

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1855. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1855.

18 Victoria – Chapter 25

An Act relating to the service of Process. Passed 12th April 1855.

Section.

1. Writ for service on a British subject out of jurisdiction; issue; time for appearance; proceedings
2. Writ for like services on an alien.

Section.

3. Concurrent Writs.
4. Affidavits to justify further proceedings by the Court; counterfeiting, perjury, &c, penalty.
Forms.

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. In case any defendant in any suit brought or to be brought in the Supreme Court of this Province, being a British subject, is residing out of the jurisdiction of the said Supreme Court of this Province, it shall be lawful for the plaintiff to issue a Writ of Summons in the form contained in the Schedule to this Act annexed, marked A, which writ shall bear the indorsement contained in said form, purporting that such writ is for service out of the jurisdiction of the said Court; and the time for appearance by the defendant to such writ shall be regulated by the distance from New Brunswick to the place where the defendant is residing; and it shall be lawful for the Court or a Judge upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made wholly or in part within the jurisdiction, or in respect of any contract executed or to be executed in whole or in part within the jurisdiction, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction of the said Court in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner, and subject to such conditions as to such Court or Judge may seem fit, having regard to the time allowed for the defendant to appear, being reasonable, and to the other circumstances of the case; provided always, that the plaintiff shall, and he is hereby required to prove the amount of the debt or damages claimed by him in such action, either before a jury upon a Writ of Inquiry, or before a Judge of the said Court, according to the nature of the case, as such Court or Judge may direct, and the making such proof shall be a condition precedent to his obtaining judgment.

2. In any action against a person residing out of the jurisdiction of the said Court, and not being a British subject, the like proceedings may be taken as against a British subject resident out of the jurisdiction, save that in lieu of the form of Writ of Summons in the Schedule to this Act annexed, marked A, the plaintiff shall issue a Writ of Summons according to the form contained in the Schedule marked B, and shall in manner aforesaid serve a notice of such last mentioned writ upon the defendant therein mentioned; which notice shall be in the form contained in the said Schedule

also marked B, and such service shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad; and by leave of the Court or a Judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon.

3. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction; and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

4. Any affidavit for the purpose of enabling the Court or a Judge to direct proceedings to be taken against a defendant residing out of the jurisdiction of the said Court, may be sworn if in Great Britain or Ireland, before any Judge of the Court of Queen's Bench or Common Pleas, or Baron of the Exchequer, or Master in Chancery, in England or Ireland; or any Judge or Lord of Session in Scotland; the hand writing of such persons respectively being authenticated under the seal of a notary public, or before any Mayor or other Chief Magistrate of a City, Borough, or Town Corporate, in any part of the United Kingdom, under the Corporate Seal; and if in any other part of the British Dominions, before any Judge of the Supreme or Superior Court of Judicature, his hand writing being authenticated by a notary as aforesaid, or the Chief Magistrate of any City or Municipality, under the Corporate Seal; and if in any Foreign State or Kingdom, under the hand and seal of office of any British Minister, Ambassador, Consul General, Vice Consul, or Consular Agent, resident there; and every affidavit so sworn by virtue of this Act, may be used and shall be admitted in evidence, saving all just exceptions, provided it purport to be sworn, signed, and verified as aforesaid: provided always, that if any person shall forge the signature of any such affidavit, or shall use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to imprisonment for any term not exceeding three years nor less than one year, with hard labour, in the Provincial Penitentiary; and every person who shall be charged with committing any felony under this Act, may be dealt with, indicted, and tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed in the County or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence, may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed in any County or place in which the principal offender may be tried: provided also, that if any person shall wilfully and corruptly make a false affidavit before any person herein authorized to take such affidavit, every person so offending shall be deemed and taken to be guilty of perjury in like manner as if such false affidavit had been made in New Brunswick, before competent authority, and shall and may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed in any County or place in which he shall be apprehended, or be in custody, as if his offence had been actually committed in that County or place.

SCHEDULE.

(A)

Writ when the defendant, being a British subject, resides out of the jurisdiction.

Victoria, by the Grace of God, &c.

To C. D. of _____.

We command you, that within [here insert a sufficient number of days within which the defendant might appear, with reference to the distance he may be from New Brunswick] days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Supreme Court of the Province of New Brunswick, in an action at the suit of A. B.; and take notice that in default of your so doing, the said A. B. may by leave of the Court or a Judge, proceed therein to judgment and execution. –Witness, &c.

Memorandum to be subscribed on the Writ.

N. B. – This Writ is to be served within (six) calendar months from the date thereof, (or if renewed, from the date of such renewal,) including the day of such date, and not afterwards.

Indorsement to be made on the Writ before the service thereof.

This Writ is for service out of the jurisdiction of the Court, and was issued by E. F. of _____ Attorney for the plaintiff; or This Writ was issued in person by A. B., who resides at [mention the City, Town, or Parish where plaintiff resides.]

Indorsement to be made on the Writ after service thereof.

This Writ was served by X. Y. on L. M. the defendant (or one of the defendants) on (Monday) the _____ day of _____ 18____.

Served.

X. Y.

(B)

Writ where the defendant, not being a British subject, resides out of the jurisdiction.

Victoria, by the Grace of God, &c.

To C. D. of _____.

We command you, that within [here insert a sufficient number of days within which the defendant might appear, with reference to the distance he may be at from New Brunswick] days after notice of this Writ is served on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Supreme Court of the Province of New Brunswick, in an action at the suit of A. B.; and take notice that in default of your so doing, the said A. B. may by leave of the Court or of a Judge, proceed therein to judgment and execution. –Witness, &c.

N. B. – Notice of this Writ to be served within six calendar months from the date thereof, including the day of such date, and not afterwards.

[Indorsement as in last.]

Notice of the foregoing Writ

To C. D. late of _____ or now residing at _____

Take notice, that A. B. of _____ in the County of _____ New Brunswick, has commenced an action at law against you C. D. in Her Majesty's Supreme Court of New Brunswick, by a Writ of that Court, dated the _____ day of _____ 18____; and you are required within _____ days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action by causing an appearance to be entered for you in the said Court to the said action, and in default of your so doing, the said A. B. may by leave of the Court or a Judge, proceed therein to judgment and execution.

Indorsement to be made on the Writ after service thereof.

This Writ was served by O. P. on C. D. the defendant (or one of the defendants) on _____ the _____ day of _____ 18____.

Served.

O. P.