

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1856. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1856.

19 Victoria – Chapter 43

An Act to explain and amend Chapter 137, Title XXXVII, of the Revised Statues, "Of the jurisdiction of Justices in Civil Suits." Passed 1st May 1856.

Section.

1. Jurisdiction of Justices of the Peace limited to County for which appointed.
2. Order for hearing on review, to stay execution.
3. On cause shewn a Judge may order removal of proceedings within thirty days after judgment.

Section.

4. Proceedings in case either party be out of the Province or concealed.
5. Judge on review, may for insufficient service, or want of opportunity, &c., set aside judgment, order non-suit, &c.
6. Venire to be delivered to a constable.

Whereas doubts have arisen as to the power and jurisdiction of Justices, under Chapter 137, Title XXXVII, of the Revised Statutes, to issue Summons, Capias, and Process to Counties in the Province other than those for which they are or may be respectively appointed: And whereas, the said Chapter requires amendment in other respects;—

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

1. That nothing in the said Chapter shall authorize or be construed to authorize or empower any Justice to issue any summons, capias, or other process, (except subpoenas) to any part of the Province, beyond the County for which such Justice is or may be appointed a Justice of the Peace, and in which such Justice shall at the time reside; and the jurisdiction of Justices in civil suits is and shall be in all cases confined to the County in which such Justice resides and for which he has been appointed a Justice of the Peace.

2. That in cases of review before a Judge of the Supreme Court, the order for hearing, if served on the Justice before execution shall have issued, shall stay the issuing of execution, and if the execution shall have been issued and not collected, the Justice shall grant the party requiring it a certificate of the issuing of such order, which on being served on the constable in whose hands the execution may be, shall suspend such execution.

3. In case any party to a suit in a Justice's Court may desire to have the same reviewed, and shall make it appear to the satisfaction of a Judge of the Supreme Court that he has been unable to apply to the Justice before whom the judgment was given for a copy of the evidence, a minute of the cause of action, the grounds of defence, and the result, within six days after such judgment, according to the provisions of the forty fourth Section of said Chapter, such Judge may, at any time within thirty days from the day of giving judgment, issue his order to the Justice, who upon service thereof and demand of such copy of the evidence and proceedings, shall within three days

thereafter give the same to the party, he paying therefor as provided in the said forty fourth Section, and the proceedings in review shall be thereupon taken in the same manner as if the copy had been demanded within six days of the judgment, and according to the provisions of the said forty fourth Section; and such order for copy of evidence and proceedings when served on the Justice, shall operate as a stay of proceedings in the same manner as the order for hearing.

4. In case of either of the parties being out of the Province or concealed therein, so that the order for hearing or copy, of proceedings cannot be served, then the service of the same on the Justice shall be a stay of proceedings until some person, appear on behalf of the absent or concealed party, to resist or shew cause against such application, when the review may proceed by service on the person so acting for the absent or concealed party, it being made to appear by affidavit, and to the satisfaction of the Judge granting such order, that the party is absent or concealed.

5. Upon the hearing on review, if the Judge of the Supreme Court be satisfied by affidavit that the defendant has not been legally served with summons or first process in the cause, or that he has not had a fair and reasonable opportunity of appearing, or defending the same before the Justice, the same shall be a sufficient ground for setting aside the judgment, or ordering a non-suit to be entered, or the Judge may make such order in the matter as to him may seem right, notwithstanding the return of the Justice, which shall be no bar or ground for excluding evidence by affidavit, either of the want of service of summons, or opportunity to appear as above stated; provided always, that copies of the affidavits to be used on such hearing be served on the Justice who tried the cause, with the order for hearing.

6. In case of a Jury being applied for, and a venire issued, the justice shall not deliver the venire to either party, but to the constable by whom the Jury are to be summoned.