

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1867. Fredericton, NB: G. E. Fenety, Printer to the Queen's Most Excellent Majesty, 1867.

30 Victoria – Chapter 10

An Act to establish County Courts. Passed 17th June 1867.

Section.

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Section.

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Fees.

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

1. There shall be established in each of the Counties in this Province a Court of Law and of Record, to be styled the County Court of [the name of the County,] and the Sittings of the said Court shall be held at or near the County Court House in the Shire Town.

2. The Governor in Council shall appoint one Judge for the Counties of Charlotte, Carleton, and Victoria; one Judge for the Counties of York, Sunbury, and Queen's; one Judge, for the Counties of Albert, Westmorland, and Kent; one Judge for the Counties of Northumberland, Gloucester, and Restigouche; and one Judge for the Counties of King's and Saint John; provided that the said Court for the County of Saint John shall not have or exercise any jurisdiction in any cause in which the City Court in and for the City of Saint John, or the Police Court in the Parish of Portland, in the County of Saint John, have jurisdiction: The said Judges shall be Barristers of not less than seven years standing, and shall hold office during good behaviour; and a Clerk for each Court shall be appointed in like manner, who shall be an Attorney, and shall hold his office during pleasure.

3. The salary of the Judges of the several County Courts shall be not less than one thousand dollars nor more than two thousand six hundred dollars per annum, payable quarterly by Warrant on the Treasury, and travelling expenses not exceeding two hundred dollars per year.

4. When by reason of unavoidable absence or absence by leave, of the Judge, a County Court cannot be held, the Clerk shall adjourn the Court to such day as he may deem convenient, and so from time to time until the Court can be held, and he shall enter in the minutes the cause of such adjournment; and in case of the continued inability or absence of a Judge to hold his Court, the Governor in Council may appoint a Barrister of the Supreme Court to act in his stead during such inability or absence, and who shall be vested with all the powers of the Judge.

5. No Judge of any such Court shall practise, carry on or conduct any business in the profession or practice of the Law while being such Judge, on pain of forfeiture of his office.

6. Every Judge shall take the following Oath before some person appointed by the Governor in Council to administer the same, that is to say:—"I ___ do swear I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of a Judge of the County Court, and for the several Counties of ___ without fear, favor or malice.—So help me God."

7. The Courts shall not have cognizance of any action,—

1st. Where the title to land is brought in question; or

2nd. In which the validity of any devise, bequest or limitation is disputed, except as hereinafter provided ; or

3rd. For criminal conversation or seduction; or

4th. For breach of promise of marriage; or

5th. Of any action against a Justice of the Peace for any thing done by him in the execution of his office.

8. Subject to the exceptions in the last preceding Section, the County Courts shall have jurisdiction and hold plea in all personal actions of debt, covenant, and assumpsit, when the debt or damages claimed do not exceed the sum of two hundred dollars, and in all actions of tort when the damages claimed do not exceed one hundred dollars, and in actions on bail bonds given to a Sheriff in any case in a County Court, whatever may be the penalty or amount sought to be recovered.

9. The said Courts respectively shall hold Terms every year in each County, which Terms shall annually commence as follows:—

For the County of Charlotte, on the second Tuesday in the months of January and June, on the fourth Tuesday in March, and on the, first Tuesday in October:

For the County of Carleton, on the second Tuesday in the months of March and December, and the first Tuesday in July:

For the County of Victoria, on the first Tuesday in the months of March and December, and the second Tuesday in July:

For the County of York, on the first Tuesday in January, March, June, and October:

For the County of Sunbury, on the Wednesday next after the second Tuesday in the months of January, June, and October:

For the County of Queen's, on the Wednesday next after the fourth Tuesday in January and June, and on the third Tuesday in October:

For the County of King's, on the first Tuesday in the months of April, July, October, and January:

For the County of Saint John, on the fourth Tuesday in the months of April, July, October, and January:

For the County of Albert, on the fourth Tuesday in the month of June, and on the second Tuesday in the months of March and November:

For the County of Westmorland, on the third Tuesday in the month of June, on the second Tuesday in the month of December, and on the first Tuesday in the month of March:

For the County of Kent, on the third Tuesday in the month of January, on the last Tuesday in the month of April, and on the first Tuesday in the months of July and November:

For the County of Northumberland, on the fourth Tuesday in the month of January, the second Tuesday in April, and on the fourth, Tuesday in July, and the third Tuesday in October:

For the County of Gloucester, on the third Tuesday in the months of January and July, and on the first Tuesday in April:

For the County of Restigouche, on the second Tuesday in the months of January and March, and on the second Tuesday in July:
and continue until all the business shall be finished; or the Judge may adjourn the Court to a future day when it may be necessary to finish the business; and all parties, ministers of the law, jurors and witnesses summoned, shall attend at; such adjourned Court, or the Judge may order new Juries to be summoned to attend, and to be charged with the like pains and penalties for any default; but no witness shall be liable for non-attendance unless duly served with a subpoena, and his expenses be paid or tendered.

10. The first Tuesday and Saturday in each Term shall be a day for the return of Writs of Execution.

11. If the Judge shall be satisfied by either party in a cause in his Court, that such cause can be more conveniently or fairly tried in some other County Court, he shall order that the venue be changed, and that the cause be sent for hearing to such other County Court; and the Clerk of the Court shall forthwith transmit, by Post, to the Clerk of the Court to which the cause is sent, a certified copy of all papers and proceedings in the cause on file in his office, and a certified copy of the order for changing the venue, which cause shall be dealt with in such Court as if originally brought therein.

12. Every process, mesne or final, issued out of the said Courts respectively, and all other proceedings therein, may be on paper, and every process shall be directed to the Sheriff of the County to or into which it is issued; the first process in every cause, except replevin, shall be according to the Form (A) in the subjoined Schedule, or as near thereto as may be, and shall bear teste on the day of issuing thereof; and all other writs shall be in form as near as may be to similar writs issued out of the Supreme Court, and made

returnable in like manner at some Term of the Court, and shall also bear teste on the day of issuing.

13. In all cases where the party may be held to bail, the plaintiff or his agent shall make affidavit of the debt before the Judge of the Court, or a Commissioner authorized to take affidavits to be read in the Supreme Court, and the amount sworn to shall be endorsed on the writ, and the Sheriff shall arrest the defendant thereunder and commit him to gaol, unless he shall give a bond, with two responsible persons, to the Sheriff, in double the amount of the sum sworn to, conditioned for the payment of the sum sworn to, with costs on judgment recovered, or upon making a deposit with the Sheriff of the sum sworn to, with ten dollars for costs, and the bond shall be assigned to the plaintiff, and shall stand as a security for the debt and costs to be recovered in said action; but the defendant, or his bail, may be discharged from the bond upon the render of the defendant to the custody of the Sheriff of any County, and notice thereof given to the plaintiff or his attorney; and in case of render before final judgment, the Sheriff may take a new bond in manner before mentioned; and unless the plaintiff shall charge the defendant in execution within twenty days after final judgment and notice of render, the Judge may discharge him out of custody by writ of supersedeas; and in case the Sheriff shall take insufficient bail, he shall be liable to the plaintiff for all damages sustained thereby.

14. In every case where the writ of execution against the defendant in any action is returned *non est inventus*, and an action is prosecuted against his bail upon their bond, they shall be allowed to render their principal in discharge thereof, at any time within thirty days after the service of the writ on such bail, and they shall be discharged from all liability as such bail on payment of the costs of such action, incurred at the time of notice to the plaintiff or his attorney of such render. The Judges of County Courts shall have the same power to grant relief to the Sheriff or bail as may be now done by the Supreme Court, or any Judge thereof.

15. That in all actions in the said Court, except in replevin, the bill of complaint or declaration shall be inserted in the writ, and a copy thereof, with a copy of the particulars of the plaintiff's demand, in cases where by the practice of the Supreme Court the defendant would be entitled thereto, shall be served on him, and he shall, within thirty days thereafter, enter an appearance in the said action and plead the general issue or some other plea in bar, and give a copy thereof do the plaintiff or his attorney, and the said cause shall be tried according to the practice of the Supreme Court, after due notice; and in case the defendant shall fail to enter his appearance and plead within the time aforesaid, then judgment by default may be entered against him in the said cause, and in twenty days thereafter the Judge may assess the damages and the Clerk sign final judgment for the sum assessed and costs to be taxed; provided always, that the Judges of the said respective Courts may let in the defendant to appear and defend upon terms.

16. In all actions the defendant may file a demurrer to the writ in lieu of the general issue, and shall give a copy thereof to the plaintiff's attorney, which demurrer shall be in a brief form; and notice in writing, of the grounds thereof, shall be given to the plaintiff or his attorney with such copy; and upon such demurrer the Judge shall give judgment according to the very right of the matter; and if judgment be given for the plaintiff, the Judge shall assess the damages as in case of judgment by default, and the plaintiff may sign judgment therefor, with costs; but if judgment shall be given for the defendant, he may sign judgment for costs, unless the Judge allow the plaintiff to amend on terms, and allow the defendant to plead *nunc pro tunc*.

17. In all actions (except replevin) any matters in bar to the action which in actions not summary by the present practice of the Supreme Court ought to be pleaded specially, may be given in evidence under the general issue or other plea in bar, provided that notice in writing of such matter be given to the plaintiff or his attorney at the same time with the plea, and infancy or coverture of the defendant shall not in any action be given in evidence unless notice thereof be given.

18. Every Act of Assembly relating to the depositions of witnesses before trial, to the proceedings in replevin, to evidence, to the service of process, to tender, and for the amendment of the law in any way as to practice, proceedings, and evidence, or any other matter or thing whatever, connected with the administration of justice in the Supreme Court, shall apply to each County Court, when not inconsistent with the provisions of this Act.

19. The mode of proceeding in all cases not herein provided for, shall be according to the practice of the Supreme Court.

20. The Clerk of each Court shall sign and seal all writs, and file all writs and papers, and shall keep a book in which he shall enter all causes, and all rules and orders made therein, and a minute of every judgment rendered in his Court, a copy of which, certified by him, shall be evidence of such judgment in all Courts in this Province; and he shall keep an office in the shire town of the County.

21. No defendant shall remove any action commenced in the said Court into the Supreme Court by *habeas corpus* or *certiorari*; and if any action be brought in the Supreme Court that could have been brought in a County Court, the plaintiff shall not be allowed any costs, unless the Judge who tried the same shall certify that there was good cause for bringing the action in the Supreme Court.

22. The several Courts, or the respective Judges thereof, shall have power by rule or order, in Term or Vacation, to set aside verdicts, or nonsuits, and grant new trials, and make orders for judgments *non obstante veredicto*, or for arresting judgments; and may by rule or order set aside judgment by default, set aside proceedings for irregularity, grant time for pleading, and order stay of proceedings till security be given for costs, and

may issue summonses, and make orders in all matters of practice in like manner and on like grounds and to the same extent as in the Supreme Court, or by the Judges thereof, and may cause rules on Sheriffs, or any other rules, orders or proceedings thereupon, to be served in any County.

23. The said Courts shall have and exercise the same powers to enforce their rules and orders as the Supreme Court possess, and may punish by fine or imprisonment, or both.

24. In case any party in a cause in any of the said Courts is dissatisfied with the decision of the Judge upon any point of law, or with the charge to the jury, or with the decision upon motion for a nonsuit or new trial, or in arrest of judgment, or for judgment *non obstante veredicto*, he may appeal to the Supreme Court; and the Judge, at the request of such party, his counsel or attorney, shall stay the proceedings until judgment be given on appeal, when if the party wishing to appeal give a bond with sureties to the satisfaction of the Clerk; to the opposite party, in the sum of one hundred dollars, conditioned for the payment of all the costs of the appeal awarded by the Supreme Court, if the judgment or decision of the Judge be affirmed, then at the request of the party appellant the Judge shall certify under his band to the Supreme Court the pleadings in the cause, and all motions, rules or orders made, granted or refused therein, with his own charge, judgment or decision thereon, and, when a trial has been had, the evidence and all questions and exceptions thereto, whereupon the matter shall be set down for argument at such time as the Supreme Court shall direct; and that Court shall make such order or direction to the Court below, touching the judgment to be given in the matter, as the law requires, and shall in their discretion award costs to either party, which costs shall be certified, and form part of the judgment of the Court below; and upon receipt of such order, direction, and certificate, the Court below shall proceed in accordance therewith.

25. When any tenant shall, after the expiration of his tenancy, refuse to deliver up possession to the landlord, such landlord may apply to the Judge of any County Court where the premises are situate, and having made oath that such tenant has held and occupied the premises designated in the affidavit, for a certain period then expired, and that due notice to quit when necessary has been given, such Judge shall issue a Summons (B) giving at least six days notice, to be served with a copy of the affidavit on the tenant, or by leaving the same with some adult person of the household living in his dwelling house, to shew cause why he holds over: If the tenant neglects to attend, or attending and no sufficient cause be shewn, and on hearing the parties, the Judge may issue his Warrant (C) to the Sheriff, directing him to deliver possession of the premises to the landlord, to be executed by Him according to the exigency of the warrant: The cost of such proceeding shall be taxed and allowed, and payment thereof may be enforced by attachment.

26. No privilege shall be allowed to any person to exempt him from the jurisdiction of the several County Courts; but Members of the Legislature shall not be arrested or imprisoned by civil process issued out of any of the said Courts.

27. Any executor or administrator may sue and be sued in any of the said County Courts, in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court, and he may be sued for the amount, or part of the amount, of a distributive share duly ascertained by the proper Court under an intestacy, or of any legacy under a will, provided the same in either case do not exceed two hundred dollars.

28. The said Courts may issue writs of *fieri facias* against goods and lands of the party, which shall bind the same from the time of the delivery thereof to the Sheriff to be executed, and he shall endorse thereon the day of the month and year he received the same, and writs of *capias ad satisfaciendum* in like manner as the Supreme Court; and when lands are levied upon, they shall be advertised, sold and conveyed by the Sheriff, in the same manner and form as under executions issued out of the Supreme Court.

29. The said Courts may issue writs of execution and writs of subpoena into any other County, to be served or executed therein, and all such writs shall be of equal force as if the same had issued from the Court or by the Judge of the County to or into which they may be so issued.

30. The Sheriff shall summon twelve men (qualified) to serve as Petit Jurors at each Term of the said Courts, for the trial of causes therein, in the same manner provided by the Act of Assembly, eighteenth Victoria, Chapter twenty four, intituled *An Act relating to Jurors*, and they shall be subject to the pains and penalties prescribed in the said Act.

31. Five jurors shall be sworn and empanelled for the trial of each cause, four of whom, in case they cannot agree after two hours absence, may render a verdict.

32. The several County Courts and the respective Judges thereof, shall have and exercise all the powers and authority vested in the Supreme Court, or the Judges thereof, respectively, by Chapter 124, Title xxxiv, of the Revised Statutes, 'Of Insolvent Confined Debtors,' and of Chapter 125, Title, xxxiv, of the Revised Statutes, 'Of Absconding, Concealed, and Absent Debtors,' and also of an Act made and passed in the twenty sixth year of the Reign of Her present Majesty Queen Victoria, Chapter 10, intituled "An Act to amend Chapter 124, Title xxxiv, of the Revised Statutes, 'Of Insolvent Confined Debtors,'" and of any other Act or Acts in amendment thereof .

33. The Judge of any County Court may try and determine causes brought to issue before him without the intervention of a jury, if both parties agree thereto.

34. No Petit Jury shall be summoned or hereafter attend at any General Sessions of the Peace.

35. In all criminal cases, cognizable by the Court of General Sessions of the Peace, the said Courts may, after bill found, hand over the indictment to the County Court, to be there proceeded with to trial and conviction in the same manner as in the Circuit Court; and the Court of Sessions shall in such case (if the offender be admitted to bail) bind him over by recognizance, to appear and take his trial at such County Court, and the witnesses to appear and give evidence; and the Judge of the County Court may, upon good cause shewn, from time to time postpone the trial to any future sitting of the Court, and in such case shall bind over the offender by recognizance (and if at his instance, with sureties) in such sum as he may think proper, to appear and take his trial at such future Court; and he may also bind over by recognizance the witnesses, to appear and give evidence at such Court: The jury for the trial of such offenders in the County Courts shall be seven, all of whom must agree upon the verdict.

36. The several Judges of the County Courts shall have and exercise all the powers given to a Judge of the Supreme Court in cases of Review in causes tried in a Justice's Court, by Title xxxvii, Chapter 137, Section 44, and all other Acts relating or in addition thereto.

37. The Inferior Courts of Common Pleas are hereby abolished, and all Acts or parts of Acts relating thereto are hereby repealed; but all causes pending in any of the said Courts may be carried on to their termination, and judgment obtained and execution issued in the same manner as if this Act had not passed, only that causes within the jurisdiction of the County Court, and in which issue was joined, may be transferred to the County Court by the order of a Judge, and proceeded therein in the same manner as if originally brought in such Court; and all causes not within the jurisdiction of the County Court may in like manner be transferred to the Supreme Court, and all further proceedings had therein shall be carried on as if originally brought in that Court.

38. All Acts and parts of Acts relating to the summary practice in the Supreme Court are hereby repealed, but all suits and proceedings may be carried on to the termination and judgment, and execution shall issue in the same manner as if this Act had not passed.

39. The Judge of each County Court shall be ex officio a Justice of the Peace in and for each County for which he is appointed.

40. If in any action brought in a County Court the plaintiff does not recover a larger sum than he could have recovered in a Justice's Court, he shall not be entitled to any costs unless the Judge who tried the cause shall certify that there was reasonable ground for bringing the action in the County Court, or unless the sum claimed was reduced by set off.

41. Only Attorneys of the Supreme Court may practise in the County Courts.

42. The Clerk of each County Court shall provide a Seal for the said Court, and necessary Books for the Records of the said Court, which shall be approved by the Judge, and paid for by the Treasurer or Secretary-Treasurer of the County, out of the funds of the County, on the order of the Judge of the County Court of such County.

43. The Clerk of the Court shall tax costs, subject, in the event of any dispute, to be reviewed by the Judge, and according to the following scale:—

Schedule of Fees.

For the Jury Fund, and to be applied to the payment of the Jurors by the Clerk.

On entering cause for trial,	\$ 1 0 0
On trial of cause, to be deposited on entry,	3 0 0

For the Clerk.

Signing and sealing every writ,	\$ 0 3 0
Filing every paper,	0 1 0
Filing writ and entering cause,	0 2 0
Interlocutory judgment and certificate,	0 2 0
On signing final judgment,	0 4 0
Taxing costs,	0 2 0
Calling and swearing Jury,	0 2 0
Swearing each witness,	0 1 0
Reading each paper,	0 1 0
Receiving and entering verdict,	0 2 0
On entering order for judgment of nonsuit,	0 2 0
For every search made,	0 2
For all copies of papers, 10 cents per folio.	
Certificate,	0 2 0
Postages, when incurred,	
On entering cause for trial,	\$ 0 4 0
On payment of money into Court, on every dollar two cents,	0 0 2

For the Attorney.

Taking instructions to sue or defend,	1 0 0
Writing letter to defendant,	0 5 0
Writ, including particulars, where it does not exceed four folio,	2 0 0

Each copy of writ and particulars exceeding	
four folio,	1 0 0
Alias and pluries,	0 5 0
Affidavit of debt and oath,	0 4 0
Filing writ and entering cause,	0 5 0
Signing interlocutory judgement,	0 5 0
Preparing bill of costs,	0 2 0
Copy and service when necessary,	0 3 0
Attending taxation,	0 2 0
Preparing assessment dockets,	0 4 0
For every necessary attendance on Judge,	0 6 0
For drawing any summons, rule, or order, and	
copy,	0 2 5
Signing final judgment,	1 0 0
Execution when actually issued, including	
Clerk's fee,	0 9 0
Venire when actually issued,	0 5 0
Every notice and service,	0 4 0
Brief,	1 0 0
Every motion,	0 6 0
Entering every cause for trial,	0 5 0
For entering appearance and plea,	0 6 0
Copy thereof to file,	0 3 0
Copy for plaintiff and service,	0 4 0
For preparing special notice or other paper	
when necessary, 10 cents per folio.	
Copy to file, 5 cents per folio.	
Copy to serve, 5 cents per folio.	
Service of every paper,	0 1 0
Subpoena,	0 4 0
Each copy,	0 2 0
Every necessary search,	0 2 0
Postages actually paid.	

Counsel Fee.

On trial of cause and on every argument
 before the Court, not less than \$5 nor more
 than \$14, at the discretion of the Judge.
 Every special motion or argument before the
 Judge at Chambers, not more than \$5, at
 the discretion of the Judge.

In case of judgment by default where the damages recovered shall not exceed \$100, the costs of the Attorney shall not be taxed at a sum exceeding \$6, exclusive of Sheriff's fees.

Sheriff's Fees.

For every serving every writ including affidavit and return thereon,	\$ 0 6 0
Milage, going and returning, 5 cents per mile.	
Every bond,	1 0 0
Assignment thereof,	0 5 0
Poundage, four cents on every dollar.	
When lands are advertised under execution, incidental expenses also to be allowed when absolutely necessary.	
Preparing deed of conveyance,	2 0 0

Constable.

For attending each Jury,	0 2 0
Witness fees to be the same as in the Supreme Court.	

44. The Petit Jurors attending at the said Courts shall be paid in the same manner and at the same rate as the Jurors attending at the Supreme Court.

45. No fees shall be allowed for the service of any writs, unless served by the Sheriff or his Deputy, or the Coroner.

Form A.

[L.S.]

_____ County, ss.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the Faith, &c.

To C.D. of _____ in the County of _____, Greeting:

We command you, that within thirty days after service upon you of this writ, you do cause an appearance to be entered for you in the County Court of the County of _____, to answer A.B. in a plea of [the form of action] for that whereas [here set out the cause of action in a brief form] and take notice that in default of your doing so, the said A.B. may cause an appearance to be entered for you, and proceed thereon to judgment and execution.— Witness, J. H., Judge of the said Court, this _____ day of _____ A. D. 186_____.

E. F., Clerk.

J. K., Plaintiff's Attorney.

Form B.

A. B. of _____ having made the affidavit required by law, I therefore require you to appear before me on the _____ day of next, (or instant,) at _____ to shew cause, if any you have, why you should not deliver up to the said A.B. the premises described in said affidavit.— Dated this _____ day of _____ A. D. 18_____.

E. F., J. C. C.

To Mr. C. D.

Form C.

To the Sheriff of _____

Whereas A. B. claims the premises situate [here describe the premises] now in the possession of C. D., who holds over and refuses to deliver them up, the matter having been heard before me pursuant to law, I do adjudge that the said A. B. shall be forthwith put in possession and shall recover his costs, being _____, besides your fees for executing this writ; you are hereby commanded to put the said A. B. into immediate possession of said premises, and that you levy of the goods and chattels of the said C. D. the sum of _____ for his costs, besides your fees; and for want of goods and chattels, that you take the said C. D. and deliver him to the keeper of the gaol of the said County, who will safely keep him for _____ days, unless said costs and fees be sooner paid; and make return hereof, and what you have done, within days from this date.— Dated this _____ day of _____ A. D. 18_____.

E. F., J. C. C.