

Laws of Her Majesty's Province of Newfoundland, passed in the year 1864. J. C. Withers,
Queen's Printer, 1864.

27 Victoria – Chapter 12

**An Act to Amend and Consolidate the Law relating to Costs on the Common Law Side of the
Supreme and Central Circuit Courts. (Passed 13th April, 1864.)**

Whereas it is expedient to amend and consolidate the Law relating to the Costs on the Common Law
Side of the Supreme Court and Central Circuit Court:

Be it therefore enacted, by the Governor, Legislative Council and Assembly, in Legislative Session
convened, as follows.

- I. In actions at law instituted in the said Courts, taxable costs shall be paid and. recovered by the parties to such suits, as follows.
- II. A plaintiff who recovers final judgment for the whole or any part of his demand, whether of money, lands or chattels, shall recover also the general costs of the cause, but subject to the restrictions hereinafter contained.
- III. A defendant who recovers final judgment against the whole demand of the plaintiff, whether upon verdict, demurrer, non-suit, non pros., nolle prosequi, discontinuance or otherwise howsoever, shall recover also the general costs of the cause, but subject to the restrictions hereinafter contained.
- IV. The costs of any issue, either in fact or in law, shall follow the finding or judgment upon such issue, and be adjudged to the successful party whatever may be the result of the other issue or issues, and may be set off against costs payable to the opposite party, or execution may issue for the same as in other cases.
- V. On all rules of Court and Judge's orders, the costs shall be costs in the cause unless otherwise directed by the Court or Judge in making such rules or orders.
- VI. Upon an arrest of judgment, or judgment non obstante veredicto, the Court shall adjudge to the party, against whom such judgment is given, the costs occasioned by the trial of any issues of fact arising out of the pleading for defect of which such judgment is given, and upon which such party shall have succeeded, and such costs shall be set off against any money or costs adjudged to the opposite party, and execution may issue for the balance, if any.
- VII. If any plaintiff, having given the usual notice of trial shall neglect; to try his cause when called on, and the defendant be then ready to proceed to trial, the defendant shall be entitled to tax against the plaintiff all costs occasioned by such neglect, and may recover the same in manner prescribed in the preceding section.

VIII. Costs in a cause removed from an inferior Court, before and after removal shall follow the final event of the cause; Provided that where a cause so removed shall be sent back to the inferior Court for trial, the party removing the same shall not be entitled to the costs incident to removal, notwithstanding he shall finally succeed in the suit.

IX. In every action brought by an executor or administrator in right of the testator or intestate, he shall be liable to pay costs to the defendant in like manner as if he were suing in his own right.

X. Where a nolle prosequi shall have been entered upon any count, or as to part of any declaration, a defendant shall be entitled to and shall recover his reasonable costs in that behalf.

XI. When a new trial is granted, the costs of the former trial shall be subject to the direction of the Court, as contained in the rule granting the new trial; and where no mention of costs is contained in the rule, each party shall pay his own costs of such former trial.

XII. When a venire de novo is awarded, the costs of the former trial shall be subject to the order of the Court at the time of making such award.

XIII. When for any reason a Jury shall be discharged without a verdict, each party shall pay his own costs of trial.

XIV. If the plaintiff in any action of trespass, or on the case, other than assumpsit, shall recover less damages than eight dollars, he shall not recover any costs, unless the Judge before whom the trial shall have been had shall immediately after certify on the roll that the action was brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action was brought, or that the trespass or grievance for which the same was brought was wilful and malicious; but nothing in this section shall be construed to deprive any plaintiff of costs in, any action of trespass to lands or tenements in respect of which notice not to trespass thereon shall have previously served or left at the last place of abode of the defendant by or on behalf of the owner or occupier.

XV. The party applying for a Special Jury shall bear the costs thereof, and shall not be, entitled to any further allowance for the same upon taxation of costs, other than he would have been entitled to had the cause been tried by a Common Jury, unless the Judge before whom the cause is tried shall, immediately after the verdict or trial, certify upon the roll that the same was a cause proper to be tried by a Special Jury, and this provision shall apply as well to cases in which the plaintiff shall be non-suited before or after verdict, as to cases in which a verdict shall pass against him.

XVI. A person admitted to sue in forma pauperis shall not in any case be entitled to costs from the opposite party, unless by order of the Court or a Judge.

XVII. No set-off of damages or costs between parties shall be allowed to the prejudice of the attorney's lien for costs in the particular suit against which the set-off is sought; Provided nevertheless that interlocutory costs in the same suit awarded to the adverse party may be deducted.

XVIII. Nothing in this Act contained shall affect the provisions of any Act relating to the Revenue, providing for the indemnification of Officers of Her Majesty's Customs from costs in certain cases.

XIX. Security for costs may, in the discretion of the Court or a Judge, be ordered to be given by the plaintiff or by a defendant in replevin, in the following cases, namely, where such plaintiff, or defendant, in replevin, resides beyond the jurisdiction of the Court, where a plaintiff or such defendant is an uncertified bankrupt or insolvent, or becomes a bankrupt or insolvent, during the pendency of the suit, or where he has assigned his property for the benefit of his creditors; and in a second ejectment for the same premises against the same defendant, or one defending under the former defendant, and by the same plaintiff, or one claiming through him, where the first action shall have been unsuccessfully brought, and such security may be ordered with or without a stay of proceedings, or with such other conditions as to the said Court or Judge may seem just.

XX. Costs payable under rule of Court or Judge's order, may be recovered by process of contempt, the Judge's order being first made a rule of Court; all other interlocutory costs by set off, or judgment and execution, as in ordinary cases.

XXI. Upon a writ of execution the costs of executing, such writ, and also the costs of other ineffectual writs of execution, may be levied in addition to the amount of the judgment.

XXII. One day's notice of taxing costs, with copies of the bill of costs, shall be given by the Attorney of the party whose costs are to be taxed, to the other party or his attorney; Provided that such notice shall not be necessary to a defendant who has not appeared.

XXIII. No action shall be commenced by an attorney for costs incurred in any action until after the expiration of one calendar month from the time when he shall have delivered to the intended defendant, or left at his last place of abode, a fair copy of his bill of such costs, written in words at length and figures, and signed by the attorney, with the place of his office or residence.

XXIV. The costs enumerated in the schedule annexed shall be those payable in the said Courts, in cases where such charges shall be applicable.

XXV. The eleventh, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-sixth, twenty-seventh, thirty-second, thirty-third, thirty-sixth, and thirty-seventh, of the new rules of the Supreme Court, and the forty-first, fifty-fourth, and fifty-fifth, of the old rules of the, Supreme Court, are hereby repealed; Provided that nothing in this section contained shall prevent the said rules from remaining in force, as heretofore, in the Northern and Southern Circuit Courts.

XXVI. This Act shall come into operation on the thirtieth day of June next.

SCHEDULE

Fees to be taken by Attorneys in the Supreme and Central Circuit Courts:

Warrant of Attorney	\$0.75	Cents
Notice of Action	0.75	"
Every Process - whether original, mesne, or final	0.75	"
Copies, each	0.25	"
Declaration	1.50	"
Copies, each	0.75	"
Entering Appearance	0.75	"
Interlocutory Judgment by default	0.75	"
General Issue	0.75	"
Special Plea	1.50	"
Copies, each	0.75	"
Every subsequent Pleading	1.50	"
Copies, each	0.75	"
Affidavit of Debt	0.75	"
Affidavit of Service	0.25	"
Special Affidavit according to necessary length	0.75 to 1.50	"
Every necessary Notice	0.75	"