

WRIT OF SUMMONS.—ABSENTEES.

15. In case any defendant, being a British subject, in a suit to be brought in the Supreme Court, is residing out of the jurisdiction of the said Court, the plaintiff may issue a writ of summons in the form No. 4 in the Schedule A, which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the Court, and the time for appearance by the defendant shall be regulated by the distance from New Brunswick to the place where the defendant is residing, having due regard to the means of and necessary time for postal or other communication; 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 a 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 him, 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 or 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 the Court or Judge may seem fit, (having regard to the time allowed the defendant to appear being reasonable, and to the other circumstances of the case); provided always, that the plaintiff shall be required to prove the amount of the debt or damage claimed by him in such action, either before a jury on a Writ of Inquiry, or before a Judge, according to the nature of the case, as the Court or a Judge may direct, and the making such proof shall be a condition precedent to his obtaining judgment.

16. 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, except that instead of the summons mentioned in the next preceding section, the plaintiff shall issue a writ of summons according to the form No. 5 in the Schedule A, and shall in manner aforesaid serve a notice of such last mentioned writ upon the defendant, which notice shall be in the form No. 5 in Schedule A; and such service shall be of the same force and effect as the service of a writ of summons in any action against a British subject resident abroad, and by leave of the Court or a Judge, upon satisfactory proof by affidavit as aforesaid, the like proceedings may be had and taken thereupon.

17. 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.

18. 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 Court, may, if made out of the jurisdiction, be sworn before any Judge or officer or other person who may be authorized by any Act of Assembly to take affidavits beyond the jurisdiction of the Court.

WRIT OF CAPIAS.

19. In case any person is to be arrested and held to bail,

the process shall be by a writ of *capias*, according to the form No. 2 in Schedule A.

20. Such writ may be directed to the Sheriff of any County in the Province, and shall, except in the case of concurrent writs, bear date on the day on which it issues, and shall be tested and indorsed in the same manner as the writ of summons, and shall also be indorsed with the amount for which the defendant is to be held to bail, stating whether it is by affidavit or Judge's order.

21. No person shall be held to special bail upon a writ of *capias*, unless an affidavit be first made by the plaintiff, or his agent, of the plaintiff's cause of action, and that the amount thereof (being not less than one hundred dollars) is justly due to the plaintiff; provided always, that where the cause of action is other than a debt certain, a writ of *capias* may be issued to arrest a defendant upon obtaining a Judge's order for that purpose in such cases, and in such manner as has heretofore been the practice; provided also, that nothing herein contained shall subject any person to arrest who by reason of any privilege may now by law be exempt therefrom: Such affidavit may be made before a Judge of the Court, or before any Commissioner appointed to take Affidavits to be read in the Supreme Court; and in cases where the affidavit shall be made outside of the Province, then before any Judge or officer or other person who may be authorized by any Act of Assembly to take affidavits for use in this Province, in the country or place in which such affidavit is made; and the sum or sums specified in such affidavit or order, as the case may be, shall be indorsed on such writ, for which sum or sums so indorsed the Sheriff or other officer executing the writ shall take bail, and for no more.

22. No writ of *capias* shall be in force for more than two months from the day of the date thereof inclusive; but every such writ may be continued by *alias* or *pluries*, as the case may require, if any defendant therein named may not have been arrested thereon.

23. Concurrent writs of *capias* may be issued from time to time in like manner and form as the original writ in the action, and shall only be in force for the same period as such original writ, and no longer.

24. Upon each copy of a writ of *capias*, there shall be subscribed as notice to the defendant, according to the form No. 3 in Schedule A.

25. Every writ of *capias*, and so many copies thereof as there are persons intended to be arrested thereon or served therewith, together with every memorandum or notice subscribed thereto, and all indorsements thereon, shall be delivered to the Sheriff or other officer to whom such writ is directed, or who has the execution thereof; and the plaintiff or his attorney may by writing order such Sheriff or officer to arrest one or more of the defendants therein named, and to serve a copy thereof on one or more of the others; which order shall be duly obeyed by such Sheriff or officer, and such service shall be of the same force and effect as the service of the writ of summons hereinbefore mentioned.

26. Such Sheriff or officer shall execute the writ of *capias* without unnecessary delay, and shall upon or immediately after the execution of such writ, cause one copy thereof with the memorandum and indorsement, to be delivered to each person upon whom he executes the same, whether by service or arrest, and shall immediately thereafter indorse his return on such writ with the true day of the execution thereof, and return the same to the plaintiff's Attorney with an affidavit