

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 next preceding Section of this Chapter; 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 next preceding Section of this Chapter.

45. Upon the hearing on review, if the Judge of the Supreme Court, or County 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.

46. In cases of review before a Judge of the Supreme Court or County Court, the order for hearing, or the order for copy of the evidence and proceedings, 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.

47. Upon application being made for a copy of the evidence, minute of the cause of action, the grounds of defence, and the result, the Justice shall, if requested, and upon payment of the fee as aforesaid, give the applicant a certificate that such application has been made, and stating therein the parties, the nature of the cause of action, the amount and date of judgment; and no constable upon whom such certificate, or a copy thereof, is served, shall, within fourteen days from the date of judgment, proceed to make sale of any goods or chattels taken in execution upon such judgment.

48. 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 at such time as the Judge may appoint, 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.

49. Persons in custody on a writ of attachment, shall be entitled to the benefit of the Chapter for the Relief of Insolvent Confined Debtors, or to the benefit of any other Act for the relief of persons under arrest.

50. Money paid for any person to a Justice in his official capacity, if detained by him after demanded from him by the party entitled thereto, may be recovered with treble costs by action in the County Court.

51. A Justice may punish for contempt, persons guilty of the following acts:—

First—Insolent behaviour towards the Justice whilst engaged in any judicial proceedings:

Second—Any breach of the peace, or disturbance tending to obstruct the official proceedings of a Justice:

Third—Wilful refusal by witness at any trial before a Justice to testify.

The punishment for contempt in the above cases may be by removal of the offender from the Court, or the imprisonment (P) of him in gaol, for a period not exceeding twenty four hours; the Justice imposing such punishment shall make a record thereof.

52. Every Justice shall at the request and cost of any party, furnish him with copies of any proceedings had before the Justice in a civil suit.

53. The proceedings in any cause had before a Justice may be proved

by the production of the original, or a copy thereof, certified by the Justice whose signature shall be proved by a witness.

54. Justices shall preserve all papers in any cause delivered to them to be filed, and upon their death or removal from office, they shall be delivered to the Clerk of the Peace of the County, to be filed in his office.

55. Neither the plaintiff nor defendant in any cause, when giving evidence in his own behalf therein, shall be entitled to any witnesses' fees, unless he appears to the satisfaction of the Justice of the Peace before whom the cause is tried, to be a necessary and material witness.

56. When any act is to be done, the time shall be computed the first day exclusively, and the last day inclusively.

57. The processes and proceedings in actions in Justices' Civil Courts, and on the review thereof, and the attachment, shall be according to the Forms in the Schedule to this Chapter, or to the like effect, and the Fees therefor shall be taxed according to the Table of Fees.

58. Affidavits to be used in a Justice's Civil Court, or in proceedings on review therefrom, may be sworn before any Justice of the Peace, or before any Commissioner authorized to take affidavits to be read in the Supreme Court.

59. In applying the provisions of Section twenty one of this Chapter to causes in the City Court of Saint John, the Town of Portland Civil Court, the City of Fredericton Civil Court, the Parish of Sussex Civil Court, the Parish of Caraquet Civil Court, or before any Stipendiary or Police Magistrate having civil jurisdiction, or any Justice having civil jurisdiction to the amount of forty dollars, the words "twenty dollars" shall be read forty dollars or eighty dollars, according to the amount to which the Court or Magistrate has jurisdiction; the provisions of said Section twenty one shall apply to actions in said Court, or before such Magistrate, in addition to any thing regarding payment, set-off, or abandonment, contained in the several Chapters or Acts relating to the said Courts, or the civil jurisdiction of said Magistrate.

SCHEDULE

Of Forms of Proceedings in Justices' Civil Courts, and on Review.

(A)

Appointment of next Friend for a Minor.

At the request of A. B. who is under the age of twenty one years, S. L. of [state residence and occupation] is appointed his next friend in a suit against C. D., and hereby consents thereto.—Dated the day of , 18 .

S. L.

N. M., J. P.

(B)

Summons.

County, ss. To any Constable of the Parish of
Summon C. D. to appear before me at my dwelling house in the Parish of , (or at my office in the Parish of , or otherwise, as the case may be), on the day of , at the hour of in the noon, to answer the demand of A. B. for [state the amount claimed in words at length], for [state the nature of the action, and if a bill of particulars be annexed to the copy of summons, add according to the particulars herewith delivered,] and make return hereof forthwith as by law directed.—Dated the , day of , 18 .

N. M., J. P.

Second Summons.

"Summon, as before directed, C. D. to appear or" as in the foregoing."

Third or subsequent Summons.

"Summon as often before directed, C. D. to appear or."

Returns.

Personally served on the within named C. D. the day of , 18 , by me. O. P., Constable.

Proved on oath before me the day of , 18 . N. M. J. P.

Personally served on the within named C. D. the day of , 18 ; the within named E. F. was not found. O. P., Constable.