



(Continued from our last Page.)

person against whom the execution issued; if the goods shall remain unsold for want of buyers, the Constable may adjourn the time of sale for any period not less than twenty-four hours or more than six days, and may in such case proceed to sell the same after the return day of the execution, but shall immediately after such sale make return and payment as above specified, and whatever goods remain unsold after the execution is fully satisfied shall be restored to the party from whom the same were taken.

That no Constable shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, but every such purchase shall be absolutely void.

That for want of goods and chattels whereon to levy, the Constable shall in the cases authorized by law (unless otherwise directed by the party in whose favor such execution shall issue) take the body of the person against whom the execution is directed and convey him to the common gaol of the County or City and County, the keeper whereof shall keep such person in safe custody until the debt or damages and costs shall be paid, or he is thence discharged by due course of law; and the Constable so conveying any such person shall exhibit to the keeper of such gaol, the execution by virtue of which the commitment is made, and the gaoler shall thereupon enter the particulars of such execution in his register.

That no person so committed to gaol shall be liable to be detained more than one day for every two shillings of the debt or damages and costs required by such execution to be levied, or more than fifty days in the whole, if the amount exceed five pounds; and every person so committed shall be entitled to his discharge at the expiration of such time.

That notwithstanding the discharge of the Defendant under the preceding section, the judgment upon which such execution issued shall remain good against the property of the Defendant, and a new execution may be issued against his property in like manner as if he had not been imprisoned.

That no female shall be arrested or imprisoned upon any execution issued from a Justice's Court.

That if a Constable neglect to return an execution within ten days after the return thereof, except with the written consent of the party in whose favor the same was issued, or neglect to pay over the money received or levied thereon, for the space of five days after he shall have received the same, such party may maintain an action of debt against such Constable, and shall recover therein the amount of the execution with interest from the time of the issuing such execution; and a Justice of the Peace shall have jurisdiction of such action, though the amount of the execution with costs exceed five pounds.

That upon the return of an execution duly issued according to the foregoing regulations against any person who may have given bail to a Justice's Court, stating that sufficient goods and chattels of the Defendant could not be found, whereon to levy the amount, and that the body of the said Defendant could not be found, the Plaintiff may maintain an action of debt against such bail jointly or severally, and shall recover therein the amount of debt or damages together with the costs in the original suit, and such judgment against the bail shall be also rendered with costs: provided, nevertheless, that when the amount of debt or damages exceed the sum for which the said Defendant was arrested, the bail shall only be liable to the extent of that sum and the costs.

That a Justice of the Peace shall have jurisdiction of such actions against bail, notwithstanding the judgment against the Defendant may together with costs, exceed five pounds.

That in any action or suit brought in any other Court than the said Justice's Court for any debt, if the Plaintiff do not recover more than five pounds, he shall not be entitled to any costs whatever, unless he obtain an order of the Court or of the Judge before whom the cause was tried, for entering up judgment for costs, upon the ground of the demand having been reduced by set-off, or upon reasonable cause shown to such Court or Judge for bringing the action in such other Court; and in case of any such action or suit being brought in the Supreme Court, and the Plaintiff recovering a less sum than five pounds, if the Judge before whom the cause shall be tried shall think fit to certify that there was no reasonable cause for the Plaintiff bringing such action in that Court, the Defendant shall be entitled to costs, to be recovered by process of attachment, but no such attachment shall be awarded for more than the overplus in which such costs may exceed the amount of the debt or damages recovered by the Plaintiff in such suit; and such costs or so much thereof as will be sufficient to cover the same, shall go in satisfaction of such judgment.

That in all cases of judgment rendered before a Justice of the Peace in civil actions, either party thinking himself aggrieved by such judgment may apply to a Judge of the Supreme Court for an order to remove the same for review.

That the party intending to apply for such order shall make or cause to be made an affidavit, setting forth the substance of the testimony and proceedings before the Justice of the Peace, and the grounds upon which an allegation of error is founded; which affidavit shall be sworn before any person authorized to take affidavits to be read in the Supreme Court.

That such Affidavit shall, within thirty days after rendering such judgment, be presented to a Judge of the Supreme Court, and if it shall thereupon appear to such Judge that any error has been committed by the Justice of the Peace or Jury, in the Proceedings, Verdict, or Judgment, by means whereof substantial justice has not been done, or that the Justice had not jurisdiction in the cause, he shall grant his order for removal of the cause before such Judge, at such day and place as he shall appoint; or before the Supreme Court at the next ensuing Term, if the Judge shall so direct: provided always, that such Judge may in his discretion, before granting such order, require the party applying, to execute a Bond to the opposite party, with or without Sureties, and in such penal sum as the Judge may direct, conditioned for the payment of all damages, costs and expenses, which may be awarded by the said Supreme Court or any one of the Judges thereof; which Bond shall remain with the said Judge and shall not be put in force until the Order of the Supreme Court, or of a Judge thereof.

That the Order for removal shall, within twenty days after the same shall have been granted, be served upon the Justice by whom the judgment was rendered, together with a copy of the Affidavit upon which the same was allowed, and the sum of five shillings shall be paid to the Justice for his fees for making a Return to the order, and no order shall be of any effect, unless these requisites shall have been complied with.

That if the Order and Affidavit shall be served on the Justice before execution shall have issued, it 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.

That the Justice before the return day of such order, or within fourteen days after service thereof, shall make return thereto in writing, in which return he shall truly and fully answer to all the facts set forth in the Affidavit, on which the order was made; and such Justice shall forthwith make and transmit his return to the Judge, pursuant to the order, or deliver the same, if required, to the Attorney of the party at whose instance the same was granted, for the purpose of being forthwith transmitted to the said Judge.

That the Supreme Court or any Judge thereof shall have power to compel such Justice to make or amend such return by rule or order, and by attachment, if necessary.

That upon the return to such order being made, the Judge shall appoint a day and place for hearing the matter, which may from time to time be adjourned as he may think fit; and notice thereof shall be given to the opposite party, by service on the person or his Attorney, and by order of the said Judge in presence of the party or his Attorney, and the Judge shall proceed to hear the parties, their Counsel or Attorneys, and may receive any Affidavit, on either side, explanatory of the proceedings before the said Justice, and shall give judgment in the case as the very right of the matter may appear, without regarding technical omissions, imperfections or defects, in the proceedings before the Justice, which do not affect the substantial justice of the case; and may affirm, reverse or alter the judgment either as to debt, damages or costs in whole or in part, and may, if necessary, remit the cause to the Justice of the Peace, for the purpose of execution being issued for the amount awarded to either party on such review of the proceedings, or may direct the payment of such money to be enforced by attachment: provided always, that the Judge by whom such order may have been granted, may, at any time before his final determination of the matter, adjourn the same for hearing before the Supreme Court at the next ensuing, or any subsequent Term thereof, and in that case the cause may be brought on for argument before the said Court, and judgment shall be rendered by the Court in the same manner, and to the like effect as if heard and determined before a single Judge; and the Court may remit the same to the Justice of the Peace or enforce the payment thereof in the same manner, as before provided in the case of a determination before a single Judge: provided always, that in case of the sickness or absence of the Judge by whom any order may have been so granted, the matter may be heard before any other Judge of the Supreme Court, who shall thereupon be vested with the same power and authority in the premises, as if the said order had been allowed by him.

That if the judgment be wholly affirmed or reversed, costs shall be awarded to the successful party; that if the judgment be affirmed in part, or altered, costs may be awarded, according to the discretion of the Court or Judge; the costs in all cases before a Judge to be taxed and allowed by such Judge, and in all cases before the Court to be taxed and allowed by any of the Judges or the Clerk, as usual in other cases, and to be recovered by process of attachment.

That a copy of the minute of the judgment of the Supreme Court or of a Judge thereof, upon such review of any judgment of a Justice's Court certified under the hand of a Judge by whom such judgment may be given, or of the Clerk of the Court, if given by the Court shall in all Courts be evidence of the judgment of such Supreme Court or Judge; and a copy of any rule or order of such Court or Judge, made in any of the proceedings herein provided for, certified in like manner, shall in all Courts be evidence of such rule or order.

That the decision of any Judge of the Supreme Court, or of the Court, upon such review of the proceedings before a Justice of the Peace, shall be final and conclusive.

That no Certiorari or other Process to remove any judgment or proceeding had before a Justice of the Peace in a Civil Suit, under the provisions herein contained,

shall be issued or allowed by the Supreme Court or any Judge thereof, or any order made for removal of the same, except in the manner and under the regulations hereinafter provided.

That the Plaintiff shall not be entitled to recover, or the Defendant to set off any debt or demand barred by the Statute of limitations in any Action before a Justice of the Peace, if the benefit of the Statute be claimed at the Trial; neither shall the Plaintiff be entitled to recover in any Action of Trespass or other Action before a Justice, when the Action is barred by the said Statute, if the Defendant claim the benefit of such Statute, at the Trial.

That in any Action before a Justice of the Peace for the recovery of a debt, the Defendant may at any time, while the Suit is pending, pay into the hands of the Justice such sum of money as he may think fit on account of the Plaintiff's demand, together with the Plaintiff's costs then incurred, an entry of which payment shall be made in the Justice's Book; and if the Plaintiff after notice of such payment, shall take further proceedings and shall not recover more in the Action for his debt than the amount so paid on that account to the Justice, and his demand shall not have been reduced below that amount by any Set-off, Judgment shall be awarded for the Defendant with costs.

That a Defendant shall not be entitled to the benefit of any Tender made before Action brought, unless he do pay the sum so tendered into the Justice's hands, at least two days before the day appointed for the trial or hearing; neither shall such tender be available in his defence, if the Plaintiff make it appear that any time after such Tender, and before Action brought, the sum tendered was demanded by him from the Defendant and refused.

That where money is so paid into a Justice's hands pending a Suit as provided for in either of the two next preceding Sections, the Plaintiff shall be entitled to receive the same upon application therefor to the Justice, who shall make an entry in his book of such application.

That if any person upon examination on oath or affirmation at the trial or hearing of any cause before a Justice of the Peace, shall wilfully and corruptly give false evidence, or shall in any Deposition or Affidavit taken in writing before any Justice of the Peace, or person authorized to take Affidavits to be read in the Supreme Court, in any manner relating to the proceedings in any cause before a Justice of the Peace, or on the removal or review thereof, wilfully and corruptly swear or affirm any matter or thing which shall be false or untrue, every such person so offending and being thereof lawfully convicted, shall be subject to the like pains and penalties as any person convicted of wilful and corrupt perjury are by law liable and subject unto.

That every Process issued by any Justice of the Peace shall be signed by him, and that no blank Process shall be delivered out by any Justice to any person to be filed up and issued.

That if any money shall have been paid to a Justice of the Peace upon execution or otherwise, in satisfaction of the debt or damages recoverable in any Civil Suit prosecuted before him in his official capacity, and he shall have neglected or refused, after demand, to pay over the same to the party entitled thereto, such neglect or refusal shall be deemed a misdemeanor and be punishable as such; or the party entitled to such money, his Executors or Administrators, may maintain an Action in the Supreme Court for recovery of the same, and in such case the action shall be a bar to any criminal prosecution for the same offence.

That in the following cases, and no others, a Justice of the Peace may punish as for a criminal contempt persons guilty of the following acts:—

First. Disorderly, contemptuous or insolent behaviour towards such Justice, while engaged in the trial of a cause, or in the rendering of any judgment, or in any judicial proceedings which shall tend to interrupt such proceedings or to impair the respect due to his authority.

Secondly. Any breach of the Peace, noise, or other disturbance, tending to interrupt the official proceedings of a Justice.

Thirdly. Resistance wilfully offered by any person in presence of a Justice to the execution of any lawful order or Process made or issued by him.

Fourthly. Any wilful refusal to testify on the part of a Witness at any Trial before a Justice.

That punishment for contempt in the foregoing cases may be by fine, not exceeding ten shillings, or by imprisonment in the common Gaol, not exceeding three days, or both, in the discretion of the Justice; and the Justice imposing such punishment shall make a record thereof, stating the particular circumstances of the offence, and the judgment rendered, and shall issue his Warrant for levying such fine by distress and sale of the offender's goods and chattels, or committing such offender to the common Gaol, or both, as the case may be; which warrant shall be directed to any Constable of the County, and the fine when levied shall be paid to the Overseers of the Poor, for the use of the Poor of the Parish wherein such offender resides, or wherein the levy may be made, as the Justice shall direct.

That every Justice shall, at the reasonable request and cost of any party, furnish copies of any proceedings had before him in a Civil Suit, or permit such party to take such copies.

That the proceedings in any cause had before a Justice may be proved by producing the original Minutes of such proceedings entered by such Justice, and the oath of such Justice, or in case of his death or absence, proof of his handwriting; or they may be proved by producing copies of such minutes sworn to by a competent Witness, as having been compared by him with the original entries, with proof that such entries were in the hand writing of the Justice.

That every Justice shall carefully file and preserve all Affidavits and papers delivered to him to be filed in any cause, and upon the death of such Justice, or his removal from office, the same shall be delivered to the Clerk of the Peace of the County, to be filed in his office.

That every Justice shall keep a Doctel Book or Minute of every Process, whether Motion Process or Execution, issued by him, stating shortly the substance of the Process, names of the parties, date of issuing and return, name of the Parish, and also the name of any other person other than a Constable, who may be specially appointed to serve such Process.

That in all Processes the day of service shall be considered exclusive, and the day of appearance or return, inclusive; and in like manner the number of days allowed for any proceeding in a cause shall always be computed the first exclusively and the last inclusively.

That when a deposit shall have been made with any Justice by a Defendant, in lieu of Bail, such Justice may apply the same to the satisfaction of the amount which may be awarded to the Plaintiff for his debt or damages and costs, and shall on demand return the overplus, if any, to the Defendant. If such deposit be not sufficient to satisfy the amount recovered, the Justice shall, at the request of the Plaintiff, issue execution for the balance. In case the judgment shall be in favor of the Defendant, the whole sum so deposited shall be returned to him on demand.

IV. And be it enacted, That the several provisions of an Act passed in the forty first year of the Reign of His late Majesty King George the third, intitled "An Act for the rendering of Justices more safe in the execution of their office, and for indemnifying Constables and others acting in obedience to their Warrant," shall extend to the proceedings herein contained, and to the protection of Justices and Constables in the same manner and to the same extent as therein provided, as fully as if the same were hereby repeated, and the same protection shall be afforded to Constables acting in obedience to any Process or Warrant, hereby authorized to be issued under the hand of any Justice, as is in and by the sixth Section of the said Act afforded to Constables acting in obedience to the Warrants therein mentioned.

V. And be it enacted, That the Processes and proceedings in Actions before Justices of the Peace, and on the removal thereof shall be according to the forms in the Schedule to this Act annexed, or in words to the like effect; and that the fees therefor shall be taxed and allowed according to the table contained in the Schedule to this Act annexed; and no fees whatever shall be taxed or allowed for any proceedings in Justice's Courts or on the removal thereof, other than such as are set down and specified in the said table.

VI. And be it enacted, That no Process shall abate, or any Suit now pending before any Justice of the Peace, or in the City Court of the City of Saint John, under and by virtue of the Acts hereby declared to be repealed, shall be discontinued or abated by reason of such repeal; but that all Processes, Suits and proceedings shall be continued, determined and concluded, as if no such repeal were made.

VII. And be it enacted, That the City Court of the City of Saint John shall be vested with the same jurisdiction and authority, as are by these regulations prescribed for Courts before Justices of the Peace, and no other; but the practice Fees, Process, forms and modes of proceeding in the said City Court, shall continue the same as now established, used and allowed, until otherwise regulated by Law.

VIII. And be it enacted, That whenever in any of the foregoing provisions words importing the singular number or the masculine gender are used, yet the said provisions shall be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

IX. And be it enacted, That this Act shall commence and take effect on the first day of July in the present year.

Schedule of Forms of Proceedings in Justice's Courts and on the removal thereof for review.

No. 1. 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 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 ——— 183 ———.

Summon (as before) &c. as in the foregoing, Summon (as often before) &c.

Personally served on the within named C. D. the ——— day of ——— 183 ——— by me, ———

Proved on oath before me the ——— day of ——— 183 ——— O. P. Constable.

Personally served on the within named C. D. the ——— day of ——— 183 ——— the within named E. F. was not found. ———

Served on the within named C. D. by leaving a copy at his last place of abode, in the Parish of ——— with his Wife, and acquainting her with the contents. ——— O. P. Constable.

(or)
With R. D. his Father, Mother, Son, Daughter, (as the case may be) being a person of suitable age and discretion, and acquainting him, (or "her") with the contents. ——— O. P. Constable.

With R. S. a Clerk;
With R. S. an Apprentice;
of the said C. D. who resides in his House and is of suitable age and discretion, and acquainting him with the contents. ——— O. P. Constable.

Personally served on the within named C. D. the ——— day of ——— 183 ——— and served at the last place of abode of the within named E. F. in the Parish of ——— the same day (or as the case may be) by delivering a copy to his wife (or as the case may be) and acquainting her with the contents. ——— O. P. Constable.

N. B. Add the attestation in all cases where necessary.

AFFIDAVITS OF SERVICE OF SUMMONS.
A. Z. of (state residence and occupation of Deponent) maketh oath that he did on the ——— day of ——— personally serve C. D. the Defendant, in the annexed process named, with a true copy thereof (and at the same time read the same to him, or "acquainted him with the contents thereof.") ——— A. Z.

Sworn at ——— the ——— day of ——— before ———
Note. If the process was not required to be read or explained to the Defendant, the part between the brackets may be omitted. If a bill of particulars be annexed to the copy of process, the affidavit shall be as follows:

A. Z. of &c. maketh oath that he did on the ——— day of ——— personally serve C. D. the Defendant in the process named, with a true copy thereof; annexed to which copy was a particular of the Plaintiff's demand signed by ——— the Justice issuing the process.

SERVICE AT DWELLING.
A. Z. Constable of the Parish of ——— maketh oath that he did on the ——— day of ——— leave at the last place of abode of E. F. the Defendant, a true copy of the annexed process with R. F. the Mother of the said E. F. (or "with the Wife of the said Defendant," or "with S. F. a daughter of the Defendant of suitable age and discretion," or with L. M. a Clerk, or Apprentice of the said Defendant residing in his family, of suitable age and discretion") and at the same time acquainted her with the contents.

Sworn at ——— the ——— day of ———
A. Z. Constable of the Parish of ——— maketh oath that he did on the ——— day of ——— personally serve E. F. one of the Defendants, in the annexed process named, with a true copy thereof, and did on the ——— day of ——— leave at the last place of abode of S. H. the other Defendant, a true copy of such process, with ——— [as the case may be] and at the same time acquainted him with the contents.

Note. If the Summons has been served in an adjoining Parish, the limits of which extend to a greater distance than thirty miles from the place where the Court is holden, the affidavit should state that the Summons was served within that distance, and the following may be added to any of the above affidavits, "and that the said Summons was served within thirty miles of the Justice's Dwelling," [or other place whereto the Summons is returnable, as the case may be.]

No. 2. AFFIDAVIT IN ORDER TO OBTAIN A CAPIAS.

A. B. of [state the place of residence, profession or occupation of the Deponent] maketh oath that C. D. is justly and truly indebted to the said Deponent in [state amount and cause of action, which must not be under twenty shillings] after giving full credit, to the best of this Deponent's knowledge or belief, for all payments and off acts that the cause of action does not exceed five pounds, that he doth verily believe the said C. D. is of the full age of twenty-one years, and that there is danger of losing the said debt, if the said C. D. be not arrested or held to bail.

Sworn at the Parish of ——— this ——— day of ——— 183 ——— before ——— M. N. J. P.

R. S. of [state the place of residence, profession, or occupation, of the Deponent] Agent of [or "Clerk and Agent of"] A. B. of [state residence and occupation of Plaintiff] maketh oath that C. D. is justly and truly indebted to the said A. B. [conclude as in the foregoing form.]

No. 3. CAPIAS, RETURN, BAIL AND DEPOSIT.

County, ss.
To any Constable of the Parish of ——— you are hereby required to take the body of C. D. and him safely keep till he shall give good bail to answer the demand of A. B. for [state the amount claimed in words] in an action of debt for [as in Summons] and to notify the said Defendant that the cause will be heard before me, at my Dwelling House in the Parish of ——— on the ——— day of ——— at the hour of ——— in the ——— noon. In default of bail being given you are required to bring the said Defendant before me, that he may be dealt with as the Law directs. Dated the ——— day of ——— 183 ——— N. M. J. P.

Oath for ——— shillings.

N. B. When the Defendant is brought before the Justice, he will either admit him to bail, take a deposit, or issue a warrant for his commitment. If bail are offered, they must, unless allowed by the Plaintiff, justify, according to the annexed affidavit. If deposit is offered the amount to be taken is the sum sworn to, the amount of Constable's mileage and five shillings.

BAIL AND RETURN.
I [or "We," as the case may be] do hereby consent to become bail for the within named C. D. in this suit. Dated the ——— day of ——— 183 ——— R. S.

The within Defendant was arrested and served with copy of this process on the ——— day of ——— 183 ——— and bail was given for him by R. S. of [state the name, residence and occupation of the bail].
The within Defendant was arrested and served with copy of this process on the ——— day of ——— 183 ——— O. P. Constable.

I do hereby consent to become bail for the within named C. D. in this suit. ——— R. S.

Entered before me this ——— day of ——— 183 ——— N. M. J. P.

The within named Defendant was brought before me, and made deposit of the sum of ——— shillings this ——— day of ——— 183 ——— N. M. J. P.

Sum sworn to £	- -
Mileage	- -
For Costs	- 5 -
£	- -

R. S. maketh oath that he resides in the Parish of ——— in the County of ——— and follows the business or occupation of a ——— that he is really and bona fide worth the sum of [double the sum sworn to] over and above what will pay all his just debts, and in addition to the necessary wearing apparel and bedding of himself and family, fuel, and tools of trade.

No. 4. WARRANT OF COMMITMENT FOR WANT OF BAIL.

County, ss.
To any Constable of the Parish of ——— and to the Keeper of the Common Gaol of the County of ——— whereas, C. D. has been arrested and brought before me, on a Capias issued by me, (or "by K. L. Esquire, Justice of the Peace of the said County") at the suit of A. B. upon oath for the sum of ——— shillings, and is unable to give Bail or make deposit: these are to authorize and require you the said Constable to convey the said Defendant to the said Gaol and deliver his body to the said Keeper together with this warrant, and you the said Keeper to receive the body of the said Defendant, and him safely keep for ——— days, unless sooner discharged by due course of Law. Given under my hand at the Parish of ——— the ——— day of ——— 183 ——— N. M. J. P.

No. 5. 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 ——— 183 ——— S. L. N. M. J. P.

No. 6. AFFIDAVIT TO BE TAKEN IF REQUIRED BY ANY PERSON, APPEARING AS ATTORNEY OR AGENT FOR A PARTY.

In the Court before N. M. Esquire, J. P.
Between { A. B. Plaintiff, and C. D. Defendant.

J. K. of [state residence and occupation] who appears as Attorney [or Agent] for the above named Plaintiff [or Defendant] maketh oath and saith that he has not directly or indirectly received any fee, hire or reward or any promise of fee, hire or reward, for his services as such Attorney [or Agent] that he has no expectation of receiving, and that he will not accept or receive any pay, remuneration, or gratuity for his attendance or services already rendered, or to be rendered to the Plaintiff [or Defendant] in the conduct of this suit. ——— J. K.

Sworn before me the ——— day of ——— 183 ——— N. M. J. P.