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COURT OF
REQUESTS BILL.

FOR

Recovery of Small Debts.

WITHIN THIS PROVINCE.

YORK

PRINTED BY ORDER OF THE GOVERNMENT

J. W. CO.

188

1833

(1)

AN ACT to repeal part of, amend and reduce to one Act of Parliament the several Laws now in force in this Province, for the recovery of Small Debts; and to extend the Jurisdiction of the Court of Requests within the same.

WHEREAS it is found necessary to repeal part of, and amend and reduce to one Act of Parliament, the several Laws now in force in this Province, for the recovery of small debts; and also to extend the Jurisdiction of the Court of Requests within the same.

Be it &c., That from and after the first day of September next, a certain Act passed in the thirty second year of the Reign of His late Majesty, King George the Third, entitled, "An Act for the more easy and speedy recovery of small debts;" a certain other Act, passed in the fifty-sixth year of His said Majesty's Reign, entitled, "An Act to extend the Jurisdiction of the Court of Requests," and also so much of the ~~last~~ Clause of a certain other Act, passed in the thirty seventh year of His said late Majesty's Reign, entitled, "An Act to extend the Jurisdiction and regulate the proceedings of the District Court, and Court of Requests," as applies to the said Court of Requests, be, and the same are hereby repealed.

2. *And be it, &c.*, That from and after the first day of September next, ~~it shall~~ and may be lawful for any two or more Commissioners, acting under and by virtue of a commission from the

Governor, Lieutenant Governor, or person administering the Government of this Province, who is hereby duly authorised and empowered to grant the same, under his hand and seal of office, to assemble, sit and hold a Court of Justice, to be called a Court of Requests, on the first and third Saturday of each month, at some place within their respective divisions, which divisions shall be ascertained and declared by the Justices in Quarter Sessions assembled, or the greater part of them at the General Quarter Sessions, which shall be holden first after the first day of April next; and the said Commissioners for the time being, or any two or more of them, shall have power and authority, and are hereby authorised empowered and required, to hear and determine all matters of debt or contract, when the demand doth not exceed the sum of Ten Pounds, and to give and pronounce such judgment and decree therein respectively, and to award execution thereupon, with such costs as are hereinafter specified, against the goods and chattels of all and every the person and persons against whom they shall give or pronounce any judgment or decree, as to them shall appear just in law or equity; and that the acts, orders, judgments and decrees of the said Commissioners shall be final, between the parties thereto;—*Provided always*, that the Commissioners hereinbefore mentioned, shall be appointed, and hold their office during pleasure only.

3. *And be it, &c.*, That so soon as the said divisions shall have been declared in each District as aforesaid, the same shall be numbered by the said Justices in General Quarter Sessions assembled, beginning at number one, and continuing to

the highest number of such divisions in each District; and shall be particularly described in a book, to be kept for that purpose, and deposited in the office of the Clerk of the Peace.

4. *And be it, &c.*, That the Clerk of the Peace in and for each District, shall transmit to the office of the Governor, Lieutenant Governor, or person administering the Government of this Province, a copy of the book or list of divisions, from time to time declared as aforesaid, within the limits of the District of which he is Clerk of the Peace, describing them according to their respective numbers.

5. *And be it, &c.*, That from and after the said first day of September next, it shall and may be lawful for every person or persons, who then or thereafter, may have any debt or debts owing to him, her or them, not exceeding the sum of Ten Pounds currency, by any person or persons whatsoever, being an inhabitant of the District within which the court shall be holden, to cause such person or persons to be summoned by a writing under the hand of the Clerk of the said court, who shall be appointed as hereinafter mentioned; a copy of which shall be left with some grown person at the dwelling-house or usual place of abode of such person or persons, or by service of the same on the person of such debtor, to appear before the Commissioners of the said court; and the said Commissioners, after such summons as aforesaid, shall, upon proof of such copy of said summons having been so left or served, at least six days previous to the day of appearance, have full power and authority, by virtue of this Act, to make, or cause to be made, such acts, orders, decrees,

judgments and proceedings, between such plaintiff and his, her or their debtors, (defendants), touching such debt or debts, not exceeding the sum of Ten Pounds currency of this Province, in question before them, as they shall find consistent with law or equity; and all such acts, orders, decrees, judgments and proceedings, shall be entered in a book, to be kept for that purpose. *Provided always*, that nothing in this Act contained, shall extend or be construed to extend, to authorise the summoning of any defendant or defendants before any Court of Requests, within any District, other than that which shall be established by the Magistrates in Quarter Sessions, as by law directed, for the division in which such defendant or defendants shall, at the time of issuing such summons, be resident:—*And provided also*, that the court shall in no case give judgment against a defendant for a larger sum than Forty Shillings, unless it shall be proved to them that he has been personally served with the summons issued in such cause.

6. *And be it, &c.*, That no Barrister, Attorney at Law, or Solicitor, being served with process of the said Court, shall be allowed to plead or maintain any privilege against the process, authority, jurisdiction or judgment thereof; nor shall any Barrister, Attorney at Law, or Solicitor, have or maintain any privilege of bringing, in a superior court, an action, upon any cause of action, which, from its nature, shall be properly cognizable in the Court of Requests.

7. *Provided always, And be it, &c.*, That nothing in this Act contained, shall extend, or be construed to extend to authorise the holding plea

in such court, for any gambling debt whatsoever, or for any spirituous liquors drunk at a Tavern.—

8. *Provided also, And be it, &c.*, That nothing in this Act contained, shall extend or give jurisdiction to any Court of Requests, to take cognizance of any cause involving the right or title to Real Estate.

9. *And be it, &c.*, That a statement of the particulars of the demand upon which any party shall sue in the said Court of Requests, shall be annexed to, or endorsed on every summons taken out, or served on the defendant or defendants, with such summons; to which bill of particulars the name of the plaintiff or plaintiffs bringing the suit shall be subscribed; and to the items contained in the said bill of particulars, the said plaintiff or plaintiffs shall be required to confine his, her, or their proof at the trial.

10. *And be it, &c.*, That in order to prevent unnecessary expense, it shall, and may be lawful for the said Commissioners, or any one of them, at any time to give judgment, and cause the same to be entered on the voluntary confession of any defendant, when the amount demanded does not exceed the jurisdiction of the said court; which confession may be in the form hereinafter set forth, and that judgment shall not be entered up on any such confession, in a case where no summons has been sued out by the plaintiff, until such plaintiff shall have made an affidavit to be endorsed on or annexed to the confession, declaring that the defendant, before giving that confession, did truly, and bona fide, owe him the amount therein specified.

11. *And be it, &c.*, That in case any person or persons, shall make oath or give evidence, in any cause depending before the said Commissioners, in the said Court, whereby he, she or they shall wilfully and corruptly forswear themselves, such person or persons shall on conviction, suffer the pains and penalties inflicted on persons guilty of wilful and corrupt perjury.

12. *And be it &c.*, That the present Courts of Requests shall be and continue established until the first day of September next, and that all suits or controversies which shall remain unsettled or which shall not have been finally disposed of in the several Courts of Request in this Province, shall, after the first day of September next, be transferred to the Court of Requests having the jurisdiction in such suit or controversy, established by this Act, together with all papers and proceedings relating thereto; which said unsettled suits or controversies shall be proceeded in until finally disposed of by the Court of Requests having jurisdiction, and established by this Act, in the same manner that such unsettled suits or controversies would have been proceeded in if this Act had not been passed.

13. *And be it &c.*, That this Act shall extend to all new Districts which may be hereafter created or set apart within this Province, and that the Justices of the Peace in such new Districts shall, at their first Court of General Quarter Sessions to be by them holden, partition and set off the same into divisions, and do and perform all such other matters and things, in the same manner as is required by this Act of the Justices in the several Districts now by law established.

14. And for the better discovery of the truth and the more solemn determination of matters and causes which shall be depending in the said Court. *Be it &c.*, that it shall and may be lawful for the said Commissioners or any two or more of them assembled in Court as aforesaid and they are hereby authorised and empowered to administer or cause to be administered on Oath or Oaths to the Plaintiff or Plaintiffs, Defendant or Defendants respectively and to such Witness or Witnesses as shall be produced by each party and also to all or any of the Officers of the said Court, and to all other persons whatsoever for or concerning any business relative thereunto, and to take the Affirmation or Affirmations of such Plaintiff or Plaintiffs, Defendant or Defendants, Witness or Witnesses or other persons as aforesaid who are or shall be of the people called Quakers or such other denomination of Christians as are allowed to give evidence on their Affirmation.—Provided always that although the Court may for their better satisfaction and for the discovery of the truth, require the Plaintiff or Defendant to be examined on Oath or Affirmation, they shall in no case give Judgment for either party in any cause for more than forty shillings or allow or disallow any set off to a greater amount than forty shillings on the mere Oath or Affirmation of the Plaintiff or Defendant respectively, nor without sufficient evidence to warrant such Judgement, independent of such Oath or Affirmation.

15. *And be it &c.*, That no person or persons shall be capable of acting as a Commissioner or Commissioners in the execution of the power given by this Act until he or they shall respectively have taken an Oath to the effect following.

“ I. A. B. do swear that I will faithfully, impartially, and honestly, according to the best of my Judgment, hear and determine such matters and things as shall be brought before me as a Commissioner of the Court of Requests of Division Number constituted and established under and by Virtue of an Act of the Legislature of this Province entitled ‘ An Act to repeal part of amend and reduce to ~~the~~ Act of Parliament the several Laws now in force in this Province for the recovery of small debts, and to extend the Jurisdiction of the Court of Requests within the same’ without favour or affection to either party. So help me God.”

Which Oath may be administered by any Justice of the Peace and shall be by such Justice transmitted to the Clerk of the Peace of the District in which the Division for which such Commissioner shall have been appointed shall be situated.

16. *And be it &c.*, That from and after the passing of this Act it shall be the duty of the Commissioners of each Court of Requests to appoint a fit and proper person to discharge the duties of Clerk who shall be subject to be removed from His Office by the Commissioners or a majority of them for the time being and whose duty it shall be to issue all Summonses, Subpœnas, executions and other process necessary to be issued out of the said Court, to receive from the Bailiffs all money collected under this Act and to pay the same over to the parties to whom it was decreed, and to keep a faithful record in a suitable book to be by him provided for that purpose (which Book shall be the property of the District) of all the proceedings of the Court for which he may be

appointed, and which Clerk shall, before he enters upon the duties of his Office, take the following Oath :

“ I. A. B. do swear that I will well and truly perform and fulfil all duties belonging to the Office of Clerk of the Court of Requests for the and will faithfully make, enter, and preserve all proceedings and remembrances of the said Court to the best of my skill and ability— So help me God.”—*Provided always*, that no Clerk so appointed shall enter upon the duties of his Office until he shall have given security to the Commissioners in the sum of one hundred pounds for the proper performance of his duty—that is to say : shall enter into the Covenant hereinafter mentioned binding himself without limitation as to amount with two or more sureties to such Amounts severally as shall together make up one hundred pounds, such sureties to be persons sufficiently responsible in the Judgment of the Commissioners, and it shall also be the duty of the said Commissioners and they are hereby empowered to appoint one or more fit and proper persons to discharge the duties of Bailiff, according to the provisions of this Act ; which Bailiff or Bailiffs shall give security in the same manner and to the same amount as the Clerk of such Court and shall hold his Office during the pleasure of the Commissioners who, or a majority of them, may in their discretion remove such Bailiff and appoint another in his stead.

17. *And be it further &c.*, That the security to be given by every Clerk or Bailiff of any Court of Request in this Province, shall be in the following form, or to the like effect, that is to say :

Know all Men by these presents, that we A. B. Clerk or Bailiff (as the case may be) of division number _____ in the District of C. D. of the District of _____ and E. F. of _____ in the District of _____ (when more Sureties here insert their names) do hereby jointly and severally covenant and promise that A. B. Clerk or Bailiff (as the case may be) of the division aforesaid shall well and truly pay over to the person or persons entitled to the same all such monies as he shall receive by virtue of his Office of Clerk or Bailiff (as the case may be) from the date of this Covenant, during his continuance in Office, and that he shall not within that period negligently or wilfully misconduct himself in his said Office of Clerk or Bailiff (as the case may be) nevertheless it is hereby declared that no other or greater sum shall be recovered against the Sureties respectively than as follows, that is to say :—

Against C. D.

Against E. F.

If other Sureties add them in like manner.

In Witness whereof we have hereunto set our hands and Seals the _____ day of

L. S.

L. S.

L. S.

Signed Sealed and delivered
in presence of

}

18. *And be it &c.*, That any person or persons who may be injured, delayed or damaged by the negligent or wilful misconduct of any Clerk or Bailiff of any Court of Requests, shall and may

sue upon such covenant in his name, and the Commissioner or Commissioners of such Court are hereby authorised to give such Judgment thereon as to them shall seem just in law and equity, not exceeding in amount the sum to which their jurisdiction is limited—*provided always*, that nothing herein contained shall prevent the bringing any action upon such covenant in a superior Court for a cause of action beyond the jurisdiction of the Court of Requests.

19. *And be it &c.*, That every Bailiff appointed by the Commissioners of any Court of Requests shall attend at the sittings of such Court at ten o'clock of the day on which any process or execution shall have been made returnable, and it shall and may be lawful for the said Commissioners to administer and they are hereby authorised to administer an Oath to such Bailiff to the effect following, that is to say:—

“You A B Bailiff of division number *1* of the Court of Requests in the *1* District, shall truly answer all such questions as shall be put to you by the Court touching the service or execution of any Writ or Process issued from this Court which may have been placed in your hands and returnable here this day. So help you God.”

20. *And be it &c.*, That whenever any Plaintiff or Plaintiffs who may hereafter bring an action in the Court of Requests shall fail to appear, or otherwise establish his, her or their claim, either in his her or their own person or persons or by agent, at the time specified in the summons, it shall be the duty of said Commissioners to give judgement against such Plaintiff or Plaintiffs for all costs attending the same, as also such sum to

compensate the Defendant or Defendants for loss of time in attending the said Court as the said Commissioners, unless they shall find such failure to have occurred with the assent of or upon a previous understanding with the Defendant, may deem just and equitable.

21. *And be it &c.*, That in all actions which may hereafter be brought before the Commissioners of the Court of Requests, if it shall be proved to the satisfaction of the Court, that the claim of the Defendant exceeds that of the Plaintiff, it shall be the duty of the said Commissioners and they are hereby required to enter judgment in favour of the Defendant for such balance as may appear to be due to the said Defendant together with costs. *Provided always*, that no sett off shall be allowed to be given in evidence before such Commissioners which shall exceed the amount of ten pounds, and *provided always* that if the Plaintiff shall contest such sett off, it shall be incumbent on the Commissioners to suspend judgement and to admit both parties on the next or other subsequent Court day to produce evidence respecting the same, unless the Defendant shall satisfy the Commissioners by evidence on Oath, that he did four days before the return of the summons issued against him, serve the Plaintiff with a statement of the particulars of his sett off, signed by the Defendant, in which case the Commissioners may on the first day appointed for the trial hear and determine the same, confining the sett off to the items specified in such bill of particulars.

22. *And be it &c.*, That if any witness or witnesses in any trial live out of the division where any cause may be tried, but within the District

in which such division is situated, then and in such case he, she or they may be subpoenaed in like manner as if he, she or they lived within such division, but no costs shall be allowed for such witness against the opposite party unless the Commissioners shall find that his evidence was necessary to make out the case of the party calling him.

23. And whereas it is customary among the people of this Province to contract for the payment of a certain specified amount or of certain sums in produce or labour, or in some manner otherwise than in money, and doubts may arise with the Commissioners acting under this Act whether they can adjudge such amount or sums to be paid in money. *Be it &c.*, That in any such case after the day is passed in which the produce or goods should have been delivered or other thing should have been done, it shall be in the power of the Court, if they find it just in other respects, to give judgment for the amount in money as if the debt or agreement had been for money.

24. *And be it &c.* That all fines levied under the provisions of this Act shall be by the Commissioner or Commissioners of every Court of Requests, paid over to any Overseer or Overseers of Highways in the division wherein such fine or fines shall have been levied, and such Overseer or Overseers are hereby authorised and required to expend the same in the same manner as other moneys coming into their hands to be expended on the highways, and shall render an account thereof within three months after the expenditure thereof to the Commissioner or Commissioners from whom he shall have received the same, and such

Commissioner or Commissioners are hereby required to make a return of such fines and expen-
 ture to the ensuing Quarter Sessions.

25. *And be it &c.*, That if any person shall use contemptuous or insulting language to the Commissioners aforesaid while discharging the duties imposed upon them by this Act or shall in any manner disturb the proceedings of any Court of Requests, it shall and may be lawful for the said Commissioners to imprison such offender or offenders in the common Gaol of the District for a period not exceeding six days, or impose a fine not exceeding two pounds, at the discretion of the Commissioners, such fine to be levied and collected in a summary way by warrant of distress to be issued by the said Commissioners directing the same to be made of the goods and chattels of the offender.

26. *And be it, &c.* That when any execution shall be issued out of the said court, against any defendant or defendants, or against any plaintiff or plaintiffs, and sufficient goods and chattels of the party or parties against whom such execution shall have been issued, shall not be found within the division where such cause shall have been tried to satisfy the same, then and in such case it shall and may be lawful to levy the amount of such execution or the balance thereof, of the goods and chattels of such party or parties, in any other division within the same District, and the Clerk of the court from whence the same issued, may direct another execution for the amount due to the Bailiff of the same division, or the Bailiff of the division in which the execution is to be enforced; *Provided always*, that the Bailiff of the division in

which judgment was entered, shall not be compelled to go out of his division, nor shall the cost of travelling from one division to another, be taxed against the person against whom the execution shall be issued.

27. *And be it, &c.*, That when any judgment in the said court, shall exceed the sum of Forty Shillings, it shall not be lawful for the said Commissioners to issue any execution thereon, until the expiration of forty days from the time of giving and recording such judgment, unless the party obtaining judgment shall make it appear by his own oath, or other testimony, to the satisfaction of the Commissioners, that he will be in danger of losing the debt in consequence of such delay, in which case, and also in the case of any judgment against a Clerk or Bailiff, for monies received by him and not paid over, it shall be lawful for the said Commissioners, or any one of them, to order the issue of execution at such time as he may think fit.

28. *And be it &c.*, That no Bailiff shall proceed to the sale of any effects taken by virtue of any Writ of Execution issued by a Court of Requests, unless public notice in Writing be given at least 8 days before such sale, at the most public place in the Town or Township where such effects may have been taken in Execution, of the time and place where such effects are to be exposed to sale.

29. *And be it &c.*, That if any action shall hereafter be brought in any of the Superior Courts which might have been tried in the Court of Requests, no higher Costs shall be taxed to the Plaintiff than would have been recoverable in the Court of Requests, unless it shall be shown to the court

or to a Judge thereof, in vacation, that from the nature of the Plaintiff's Evidence or the situation of his Witnesses, he could not have proved his case in the Court of Requests, or unless in the Action in the Superior Court, the Defendant shall have been arrested.

30. *And be it &c*, That whenever either of the parties to any cause shall apply for an adjournment, in consequence of the absence of some material Witness or for other sufficient reasons shown upon oath to the satisfaction of the court, it shall be the duty of the Commissioners to grant the Application upon the payment of reasonable costs by the party applying for such adjournment.

31. *And be it &c.*, That the several fees and sums of money hereinafter limited and expressed and no more shall be taken.

COMMISSIONERS FEES.

For every final Judgment. 2s.

CLERK'S FEES.

For recording Judgment. 6d.

For every Summons or Subpcena. 6d.

For every copy of Judgment (if demanded). . 1s.

For every Execution. 1s.

BAILIFF'S FEES.

For serving every Summons or Subpcena
within one mile of the Clerks House. 1s.

For every mile in travelling to execute process,
or execution where the distance exceeds one mile,
4d.

For serving a writ of Execution, seizing and
selling effects, and making return, if the judgment
does not exceed five pounds; 2s. 6d.

Ditto, do., if judgment exceeds £5. in like pro-
portion.

The allowance to be paid to all and every of the witnesses, to be left to the discretion of the Commissioners, but not to exceed 2s. 6d. per day, to each.

32. *And be it, &c.*, That the following forms may be used by the Commissioners of the Court of Requests.

IN THE COURT OF REQUESTS.

District,)
 Division, No.) Plaintiff,
 to wit.) Defendant.
 To the Defendant.

You are hereby summoned and required to be and appear before the Commissioners of His Majesty's Court of Requests, to be held at in the Township of by eleven o'clock in the forenoon, on Saturday the day of to answer the demand of for pounds shillings and pence of lawful money of this Province, which he claims from you, and a statement of which claim is hereunto annexed, herein fail not as Judgment will be given against you for default.

Witness A. B. Clerk of said Court, this day of

IN THE COURT OF REQUESTS.

District,) To
 division No.)
 To wit:) You are hereby summoned and required to be and appear before the Commissioners of His Majesty's Court of Requests to be held at in the town of on

IN THE COURT OF REQUESTS,

I of the Town of in the
 District do hereby acknowledge that I am
 justly indebted to in the sum of
 being the amount due to on a note,
 account, or contract (as the case may be) and I
 do consent that Judgment be forthwith entered
 against me for the said sum with the Costs, but
 no execution to be issued until the day of
 next

Witness

(Form of the Oath to be administered to a Witness,)

“ The Evidence you shall give to this Court
 touching the matter in question shall be the truth
 the whole truth and nothing but the truth, so help
 you God.”

JOHN B. ROBINSON,

Speaker.

Passed the Legislative Council, }
 28th day of December, 1832. }

ARCHIBALD McLEAN,

Speaker.

Passed, Commons House of Assembly, }
 31st day of December, 1832. }