

returned by the officer, such justice may issue out a warrant of contempt, directed to the sheriff, or marshal, or other officer, as aforesaid, to bring the contemner before him, as well to answer the said contempt as the plaintiff's action, and may (if he see cause) fine such contemner not exceeding ten shillings, to be accounted for to the treasurer of the county towards defraying of county charges; and after judgment given in any case, may grant an execution or warrant of distress, directed to the sheriff, [*or*] marshal or other officer as aforesaid, to levy the said fine, debt or damage, with charges upon the defendant's goods or chattels. And such officer, by virtue thereof, shall expose the same to sale, returning the overplus (if any be) to the defendant, and for want of such distress, to take the body of the defendant, and him to carry and convey to the common goal of the county or precinct, there to remain until he hath satisfied the said fine, debt or damage, with charges. And in case such complainant be nonsuited, or judgment pass against him, then the said justice is hereby impowred to assess to the defendant reasonable costs against such complainant, to be levied and recovered in manner and form above expressed: *provided, always*, that all summons, *capias* or attachments before such justice of the peace shall be served and executed at least seven days before the time of tryal or hearing.

Fine for contempt in not appearing upon summons.

Writs to be served seven days before trial.

*Provided, also*, that the party agrieved shall have liberty to appeal to the next inferior court of common pleas to be holden for the same county, he entering into recognizance, with one sufficient surety, in the value of the debt or damage sued for, and sufficient to answer all costs, to prosecute the said appeal there with effect, and to abide the order of [*the*] said court, where such case shall be tryed and receive a final issue and determination.

Party agrieved to appeal to the inferior court. 1 Mass. 458, *note*. 4 Mass. 470.

[SECT. 2.] And the party appealing shall bring the copies of the whole case to the courts appealed to, where each party shall be allowed the benefit of any further plea or evidence; and if, upon such new plea or evidence, the judgment happen to be reversed, the appellant shall have no costs granted for the first tryal; and such appellant shall also give in the reasons of his appeal unto the justice appealed from, in writing, seven days inclusively before the sitting of the court appealed to. And all justices are hereby required to keep fair records of all their proceedings from time to time.

Party appealing to bring the whole case.

Reasons of appeal to be given in seven days before the trial.

*And be it further enacted by the authority aforesaid,*

[SECT. 3.] That the clerk of any town within this province, may and hereby is impowred to grant replevins, summons or attachments for any matter or cause tryable before any justice of the peace, and summons for witnesses, and to direct the same to the constables of such town, or to the party to be summoned for witness respectively; and the constable or constables are hereby required to execute such replevins, summons or attachments accordingly, and to make due return thereof. [*Passed June 18; published June 19.*]

Clerks of towns to grant replevin, &c. 8 Allen, 401.

## CHAPTER 9.

### AN ACT FOR ESTABLISHING OF COURTS.

For the establishment of courts of justice throughout this province, as well in respect of the times and places for holding of the same as for the orderly regulating the proceedings therein,—

*Be it enacted and ordained by the Lieutenant-Governour, Council and Representatives convened in General Assembly, and it is hereby enacted and ordained by the authority of the same,*

Disallowed by the privy council, Nov. 24, 1698.

See 1692-3, chap. 33.

Times and places for holding of the general sessions of the peace.

[SECT. 1.] That there shall be held and kept in each respective county within this province, yearly, at the times and places hereafter named and expressed, a court of general sessions of the peace, by the justices of the peace of the same county, or so many of them as shall be limited in the commission for the peace, who are hereby impowred to hear and determine all matters relating to the conservation of the peace, and punishment of offenders, and whatsoever is by them cognizable according to law, and the times and places for the holding and keeping the said courts within the respective counties, shall be as followeth; that is to say, for the county of Suffolk, at Boston, on the first Tuesdays in July, October, January and April; for the county of Essex, at Salem, on the last Tuesdays in June and December, at Newbury, on the last Tuesday in September, and at Ipswich, on the last Tuesday in March; for the county of Middlesex, at Cambridge, on the second Tuesday in September, at Charl[e]stown, on the second Tuesday in December and March, and at Concord, on the second Tuesday in June; for the county of Plimouth, at Plimouth on the third Tuesdays in September, December, March and June; for the county of Barnstable, at Barnstable on the first Tuesdays in July, October, January and April; for the county of Bristol, at Bristol on the second Tuesdays in July, October, January and April; for the county of York, at Wells on the first Tuesday in July, and at York on the first Tuesday in January; for the county of Ham[p]shire, at Northampton on the first Tuesday in September, and at Springfield on the first Tuesday in March; for Dukes County, at Edgartown on the first Tuesday in October, and on the last Tuesday in March; and for the Island of Nantucket, at said island on the first Tuesday in October, and on the last Tuesday in March yearly, from time to time.

*And be it further enacted by the authority aforesaid,*

Times and places for holding inferior courts of pleas.

[SECT. 2.] That at the times and places before mentioned, there shall be held and kept in each of the said respective counties, and Island of Nantucket, an inferior court of common pleas, by four of the justices of and residing within the same county, and island, respectively, to be appointed and commissioned thereto, any three of whom to be a quorum, for the hearing and determining of all civil actions arising or happening within the same, tryable at the common law, of what nature, kind or quality soever, and upon judgment given therein to award execution.

*And be it further enacted by the authority aforesaid,*

Appeals allowed to the superior court.

[SECT. 3.] That it shall be in the liberty of the party agrieved at any judgment given in any of the said inferior courts, to appeal therefrom unto the next superiour court to be held within or for the same county; and upon judgment given at the said superiour court upon such action of appeal it shall be lawful for either party appellant or defendant, within the space of eighteen months next after such judgment given, and not afterwards, to review such action by process out of the same court once, and no more, the case upon such action of review to be finally issued and determined; or otherwise the party agrieved at any judgment given in any of the said inferior courts may, by a new process, once and no more, [to] review the said case in the same court where it was first tryed, and within the space of one year next after judgment given upon such tryal by review, the party agrieved may bring his writ of error for a tryal of the said case at the superiour court to be held within or for the same county, there to receive a final issue and determination: *provided*, that the party appealing or bringing any writt of error as aforesaid, shall first enter into recognizance, with sufficient sureties, if upon appeal, before one or more of the justices of the court appealed from, in a reasonable sum, that he will prosecute such appeal with effect; and if upon a writ of error, before one or more

Liberty of review in eighteen months next, and not afterwards.

Review in the inferior court.

Writ of error afterwards.

Party appealing or taking out a writ of error to give security.

of the justices of the superiour court, in the value of the debt or damage recovered, that he will prosecute such writ of error with effect and abide the order of the court thereupon.

*Provided, also,* that no appeal shall be admitted after the time of the court's sitting, nor after execution granted, and that the party appealing shall bring copies of the whole case unto the superiour court appealed to, where each party shall be allowed the benefit of any new and farther plea and evidence; and if upon such new plea and evidence the judgment happen to be reversed, the appelland shall have no costs granted him for the first tryal; and further, that every appelland as aforesaid shall give in a declaration briefly setting forth the reasons of his appeal unto the clerk of the court appealed from, fourteen days, inclusively, before the sitting of the court where such appeal is to be tryed.

No appeal admitted after the court's sitting, or execution granted.

No costs granted for the first trial where the judgment is reversed on new plea or evidence.

*And be it further enacted by the authority aforesaid,*

[SECT. 4.] That there shall be a superiour court of judicature, court of assize and general goal delivery, over this whole province, to be held and kept, annually, at the respective times and places hereinafter mentioned, by one chief justice and four other justices to be appointed and commissioned for the same, any three of whom to be a quorum, who shall have cognizance of all pleas, real, personal or mixt, as well in all pleas of the crown, and in all matters relating to the conservation of the peace, and punishment of offenders, as in civil causes or actions between party and party, and between his majesty and any of his subjects, whether the same do concern the realty, and relate to any right of freehold and inheritance, or whether the same do concern the personalty, and relate to matter of debts, contract, damage or personal injury, and also in all mixt actions which concern both realty and personalty; and after deliberate hearing, to give judgment and award execution thereon.

Superior court of judicature and court of assize.

*And be it further enacted by the authority aforesaid,*

[SECT. 5.] That the justices in any of the courts aforesaid, where the forfeiture of any penal bond shall be found, shall be and are hereby impowred, in the entering up of judgment in such case, to chancer the same unto the just debt and damages: *provided, always,* that when the original process in civil causes is made out of the superiour court, the party agrieved at the judgment thereon given shall have liberty to review his case in the said superiour court once and no more, and that all persons which shall bring any action of review to the superiour or inferiour court respectively shall lay the whole case before the court where such action of review is to be tryed.

Power to chancer forfeiture of any penal bond.

Liberty of review in the superiour court.

*Provided, also,* that either party not resting satisfied with the judgment or sentence of any of the said judicatories or courts of justice in personal actions, where the matter in difference doth exceed the value of three hundred pounds sterling, may appeal unto his majesty in council, such appeal being made in time, and security given according to the directions in the charter in that behalf.

Appeal to his majesty in council.

*And be it further enacted by the authority aforesaid,*

[SECT. 6.] That the said superiour court of judicature, court of assize and general goale delivery shall be held and kept at the times and places within the respective countys as followeth; that is to say, within and for the county of Suffolk, at Boston, on the last Tuesdays in October and April; within and for the county of Essex, at Salem, on the second Tuesday in November, and at Ipswich, on the third Tuesday in May; within and for the county of Middlesex, at Cambridge on the last Tuesday in July, and at Charlstown on the last Tuesday in January; for the counties of Plymouth, Barnstable, Bristol and Dukes County, at Bristol on the second Tuesday in September, and at Plimouth on the second Tuesday in March.

Times and places of holding the superior court, &c.

*And be it further enacted,*

Appeals from  
Hampshire,  
York and Nan-  
tucket to be at  
Boston or  
Charlestown.

Court of assize  
to be held in  
the said places,  
as occasion  
shall be.

[SECT. 7.] That the tryal of all civil causes by appeal, from any of the inferiour courts within the respective countys of York[e] and Hampshire, and the Island of Nantucket, or by writt of error, shall be in the superiour court to be held at Boston or Charl[e]stow[n], and that there be held and kept a court of assize and general goale delivery for the respective counties and places of York[e], Hampshire, and the Island of Nantucket aforesaid, within the same, from time to time, as the governour and council, advising with the justices of the said court, shall direct and appoint, according as occasion may be.

*And be it further enacted by the authority aforesaid,*

Plaintiff's lib-  
erty to begin  
his suit either  
in the inferior  
or superior  
court.

[SECT. 8.] That it shall be in the liberty of any plaintiff to begin his suit either in the inferiour or superiour court, at his pleasure: *provided, nevertheless*, that no action under the value of forty shillings shall be brought into any of the inferiour courts, nor any action under the value of ten pounds into the superiour court, unless where freehold is concerned, or upon appeal.

*And be it further enacted by the authority aforesaid,*

Processes and  
writs to issue  
out of the  
clerk's office.

[SECT. 9.] That all processes and writts shall issue out of the clerk's office of the said respective courts in his majesty's name, under the seal of the said office, to be signed by the clerk, and directed to the sheriff or marshal of the county, his undersheriff or deputy, and if such writt or process be against the sheriff or marshal, to be directed to the coroner of such county, who is hereby impowred to execute the same; and where the sum sued for is under ten pounds, may be also directed to the constables of the towne. And writts, as well original

Such process to  
run through  
the province.

as judicial, issuing out of the clerk's office of the superiour or inferiour courts respectively, shall run into any county within this province, and be there executed by the officer or officers of such county to whom they are directed: *provided, nevertheless*, that the clerk of each town respectively within this province, as well as the clerk of the said respective courts, may and hereby is impowred to grant summons for witnesses in civil cases, directed to the party to be summoned for witness, requiring him or them to appear at the superiour or inferiour court respectively. And all processes for appearance, as well in the inferiour court of pleas, as the superiour court of judicature, shall be served and executed fourteen days before the sitting of the court wherein such writ or process shall be returnable. And all proper original processes in the said courts shall be summons, *capias* or attachment. And in case upon any such process duely served, and return thereof made into court, the defendant do not appeare, by himselfe or his attorney, his default shall be recorded, and judgment entred up against him thereupon, unless before the jury be dismist he shall come into court and move to have a tryal; in which case he shall be admitted thereunto, first paying down unto the adverse party double the costs he has then been at so far, and the plaintiff shall make a new entry.

Town clerks  
may grant sum-  
mons for wit-  
nesses.

Judgment to  
be entered up  
upon default.

*And be it further enacted by the authority aforesaid,*

Matters and is-  
sues in fact to  
be tried by a  
jury.

[SECT. 10.] That all matters and issues in fact arising or happening in any county or place within this province shall be tryed by twelve good and lawful men of the neighbourhood, to be chosen in manner following; that is to say, that the clerk of each court respectively, in convenient time before the sitting of such court shall issue out warrants directed to the constables of the several towns within the county, or jurisdiction of said court, or the most principal of them, requiring them to assemble the freeholders and other inhabitants of such town, qualified as in and by his majesty's royal charter is directed, to elect and choose so many good and lawful men as the warrant shall direct, to serve as jurors at such court, and the constable shall summon the per-

Jurors, how to  
be chosen.

sons so chosen, to attend accordingly at the time and place appointed, and make timely return of his warrant unto the clerk that granted the same, on pain that every constable failing of his duty herein shall forfeit and pay as a fine unto the county treasurer for the use of the county the sum of forty shillings. And no person serving as a justice, juror, witness or otherwise, shall be obliged to use any other ceremony in taking of their respective oaths, than lifting up the hand, as has been accustomed.

Penalty on constables for not making return of warrants for jurors.

Ceremony to be used in swearing.

*And be it further enacted by the authority aforesaid,*

[SECT. 11.] That the justices of the said several courts be and are hereby impowred to make necessary rules and orders for the more orderly practising and proceeding in said courts: *provided*, they be not repugnant to the laws of this province, and that no summons, process, writt, judgment or other proceeding in courts or course of justice shall be abated, arrested or reversed upon any kind of circumstantial errors or mistakes, where the person and case may be rightly understood and intended by the court, nor through defect or want of forme only. And all writts, processes, declarations, indictments, pleas, answers, replications and entries in all the said courts shall be in the English tongue, and no other. And it shall be in the liberty of the plaintiff or defendant in any of the said courts to plead or defend his own cause in his own proper person, or with the assistance of such other as he shall procure, being a person not scandalous or otherwise offensive to this court. And attourneys' fees to be allowed at the superiour court of judicature shall be twelve shillings, and at the inferiour court, ten shillings, and no more; and but one attourney to be paid for in any case.

Courts to make necessary rules and orders.

No process, writt, &c., to be abated for circumstantial error.

All writts, &c., to be in the English tongue.

Attourneys' fees.

*And be it further enacted,*

[SECT. 12.] That two shillings *per diem* shall be accounted due satisfaction to any witness for his travel and expences, and no more, to be allowed in civil causes. And if such witness live within three miles of the place of the court's sitting whereto he is summoned, and be not to pass any ferry, then one shilling and sixpence *per diem* shall be accounted sufficient. And if any person or persons upon whom any lawful process or summons shall be served to testify, depose or give evidence concerning any cause or matter depending in any of the said courts, and having tendred unto him or them such reasonable sums of money for his or their costs and charges as, having regard to the distance of the places, is necessary to be allowed in that behalfe do not appear according to the tenour of the process or summons, having no lawful or reasonable let or impediment to the contrary, that then the party so making default shall, for every such offence, lose and forfeit forty shillings, and shall yield such further recompence to the party agrieved, according to the loss and hindrance that he shall sustain by reason of the non-appearance of the said witness or witnesses; the said several sums to be recovered by the party so agrieved against the offender or offenders by action of debt, bill, plaint or information in any of his majesty's courts of record, wherein no essoign, protection or wager of law to be allowed. [*Passed and published June 19.*]

Witnesses allowances *per diem*.

Penalty for witnesses not appearing.

“The Act entituled *An Act for establishing of Courts*, providing, amongst other things, that all matters and issues in fact shall be tryed by a jury of Twelve men, has, in that particuilar, been looked upon to be directly contrary to the intention of the Act of Parliament, passed here in the 7<sup>th</sup> & 8<sup>th</sup> years of his Majesty's Reign, entituled *An Act for preventing frauds and regulating abuses in the Plantation Trade*, by which it is provided that all causes relating to the breach of the Acts of Trade may, at the pleasure of the Officer or Informer, be tryed in the Court of Admiralty, to be held in any of his Majesty's Plantations, respectively, where such Offence shall be committed; Because the method of tryal in such Courts of Admiralty is not by Juries of twelve men, as by the forementioned *Act for establishing of Courts* is directed; Upon which occasion we further add that it is necessary your Lordship take especial care that the intent of the forementioned Act of Parliament relating to Courts of Admiralty in the Plantations, be duly complied with in that Province of the Massachusetts Bay.”—*Letter from the Board of Trade to Bellomont, Feb. 3, 1698-9.*