

Liber H. S. Removals to, and Tryals in, the Provincial Courts, or before the  
 No. I Justices of Oyer and Terminer, and Goal-Delivery.

p. 12 And whereas, by an Act for the Advancement of Justice, it is Provided and Enacted. That in all Actions to be commenced in the Provincial Court, for the Recovery of any certain Sum of Money or Tobacco, within the Jurisdiction of that Court wherein the Plaintiff shall be desirous of a speedy Tryal, that if the Plaintiff should send a Copy of the Declaration in the Case, with the Writ, and cause the same to be served on, or delivered to the Defendant, or left at his or her last Place of Abode, Twenty Days at the least before the Appearance Court, it should be lawful for the Justices of the said Court, and they are by that Act required to proceed to Tryal the same Court; and if the Defendant should refuse or neglect to answer or plead, to render Judgment for the Plaintiff, with Cost of Suit, unless sufficient Cause should be shewed by the Defendant why there should be an Imparlance; and that as Jurors are not summoned to the Provincial Courts, but the Facts tried in the several Counties where they have arisen, or shall arise, so that when the Defendant pleads any Matter of Fact triable by a Jury, the Issue cannot be tried at the Appearance Court:

[Where the Cause is to be tried when no Occasion appears for an Imparlance.] Be it therefore Enacted and Declared, That where Copies of Declarations are served, or left according to the Directions of the said Act, and no sufficient Cause shewn for an Imparlance, and that the Defendant should plead a Matter of Fact which is required to be done at the Appearance Court, that then and in such Case, the Fact shall be tried at the first Assizes that shall happen after the Appearance Court in the County where the Fact hath arisen or shall arise; any Law, Usage, or Custom, to the contrary notwithstanding.

[Affidavit of Witnesses unable to attend the Assizes, as valid as if the Deposition of such Witness was personally given in Court.] And whereas, Justice may be delayed, or People lose their Rights for want of the Testimony of Witnesses, who may happen to be so sick or impotent, as to be unable personally to attend at the Tryal of Causes, to give their Evidence, viva voce, without apparent Hazard of their Lives or Healths; Be it therefore Enacted, by the Authority, Advice, and Consent aforesaid, That where any Witness shall be summoned by any Plaintiff or Defendant, and shall be really so impotent, sick, or infirm, that he or she shall not be able to attend, according to such Summons, without the apparent Hazard of the Life or Health of such Witness (to be made appear to the Satisfaction of the Court), that then and in every such Case, the Party summoning such Witness may have the Affidavit on Oath, or Affirmation if the Witness be a Quaker, of such sick or impotent Witness, taken before any Magistrate not being of kin to the Parties, and that any Affidavit so taken, (the adverse Party always having timely Notice and Opportunity to cross-examine such Witness,) shall be received as Evidence p. 13 on the Tryall of the Cause wherein such Witness shall be summoned,