

July 1732

( 14 )

within the Jurisdiction of that Court, wherein the Plaintiff should be desirous of a speedy Trial, 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 Trial 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 shewn by the Defendant, why there should be an Imparance.

AND that, as Jurors are not summoned to the Provincial Court, but the Facts tried in the several Counties where they arise; so that, when the Defendant pleads a Matter of Fact, triable by a Jury, the Issue cannot be tried at the Appearance Court, *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 Imparance, 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.

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 Personall to attend at the Trials 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 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 on the Trial of the Cause wherein such Witness shall be summoned, as if the Witness was present, and should deliver his or their Testimony, *Viva Voce*; any Law, Custom, or Usage, to the contrary, notwithstanding.

*PROVIDED always*, That if any such Witness shall wilfully and corruptly swear or affirm falsely; that then, and in every such Case, he or she shall be liable to the same Prosecution, Penalty, and Forfeiture, as Persons guilty of, or committing corrupt and wilful Perjury, are liable to.

*AND be it Enacted*, That the next Provincial Court shall begin the Third Tuesday of October next after the End of this Session of Assembly, and not before; and that all Actions now depending in that Court, of what Nature soever, shall be, and are, by this Act, continued until the said