FRIDAY, 2nd JULY, 1790.

The Court met pursuant to adjournment.
Present: The same Judges.

William Yerks, Plaintiff, vs. Joseph Carnahan, Defendant.

(From 23rd March.)

The plaintiff appears in person and prays that issue may be joined.

The defendant also appears in person and objects to any further proceedings in this action, because the original writ has been served on him instead of a copy, and that the Court cannot legally proceed thereon.

It appears to the Court by the evidence of the Sheriff that the copy of the summons and declaration was duly served on the defendant, and that he has since obtained the original by a mistake of the Sheriff.

The defendant further objects that the plaintiff in his declaration does not sufficiently describe the said 100 acres of land, and that the plaintiff should point out the same and prove his title to it.

The plaintiff informs the Court that the said land consists of the half of lots Nos. 21, 22 and 23, in the second Concession of Adolphustown, which were duly granted to his deceased father, Isaac Yerks, by a certificate from Government, which he is ready to prove.

The defendant says that he is entitled to the whole of the said lots and that the plaintiff has no right to any part of them, and is ready to prove the same.

The plaintiff says that in the year 1784 his father, the late Isaac Yerks, received a certificate for one hundred acres of land jointly with the defendant, and after making some little improvement which was supposed necessary for securing his title, he had occasion to take a journey to the States in 1785. That in the meantime he resided in the family of the defendant, whom he left his attorney to keep possession of the lot, suggesting that it would be otherwise in danger of being taken from him. That his father returned in the year 1787, and immediately took possession of the premises and built a house thereon, in which he lived till about August, 1788, at which time he died. That, without any further authority, the defendant took possession of the premises and doth still hold them to the wrong of the lawful heir and administrators.

Evidence called by the plaintiff, viz., John German, Christ'r German, Henry Johnson, Simon Chorly, Michael Sloot, and Abraham Maby; the said witnesses were duly sworn and their depositions taken and filed. The defendant sayeth that he has taken possession of the lands in question partly in consequence of a deed of gift from the

original proprietor, Isaac Yerks, and partly from considering them as vacant, by Yerks relinquishing them to the defendant's lawyer, Mr. Knotte. Evidence called by the defendant, Jno. Baker, sworn and his deposition filed.

The Court will deliberate on the merit of the cause and give judgment on Thursday next.

SATURDAY, 3rd JULY, 1790.

Present: The same Judges.

James Robins
vs.
Willett Casey.

(From Thursday last.)

The plaintiff appears in person and produces a promissory note, dated the 8th day of October, '89, payable to John Hyck or order.

The defendant also appears in person and sayeth that this cause should be dismissed with costs, because that he is summoned by Jas. Robbins, plaintiff, and the declaration is signed John Hyck, which is contrary to the ordinance of this province.

The Court having observed the said summons and declaration which appears to be issued in the manner stated by the defendant they do therefore consider that this action be dismissed with costs to the defendant, taxed at four pounds, three shillings and threepence.

Macaulay & Markland
vs.
Jas. Connor.

The defendant appears in person and prays that default may be taken off, and prays that this cause may be tried on Monday next.

The Court, by the consent of the parties, do order that this cause may be tried as prayed.

James Robins,
Plaintiff,
vs.
Willett Casey,
Defendant.

And the defendant cometh in person into this court, and for plea in bar to the declaration of plaintiff in this cause or to so much thereof as is necessary for him to answer, sayeth that the declaration and the matter therein contained is not sufficient in law to maintain the said action, nor is he bound by the law of the land to answer thereto, inasmuch as it appears that a summons has issued for the plaintiff against the defendant on the declaration and prayer of John Huyck, not the plaintiff himself, which is contrary to the ordinance of the province of the 25th of his present Majesty's Act first, which lays down the manner of proceedings in action above the value of £10 sterling in the courts of this province. Wherefor the defendant prays to be hence dismissed, with his costs in this behalf most unjustly sustained.

The Court adjourned to Monday next, the 5th inst.

MONDAY, 5th JULY, 1790.

The Court met pursuant to adjournment.
Present: The same Judges.

Messrs. Macauley & Markland vs. James Connor.

(From Saturday last.)

The plaintiff, Thomas Markland, produces Robert Macauley's account against the defendant for a box medicine, charged sixty pounds, which is by order of Court added to the amount demanded in the declaration.

The defendant does also appear in person and alleges that the said chest of medicine was not really worth sixty shillings, and that no specific price was agreed on by the parties when the said chest of medicine was delivered, which is not denied by the plaintiff. The plaintiff also produces his account against Robt. Macauley for medicines and attendance in curing a broken leg, amounting to fifty pounds.

The plaintiff objects to the said account and declares that the charge is exhorbitant for the medicine and attendance that have been given.

The defendant, in this case, alleges that his charge is not extravagant nor without a precedent, and that the cure he performed was of a dangerous nature and that he is justly entitled to the amount he demands for the said cure.

Mr. Joseph Forsyth being called by the defendant, upon oath declares that he heard it publickly reported in Montreal that Mr. Murray had paid Doctor Bleak fifty pounds for curing a broken leg, which was allowed by the Court in that district.

The Court do not consider themselves competent to judge of the nature of the defendant's charge without consulting the opinion of professional men upon the subject, and do therefore call upon Jas. Latham and James Gill, surgeons, for their opinion.

On question by the Court: Mr. Latham says he has not attended cases of this kind in this province, and that their charges generally depend on the circumstances of the patient; that he has known from two pounds to one hundred guineas paid for cures of that kind.

Question by the Court: On considering all the circumstances in this case, as a professional man, what would you think yourself entitled to charge? Mr. Latham answers that he would think himself very honourably paid by thirty guineas.

Question of Court: Would you think yourself entitled to charge so much? Answered that he certainly would.

Question by the Court to James Gill: Have you attended cases of the nature of that now before the Court, in this province?

Answer: I have not attended any but amongst soldiers.

Question by the Court: Are you not acquainted what charges are made in suit cases by professional men in this province?

Answer: That he has known from ten to seventy pounds charged, according to circumstances.

Question by the Court: What would you think yourself entitled to charge for a case of this kind, considering all the circumstances?

Answer: That he would charge at least ten pounds for each fracture.

Question by the Court: Do you include anything for medicine in the charge you have mentioned?

Answer: That he does not include anything for medicine, but merely for reducing the fracture.

The Court having heard the parties and the evidence in this case, will take time to deliberate on the merits and give judgment on Thursday next.

The Court adjourned to Thursday next.

THURSDAY, 8th JULY, 1790.

The Court met pursuant to adjournment.

Present: The same Judges.

William Yerks
vs.
Joseph Carnaham.

The Court having duly considered the merits of this action do order and adjudge that the plaintiff William Yerks be put in possession of the premises in the space of one month, that is to say, the whole of lots Nos. 23, and such moiety of No. 22 as shall be equal to the full half of the whole three lots Nos. 21, 22 and 23, and that the defendant do pay the costs of this suit, taxed at £7 8s. 11d.

Messrs. Macauley
& Markland
vs.
James Connor.

The Court having duly considered the merits of this action do order and adjudge that the plaintiff shall recover of the defendant the full sum of thirteen pounds, six shillings and sixpence currency of this province, and that the defendant do pay costs of suit.

John Ferguson
vs.
Abe. Flsher.

The Sheriff returned that he has duly summoned the defendant to appear this day.

The plaintiff appears in person.

The defendant being duly called made default.

The plaintiff prays that the default may be recorded.

The Court does order that the default be recorded.