

and 4 days between service and return of process.

between the issuing and return, and *four* days between the service and return of each writ or summons, the service of which shall be proved by the oath of any person serving the same.

Fees of the Justice.

V. *And be it further enacted*, That for every writ or summons, the Justice issuing the same shall have and receive *four pence*, and for every trial and judgment *one shilling*, and for every execution *six pence* and no more—and no other or greater fees shall be taken by any Justice in any cause or under any pretence whatsoever, and that the whole amount of costs to be taxed in any one action shall not exceed *five shillings*.

Parties to have a right to trial by jury.

VI. PROVIDED ALWAYS, That the right of the party to a trial by jury, shall remain as directed in and by an act passed in the *twenty-sixth* year of His present MAJESTY'S reign, entitled, "An Act for regulating the Courts of Law established in the several counties for the trial of causes to the value of *forty shillings*," any thing herein to the contrary contained notwithstanding: *And also provided*, that nothing in this act contained shall extend or be construed to extend to that part of the county of Saint John, which is within the limits and jurisdiction of the city of Saint John; but that the City Court of the city of Saint John, and the Clerk thereof shall have the same authority, power, and jurisdiction within the limits of the said city as if this act had not been made, any thing herein before contained to the contrary notwithstanding.

Act not to extend to the city of St. John.

Limitation.

VII. *And be it further enacted*, That this act shall continue and be in force for and during *two years* and no longer.

C A P. V.

An ACT for regulating MARRIAGE and DIVORCE, and for preventing and punishing INCEST, ADULTRY, and FORNICATION.

Preamble.

WHEREAS it is necessary in order to the keeping up of a decent and regular society, that the matrimonial union be settled and limited by certain rules and restraints; and the state of this province requires some provisions in this behalf, as also for cases of divorce and alimony.

Persons making known to any

I. BE IT ENACTED, *by the Lieutenant Governor, Council and Assembly*, That when any persons of lawful age and capacity to make a contract of marriage, shall make known to any Parson,

Parson, Vicar, Curate or other person in Holy Orders of the Church of England in the town or parish where they respectively reside, or in case there shall be no Parson, Vicar, Curate or other person in Holy Orders of the Church of England in such town or parish then to any of his Majesty's Justices of the Peace, being of the Quorum, in the county where they respectively reside, their intention of making a contract of marriage, such Parson, Vicar, Curate or other person in Holy Orders of the Church of England, shall cause proclamation to be made with an audible voice of such intention of marriage at some church, chapel, or other public place of meeting for religious worship in the town or parish, or towns and parishes where such parties and each of them respectively reside, during the time of devine service, on *three* Sundays successively, or in case there shall be no Parson, Vicar, Curate or other person in Holy Orders of the Church of England as aforesaid, such Justice of the Peace as aforesaid, shall cause a notification of such bans of matrimony in writing subscribed with the hand of such Justice of the Peace, to be affixed to some visible part of such church, chapel or other public place of meeting for religious worship, or some other public building to be directed and appointed by such Justice of the Peace and situate as aforesaid, on *three* Sundays successively: And if there shall be no lawful impediment or objection after such publication or notification of bans as aforesaid, it shall and may be lawful for such or any other Parson, Vicar, Curate or other person in Holy Orders of the Church of England, or any such Justice of the Peace as aforesaid, where there shall be no Parson, Vicar, Curate or other person in Holy Orders of the Church of England, as aforesaid, and they are hereby respectively authorized to solemnize and take the acknowledgment of marriage between such parties. PROVIDED, that in case they, or either of them are within the age of *twenty one* years, consent thereto be first had of the father or guardian of the party or parties within the age last mentioned. PROVIDED ALSO, that any marriage so to be solemnized by any such Justice of the Peace as aforesaid, shall be solemnized and performed in the manner and form which shall be directed by the Governor, Lieutenant Governor or Commander in Chief of the province.

Clergyman of the Church of England

or to any Justice of the Quorum

their intention of marrying—such Clergyman shall publish the bans *three* Sundays successively;

or such Justice shall advertise the same on *three* Sundays successively,

and if no impediment, such or any other Clergyman of the Church of England or such Justice to solemnize marriage.

If either party be within 21 years, consent of the parent to be first had. Justices of the Peace to use the form directed by the Governor.

II. *And be it further enacted*, That if any Parson, Vicar, Curate or other person in Holy Orders of the Church of England, or any such Justice of the Peace as aforesaid, shall presume to solemnize or celebrate marriage between any persons whatsoever, before proclamation or notification of bans of matrimony between them made in form aforesaid, except a licence be first had and obtained therefor by and under the hand and seal of the Governor, Lieutenant Governor, or Commander in Chief of this province

Any Clergyman of the Church of England or Justice of the Peace celebrating marriage before publication, without licence,

to forfeit 20*l*.

Prosecution to be commenced within *twelve* months.

Any person other than a Clergyman of the Church of England, or Justice of Peace

celebrating or assisting in any marriage;

contrary to the meaning of this act,

to be fined not more than 100*l*. nor less than 5*l*. for every offence and imprisoned.

Nor to extend to Ministers of the Kirk of Scotland,

nor to Quakers,

nor Clergymen of the Church of Rome.

Justices of the Peace to register marriages,

province, he shall forfeit and pay to His MAJESTY the sum of *twenty pounds* to be recovered, with costs of suit, by bill, plaint or information in the Supreme Court of Judicature. **PROVIDED** always, that every prosecution for any offence, penalty, or forfeiture in this clause contained, shall be commenced within the space of *twelve months* after such offence committed, and not afterwards.

III. *And be it further enacted,* That, if any person, other than a Parson, Vicar, Curate, or some person in Holy Orders of the Church of England, or some such Justice of the Peace where there shall be no Parson, Vicar, Curate or other person in Holy Orders of the Church of England as aforesaid, shall presume to solemnize or celebrate marriage or shall officiate, or assist in solemnizing or celebrating or making any marriage, or contract of present marriage between any persons whatsoever, or if any such Parson, Vicar, Curate or other person in Holy Orders of the Church of England, or any such Justice as aforesaid, shall solemnize or celebrate marriage or shall officiate or assist in solemnizing or celebrating, or making any marriage contrary to the provisions and the true intent and meaning of this act, every such offender who shall be thereof convicted upon indictment or information of His MAJESTY'S ATTORNEY GENERAL before the Supreme Court of Judicature or any Court of Oyer and Terminer or Goal Delivery, shall for every offence forfeit and pay a fine to the KING not exceeding *one hundred pounds*, nor less than *fifty pounds* and suffer **TWELVE MONTHS** imprisonment. **PROVIDED** always, that nothing in this act contained shall extend or be construed to extend to prevent any Minister of the Kirk of Scotland regularly ordained according to the rights thereof, from celebrating and solemnizing marriage agreeable to the forms and usages of that Church between persons of that communion. **PROVIDED** also, that nothing herein contained shall extend or be construed to extend to prohibit or restrain persons called **QUAKERS** from the full and free liberty of solemnizing marriage according to the usages, forms and customs of that sect, in case both parties to such marriage are **QUAKERS**. **AND PROVIDED** also, that nothing in this act shall extend or be construed to extend to prohibit or restrain any person regularly ordained in Holy Orders of the Church of Rome from solemnizing marriage agreeable to the forms of their Church between persons of that communion only.

IV. *And be it further enacted,* That every such Justice of the Peace as aforesaid shall register or cause to be registered in a fair or legible hand writing, subscribed with his own proper name and addition by himself, or by some other person in his presence and by his direction, in a book to be provided and kept for that purpose, all marriages and contracts of marriage by and in presence of him and them respectively celebrated, solemnized and acknowledged

knowned from time to time, and shall also within *three* months from and after every such celebration and solemnization of marriage, deliver or transmit to the Clerk of the Peace in the county where the marriage shall have been solemnized and made as aforesaid, a certificate or memorial thereof in writing subscribed with his proper name and addition, which certificate or memorial the said Clerk of the Peace is hereby authorized and required to enter, transcribe and enrol in and with the records of the court of General Sessions of the Peace. And such registry shall be deemed and taken in all Courts of Law and Equity in this province to be as good evidence of such marriage so registered, as the registry of such marriage would be if made by any Parson Vicar, Curate or other person in Holy Orders of the Church of England, agreeable to the Canons of the said Church.

and transmit a certificate thereof to the Clerk of the Peace within *three* months,

to be entered in the records of the county which shall be as good as if registered by a Clergyman of the Church of England.

V. *And be it further enacted*, That all causes, suits, controversies, matters and questions touching and concerning marriage and contracts of marriage and divorce, as well from the bond of matrimony as divorce and separation from bed and board and alimony, shall and may be heard and determined by and before the Governor or Commander in Chief of this province and His Majesty's Council: And that the Governor or Commander in Chief and Council aforesaid or any five or more of the said Council together with the Governor or Commander in Chief as President be and they are hereby constituted, appointed and established a Court of Judicature in the matters and premises aforesaid, with full authority, power and jurisdiction in the same. **PROVIDED**, and it is hereby declared that nothing herein contained shall deprive, diminish, control, obstruct or abridge, or be construed, deemed, or extended to deprive, diminish, control, obstruct or abridge in any manner the rights, powers, authority, judicature, or jurisdiction of the Court of Chancery or of the Supreme Court of Judicature or of any Inferior Court of this province, in and touching the matters and premises aforesaid or any of them, and that no sentence, decree, judgment, or proceeding of the said Court of Governor or Commander in Chief and Council in any information, prosecution, suit or process touching and concerning any marriage or contract of marriage or divorce or alimony shall take away, annul, bar, suspend or in any wise alter or affect the right of action of any person or persons for any injury or damage sustained for or by reason of any breach of any covenant or contract of marriage.

All controversies concerning marriage and divorce

to be determined by the Governor and Council;

who are constituted a court for that purpose.

Nothing in this act to control the rights of any court,

and no sentence of the Court of Governor and Council

to affect the right of action of any person.

VI. *And be it further enacted*, That the fixed and stated terms of holding the said Court of the Governor and Council for the purposes and causes herein mentioned, shall be and commence on the *first* Tuesday in *February* and the *third* Tuesday in *July* in each and every year and shall continue during the space of *ten* days.

Terms of holding the Court of Governor and Council.

C.

VII.

VII. *And whereas*, The arduous affairs of government may render it impossible for the Governor or Commander in Chief at all times to preside in person in the Court aforesaid.

The Governor or Commander in Chief to appoint a Deputy in the said Court

Be it further enacted, That it shall and may be lawful for the Governor or Commander in Chief by warrant or commission under his hand and seal, to depute, constitute and appoint the Chief Justice, or either of the Justices of the Supreme Court of Judicature or the master of the Rolls to preside in his place and stead in the said Court, or the Governor and Council, and to have, hold and exercise all the powers, privileges, authority and jurisdiction of the Governor or Commander in Chief in the same Court, and that such Deputy or Vice President, shall have, hold and exercise all such powers, privileges, authority and jurisdiction accordingly as are hereby given and granted to the Governor or Commander in Chief in the same Court in all the causes matters and things therein cognizable by this act.

VIII. And for the more effectually preventing and punishing of incest, adultery, fornication and all acts of lewdness and unlawful cohabitation and intercourse between man and woman.

Persons convicted of Incest &c.

to be punished at the discretion of the Court.

Be it further enacted, That every person who shall be hereafter lawfully convicted of any of the crimes aforesaid, before the Supreme Court of Judicature or any Court of Oyer and Terminer and Goal Delivery in this province, shall be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender or offenders shall be convicted.

Causes of divorce.

IX. *And it is hereby declared and enacted*, That the causes of divorce from the bond of matrimony and of dissolving and annulling marriage are and shall be frigidity or impotence, adultery and consanguinity within the degrees prohibited in and by an act of Parliament made in the *thirty-second* year of the reign of KING HENRY the *eighth*, entitled "An Act for marriages to stand notwithstanding pre-contracts" and no other causes whatsoever.

In cases of divorce for adultery, the issue not to be bastardized;

nor the wife barred of dower; nor husband deprived of tenancy.

X. **PROVIDED ALWAYS**, *and be it further enacted*, That in case of a sentence of divorce from the bond of matrimony or marriage for the cause of adultery, the issue of such marriage shall not in any case be bastardized or in any way prejudiced or affected with any disability thereby. **PROVIDED ALSO**, that the wife in such case shall not be thereby barred of her dower, or the husband be thereby deprived of any tenancy by the curtesy of England unless it shall be so expressly adjudged and determined in and by such sentence of divorce.

XI. *And be it further enacted,* That an act made and passed in the *twenty-seventh* year of His present MAJESTY'S reign, entitled "An Act for regulating marriage and divorce and for preventing and punishing Incest, Adultery and Fornication" be and the same is hereby repealed, and declared to be utterly null and void.

The act passed in the 27th year of His Majesty's reign repealed.

C A P. VI.

An ACT in addition to an Act, entitled, "An Act for REGULATING JURIES and DECLARING the QUALIFICATION of JURORS."

I. **B**E IT ENACTED, by the Lieutenant Governor, Council and Assembly, That the Sheriffs of each county shall once a year, viz. on or before the first day of May make out a list of all persons qualified to serve upon Juries, who have resided within the said county for three months preceeding, with their titles and additions, between the age of twenty-one years, and the age of sixty years, and return the same into the office of the Clerk of the Peace in their respective counties, which Clerks respectively shall cause the same to be fairly entered in a book to be by them provided and kept for that purpose, among the records of the Sessions of the said county: And each and every Sheriff who shall neglect to make out and return such list shall forfeit and incur the penalty of ten pounds, to be paid into the hands of the Treasurers of the respective counties, for the use of the county, to be recovered by bill, plaint or information in any Court of Record, having jurisdiction thereof. And no Sheriff shall impanel or return any person or persons to try any issue joined in any Court of Record in this province, that shall not be named and mentioned in such list.

Sheriffs of the counties once a year to make out a list of Jurors,

and return it in to the Clerks office,

to be entered in a book kept for the purpose.

penalty on Sheriffs neglecting

Sheriffs not to return persons not named in the list.

II. *And be it further enacted,* That each Sheriff shall have and receive such sum of money for his expenses and trouble in making out and returning such list, as the Justices in their General Sessions shall deem to be an adequate compensation therefor, and they shall thereupon order the same to be paid by the Treasurer of the county, out of the monies in his hands belonging to such county respectively, and such sum so to be allowed to the Sheriff shall be deemed a county charge and shall be provided for as other county charges are or may be by law.

Sheriffs to be paid for making out such lists.