

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1808. Saint John, NB: Jacob Mott, Printer to the King's Most Excellent Majesty, 1808.

48 George III – Chapter 2

An Act for making Process in Courts of Equity effectual against Persons who reside out of this Province and cannot be served therewith. Passed the 30th July, 1808.

Whereas sometimes persons have withdrawn themselves out of the limits of this Province, and thereby rendered it impracticable to serve them with Process for their appearance in the Court of Chancery of this Province; for remedy of the inconveniences thence ensuing.

I. Be it enacted by the President, Council, and Assembly, That if in any suit which hath been or hereafter shall be commenced in the said Court of Chancery, any defendant or defendants against whom any Subpoena or other process shall issue, shall not cause his, her or their appearance to be entered upon such Process within such time and in such manner as according to the rules of the Court the same ought to have been entered in case such Process had been duly served, and an affidavit or affidavits shall be made to the satisfaction of the said Court that such defendant or defendants is or are out of the limits of this Province, or that upon inquiry at his, her or their usual place of abode he, she or they could not be found so as to be served with such Process, and that there is full ground to believe that such defendant or defendants is or are gone out of this Province, or otherwise abscond to avoid being served with the Process of the said Court, or that such defendant or defendants departed from this Province after the cause of action upon which such suit hath been or shall be commenced, accrued, and have or hath not resided within this Province for the term of twelve months next preceding the commencement of such suit; or that the Heirs, Executors or Administrators of any person dying in this Province, or of any person who shall have so absented him or herself from this Province, in cases in which such Heirs, Executors or Administrators may be made defendant or defendants in such suit, reside without the limits of this Province, then and in such case the said Court may make an order directing and appointing such defendant or defendants to appear at a certain day therein to be named, and a copy of such order shall within fourteen days after such order made be inserted in the Royal Gazette, published by the King's Printer in this Province, and shall continue to be inserted in the same Gazette for the space of three months thence next ensuing; and also a copy of such order shall within the time aforesaid of fourteen days be posted in some public place in the Town or Parish in which such defendant or defendants last dwelt within this Province; and if such defendant or defendants do not appear within the time limited by such order or within such further time as the Court shall appoint, then on proof made of such publication of such order as aforesaid, the Court being satisfied of the truth thereof, may order the plaintiff's Bill to be taken *pro confesso*, and make such decree thereon as shall be thought just, and may thereupon issue Process to compel the performance of such decree either by an immediate sequestration of the real and personal estate and effects of the party so absenting, if any such can be found, or such part thereof as may be sufficient to satisfy the demands of the plaintiff or plaintiffs in such suit, or by causing possession of the estate or effects demanded by the Bill to be delivered to the plaintiff or plaintiffs, or otherwise as the nature of the case shall require; and the said Court may likewise order such plaintiff or

plaintiffs to be paid and satisfied his, her or their demands out of the estate or effects so sequestered according to the true intent and meaning of such decree, such plaintiff or plaintiffs first giving sufficient security in such sum as the Court shall think proper, to abide such order touching the restitution of such estate or effects as the Court shall think proper to make concerning the same; upon the defendant or defendants appearance to defend such suit and paying such costs to the plaintiff or plaintiffs as the Court shall order; but in case the plaintiff or plaintiffs shall refuse or neglect to give such security as aforesaid, then the said Court shall order the estate or effects so sequestered or whereof possession shall be decreed to be delivered to remain under the direction of the Court, either by appointing a receiver thereof or otherwise as to such Court shall seem meet, until the appearance of the defendant or defendants to defend such suit, and his, her or their paying such costs to the plaintiff or plaintiffs as the said Court shall think reasonable, or until such order shall be made therein as the Court shall think just.

II. Provided always, That if any decree shall be made in pursuance of this Act against any person or persons being out of this Province or absconding in manner aforesaid at the time such decree is pronounced, and such person or persons shall within three years after the making of such decree return or become publicly visible, then and in such case he, she or they shall be served with a copy of such decree within a reasonable time after his, her or their return or public appearance shall be known to the plaintiff or plaintiffs; and in case any defendant against whom such decree shall be made shall, within three years after the making of such decree, happen to die before his or her return into this Province or appearing openly as aforesaid, or before his or her being served with a copy of such decree, then his or her Heir, if such defendant shall have any real estate sequestered or whereof possession shall have been delivered to the plaintiff or plaintiffs, and such heir may be found, or if such Heir shall be a *feme covert*, infant, or *non compos mentis*, the husband, guardian or committee of such Heir respectively, or if the personal estate of such defendant be sequestered or possession thereof delivered to the plaintiff or plaintiffs, then his or her Executor or Administrator (if any such there be) may and shall be served with a copy of such decree within a reasonable time after it shall be known to the plaintiff or plaintiffs that the defendant is dead, and who is his or her Heir, Executor or Administrator, or where he, she or they respectively may be served therewith.

III. Provided always, That if any person or persons so served with a copy of such decree, shall not within six months after such service appear and petition to have the said cause reheard, such decree so made as aforesaid shall stand absolutely confirmed against the person and persons so served with a copy thereof his her or their respective Heirs, Executors and Administrators, and all persons claiming or to claim by, from or under him, her or them or any of them by virtue of any Act done or to be done subsequent to the commencement of such suit.

IV. Provided nevertheless, That if any person so served with a copy of such decree, shall within six months after such service, or if any person not being so served shall within three years next after the making of such decree appear in Court and petition to be beard with respect to the matter of such decree, and shall pay down or give security for payment of such costs as the Court shall think reasonable in that behalf, the person or persons so petitioning his, her or their respective Representatives, or any person or persons claiming under him, her or them respectively by virtue

of any Act done before the commencement of the suit, may be admitted to answer the Bill exhibited, and issue may be joined, and witnesses on both sides examined, and such other proceedings, decree and execution may be had thereon as there might have been in case the same party had originally appeared and the proceedings had then been newly begun, or as if no former decree or proceedings had been in the same cause.

V. Provided nevertheless, and be it further enacted, That if any person against whom such decree shall be made his, her or their Heirs, Executors or Administrators shall not within three years next after the making of such decree appear and petition to have the cause reheard, and pay down or give security for payment of such costs as the Court shall think reasonable in that behalf, such decree made as aforesaid shall stand absolutely confirmed against the person and persons against whom such decree shall be made, his, her and their Heirs, Executors and Administrators, and against all persons claiming or to claim by, from or under him, her or them or any of them by virtue of any Act done or to be done subsequent to the commencement of such suit; and at the end of such three years it shall and may be lawful for the Court to make such further order as shall be just and reasonable according to the circumstances of the case.