

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1833. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1833.

3 William IV – Chapter 19

An Act in Addition to an Act for making Process in Courts of Equity effectual against Persons who reside out of this Province, and cannot be served therewith. Passed 19th March 1833.

Whereas it frequently happens that Persons resident without the Limits of the Province, are necessary Parties, Defendants, in Suits in the Court of Chancery, brought for the Foreclosure or Redemption of Mortgages on Lands situate in the Province, and for other Matters: And Whereas Doubts have arisen whether the Provisions of an Act passed in the Forty eighth Year of the Reign of His late Majesty King George the Third, intituled *An Act for making Process in Courts of Equity effectual against Persons who reside out of this Province, and cannot be served therewith*, extend to Persons who have never been resident within the Province; and it is deemed expedient to make further and other Regulations relative to Non-residents;

I. Be it enacted by the Lieutenant Governor, 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 it shall be made to appear, on Affidavit to the Satisfaction of the said Court, that such Defendant or Defendants do not reside within the Province, but have a known Place of Residence elsewhere, which shall be stated in such Affidavit, 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 so long a Time as the Court shall direct, not less than Three Months; and a Copy of such Order shall, within One Year next after the making of the same, be served on the Defendant or Defendants, either personally or by leaving the same at the Residence of the said Defendant or Defendants with some Person belonging to the Family or living in the House of the said Defendant or Defendants; 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 and Service of such Order as aforesaid, the Court being satisfied of the Truth thereof may order the Plaintiffs Bill to be taken *pro confesso*, and make such Decree thereon as shall be thought just and proper, and may thereupon issue Process to compel the Performance of such Decree as is in and by the said recited Act provided: Provided always, that if the Defendant or Defendants reside in the United Kingdom or any other Part of Europe, or in the West Indies, such Service shall be made at least Three calendar Months before the Day therein named for Appearance; and if the Defendant or Defendants reside in any Part of the United States of America, or in any of the British North American Colonies, such service shall be made at least Two calendar Months before the Day of Appearance; and if the Defendant or

Defendants reside in any other Part of the World, such Service shall be made at least Six calendar Months before the Day of Appearance.

II. And be it enacted, That Proof of such Service may be made by Affidavit or Affidavits, to be taken and subscribed before any Judge of the Court of King's Bench, Common Pleas, or Exchequer, or before the Lord Chancellor, Master of the Rolls, or Vice Chancellor, or any Master of the High Court of Chancery, or Mayor of any City, Borough, or Town Corporate in England or Ireland; before any Lord of Session or other Superior Judge, or any Provost or other Chief Magistrate of any City, Borough, or Corporate Town in Scotland; before any Judge of the Supreme or Superior Court or Master of the Rolls in any British Colony; or before any Superior Court, or any Judge thereof, in the United States of America, or any other Foreign Country: Provided always, that such Affidavit or Affidavits, if taken in any Foreign Country, be authenticated by a Certificate under the Hand and Seal of the British Ambassador, Envoy, Minister, Consul, or Vice Consul, and, if taken within any Part of the British Dominions, by a Certificate under the Hand and Seal of some Public Notary, to the Satisfaction of the said Court of Chancery.