

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1839.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1839.

2 Victoria – Chapter 35

**An Act for the improvement of the Practice in the Court of Chancery. Passed 23d March 1839.**

Whereas the Practice of the Court of Chancery is in many respects dilatory and expensive, and ill adapted to the state of the Province, and requires extensive alterations and amendments;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the Chancellor, by and with the advice and consent of the Master of the Rolls, shall have full power and authority from time to time to direct and declare the forms of process, and to prescribe, modify, alter and amend the practice and proceedings to be observed in all matters of which the said Court now has or hereafter may have cognizance and jurisdiction.

II. And be it enacted, That there shall be three Terms of the said Court in each year, that is to say: Hilary Term, to commence on the last Tuesday in January and to end on the Saturday then next ensuing; Trinity Term, to commence on the first Tuesday in June and to end on the Saturday then next ensuing; and Michaelmas Term, to commence on the first Tuesday in October and to end on the Saturday then next ensuing; and that causes and other matters to be heard in the said Court may be brought to hearing and heard and determined in vacation as well as in term, under such regulations as may be established in that behalf by the rules and orders of the said Court.

III. And be it enacted, That the common Gaol of the County of York shall be the prison of the said Court; provided always, That in case it shall be expedient and the ends of justice be thereby answered, any prisoner of the Court may be committed to the common gaol of any County within which he may have been arrested, in case the Court shall so order and direct.

IV. And be it enacted, That it shall be the duty of the Sheriffs in the several Counties to serve any writs of subpoena, or execute any process of this Court within their respective Counties that may be sent to them for that purpose, and they shall be entitled to the following fees and emoluments in respect of the same, that is to say: for the service of every subpoena to appear and answer, two shillings and six pence; for every arrest under a writ of attachment or other process, five shillings; and also the same allowance for travel and poundage as in case of process issuing out of Courts of Common Law: Provided always, That no charge for poundage shall be allowed except in case of monies actually received and paid over under process of this Court, and the amount of such poundage shall in such cases be levied and received in addition to the sum directed to be paid or levied by such process.

V. And be it enacted, That all Sheriffs, Deputy Sheriffs, Gaolers, Constables and other Officers shall be aiding, assisting and obeying the said Court in the exercise of its jurisdiction whenever required so to do.

VI. And be it enacted, That in case the Plaintiff, in any suit commenced or to be commenced in the said Court, shall neglect to proceed in the same in due time, according to the practice of the said Court, the Bill may be ordered to be dismissed, and in case the Defendant shall neglect to appear in due time after service of process, or shall neglect to put in his answer, or to take any other necessary step in the cause, within the time in that behalf limited by the practice of the said Court, the Bill may be ordered to be taken against him as confessed, subject nevertheless to such regulations and restrictions as may be established and provided in that behalf by the rules and orders of the said Court.

VII. And be it enacted, That the several Masters in ordinary in this Court now appointed, or hereafter to be appointed, shall have power to act as examiners in the said Court; and in any case where, from the remoteness of residence of any examiner from the place of residence of the witness, or other circumstance, it may be deemed expedient, the Chancellor or Master of the Rolls shall have full power and authority, by order of the said Court, specially to appoint some other person or persons pro hac vice, who shall have power to administer the oath to the witnesses and take the examination in such cause: Provided always, That no examination be taken by any examiner, until such examiner shall have been first duly sworn according to the rules and regulations of the said Court to be established in that behalf.

VIII. And be it enacted, That the examination of witnesses in matters pending in the said Court to such extent and subject to such rules and Regulations as may in that behalf be prescribed and established, may be conducted on questions suggested and proposed at the time of examination, and be attended by the parties, their Solicitors and Counsel.

IX. And be it enacted, That all monies that shall become subject to the control and distribution of this Court, shall be paid into the hands of such person or body corporate or politic as the Master of the Rolls shall from time to time direct, or be vested in such securities as the Master of the Rolls shall approve, and all interest or increase accruing thereon shall be added to the principal and distributed therewith to the person entitled to the same, subject to such rules and regulations as may be established in that behalf.

X. And be it enacted, That where in any suits pending in the said Court the cause of action shall survive, such suit shall not abate by reason of the death of one or more of the Plaintiffs or Defendants, but upon suggestion of such death to the Court the suit shall be allowed to proceed in favor of or against the surviving party as the case may be; and in case of the death of one or more Plaintiffs or Defendants in any suit where the cause of action shall not survive, it shall only abate as to the person or persons so dying and not otherwise.

XI. And be it enacted, That in all cases where it shall be necessary to revive a suit against the representatives of a deceased Defendant, no bill of revivor shall be necessary, but the Court may by order direct that the same stand revived, upon the petition of the Plaintiff, subject to such rules and regulations as may be made in that behalf.

XII. And be it enacted, That the said Court shall have power to enforce performance of any decree, or obedience thereto, by execution against the body of the party against whom such decree is made, or against the goods and chattels, and in default thereof the lands and tenements of such; which execution so issued shall have the like effect as executions issuing out of the Supreme Court of the said Province; and every person so imprisoned under any execution issuing out of the said Court of Chancery shall be entitled to the like benefit of any statute made for the relief of insolvent debtors, as if arrested under process of the said Supreme Court.

XIII. And be it enacted, That in all matters relating to the practice of this Court, not otherwise particularly provided for by Legislative enactment or the rules and orders of this Court, the rules of practice of the High Court of Chancery in England, as now established, shall be in force, subject nevertheless to the like exceptions, limitations, restrictions and rules of construction in the application of the same as the practice of the said High Court of Chancery prevailing and in force at the time of the erection of this Province have heretofore been, and subject to be altered, modified and restricted by such rules of practice as may be hereafter from time to time introduced and established in the Court of Chancery of this Province by any Act or Acts of the General Assembly, or the orders of the said Court.

XIV. And be it enacted, That from and after the passing of this Act it shall and may be lawful for the Chancellor, by and with the consent of the Master of the Rolls, to prepare and make a proper table of fees for the Court of Chancery in this Province, in lieu of the table of fees at present established in that Court, which table of fees so to be made and established as aforesaid shall be in full force and effect from the time notice thereof shall be given by the Master of the Rolls in the Royal Gazette, until altered by any Legislative enactment in this Province.