

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1858. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1858.

21 Victoria – Chapter 61

An Act to enable the Members of “The Society of Underwriters” of the City of Saint John, to sue and be sued in the name of their Secretary for the time being. Passed 6th April 1858.

Section.

Preamble.

1. Actions by 'The Society of Underwriters' to be in the name of the Secretary.
2. Actions against the Society.
3. Death, &c. of Secretary, not to prejudice any action.
4. Declaration and judgment, specialties of.
5. Judgment and execution, specialties of.

Section.

6. Act not to incorporate the Society;
 7. Nor prevent the alternation, &c. of rules.
 8. Proof of hand writing of Secretary to be *prima facie* evidence of appointment.
 9. Memorial of judgment against the Society, registry of, and its effect.
- Shedule.

Whereas certain Ship-owners, Merchants, and others, at the City of Saint John, have formed themselves into a Society called “The Society of Underwriters,” and have subscribed certain rules and regulations for the management of individual and private underwriting of Marine Insurance on vessels, freights, moneys, goods, and effects; and in cases of moneys lent upon Bottomry and Respondentia: and whereas the establishment of such Society under judicious management has been beneficial to trade, and has facilitated the operations of commerce at the Port of Saint John: and whereas owing to the number of individual subscribers or underwriters to each policy, inconvenience is likely to arise to the said Society, and much unnecessary expense will have to be incurred in suing and being sued whenever it may become necessary to bring or defend actions or other proceedings at law or in equity; for remedy whereof, and in order to prevent the multiplicity of law suits,—

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. That from and after the passing of this Act, all actions and suits whatsoever at law or in equity which may be brought, instituted, or prosecuted against any person or persons, body corporate or politic, already indebted or who may hereafter be indebted to the said “Society of Underwriters,” for premiums of insurance, or as makers or indorsers of premium notes, or in any other manner whatsoever, whether such person or persons, or any of them, is or are or shall be a member or members of the said Society or not, shall and lawfully may be commenced, instituted, and prosecuted in the name of the Secretary of the said Society, at the time when any such action or suit shall be commenced or instituted, as the nominal plaintiff or complainant; and in any case when it may be deemed advisable to hold such person or persons to bail, it will be sufficient for the affidavit to set forth and shew the cause of action as due or accrued to the said Society of Underwriters, and an action or actions may thereupon be commenced or instituted in the name

of such Secretary, and the writ or process issued thereon shall and may be indorsed for bail in the amount in such affidavit specified.

2. That from and after the passing of this Act, all actions, suits, and other proceedings at law or in equity, which may be commenced, instituted, or prosecuted on any policy or policies of insurance issued by the said Society, by any person or persons, or body or bodies politic or corporate, whether such person or persons, or such body or bodies politic, or any member or members thereof, is or are or shall be members of the said Society, or underwriter or underwriters on any such policy, shall be commenced, instituted, and prosecuted against the Secretary of the said Society at the time when any such suit or action or other proceedings shall be commenced or instituted, as the nominal defendant.

3. That the death, resignation, or removal, or any other act of such Secretary, shall not abate or prejudice any action, suit, or other proceeding in law or equity commenced or prosecuted under this Act, but the same may be continued, prosecuted, carried on or defended, as if such death, resignation, removal, or other act had not occurred or taken place; provided always, that if the office of Secretary of such Society shall or may at any time or times hereafter become vacant by death, resignation, removal, or otherwise, and shall be suffered and permitted to continue and remain vacant for the period of ten days, that then and from thenceforth until a Secretary is again appointed, all actions, suits, and other proceedings against the underwriters on any policy or policies of insurance issued by the said Society, shall and may be commenced, instituted, and prosecuted against such underwriters individually, this Act and any thing herein contained to the contrary notwithstanding.

4. That in any action, suit, or other proceeding on policies of insurance commenced and prosecuted under this Act, the declaration or bill of complaint in the cause shall set forth the policy or policies of insurance on which such action is brought, and also the names of the individual subscribers or underwriters thereto, with the different amounts underwritten by each respectively; and before any judgment is signed in such action, the damages payable by each underwriter in respects of his subscription to such policy or policies, shall be separately assessed, and execution therefor awarded; and a suggestion to that effect, specifying the respective amounts so assessed, and the names of the underwriters against whom executions are awarded, shall be made upon the roll.

5. That judgment in such cause shall thereupon be signed against such nominal defendant for the aggregate amount of damages recovered, and for costs; and execution shall and may be issued against the Secretary of the said Company for the time then being, in the form mentioned in Schedule A to this Act, and indorsed to levy the amount of such costs, and seven shillings and one penny for the execution, together with the Sheriff's poundage, officer's fees, and incidental expenses; and separate executions in the form mentioned in Schedule B, shall and may be issued against the individual underwriters on the policy and policies upon which such judgment shall have been so signed, for the respective amounts for which the same shall be so awarded against them as aforesaid, each of which executions shall be indorsed to levy seven shillings and one penny for the writ, also Sheriff's poundage, officer's fees, and incidental expenses.

6. Provided always, that nothing herein contained shall extend to incorporate the said Society, or be construed so as to relieve or discharge the individual members thereof from any responsibility, contract, duty, or obligation whatsoever to which, by law, he or she is or at any time hereafter may be subject or liable, either as between such Society and other parties, or as between the different members of such Society themselves.

7. And provided further, that nothing in this Act contained shall be construed so as to prevent the said Society from altering and amending or repealing their existing rules and regulations from time to time as they may see fit, or from making any further or other rules and regulations for the good government of the said Society, and the general direction and management of the business and affairs thereof.

8. In an action on any such policy, proof of the handwriting of the Secretary or defendant in such action shall be considered and received as prima facie evidence of his appointment, and also of his authority to sign such policy for the persons whose names appear therein as underwriters, and to the amounts for which they respectively so appear to have underwritten.

9. A memorial of judgment in any action obtained in the Supreme Court against the said Society, in the name of the Secretary thereof, may be given and registered as in other cases; and such memorial, when so registered, shall bind the real estate of such of the underwriters on the policy on which such judgment was obtained, to the extent of the damages assessed against each underwriter respectively, as fully as if such judgment had been against each underwriter individually.

SCHEDULE A.

Victoria, by the Grace of God, &c.

To our Sheriff of _____ greeting:

Whereas A. B. lately in our Court before us at Fredericton, recovered a judgment against C. D. as Secretary of "The Society of Underwriters," for £_____ damages and £_____ costs, in pursuance of an Act of the General Assembly of our Province of New Brunswick, made and passed in the year of our Reign, intituled, &c. We therefore command you that [of the goods and chattels, lands and tenements of the said C. D. in your bailiwick, you cause to be made the said sum of £ (the costs) and that you have that money before us at Fredericton on, &c. to be rendered to the said A. B. for his costs aforesaid,] and have there then this writ. Witness, &c.

Or if against the body, then omit the words between brackets and substitute the following:—"You take the said C. D. and him safely keep, so that you may have his body before us at Fredericton on, &c. to satisfy the said A. B. of £_____ for his said costs.

SCHEDULE B.

Victoria, &c. To our Sheriff of _____ greeting:

Whereas A. B., lately in our Court before us at Fredericton, recovered a judgment against C. D. as Secretary of "The Society of Underwriters," for £_____ damages and £_____ costs, in pursuance of an Act of the General Assembly of our Province of New Brunswick, made and passed in the year of our Reign, intituled, &c. And whereas our said Court have, in and by their said judgment, and in pursuance of the said Act of Assembly, awarded an execution to be issued against E. F. for the sum of £_____, portion of the said damages: We therefore command you that [of the goods and chattels, lands and tenements of E. F., in your bailiwick, you cause to be made the said sum of £_____,] portion of the damages aforesaid, and have that money before us at Fredericton on, &c., to be rendered to the said A. B., and have there then this writ. Witness, &c.

Or if against the body, omit the words between the brackets and substitute the following:—"You take the said E. F. and him safely keep, so that you may have his body before us at Fredericton on, &c., to satisfy the said A. B. of the said sum of £_____."