

*Laws of His Majesty's Province of Newfoundland*, passed in the year 1835.

5 William IV – Chapter 2

**An Act to amend the Law of Attachment, and to facilitate the recovery of Debts from absent or absconding Debtors. (8th May, 1835.)**

Whereas it is deemed expedient to amend the Law of Attachment, and to make further provision for the recovery of Debts from absent or absconding Debtors: Be it therefore enacted, by the Governor, Council, and Assembly of Newfoundland, in Parliament assembled, and by the authority of the same, that in all Actions at Law, or Suits in Equity, which may hereafter be brought or which are now depending in the Supreme Court or in either of the Circuit Courts of this Colony, in which the Plaintiff shall have proceeded by Attachment of the Lands, Goods, Debts, or Effects of the Defendant or Defendants, and a copy of the Writ or other Process, and of the Plaintiff's Declaration or Bill of Complaint, with a notice of the intent and meaning of the service of such Process, shall have been duly served upon such Defendant or Defendants, his, her, or their constituted Attorney, or upon the Agent of such Defendant or Defendants as shall have a House of Trade in this Island or its Dependencies conducted by such Agent, if such Defendant or Defendants shall not appear and plead thereto within Six Days after the return thereof, the Plaintiff or Plaintiffs in such Action or Suit shall be at liberty to enter an appearance for such Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had entered his, her or their appearance in Person, provided the Writ or other Process, with an affidavit of the service thereof, and the original Declaration or Bill of Complaint, shall have been duly returned and filed: Provided also, that in any Action or Suit now depending, it shall be deemed a sufficient service of the copy of such Writ or other Process, Declaration, or Bill of Complaint, or Notice, if the same be served and filed on or before the first day of the Term which next after the passing of this Act shall be held of the Court in which such Action or Suit may be depending.

II. And be it further enacted, that in all Actions or Suits wherein Process of Attachment shall be issued against the Lands, Goods, Debts or Effects of any Person or Persons who shall be absent from this Colony or not resident therein, and not having therein any known Agent or Attorney as aforesaid, a copy of such Process shall be left at the last place of abode in this Colony of such Person or Persons Defendant, or shall be served upon the Person or Persons in whose custody or possession such Lands, Goods or Effects may be, or from whom such Debts may be due to such Defendant or Defendants; and if such Defendant or Defendants shall not duly enter or cause to be entered an Appearance to such Action or Suit, then it shall and may be lawful for the Court wherein such Action or Suit shall be depending, to make such order for the Sale of the Lands, Goods and Effects, and for the collection of the Debts so attached, as the said Courts respectively shall deem meet, and to direct the Monies arising or accruing under such order to be paid into Court, there to abide the further direction of the said Courts respectively.

III. And be it further enacted, that so soon as the Plaintiff or Plaintiffs in such Action or Suit shall have made it appear to the satisfaction of the Court wherein the same shall be depending, that all reasonable means have been used to discover the place of residence of such absent Debtor or Debtors, and to apprise him, her or them, of such Action or Suit having been so instituted as aforesaid,

it shall and may be lawful for the said Court to order the Sum proved to the said Court by Affidavit to be due and owing to the Plaintiff or Plaintiffs from such Defendant or Defendants in such Suit, to be paid to such Plaintiff or Plaintiffs, in satisfaction thereof, out of any Monies remaining in the said Court belonging to such Defendant or Defendants, together with the Costs to be taxed; Provided always, that no such Money shall be paid to any such Plaintiff or Plaintiffs until security shall have been given, to the satisfaction of the said Court, to refund the whole or any part thereof, as the said Court shall direct, in case the Defendant or Defendants in such Action or Suit shall appear thereto at any time within twelve months from the return of the Writ or other Process, and proceed to the trial of the merits of the said Action or Suit.

IV. And be it further enacted, that so soon after the return of the Writ or other Process as it shall be made to appear to the satisfaction of the Court in which such Action or Suit may be depending, that such Defendant or Defendants, has or have been apprised of the institution of any such Action or Suit, and the said Court shall be of opinion that the Defendant or Defendants could reasonably have appeared thereto, the Plaintiff or Plaintiffs shall be at liberty to enter an appearance for such Defendant or Defendants, and proceed to Judgment therein, as in other cases of Attachment.

V. And be it further enacted, that in any Action at Law which may hereafter be brought in the said Supreme and Circuit Courts respectively, when the Debt due shall amount to Forty Shillings, Sterling Money, and shall be sworn to, in an Affidavit made by the Plaintiff or Plaintiffs, or his, her or their lawful Attorney, then the Defendant or Defendants shall be made to appear by Attachment of his, her or their Goods, Debts and Effects, and the like proceedings shall be had therein as in cases where the Debt exceeds Ten Pounds.

VI. And be it further enacted, that when the Goods or Effects attached under any Process of the said Supreme or Circuit Courts respectively, shall be of a perishable nature, and good and sufficient Bail satisfy the Judgment, Order or Decree of the said Court shall not have been put in by the Defendant or Defendants in such Action or Suit, it shall and may be lawful for such Court respectively, or for any Judge of the Supreme Court, in vacation, on the petition or application of the Plaintiff or Defendant, to make order for the immediate appraisal and sale of such perishable Goods or Effects, or a sufficiency thereof to satisfy the Debt and Costs, and to order payment of the proceeds thereof into Court, to abide the further order, judgment or decree of the Court in such Action or Suit.

VII. And be it further enacted, that so often as any Debt or Sum of Money due to the Defendant or Defendants in any Action or Suit to be brought in either of the said Courts, shall be attached in the hands of any third Person, and also in causes now depending in which such Attachment has already been made, such Sum or Sums of Money so attached shall be paid into Court to abide the order, judgment or decree of the said Court; and that for the purpose of ascertaining the amount due from such Person or Persons to the Defendant or Defendants, it shall be lawful for such Courts respectively to Summon such Person or Persons to appear before them, and to examine him, her or them upon oath, and to make order for the payment of such Monies into Court.

VIII. And be it further enacted, that in all cases where any Lands or Tenements, or the interest of any Person or Persons in such Lands or Tenements, shall be attached by virtue of any Process of the said

Courts respectively, the Rents, Profits or Annuities to which such Person or Persons may be entitled from such Lands or Tenements, whether then in arrear or thereafter to grow due until final Judgment, (or so much thereof as shall be sufficient to satisfy the Plaintiff's demand with reasonable costs) shall be paid to the Sheriff to abide the order, judgment or decree of the said Court: and if after due notice of such Attachment, the Lessee, Tenant or other Person from whom such Rents, Profits or Annuities shall so be or become due, shall pay the same or any part thereof to any other Person than such Sheriff or the Plaintiff or Plaintiffs in such Action, it shall and may be lawful for the said Sheriff to levy the same by a Distress and Sale of the Goods and Chattels of such Lessee, Tenant or other Person, whether the same shall be found on the Premises or elsewhere, and to hold the proceeds of such Sale subject to the order of the Court issuing such Attachment.