

Laws of Her Majesty's Province of Newfoundland, passed in the year 1843.

6 Victoria – Chapter 10

An Act to Repeal an Act passed in the Fifth Year of the Reign of His late Majesty, entitled “An Act to amend the Law of Attachment and to facilitate the recovery of Debts from absent or absconding Debtors,” and to make other provision for the amendment of the Law of Attachment.” (Passed 22d May, 1843.)

Whereas it is expedient to repeal an Act passed in the Fifth Year of the Reign of His late Majesty, entitled “An Act to amend the Law of Attachment and to facilitate the recovery of Debts from absent or absconding Debtors” and to make other provision for the amendment of the Law of Attachment:

I. Be it therefore enacted, by the Governor, Council and Assembly, in General Assembly convened, that an Act passed in the Fifth Year of the Reign of His late Majesty, entitled “An Act to amend the Law of Attachment and to facilitate the recovery of Debts from absent or absconding Debtors,” shall be and the same is hereby repealed.

II. And be it further enacted, That in all Actions at Law, or Suits in Equity, which may hereafter be brought, or which are now depending, in the Supreme or 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, with a notice of the intent and meaning of the service of such Writ or Process, and in Actions at Law a copy of the Plaintiff's Declaration, shall have been duly served upon such Defendant or Defendants, or upon the Agent of any absent Defendant or Defendants, or upon such one or more of the said Defendants, being a Partner or Partners of such absent Defendant or Defendants, as shall be within this Colony; if such Defendant or Defendants shall not appear and plead thereto within four days, or in Actions commenced before the passing of this Act, within six days after the return of such Writ or Process, 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 always that such Writ or other Process, with an Affidavit of the Service thereof, and in Actions at Law the original Declaration, shall have been duly returned and filed.

III. And be it further enacted, That in all Actions or Suits wherein Process of Attachment has been or shall be issued against the Lands, Goods, Debts, or Effects of any person or persons who are or shall be absent from or not resident in this Colony, and have not or shall not have any known Agent therein, or who being absent or not resident and having no known Agent, as aforesaid, shall not be the Partner or Partners of any Defendant or Defendants who shall be within this Colony, as aforesaid, a copy of such Process 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, 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 Goods or Effects or 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 directions of the said Courts respectively.

IV. And be it further enacted, That so soon as the Plaintiff or Plaintiffs shall make it appear, to the satisfaction of the Court, that all reasonable means have been taken to discover the place of residence of any such absent Defendant or Defendants, who shall not, either in person or by an Agent or Partner, have been served with Process as hereinbefore provided, and to apprize him, her or them, of such Action or Suit having been so instituted as aforesaid, or that such Defendant or Defendants have been apprized 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, then it shall and may be lawful for the Plaintiff to sign Judgment by default and proceed to final Judgment as in other cases, without notice of Assessment of Damages: Provided always, That no Lands of the Defendant, so Attached as aforesaid, shall be sold to satisfy such Judgment until the expiration of Six Months from the return of the Writ, unless the Court shall be of opinion, from proofs laid before it, that such Defendant has willingly absented himself to avoid payment of his Debts: Provided also that no such final Judgment shall be entered up until security has been given, to the satisfaction of the said Court, to refund the whole or any part of the Money to be recovered under the same, 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.

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

VI. And be it further enacted, That when the Goods or Effects Attached under any Process of either of the said Courts, shall be of a perishable nature, or be such as either from the expense of holding the same, or from other circumstances, may considerably deteriorate in value before Judgment can be obtained in the Action or Suit in which such Goods or Effects may have been Attached, and good and sufficient Bail to satisfy the Judgment, Order or Decree of the said Court shall not have been put in by the Defendant or Defendants, it shall and may be lawful for such Court respectively, or for any Judge of the Supreme Court in vacation, on the application of any Plaintiff or Defendant, to order the immediate Appraisement and Sale of such Goods or Effects, of a sufficiency thereof to satisfy the Debt and Costs, and to direct the proceeds thereof to be paid into the 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 Goods, Debts, or Effects, of any Defendant or Defendants in any Action or Suit now depending or hereafter to be brought in either of the said Courts, have been or shall be Attached in the hands of any Third Person, such Goods, Debts, or Effects shall be paid into Court or delivered to the Sheriff, as the case may be, to abide the Order, Judgment or Decree of the said Court: and that for the purpose of ascertaining the nature and amount of such Goods, Debts

and Effects, it shall be lawful for such Courts respectively, or for a Judge of the Supreme Court in Vacation, to summon such Third Person, or in the event of his or her absence from the Colony, his or her Agent, to appear before such Court or Judge respectively to be examined upon Oath, and thereupon to make Order for the payment into Court, or delivery to the Sheriff, as the case may be, of such Goods, Debts, or Effects, and to enforce such Order by process of Contempt: Provided always, that no such Attachments aforesaid, shall be deemed to operate on or to affect any contract executory, upon which at any day after the service of such Attachment any Sum of Money shall or may accrue, or become payable to any Defendant for or on account of any Work, Labour, or Service, to be executed, performed, or completed by such Defendant at any time after the service of such Attachment upon the Bailee; nor upon any Monies, Goods, Debts, or Effects in and over which such Defendant shall not have, at the time of the service of any such Attachment, a then present interest and disposing power.

VIII. And be it further enacted, That when any Debt which has been or shall be so Attached as aforesaid, shall be payable in Goods to be specified by the Defendant or Defendants to whom such Debt shall be owing, and such Defendant or Defendants shall neglect or refuse to specify the same previously to or at the time of such examination, as aforesaid, such Goods to the amount of the Debt so Attached, shall be delivered to the Sheriff, as aforesaid, as the Plaintiff or Plaintiffs in any such Action or Suit shall direct and prescribe.

IX. And be it further enacted, That in all cases where any Lands or Tenements, or the Interest of any person or persons in any Lands or Tenements, shall be Attached by virtue of any process of the said Courts respectively, the Sheriff, his Deputy or Bailiff, shall serve notice of such Attachment on the Tenants, Occupiers or Owners of such Lands or Tenements, and thereafter 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 (after deducting thereout Ground-rents, if any.) be paid to the Sheriff to abide the Order, Judgment or Decree of the said Court; and that the like proceedings may be had for ascertaining the nature and amount of such Rents, Profits or Annuities, and for enforcing payment of the same according to the Orders of the Court, as are hereinbefore prescribed with respect to Debts, Goods, or Effects Attached in the hands of Third Persons.

X. And be it further enacted, That in all Actions or Suits commencing by Attachment, as aforesaid, it shall and may be lawful for the Sheriff, in addition to the Sum sworn to, further to Attach and hold the Defendant or Defendants, by his, her or their Lands, Goods, Debts, and Effects, in the Sums following, that is to say—in all Actions or Suits where the amount sworn to shall not exceed Five Pounds, in the Sum of Thirty Shillings; in all Actions or Suits where the amount sworn to shall be over Five Pounds and shall not exceed Twenty Pounds, in the sum of Three Pounds; in all Actions or Suits where the amount sworn to shall exceed Twenty Pounds and shall not exceed Fifty Pounds, the sum of Four Pounds; in all Actions or Suits where the amount sworn to shall exceed Fifty Pounds, and shall not exceed One Hundred Pounds, the sum of Ten Pounds; and in all Actions or Suits where the amount sworn to shall exceed One Hundred Pounds, the sum of Ten Pounds; and a further sum at the rate of Five Pounds per Centum on the amount sworn to above the first Hundred Pounds, the Sums so Attached as aforesaid,

in addition to the sum sworn to, to be towards answering the Costs of any such Actions or Suits respectively.

XI. And be it further enacted, That it shall be lawful for any Party or Parties having obtained Judgment against a Defendant or Defendants, or issued a Writ of fieri facias thereupon, to cause Warrants under such Writs of fieri facias to be placed in the hands of any party or parties having the custody or controul of any Monies, Goods, Debts, or Effects, of the said Defendant or Defendants; and the like proceeding shall be had to examine persons holding the said Money, Goods, Debts, or Effects, and to cause the said Money to be paid into Court, or the said Goods to be Sold and the proceeds paid into Court, under such Warrants as are had under Warrants laid in virtue of Mesne Process.

XII. And whereas, by reason of the concurrent jurisdiction of the Supreme Court with the Circuit Courts, the Sheriff, when Attachments have issued against the same person both out of the Supreme Court and one of the Circuit Courts, and the Goods, Debts and Effects attached are not sufficient to answer both Attachments, may, in certain cases, without any default of him or his deputy, become liable as for a false return: Be it enacted, that whenever an Attachment out of the Supreme and either of the Circuit Courts shall be issued against the same person, and the Sheriff or his Deputy, in the one Court, shall have returned the Attachment on the Writ last delivered to him, without knowledge of the Writ of Attachment previously delivered to him or his Deputy in the other District, he shall not, for so doing, be liable as for a false return, unless the same shall have happened by or through the negligence or default of himself or one of his Deputies or Bailiffs; and it shall in such case be lawful for the said Courts respectively, or any Judge thereof, to allow the return of the Writs to be amended.