

*Laws of Her Majesty's Province of Newfoundland, passed in the year 1849.*

12 Victoria – Chapter 11

**An Act to amend the Law of Attachment in this Colony and to regulate the Fees in certain cases payable thereon. (Passed 23d April, 1849.)**

Whereas great inconvenience, expense, and injury, have been occasioned Defendants in actions prosecuted by attachment or arrest, in the Supreme or Circuit Courts of this Island, by reason of the Plaintiff or Plaintiffs neglecting to proceed to the trial thereof within the term in which the process in every such action is made returnable: For remedy whereof—

Be it therefore enacted, by the Governor, Council, and Assembly of Newfoundland, in Legislative Session convened, That so often as any suit shall hereafter be commenced by attachment or arrest, in either the Supreme or Circuit Courts of this Island, and the lands, goods, debts, or effects of any defendant or defendants shall be attached, or his or their person or persons, under and by virtue of the same, and the defendant or defendants in such suit shall plead to issue in the same within the time and in such manner as is prescribed for pleading by the rules and practice of such Court or Courts, or within such other time as the Judge or Judges of the said Court shall upon application allow', the plaintiff or plaintiffs in such suit is and are hereby required to proceed to the trial of the same within and during the term in which the said process is made returnable, unless the Judge or Judges of the said Courts respectively shall otherwise order and direct, upon sufficient affidavit or affidavits made by the said plaintiff or plaintiffs, his or their attorney or agent, in that behalf; and in ease the said plaintiff or plaintiffs in any such suit,, shall not proceed to the trial thereof in manner before mentioned, when the same is not postponed by order of the Judge or Judges aforesaid, then and in such case it shall and may be lawful for the Chief Justice, or any one of the Assistant Judges sitting in Chambers, upon application of any defendant or defendants, upon affidavit or affidavits satisfactorily shewing that in such suit the defendant or defendants had pleaded promptly, and had not unnecessarily delayed the plaintiff or plaintiffs in their pleading in such suit, and that during the sitting of the said Court the said defendant or defendants was or were ready and prepared for the trial of the same, and that had the plaintiff or plaintiffs used due and proper diligence he or they might and could have brought the same to trial within the time mentioned, but had omitted or neglected so to do, to order and direct, and the said Chief Justice or any one of the Assistant Judges is hereby required to order and direct, that all lands, goods, debts, and effects, so attached, as aforesaid, be forthwith released from such attachment, and the same restored to the defendant or defendants, at the cost of the plaintiff or plaintiffs; or if the proceeding has been by arrest of the defendant or defendants, to order that he or they be forthwith released out of custody on entering a common appearance and pleading issuably; and in case any defendant or defendants in any such suit shall have given bail to the action agreeably to the provisions of the law and practice of the Courts in such cases, the Chief Justice or any one of the Assistant Judges aforesaid, is hereby authorised and required by order to exonerate and discharge such bail, and to direct and order all bail bonds or other security or securities that may have been given to the sheriff executing such process, to be forthwith cancelled and delivered up to the parties executing the same.

II. And whereas it is expedient to regulate the fees, and the fees now payable, in certain cases of attachment: Be it therefore enacted, that in all cases, whether upon mesne or final process, where a warrant shall be placed in the hands of a third person to attach or levy upon the goods, debts, or effects, of any defendant, no commission shall thereon be charged or received by the sheriffs of the several districts of this colony, or their bailiffs; and that in all cases where the said sheriffs shall make attachment upon the goods, chattels, or effects, of any defendant, no fee for possession, other than commission, shall be charged, unless possession shall be kept for a longer period than twelve hours after such attachment shall have been made, as aforesaid, by reason of the defendant or defendants not having arranged the suit or given bail to the action as required by the rules and practice of the Court.

III. And be it further enacted, That the fifth section of an Act passed in the sixth year of Her Majesty's Reign, entitled "An Act to repeal an Act passed in the fifth year of His late Majesty's Reign, entitled "An Act to amend the law of attachment, and to facilitate the recovery of debts upon absent or absconding debtors and to make other provision for the amendment of the law of attachment," shall be and the same is hereby repealed; and that henceforth no writ of attachment shall issue for the recovery of any debt or sum of money unless such debt or sum of money shall exceed five pounds sterling, and shall be sworn to in an affidavit to be made by the plaintiff or plaintiffs, his, her, or their lawful attorney.