

*Laws of Her Majesty's Province of Newfoundland*, passed in the year 1850.

13 Victoria – Chapter 7

**An Act to fix and establish the Terms of the Supreme, Central Circuit, and Sessions Courts, and to extend the Jurisdiction and amend the Practice of the said Courts. (Passed 30th April, 1850.)**

Whereas it is expedient to fix and establish the terms or sessions of the Supreme Court, Central Circuit Court, and Courts of General and Quarter Sessions, and to make provision for the more convenient and effectual despatch of business therein, and in the Northern and Southern Circuit Courts; and also to extend the jurisdiction of the said Courts respectively, in the summary trial of certain actions at law, and otherwise to amend the practice of the said Courts:—

I. Be it therefore enacted, by the Governor, Council and Assembly of Newfoundland, in Legislative Session convened, and by the authority of the same, that there shall be two terms or sessions of the Supreme Court holden at the town of Saint John's, in every year, the first whereof shall commence on the twentieth day of May, and shall continue thence for the period of three whole weeks, and the second whereof shall commence on the twentieth day of November, and shall continue thence for the period of three whole weeks; and that there shall be two terms or sessions of the Central Circuit Court holden at the town of Saint John's in every year, the first whereof shall commence on the twentieth day of April, and shall continue thence for the period of three whole weeks, and the second whereof shall commence on the twentieth day of October, and continue thence for the period of three whole weeks: Provided always, that if any of the days for the commencement of the said terms shall fall upon a Sunday, then the Monday following shall be the first day of such term; and when the last day of any such term shall fall upon a Sunday, the Monday following shall be the last day of such term.

II. Provided nevertheless, and be it further enacted, that it shall be lawful for the said respective Courts (if they shall find it necessary for the despatch of the business therein pending) to prolong and extend any of the said terms respectively by adjournment from day to day, for such number of days, not exceeding six days in all, as they shall think fit; and further, that nothing in this Act contained shall prevent, or be construed to prevent, the holding of a term or terms, session or sessions, of either of the said Courts, at such other time or times as the Governor or Acting Governor of this Island shall, by any proclamation or proclamations to be by him for that purpose issued, direct and appoint.

III. And be it further enacted, That for the purpose of disposing of business remaining undecided in the said Courts respectively, and of hearing and determining matters from time to time pending therein, it shall be lawful for the said Courts to hold sittings during the intervals of the said terms, on the days following, that is to say; the Supreme Court on the first Mondays respectively of February, March, April, and July; and the Central Circuit Court on the second Mondays respectively of February, March, and July; upon which said days it shall be lawful for the said Courts respectively to hear and determine, do and perform, all such matters and things whatsoever, not requiring the intervention of a Jury, as may be heard and determined, done and performed, by the said respective Courts in term time, save only the trial of issues of fact, and the assessment of damages in actions at law; and to adjourn from day to day, or to such other day or days, as such Courts shall think fit, until the business pending before

them shall have been disposed of: Provided always, that such adjournment or adjournments shall not be for more than six days in all from the respective days on which the said Courts shall so sit in vacation, respectively, and that nothing herein contained shall authorize the said Judges, on any of the days aforesaid, to issue attachments for contempts, except in cases on the equity side of the said Courts.

IV. And be it further enacted, That all process, whether mesne or final, issuing out of either of the said Courts, and all declarations in ejectment, may, at the discretion of the party suing out the same, be made returnable into the respective Courts on the seventh day before the commencement of the term next following the issuing of such process, or the service of such declaration; and upon the return of such process or declaration, all parties shall be compellable to plead thereon in like manner as by the rules of the said respective Courts they would be required to plead, reply, or rejoin, if such process or such declaration had been made returnable in term time.

V. And be it further enacted, That whenever any writ of attachment or other process shall have been issued out of either of the said Courts in vacation, and it shall be made to appear to such Court, upon any day appointed as aforesaid for sittings in vacation, that the person or persons against whom such writ or process shall have issued, or are unable to pay twenty shillings in the pound to all his, her, or their creditors, it shall be lawful for the said respective Courts to have and exercise all such and the same jurisdiction, powers and authority to declare any such person or persons insolvent, appoint trustees of his or their estate and effects, and perform all other necessary and incidental acts touching such insolvency, in vacation, as by virtue of any law now in force are vested in and exercised by the said Courts respectively in term time.

VI. And be it further enacted, That as often as any rule nisi to set aside a verdict, and enter a nonsuit, or for a new trial, or any rule for a concillium on a demurrer, shall be granted by any of the Circuit Courts of<sup>1</sup> this Island, it shall and may be lawful for the Judge presiding in such Court, upon the application of any party to the suit, and upon such terms as the Judge may deem reasonable, to make such rule returnable in the Supreme Court, to be there argued and determined, either in term or upon any day in which the said Court shall sit in vacation, as hereinbefore directed; and that on such rule being made absolute or discharged, or such demurrer being adjudicated upon in the said Supreme Court, the same proceedings shall be subsequently had in the Court out of which such rule shall have issued, as though the matter to which it shall have had reference had been similarly determined in such last mentioned Court.

VII. And be it further enacted, That in any action of ejectment which may be brought in the Supreme Court or any of the Circuit Courts of this Island, it shall be lawful to serve the declaration in any such action on the tenant or tenants in possession during the continuance of any term in which such action may be brought, in like manner and to the like effect as such declaration may now be served before the commencement of the term: Provided nevertheless, that every such declaration shall be served four days at least before the day on which the notice to the tenant in possession, endorsed thereon, shall require such tenant to appear and defend such action.

VIII. And be it further enacted, That in all actions of ejectment, when the plaintiff shall not be further able to prosecute his suit for want of the defendant confessing, at the trial of the issue, lease, entry,

ouster, and possession, the plaintiff shall be at liberty to recover his costs to be taxed before the proper officer, by execution against the defendant; and when there shall be a verdict for the defendant, or the plaintiff shall be nonsuit for any other cause than for the defendant not confessing lease, entry, ouster and possession, at the trial, the defendant shall be at liberty to recover his costs, to be taxed as aforesaid, by execution against the lessor of the plaintiff.

IX. And be it further enacted, That Courts of General and Quarter, Sessions shall be holden at such places as are now or hereafter may be appointed for the holding of the same, on the first Mondays of January, April, July and October, and shall sit by adjournment from time to time until the business pending therein, respectively, shall be disposed of.

X. And be it further enacted, That it shall and may be lawful for the Courts of Session in the several Districts of this Island, other than the Central District, to hear and determine, in a summary way, actions for the recovery of debts or sums of money (save and except for the recovery of any fee of office) not exceeding five pounds; and such Courts are hereby empowered to hear and determine in like manner all actions of assumpsit for use and occupation, or of debt for rent, where the sum sought to be recovered shall not exceed five pounds, and where the title to any lands or tenements shall not be in question.

XI. And be it further enacted, That the Court of Sessions for the Central District shall be and it is hereby empowered to hear and determine, in a summary way, actions for the recovery of debts or sums of money (save and except for the recovery of any fee of office,) not exceeding five pounds sterling, and actions of debt for rent, or of assumpsit for use and occupation, where the amount sought to be recovered shall not exceed five pounds sterling, and where the title to any lands or tenements shall not be in question.

XII. And be it further enacted, That it shall be lawful for any person under the age of twenty-one years to prosecute any suit in any Court in this Island having jurisdiction in such cases, for any sum of money not greater than twenty pounds sterling, which may be due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age, and shall be subject to such and the like proceedings for the recovery of costs, and otherwise, as if of the full age of twenty-one years.

XIII. Whereas it is expedient to prescribe the forms of mesne process and the mode of pleading in summary cases aforesaid:

Be it therefore enacted, that the Schedule to this Act, marked A, shall be the form of Summons and Attachment, mutatis mutandis, to be hereafter used in summary cases in the said Courts, and the copy or copies thereof to be served upon the defendant or defendants shall be endorsed as required by law, and that in inserting any other count than in such form contained, the plaintiff or plaintiffs may do so in the same brief manner; and that in all pleadings it shall be sufficient and effectual for the party or parties pleading to make the usual and known title thereof in practice, either on the back of the original writ, or to file the same separately within the time required by the practice of the several Courts for pleading in any such case aforesaid; and that in pleading a set off it shall be sufficient for the defendant

or defendants to file a bill of particulars, accompanied with a copy for the plaintiff or plaintiffs, and endorse thereon "set off."

A  
NEWFOUNDLAND.

18  
day of  
Issued

District \_\_\_\_\_  
To the Sheriff of \_\_\_\_\_ District, Greeting.

Summon A. B. of \_\_\_\_\_ that he be before our Court on \_\_\_\_\_ to answer  
C. D. who complains in person or by E F., Attorney, that the said defendant is indebted to the  
said plaintiff in the sum of \_\_\_\_\_ Pounds, for goods sold and delivered, work performed,  
and materials furnished, monies lent, paid, received on account stated, or for use and  
occupation, or \_\_\_\_\_ as by bill of particulars hereto annexed, or \_\_\_\_\_  
Witness the Honorable \_\_\_\_\_ at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ in  
the year of Our Lord One thousand eight hundred and \_\_\_\_\_

Clerk or Commissioner of Court.  
Attorney (or person)

\_\_\_\_\_ Court.  
A.B., Plaintiff          Plaintiff  
vs.  
C.D., Defendant

E.F., of \_\_\_\_\_ maketh oath and saith that he did on the \_\_\_\_\_ day of \_\_\_\_\_  
personally serve C. D. the within named defendant, with a true copy of the within writ,  
whereupon was endorsed a notice of the true intent of such service, and also a copy of the particulars  
hereto annexed, and that he necessarily travelled \_\_\_\_\_ miles to make such service.

Sworn before me \_\_\_\_\_

XIV. And be it further enacted, That the sum of two shillings and six pence only, exclusive of mileage,  
shall be paid to the Sheriff for the service of any summary writ of summons from the Supreme or either  
of the Circuit Courts, and that the Sheriff of the Central District shall not be entitled to charge any fee  
for service, return, or poundage, on any writ of attachment executed in the Northern or Southern  
District by a special deputation.

XV. And Whereas it is expedient and necessary that provision should be made to enable Justices of  
the Peace to take order as to the hearing and determining of all differences that may arise within this  
Colony between masters or mistresses and their apprentices, and to regulate certain proceedings  
connected with apprentices:

Be it therefore further enacted, That it shall be lawful for any Stipendiary Justice of the Peace within the  
said Colony, and he is hereby required, upon application made to him in that behalf, to consent to and

approve, by writing under his hand, of any indenture of apprenticeship that shall be produced before him, provided upon examination he shall be satisfied of the good moral character and other requisite fitness of the master or mistress of such apprentice; whereupon such indenture of apprenticeship shall be as binding upon the said master or mistress and apprentice, and all parties concerned, as if such master or mistress and such apprentice or other parties had been at the time of the execution of such indenture of full age.

XVI. And be it further enacted, That if any master or mistress of an indentured apprentice shall misuse or evil entreat his or her apprentice, or the said apprentice shall have any just cause to complain, or if the apprentice do not his or her duty to his or her master or mistress, then the said master or mistress, or the apprentice having such cause of complaint, shall and may repair unto any Stipendiary Justice of the Peace of the Town or District wherein such master or mistress dwelleth, who shall by his wisdom and discretion make such order and direction between the said master or mistress and the apprentice, as the equity of the cause shall require; and for the purpose of hearing and determining any such complaint, such Justice shall have power to enforce the attendance before him of any master or mistress, and of any apprentice, and also of any necessary Witness, by summons, or, if such Justice shall think it expedient and necessary, by warrant for that purpose; and if default shall be found in such master or mistress, it shall be lawful for such Justice, at his own discretion, to impose a fine upon him or her, not exceeding Twenty Shillings, and to levy the same by distress and sale of the offender's goods and chattels, or to discharge, by writing under his hand and seal, such apprentice from his said apprenticeship, according to his discretion, upon which discharge such indenture shall cease and be of no further effect; and if default shall be found in such apprentice, the said Justice shall authorize such abatement to be made out of his or her Wages or allowances, or cause such apprentice to be imprisoned, with or without hard labour, for any period not exceeding ten days, as by his Wisdom and discretion shall be thought meet, or may, in addition to or without such abatement, correction and punishment, at his discretion, discharge such apprentice from his said apprenticeship, whereupon such indenture shall cease and be of no further effect.

XVII. And be it further enacted, That no indenture of apprenticeship, nor any covenant therein, shall be of any force or effect to require the executor or administrator of such master or mistress to keep or maintain such apprentice more than one month after the death of such master or mistress, and that at the expiration of such month the indenture of apprenticeship shall cease and be of no further effect.