

Laws of Her Majesty's Province of Newfoundland, passed in the year 1859.

22 Victoria – Chapter 4

An Act to regulate the Practice on the Equity Side of the Supreme and Circuit Courts. (Passed 20th April, 1859.)

Whereas it is expedient to diminish the expense and delay, and simplify the proceedings, on the Equity Side of the Supreme and Circuit Courts.

Be it therefore Enacted, by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:–

- I. A Suit in Equity in the said Courts shall be commenced by filing therein a Bill, in form of a Petition, setting forth briefly and concisely the complainant's case, putting such interrogatories as may be thought necessary, and praying such relief as may be suitable; on which bill shall be endorsed one or other of the notices in the Schedule annexed.
- II. A copy of such bill and notice shall be served either personally upon the defendant, or upon the agent or partner (if any such within the colony) of any absent or non-resident defendant, or personally, abroad, upon any absent or non-resident defendant who shall not have an agent or partner within the Colony, or in such manner as a Judge or the Court may direct in the case of an absent or non-resident defendant not having an agent or partner in this Colony, and whose residence cannot be discovered.
- III. The defendant shall, within the period of ten days after such service, if made within the Central District, and within fourteen days if such service be made in any other part of the Colony, and within such time as may be fixed by a Judge if such service be made abroad, put in an appearance and file and serve a plea, demurrer or answer to such bill; and unless the defendant shall appear and plead, answer or demur, as aforesaid, within such time, or within such further time, if any, as may be allowed by a Judge or the Court in that behalf, the complainant may, upon filing proof on oath of such service, enter an appearance for such defendant, and take an order of course that such bill be taken as confessed.
- IV. In case of any absent or non-resident defendant having an agent or partner in the Colony, not appearing by Attorney, service, where necessary, of all subsequent proceedings shall be made on such agent or partner; and in case of any absent or non-resident defendant not having an agent or partner within the Colony, neglecting to appear by Attorney to a bill served in manner aforesaid, service of all subsequent proceedings, when necessary, shall be made upon the Clerk of the Court for him.
- V. Exceptions to an answer, for insufficiency, shall be allowed only to the answer of an absent or non-resident defendant; and in such case they shall be filed and served within four days after the answer shall have been put in.
- VI. If such exceptions are not submitted to within four days, they may be set down for argument by either party before the Court or a Judge.

VII. If such exceptions are submitted to within four days, or if upon argument as aforesaid they are in whole or in part sustained, the defendant shall have four days in which to put in a further answer.

VIII. Exceptions to such further answer may be taken and submitted to, or demurred to, within the times and in manner aforesaid; and if such exceptions are in whole or in part submitted to or sustained,, upon argument, by a Court or a Judge as aforesaid, the complainant may have an order of course, that in the particulars rightly excepted to his bill shall be taken as confessed, unless the Court or a Judge, upon special application, shall otherwise order.

IX. Where exceptions are not or cannot be taken, or are overruled, or where, in the matter of any exceptions taken, a part of the bill only is taken as confessed, the complainant shall, within two days from the last step in the cause, put in a general replication, otherwise the cause shall stand for hearing on bill and answer.

X. On a general replication being put in, the cause shall be deemed at issue, and the parties may proceed to examine their witnesses before an examiner to be appointed either by consent or on motion to the Court or a Judge, and such examination shall, except when the Court or a Judge shall direct a commission to issue, be viva voce in presence of parties or their, attorneys, before such examiner, or, if the Court or a Judge shall so order, in open Court.

XI. Publication of evidence shall pass upon rules or Judge's orders nisi and absolute, upon motion of either party; and alter publication the cause may be set down for hearing by either party to the cause.

XII. At the hearing of the cause, unless the parties can agree on a case, to be submitted to the Court, each party shall furnish the Judges and the opposite party with a brief setting forth the substance of the proceedings and proof and the decree sought to be obtained by him.

XIII. When defendant pleads or demurs to a bill, the complainant shall have four days to reply or to amend his bill, unless further time be granted; and if he does not take issue on such plea, or amend his bill within that time, either party may set down the plea or demurrer for argument at the next or any subsequent sitting of the Court.

XIV. If a plea or demurrer be overruled on argument, or if upon issue joined thereon a plea be found to be untrue, the complainant may have an order of course that the defendant do file and serve an answer within four days, otherwise that the bill, or so much thereof as may be covered by such plea or demurrer, be taken as confessed.

XV. When issue is taken upon a plea, the proceedings for proof, publication and hearing, shall be as in case of an answer and replication.

XVI. All bills shall be verified by affidavit, and all pleas in bar in matters in pais, and all answers, shall be upon oath of the party, unless the Court or a Judge shall, upon cause shewn, otherwise order.

XVII. It shall be lawful for the said Courts respectively, or any Judge thereof, upon special cause to be shewn upon affidavit, to order a writ of attachment or *capias* to issue at any stage of the cause, in the form prescribed in the schedule, and such attachment or *capias* shall not be discharged except by like order of the Court, or a Judge, until the defendant shall have given bail to the satisfaction of the Court or a Judge, or a Commissioner of such Court, to abide by and perform the orders and decrees of the Court to be from time to time made in such cause.

XVIII. When any matter is referred to a Master to examine and report upon, the Master shall proceed therein at the instance of either party upon a notice of two days, adjourning from time to time as may be necessary.

XIX. The Master shall be at liberty, upon the application of any party interested, to make a separate report or reports from time to time as he shall deem expedient, the costs of such separate reports to be in the discretion of the Courts.

XX. When the Master has prepared the draft of his report, he shall, upon matters of importance, deliver copies thereof to any party applying for the same, and shall assign a time and place for the parties to living in objections and hear arguments thereon; and the Master shall settle and sign his report, and cause it to be filed in the office of the Registrar of the Court, within four days after the argument on such objections is closed. If no objections are made to the draft the Master shall sign and file it forthwith.

XXI. After the report is filed, either party may have an order of course to confirm the same, unless cause to the contrary thereof be shown in four days; and if no exceptions are served and filed within that time, the order may be made absolute of course, upon filing an affidavit of service of the order nisi; or either party may file exceptions to part, and have such order nisi to confirm the report so far as the same is not excepted to, and with the like effect.

XXII. Exceptions to a Master's report may be set down for hearing by either party, and after such report shall have been confirmed, either party may, from time to time, as may be necessary, bring the cause on for further directions.

XXIII. If any suit shall abate in whole or in part by the death or marriage of any party thereto, it shall be lawful for the representative or husband of such party, if a complainant, and for the complainant if the party deceased is defendant, to apply to the Court by petition (to be verified, filed and served, in the manner aforesaid.) that such representative or husband be made a party to such suit; and thereupon, unless an answer shall be put in within the times aforesaid, denying the matters upon which such petition is founded, in which case the points at issue shall be tried and determined as upon enquiry into the truth of a plea, and such order made thereon as may be just, the petitioner may have an order of course that such petition be taken as confessed, and that such suit, as respects such husband or representative, do stand revised in like manner and to the effect as in case of a decree for revivor.

XXIV. It shall be lawful for any parties (the direction of the Court or a Judge thereof in case of persons under disability, as hereinafter mentioned, being first obtained) to present a petition to any of the said

Courts, stating any documents, facts or circumstances, relating to any matter falling within the equity jurisdiction of the Court, by way of special case, and praying for the opinion of the Court thereon; and it shall be lawful for the Court to give judgment upon such petition accordingly, and such judgment shall bind all such persons as the Court shall direct, and in default of such direction shall bind all such persons as presented the same, and shall have the same effect as a declaration made by decree, in a suit to which such persons were parties, would have had, and shall be subject to rehearing, in the same manner as herein provided in case of other petitions under this Act; and where the opinion of the Court is desired in any matter in which any infant, idiot, lunatic, or married woman, is interested, it shall be lawful for the Court, or a Judge thereof, to direct the presenting of such petition by way of special case, on behalf of the infant, idiot, lunatic, or married woman, and such directions shall be conclusive to all intents and purposes.

XXV. Any party in the cause may have a rehearing upon any judgment, order or decree therein, upon applying for the same by petition to the Court, or a Judge, within twenty days after the same shall have been pronounced, and upon notice to the adverse party, on such terms, as to costs, as to the payment into Court of any money, as to the doing or not doing any particular act, or as to giving security for the performance of such judgment, order or decree, as such Court or a Judge shall direct.

XXVI. It shall be lawful for the Court or Judge by whom a rehearing of any judgment, order or decree, of a Circuit Court, may have been allowed, upon application of either party, to direct that such rehearing shall be had before the Supreme Court, and thereupon the said Supreme Court shall have full power to rescind, confirm or alter such judgment, order or decree, as may be just and equitable; and in the same manner, and with the like effect, and with the like incidents as regards the power of appeal from such judgment of the Supreme Court to the Queen in Council, as if such suit had been originally commenced therein; and the same proceedings shall be subsequently had in the said Circuit Court as if such rehearing had taken place therein.

XXVII. All rules to take effect nisi, unless otherwise specially directed, shall be four days, and the time on all proceedings shall be taken to be one day inclusive and the other exclusive; but if the time expire on a Sunday, the whole of the succeeding day shall be included; four days' notice shall be given of all hearings and special motions, and a copy of the petition, affidavit or certificate, on which any special application is founded, shall be served on the adverse party, with a notice thereof.

XXVIII. The Court, or a Judge, upon cause shewn, may extend the time for any proceeding required by this Act or by any rule of Court to be done within a limited time, and may set aside any order or decree obtained by default, upon such terms as may be equitable.

XXIX. The final decree in any cause shall be made up in the manner, and enforced by one or more of the writs, of execution, prescribed in the schedule.

XXX. Under fieri facias issued upon any such decree, it shall be lawful for the Sheriff to levy on monies, bank notes, bills of exchange, cheques, bonds, or other securities for money, to attach and sell any interest of the party against whom such process shall have issued, as well equitable and contingent as legal and vested, in any lands, and to attach, by warrant, debts and effects due or belonging to such

party; and for the purpose of realising any chose in action or other property levied on or attached as aforesaid, or under an attachment for bail, it shall be lawful for the Court or a Judge to examine upon oath, and viva voce, any garnishee in whose bands money or property may be attached, and to direct and (if necessary) to enforce by process of contempt, the payment or delivery over to the complainant or the Sheriff of so much of such money or property as may be sufficient to satisfy such execution; and it shall be lawful for the Sheriff, when he shall have levied or attached any bill, note, cheque, bond, or other security, to recover by action the amount thereof from the debtor, in the name of the Sheriff, and to appropriate the same, or so much as may be necessary, in manner aforesaid, (the party issuing such process first indemnifying the said Sheriff against all costs by reason of such action), and to sell any property delivered to him as aforesaid for the like purpose.

XXXI. Upon fieri facias or capias for money or costs, it shall be lawful for the Sheriff to levy for the costs of such writ and levy, in addition to the money or costs ordered to be paid.

XXXII. No attachment, for contempt shall issue against a defendant or other party for breach of an injunction in any decree commanding or restraining the performance of any act, other than the payment of money, except upon a rule of Court or a Judge's order to be issued upon affidavit of service upon such defendant, or party, or his attorney, partner or agent, or upon the Clerk of the Court, as aforesaid, of a copy of such injunction, and upon sufficient proof of such breach having been committed.

XXXIII. It shall be lawful for the Judges of the Supreme Court, by rules to be by them from time to time made and published for three months in the "Royal Gazette," to regulate the Equity practice of the Supreme and Circuit Courts in matters not herein provided for; and in matters not provided for by the said rules, or by this Act, the practice of the High Court of Chancery in England, for the time being, shall, so far as the same may be applicable, be the practice of the said Courts.

XXXIV. The present Equity Rules of the Supreme Court, from number one to forty-four, inclusive, are hereby repealed; and cases now pending shall be brought to conclusion under the provisions of this Act.

XXXV. The Chief Clerk and Registrar of the Supreme and Central Circuit Courts shall give such security as shall be approved of by the Supreme Court, for the safe keeping of and accounting for all monies paid into his hands by order of the Court.

SCHEDULE

Form of notice to be endorsed on Bills, where defendant is resident in or has a Partner or Agent in the Colony.

A. B. Complainant
and
C. D. Defendant

Supreme Court
in Equity

To the above named Defendant.

You are required to appear and to plead, demur, or to answer, to this bill within (ten days) after service thereof on you (or as ordered,) and in default of your so doing, the matter therein set forth will be taken to be confessed by you, and judgment will be delivered against you accordingly. ____ St. John's _____ 1859 _____ E. S. Complainant's Solicitor. If the bill be served abroad, add, after the word "accordingly," "you are also required, unless you appear by Attorney, to appoint some person resident in St. John's as your agent in this suit, and to notify such appointment to the Complainant's Solicitor; in default whereof service of all subsequent proceedings therein will be made on the Chief Clerk of this Court to serve in your behalf."

Form of Capias or Attachment for Bail.

Newfoundland, }
S. S. }

Victoria, by the Grace of God, &c.

To the Sherriff, &c.

Attach C. D. of &c., (so that you have his body before us in our ____ Court) or (by his lands, chattels, goods, debts and effets) and hold the same (or him safely keep) until he shall have given bail to perform the orders and decrees of this Court, in a cause on the Equity side of the said Court, wherein A. B. is complainant, and the said C. D. is defendant, or until discharged by due course of law; and make return of what you shall have done under this writ immediately after the execution thereof. Witness the Honourable ____ Chief Justice of the Supreme Court, at St. John's, this ____ (day of issue)

By the Court,

G. H. Chief Clerk and Registrar.

E. S. Complainant's Solicitor.

Form of Attachment for non-payment of Money or Costs, for breach or non-performance of an Order or Decree.

Newfoundland, }
St. John's, S. S. }

To the Sheriff, &c.

We command you that you attach E. D. of &c. and him commit to safe custody until (he shall have paid A. B. the sum of £ ____ which by our ____ Court were ordered to be paid by the said E. D. to the

said A. B., by a decree dated _____ and made in a cause on the Equity Side of the said Court wherein the said A. B. is complainant, and the said C. D. is defendant, or until (he shall have conformed to he said decree, reciting it as above) unless the said C. D. shall be sooner discharged from your custody by due course of law; and make return of what you shall have done under this writ immediately after the execution thereof. Witness the Honorable _____ Chief Justice of our Supreme Court, at St. John's, Newfoundland, this _____ (date of issue).

By order of the Court.

G. H., C. C. and Registrar.

E. S., Complainant's Solicitor.

Form of Fieri Facias for Money ordered to be paid, or Costs

Newfoundland,
St. John's, S. S. }

Victoria, by the Grace of God, &c.

To the Sherriff, &c.

We command you, that of the goods and chattels, debts, property, and effects of C. D. of &c., _____ you cause to be made and paid over to A. B. the sum of £ _____ which by a decree made on the Equity Side of our _____ Court and dated _____ in cause wherein the said A. B. is Plaintiff and the said C. D. is Defendant, was ordered by our said Court o be paid by the said C. D. to the said A. B., and make return of what you shall have done under this writ immediately after the execution thereof. Witness the _____ as before, and the date of issue.

By the Court,

G. H., C. C. and Registrar.

E. S., Complainant's Solicitor.

Form of Writ of Possession

Newfoundland,
St. John's, S. S.

Victoria, by the Grace of God.

To the Sheriff, &c.

We command you, that [by notifying all parties legally in occupation in that behalf] you put A. B. into possession of the rents and profits of all those lands situate, &c., [as in decree] which by a decree dated _____ and made on the Equity Side of our _____ Court, wherein the said A. B. is complainant and the said C. D. is defendant, the said C. D. was ordered to deliver up, or assign over (as the case may be) to

the said A. B. and that you of the goods and chattels of the said C. D. the sum of £ _____ the costs of the execution of this writ, and make return of what you shall have done under this writ immediately after the execution thereof. Witness the Honorable the _____ Chief Justice of our Supreme Court, at St. John's, Newfoundland, this _____ (date of issue).

By order of the Court,

C. C. and Registrar.

E. F. Claimant's Solicitor.

Form of Final Decree

Supreme Court,
In Equity.

Newfoundland

St. John's, S. S.

day of _____ A. D. 18_____

A. B. of St. John's, Yeoman, filed his bill in this Court against C. D. of &c., and therein, after alleging (substance of bill as briefly as possible) prayed (here set forth substantially the prayer of the bill) and (on this _____ day of _____ 18___ the said C. D. filed his answer to the said bill (or if the fact be so, say) by order dated _____ the said bill being taken as confessed; and on this _____ day of _____ 18___ the said A. B. filed a general replication to the said answer.) If a reference has been had, say, afterwards on &c., the Master having made a report in conformity with said decree, and the same having been by order dated _____ confirmed, the cause came on for further directions, whereupon after debate and hearing the said report and the matter aforesaid, &c. &c. &c.) Afterwards on the _____ day of _____ 18___ the evidence having been taken in the cause, and publication having passed, the cause came on for hearing. Whereupon, after debate and hearing the said bill, answer and replication, and the evidence aforesaid, the Court took time to consider thereof, and afterwards, on the _____ day of _____ 18___ did order and decree that (vide the decretal order verbatim) and that the said _____ do have writs of execution necessary in that behalf.

By order of the Court, _____ G. H. Chief Clerk and Registrar.

E. S. Solicitor of party having decree.

If other proceedings, such as the trial of an issue, an attachment, and the like, be had in the cause, let them be shortly stated in order.

The following Fees shall be taxed as between party and party on the Equity side of the said Courts.

SOLICITOR.

Warrants and instructions to sue or defend	£0	13	4
Drawing every bill, petition, or answer	1	1	0
And an additional fee not exceeding £2 2 0 may be allowed where the proceedings are voluminous or difficult			
Copies of such to file and serve, each	0	7	0
Drawing demurrer, exception, plea, or other special matter	0	6	8
Copies to file and serve, each	0	3	4
Suing out every process, final as well as mesne	0	5	0
Copy for each defendant	0	1	8
Instructions for drawing interrogatories, when witnesses shall be examined in writing	0	3	4
Drawing interrogatories for the examination of every necessary witness	0	6	8
Drawing every affidavit	0	3	4
An additional fee, not exceeding 21s., to be allowed where the statements are voluminous			
Copy of same and service, per folio of 100 words	0	1	0
Every summons to attend the Court, or Judge, or Master	0	3	4
Copy and service, each	0	2	0
Every necessary attendance before Court, Judge, Master or Examiner	0	6	8
Drawing necessary exception to Master's Report	0	6	8
Copies to file and serve, each	0	3	4
Every Supboena	0	1	0
Service	0	1	0
Preparing abstract of case for the Court on final hearing	1	1	0
Copies for the Judges, each	0	7	0
Fee with brief on every special argument	1	1	0
An additional fee, not exceeding £2 2 0, to be allowed when the argument or case is important.			
Every rule of Court	0	3	4
Copy and service, each	0	2	0
Making up final decree	0	13	4
Fee on ordinary motions	0	10	6
Fee with brief on final hearing, to be taxed by the Master, subject to the increase or reduction by the court.			
Preparing deeds which shall be ordered by the Court to be executed, or which shall be necessary in consequence of any decree or order, from 1 to 3 guineas each, according to their character, to be taxed by the Master.			
Settling the issue, when issue shall be directed to be tried by a Jury	0	10	6

And all other costs as allowed at common law, on proceedings and trial of an issue.			
Every notice of action, and every necessary notice of motion or notice of other matter including service	0	3	4
Making up interlocutory decrees	0	10	6
Expenses of witnesses or other outlays necessarily incurred in the process of a suit to be allowed on verification and production of proper vouchers.			
Examiner's fees, each witness	0	10	6
MASTER			
Every attendance upon an ordinary reference	0	6	8
Report thereon	0	6	8
Attendance on every special reference	1	1	0
And if occupied thereon more than one day, 10s. 6d. Each day after the first			
Report thereon	0	10	6
Every summons	0	1	0
Every certificate of facts	0	2	6
Taxing costs	0	6	8
Poundage on sales where ordered, one per centum on the first £100, and one-half per centum on the residue of purchase-money, to be in full for all charges except advertisements			
For allowing and signing every notice for Gazette	0	2	6
Upon money paid into Court to be paid by the party paying in the same, 2 per cent. on all sums under £100, and at the rate of one per cent. on every hundred beyond the first hundred.			
SHERIFF			
For every arrest	0	10	6
Every warrant of attachment	0	1	0
Execution of every writ of possession	0	10	6
Poundage on levies actually taken into his custody, 2½ per cent. on first £100, and 1 per cent. on every £100 beyond the first hundred, to include all expenses of sale.			