

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

22 Victoria – Chapter 5

**An Act to Amend and Simplify the Practice of the Northern and Southern Circuit Courts of this Island.
(Passed 20th April, 1859.)**

Whereas it is expedient to amend and amplify the Practice of the Northern and Southern Circuit Courts of [this] Island;

Be it therefore Enacted, by the Governor, legislative Council and Assembly, in Legislative Session convened—

I. That the Chief Judge and Assistant Judges of the Supreme Court of this Island shall, unless they shall otherwise arrange their Circuits, respectively hold the Central, Northern or Southern Circuit Courts, in rotation; the Royal Charter, or any Act to the contrary, notwithstanding. Provided always, that this section shall not take effect during the incumbency of the present Chief Justice.

II. The Sheriffs for the Northern and Southern Judicial Districts, respectively, shall, and they are hereby required, immediately upon the passing of this Act, and from time to time thereafter, to appoint and duly authorise, under their respective hands and seals, in the principal place within each Electoral District within their respective Judicial Districts, a Deputy or Deputies for the service and execution of all Writs, Rules, Orders and other Process of the said Courts respectively; which Deputy or Deputies shall possess, exercise and discharge therein, the same powers and duties as the Sheriff if personally present; and for the acts of such Deputy or Deputies, where the Process passes through the hands of the Sheriff, and not otherwise, the Sheriff making such: appointment shall be responsible; and it shall be sufficient in all cases to deliver or cause to be delivered, any Writ, Rule or other Process as aforesaid, to the Deputy Sheriff of the District where the same is required to be executed, without transmitting the same through the Sheriff; and the said respective Sheriffs are hereby required, within one month after the passing of this Act, to furnish the Sheriff of the Central District, for the information of all persons requiring the same, the names and additions of the Deputies so to be appointed by them respectively, and from time to time, in like manner, to furnish the names and additions of any further or other Deputies to be appointed by them within one month after the appointment of the same respectively; and the Sheriff of the Central District, as well as the Sheriffs of the said Northern and Southern Districts, shall keep hung up, in their respective offices, a list of such persons.

III. It shall be lawful for the Chief Justice of the Supreme Court of this Island, for the time being, to appoint in the said Northern and Southern Districts respectively, and in all other places he may deem advisable, fit and proper persons to be and act as Commissioners for taking Affidavits and issuing Mesne and Final Process and Subpoenas, returnable into the said respective Courts or into the Supreme Court.

IV. That it shall be lawful for the Chief Justice, or other Judges respectively, to authorise one or more Commissioners to take order for the examination of any Garnishee residing in any of the Outports, in

whose hands a Warrant of Attachment shall be placed or Process of Attachment or Execution issuing out of any of said Courts, in such manner as the said Chief Justice or other Judge shall direct; and upon receipt of such examination, the said Chief Justice or other Judge shall make such order or orders as may appear to them respectively to be proper, and to enforce the same in the same manner as if such examination had been taken before either of them.

V. The Proceedings, Forms of Process and Pleadings, in all causes arising in the said Northern and Southern Circuit Courts, shall be summary, and be commenced by Writ of Summons, Attachment or Capias ad Respondendum, without making any distinction as to the form of action; which Writs of Summons and Attachment shall be according to the form (mutatis mutandis) set forth in the Schedule to this Act marked A, and that the said Writ of Capias ad Respondendum shall also be according to the form prescribed in the Schedule to this Act marked B; and that the said Writs, shall be respectively tested on the day of the issuing thereof.

VI. Such Writs, together with the copies thereof to, be served, shall respectively have annexed thereto, a notice containing the particulars of the Plaintiff's cause of Action for which such Writs may be issued; and that it shall and may be lawful for the Judges of the said Courts, respectively, to hear and determine all such causes in a summary manner; and it shall not be necessary for the Plaintiff or Defendant to file any formal Appearance, Plea, Issue or Default Roll, or to enter up any Postea or Judgment therein; but the Clerk of the said respective Courts shall make an entry in his memorandum book of the Defendant's appearance and the grounds of his defence; and that all causes shall proceed upon the Original Writ as filed in Court, and the notice of the particulars of the Plaintiff's demand thereto annexed; and that a memorandum of the Judgment shall be entered on the record book of the proceedings thereof: Provided that in all causes it shall be lawful for the Plaintiff or Defendant to have a Jury for the Trial thereof if he shall require the same, or for the Court to direct that the cause shall be tried, by a Jury; and such Trial by Jury shall be upon the Original Writ, and the said notice of particulars thereto annexed, in the manner hereinbefore provided; the cost of such Jury to abide the event of the verdict.

VII. Such Writs may be made returnable on any day during the sitting of the said Courts respectively, and all causes shall be tried on the day of the return of the Writ, unless the Court or Judge shall otherwise order, or unless the service of the Writ shall be made on the day of the return thereof.

VIII. In all actions that shall be commenced by Capias ad Respondendum, the Defendant shall, within twenty-four hours after the return thereof, put in and justify bail to the action, without exception to such bail.

IX. In cases of default it shall not be necessary for the Plaintiff to enter an appearance in writing for the Defendant, and that no judgment by default shall be given against the Defendant unless upon satisfactory evidence of the service of the writ or process on him or on his accredited or known agent; and before the Plaintiff shall be entitled to obtain such judgment by default, he, or some person on his behalf, shall make oath, in open Court, to the amount due to such Plaintiff, or other cause of action: Whereupon judgment by default for the sum awarded by the Court or Jury, if the Court should see fit to refer it to a Jury, shall be entered up in the manner hereinbefore provided; and in no case shall it be required to serve the Defendant with notice of assessment of damages; but on the copy of the writ or

process to be served on the Defendant, notice shall be given him that if he shall neglect to appear on the return day thereof, the Plaintiff will sign judgment by default, and proceed to the assessment of damages as soon thereafter as the Court can attend to the same and enter up, final judgment accordingly.

X. When it shall appear to the Court that the party in default, from remoteness of residence from the place where, the Court is sitting, or any other cause, has had not sufficient time given him to appear, the trial of the cause shall be postponed for such time as the Court shall deem reasonable.

XI. Execution may issue immediately after judgment, unless the Court shall stay the same for sufficient cause; which execution, if against the goods and chattels, lands and tenements, of the Defendant, shall be in the form marked D, in the Schedule to this Act annexed, and if against the person of the Defendant, in the form marked E. in the said Schedule, the test, of which execution shall be the day of the issue thereof.

XII. From and after the passing of this Act, when and so often as any person shall claim possession of lands, tenements or hereditaments, in either of the said Northern or Southern Districts, and shall be desirous of proceeding by action in the Northern or Southern Circuit Court for the recovery of the same, such person shall commence such action by a writ of summons, in the form hereinafter provided, which shall have a notice annexed thereto, and to the copy thereof to be served on the defendant, containing the description of the property sought to be recovered, and the town, settlement, or district, in which the same may be situated; and such writ may be served personally on the tenant in the actual possession of such lands, tenements or hereditaments, in any of the said respective districts, by the Sheriff, or his Deputy therein, or in such other manner as declarations may now be served in actions of ejectment; and which writ shall be made returnable in the same manner as is prescribed for the return of such other writs or summons as may be hereafter issued under and by virtue of this Act and that all proceedings in such action, with reference to the appearance, pleadings, trial and judgment, in the said several Courts, on the part of the Plaintiff and Defendant, shall be the same as are hereinbefore provided in other actions that shall or may be brought or prosecuted therein: Provided always, that in all cases of default, or when the Defendant shall neglect or refuse to appear in such action, the said respective Courts shall thereupon proceed to hear and determine the same in the manner hereinbefore provided for the trial of other cases of default, without notice of such trial or rule for judgment.

XIII. Any other person not named in the suit shall, by leave of the Court, be allowed to appear and defend on filing an affidavit stating that he is in possession of the premises either by himself or his tenant.

XIV. On any trial to be had under the provisions of the 12th Section of this Act, whether the Defendant shall appear on such trial or not, the Court may permit the Plaintiff, after proof of his right to recover possession of the whole or of any part of the said premises mentioned in the notice annexed to the writ, to give evidence of the mesne profits thereof which shall or might have accrued from the time of the Plaintiff's right of entry or recovery down to the time of the judgment or verdict given in the cause, or to some preceding day to be specially mentioned therein, and the Judge or the Jury on the trial

finding for the Plaintiff, shall in such case give the judgment or verdict upon the whole matter, both as to the recovery of the whole or any part of the premises, and also to the amount of damages to be paid for such mesne profits; provided that nothing herein contained shall prevent the plaintiff from bringing an action for the mesne profits which shall accrue from the judgment or verdict on the day specified therein down to the day of the delivery of the possession of the premises recovered as aforesaid.

XV. The present mode of proceeding in the Northern and Southern Circuit Courts, by declaration in actions in ejectment, and all fictions and fictitious names and forms now used therein, shall be, and the same are hereby abolished.

XVI. In all such actions the plaintiff shall, after obtaining final judgment, be at liberty to issue out a writ of possession according to such form prescribed in and by the Schedule to this Act marked C.

XVII. The said Circuit Courts, respectively, shall have power and are hereby authorised, in criminal as well as civil proceedings, to commit and imprison in any common gaol in the Colony, in the same manner as if such gaol were within their respective districts.

XVIII. The Schedule to this Act annexed, and all matters directed and mentioned therein, shall be deemed and taken to be a part of this Act.

SCHEDULE A.

Newfoundland,
District,
L. S. }

Victoria, by the Grace of God,
of the United Kingdom of Great
Britain and Ireland, Queen, Defender
of the Faith, &c., &c.

Summons and Attachment

To the Sheriff of _____ District, Greeting: Summon (or Attach, as the case may be, by _____ lands, chattels, goods, debts, and effects) _____ of _____ that he be before our _____ Circuit Court at _____ on _____ the day of _____ A. D. 18____ to answer to the complaint of _____ contained in the notice hereunto annexed _____ to the damage of the Plaintiff of _____ pounds, as it is said.

Witness the Honorable _____ Justice _____ day of _____ in the Year of Our Lord One Thousand Eight Hundred and _____

Plaintiff's Attorney. By the Court, Court.
If attachment, Oath for £

C. D. of _____ maketh oath and saith that he did on the ____ day of _____ personally serve the above named _____ with a true copy of the within Writ, whereupon was endorsed a notice of the true intent of such service and a copy of the particulars hereunto annexed, and that he necessarily travelled ____ miles to make such service.

Sworn before me at
this ____ day of
A. D. 18____ } C. D.

SCHEDULE C.

Newfoundland, } Victoria, by the Grace of God, &c.
District of }

To the Sheriff of the _____ District of Newfoundland and his Deputies, Greeting:

Writ of Possession with Fi. Fa., issued
18____ day of _____ A. D.

Whereas lately in our _____ Circuit Court before us at _____ in _____ the _____ District of this Island, by our Writ and Judgment of the same Court _____ recovered against _____ the possession of a certain piece of land and premises belonging to him in the said District, situated and bounded as follows, that is to say, (here take the description from minutes of judgement, and insert the same) from which piece of land and premises the said _____ ejected the said _____ whereof the said _____ stands convicted as appears to us of record: Therefore we command you that without delay you cause the said _____ to have possession of the said land, tenements, and premises; and in what manner you shall have executed this our writ, make appear on the first day of the next term of our said Court in the said District. We also command you that of the goods and chattels, lands and tenements, of the said _____ in your Bailiwick, you cause to be made the sum of _____ which the said _____ lately in our said Court before us at _____ in the said District recovered against the said _____ for his damages, which he has sustained as well on occasion of the said ejectment as for his costs and charges by him about his suit in that behalf expended, whereof the said _____ is also convicted as appears to us of record; and have you said monies before us on the return day aforesaid, at the time and place aforesaid, and have you then there this Writ.

Witness the Honourable _____ Justice of _____ at _____ aforesaid, _____ the _____ day of _____ in the Year of our Lord 18____.

By the Court,

Clerk Court

Attorney for Plaintiff.

