

Laws of Her Majesty's Province of Newfoundland, passed in the year 1865. J. C. Withers,
Queen's Printer, 1865.

28 Victoria – Chapter 12

An Act to enable Courts of Law to give relief against Adverse Claims made upon persons having no interest in the subject of such Claims. (Passed 7th April, 1865.)

Whereas it often happens that the person sued at Law for the recovery of Money or Goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in Equity against the Plaintiff and such third party, usually called a Bill of Interpleader, which is attended With expense and delay: for remedy whereof,

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

I. Upon application made by or on behalf of any Defendant, sued in any of the Superior Courts of this Colony, in any action of assumpsit, debt, detinue, trover or case, such application being made after declaration and before plea, or under special circumstances after plea, by affidavit or otherwise, shewing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued, or is expected to sue, for the same; and that such Defendant does not in any manner collude with such third party, but is ready to bring into Court, or to pay or dispose of the subject matter of the action, in such manner as the Court or any Judge thereof may order or direct. It shall be lawful for the Court, or any Judge thereof, to make rules and orders calling upon such third party to appear and state the nature and particulars of his claim, and to maintain or relinquish his claim; and upon such rule or order to hear the allegations as well of such third party as of the Plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself Defendant in the same or some other action, or to proceed to trial upon one or more feigned issue or issues, and also to direct which of the parties shall be Plaintiff or Defendant on such trial, or with the consent of the Plaintiff, and such third party, their Counsel or Attorneys, to dispose of the merits of their claims, and determine the same in a summary manner, and to make such other rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.

II. The Judgment in any action or issue, but subject to such right of appeal and the decision of the Court or Judge, in a summary manner, or upon a case stated under this Act, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

III. If such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court or Judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original Defendant, his Executors or Administrators, saving, nevertheless, the right or claim of such third party

against the Plaintiff; and thereupon to make such order between such Defendant and the Plaintiff, as to the costs and other matters, as may appear just and reasonable.

IV. Every order made in pursuance of this Act, by a single Judge not sitting in open Court, shall be liable to be rescinded or altered by the Court, in like manner as other orders made by a single Judge.

V. If upon application to a Judge in the first instance, or in any later stage of the proceedings, he shall think the matter more fit for the decision of the Court, it shall be lawful for him to refer the matter to the Court, and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of Court instead of by the order of a Judge.

VI. Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the Court or Judge, wherever, from the smallness of the amount in dispute, or of the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party, to dispose of the merits of the respective claims of such parties, and to determine the same, in a summary manner, upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters, as may be just.

VII. In all cases of Interpleader proceedings, where the question is one of Law, and the facts are not in dispute, the Court or Judge shall be at liberty, at their or his discretion, to decide the question without directing an action or issue; and for such Judge, if he shall think it desirable, to order that a special case be stated for the opinion of the Court.

VIII. And whereas difficulties arise in the execution of process of Attachment and Execution, issued by or under the authority of the said Courts, by reason of claims made to the property attached or levied on, by persons not being parties against whom process shall have issued; and whereas sometimes doubts arise upon the examination of Garnishees, as to the right of property attached in their hands: Be it therefore enacted, that when any such claim, shall be made to any lands or chattels, goods, debts, or effects, or to the proceeds thereof, attached or levied on, or intended to be attached or levied on, by any such process, or when, upon the examination of a Garnishee, a substantial doubt shall arise as to the right to the property attached in his hands, it shall be lawful for the Court from which such process shall have issued, or any Judge thereof, upon the application of the Sheriff, or of any person making such claim, or of its own motion, before or after the return of such process, and before or after any action brought against such Sheriff, to call before them or him, by any order or rule of the Court or Judge, as well the party issuing such process as the party making or appearing to have a claim, and also such Sheriff or Garnishee, and thereupon to exercise, for the adjustment of such claims, and the relief and protection of such Sheriff or other person, all or any of the powers or authorities herein contained, and to make such rules, orders and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court or Judge.

IX. When goods or chattels have been attached, or have been seized in execution, by a Sheriff or other Officer under process of the above mentioned Courts, and some third person claims to be entitled, under a Bill of Sale or otherwise, to such goods or chattels, by way of security for a debt, the

Court or a Judge may order a sale of the whole or part thereof, upon such terms as to the payment of the whole or part of the secured debt, or otherwise, as they or he shall think fit, and may direct the application of the proceeds of such sale, in such manner, and upon such terms, as to such Court or Judge may seem just.

X. All rules, orders, matters and decisions, to be made and done in Interpleader proceedings under this Act (excepting only any affidavits) may, together with the declaration in the cause, if any, be entered of record in the Court in which the original action may have been taken, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required; and every such rule or order, so entered, shall have the force and effect of a judgment of the said Court; and thereafter, execution as of course, and with the like effect as in other cases, may issue at any time to enforce performance of, or obedience to, such judgment, and the payment of the costs under the same, substantially, according to the forms in the Schedule hereto.

XI. It shall be lawful for either of the parties to any such proceeding as aforesaid, to appeal from either of the Circuit Courts to the Supreme Court, and from the Supreme Court to the Queen in Council, in the like cases and upon the same conditions as against ordinary judgments of the said Courts respectively,
Schedule.

No. 1.
Capias.

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

To the Sheriff of _____, Greeting:

We command you that you take A. B., if to be found within your bailiwick, and him safely keep, so that you have his body before us in our _____ Court, to satisfy [or, if for a specific sum of money, or for costs only,] \$ _____, payable under a judgment of the said Court under an Act passed in the 28th Year of the Reign of Her Majesty, Queen Victoria, entitled "An Act to enable Courts of Law to give relief against Adverse Claims made upon Persons having no interest in the subject of such claims," which C. D. lately recovered in our said Court against the said A. B.,; and have you then this Writ.

Witness, &c., &c.

No. 2.
(L. S.) Fieri Facias.

To be used in cases in which a specific sum of money or costs may be recoverable.

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

To the Sheriff of _____, Greeting:

We command you, that of the goods, lands, chattels and effects of A. B., in your bailiwick, you cause to be made \$_____, due under a judgment which C. D., lately in our _____ Court recovered against the said A. B., under an Act passed in the 28th Year of the "Reign of Her Majesty, Queen Victoria, entitled "An Act to enable Courts of Law to give relief against Adverse Claims, made upon persons having no interest in the subject of such Claims;" and have you then this Writ.

Witness, &c, &c.