ANNO QUADRAGESIMO NONO

GEORGII III. REGIS.

C A P. XXVII.

An Act for eſtabliſhing Courts of Judicature in the Iſland of *Newfoundland* and the Iſlands adjacent; and for re-annexing Part of the Coaſt of *Labrador* and the Iſlands lying on the ſaid Coaſt to the Government of *Newfoundland*. [30th *March* 1809.]

WHEREAS an Act was made in the Thirty-third Year of the Reign of His preſent Majeſty, intituled, *An Act for eſtabliſhing Courts of Judicature in the Iſland of* Newfoundland *and the Iſlands adjacent*; which, by ſeveral ſubſequent Acts, has been continued until the Twenty-fifth Day of *March* One thouſand eight hundred and nine: And whereas it is expedient that the Proviſions of the ſaid Act ſhould be amended, and the like Courts of Judicature as were thereby inſtituted, be eſtabliſhed and made perpetual; be it therefore enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority of the ſame, That it ſhall and may be lawful for His Majeſty, by His Commiſſion under the Great Seal, to inſtitute a Court of Criminal and Civil Juriſdiction, to be called "The Supreme Court of Judicature of the Iſland of *Newfoundland*," with full Power and Authority to hold Plea of all Crimes and Miſdemeanors committed within the Iſland of *Newfoundland*, on the Iſlands of *Saint Pierre* and *Miquelon*, and on the Iſlands and Seas to which Ships or Veſſels repair from the Iſland of *Newfoundland* for carrying on the Fiſhery, and on the Banks of *Newfoundland*, in the ſame Manner as Plea is holden of ſuch Crimes and Miſdemeanors in that Part of *Great*

33 G. 3. c. 76.

His Majeſty, under the Great Seal, may inſtitute a Court of Criminal and Civil Juriſdiction at Newfoundland.

Britain called *England*, and alſo with full Power and Authority to hold Plea in a ſummary Way of all Suits and Complaints of a Civil Nature ariſing within the Iſland of *Newfoundland*, on the Iſlands of *Saint Pierre* and *Miquelon*, and on the Iſlands and Seas, aforeſaid, and on the Banks of *Newfoundland*, and in *Great Britain* or *Ireland*; which Court ſhall determine ſuch Suits and Complaints of a Civil Nature according to the Law of *England*, as far as the ſame can be applied to Suits and Complaints ariſing in the Iſlands and Places aforeſaid; and the ſaid Court ſhall be a Court of Record, and ſhall be holden by a Chief Juſtice to be appointed by His Majeſty, who ſhall have full Power and Authority to enquire of, hear, and determine all Crimes and Miſdemeanors, Suits and Complaints cognizable in the ſaid Court, and ſuch Court ſhall have ſuch Clerks and Miniſterial Officers as the Chief Juſtice ſhall think proper to appoint; and ſuch Salary ſhall be paid to the ſaid Chief Juſtice as His Majeſty, His Heirs and Succeſſors, ſhall approve and direct, and ſuch Salaries be paid to the Clerks and Miniſterial Officers aforeſaid as ſhall be approved by the Chief Juſtice, with the Conſent of the Governor of the Iſland of *Newfoundland*; which ſeveral Salaries ſhall reſpectively be in lieu of all other Profits and Emoluments whatſoever.

The Governor, with Advice of Chief Juſtice, may inſtitute Surrogate Courts, &c.

II. And be it further enacted, That it ſhall be lawful for the Governor of the Iſland of *Newfoundland* from Time to Time to inſtitute Courts of Civil Juriſdiction, to be called '*Surrogate Courts*', in different Parts of the Iſland of *Newfoundland* and the Iſlands aforeſaid, as Occaſion ſhall require, with full Power and Authority to hear and determine, in the like ſummary way, all Suits and Complaints of a Civil Nature ariſing within the Iſland of *Newfoundland*, and on the Iſlands of *Saint Pierre* and *Miquelon*, and on the Iſlands and Seas aforeſaid, and on the Banks of *Newfoundland*, and in *Great Britain* or *Ireland*, which Courts ſhall reſpectively be Courts of Record, and ſhall determine according to the Law of *England*, as far as the ſame can be applied to Suits and Complaints ariſing in the Iſlands and Places aforeſaid; and the ſaid Courts reſpectively ſhall be holden by a Surrogate to be appointed from Time to Time by the Governor of the ſaid Iſland, and ſhall have full Power and Authority to hear and determine all Suits and Complaints cognizable in the ſaid Court; and the ſaid Court ſhall have ſuch Clerks and Miniſterial Officers, with ſuch Salaries as the Governor ſhall appoint, which Salaries ſhall be in lieu of all Profits and Emoluments whatever.

Mode of Proceedings.

III. And be it further enacted, That it ſhall be lawful for the ſaid Supreme Courts and Surrogate Courts reſpectively, when any Suit or Complaint ſhall be depending therein, to cauſe to appear from Day to Day all Perſons intereſted in the Matter in Diſpute, and to examine upon Oath ſuch of them as it ſhall be deemed proper for better diſcovering the Truth, and thereupon and after due Conſideration of all Circumſtances to make ſuch Order, Judgement or Decree therein, and award ſuch Damages and Coſts as the Caſe ſhall require; and that in all Caſes where the Cauſe of any Suit or Complaint ſhall not exceed Five Pounds, the Party who is to anſwer ſuch Suit or Complaint, ſhall be made to appear in Court by Summons; and in all Caſes where ſuch Summons ſhall be diſobeyed, or where the Cauſe of any Suit or Complaint ſhall exceed Five Pounds, and ſhall be ſworn to in an Affidavit made by the Plaintiff, then that the Party who is to anſwer ſuch Suit or Complaint may be cauſed to appear, by Attachment

Attachment of his or her Goods, Debts, or Effects, or by Arreſt of the Perſon, and that the Execution of any Order, Judgement, or Decree may be enforced by Attachment of the Goods, Debts, or Credits of the Party, or by Arreſt of the Perſon againſt whom ſuch Order, Judgement, or Decree ſhall be made; and that it ſhall and may be lawful for the ſaid Chief Juſtice and Surrogates reſpectively to authorize ſome Perſon in his or their Abſence reſpectively to iſſue Proceſs, and do all Acts appertaining to the ſaid Supreme Court and Surrogate Courts reſpectively, ſave and except the enquiring of, hearing, and determining of any Crime or Miſdemeanor, or any Suit or Complaint of a Civil Nature.

For ſummoning Jurors.

IV. And be it further enacted, That where the Cauſe of Action ſhall exceed the Sum of Forty Shillings, and it ſhall be prayed by the Plaintiff or Defendant in ſuch Suit or Complaint that a Jury may be ſummoned to try ſuch Action, it ſhall be lawful for the ſaid Chief Juſtice and Surrogates reſpectively, and he and they are hereby reſpectively required to cauſe Twenty-four Perſons to be ſummoned, of whom Twelve ſhall be a Jury for the Trial of ſuch Action, and to proceed therein according to Law: Provided always, that if a Number of Jurors ſufficient for the Trial of ſuch Action, having been duly ſummoned, ſhall not appear to be ſworn, it ſhall and may be lawful for the Governor of the ſaid Iſland to nominate and appoint Two proper Perſons to be Aſſeſſors to the ſaid Chief Juſtice, and for each Surrogate in his Court in like Manner to nominate and appoint Two proper Perſons to be his Aſſeſſors, which Aſſeſſors, together with the ſaid Chief Juſtice or Surrogates reſpectively, ſhall proceed to the Trial of ſuch Action in like Manner as if ſuch Jury had not been prayed.

Allowing Appeals.

V. And be it further enacted, That upon any Decree or Judgement given in a Surrogate Court, for any Sum exceeding Forty Pounds, it ſhall be lawful for the Party againſt whom ſuch Decree or Judgement ſhall be given to appeal therefrom to the Supreme Court, having firſt given Notice of ſuch Intention, and having entered into a Security to the Surrogate in double the Sum for which ſuch Judgement or Decree was given or made, within Two Days after making or giving ſuch Judgement or Decree, for duly proſecuting ſuch Appeal; and upon any Decree or Judgement given in the Supreme Court for any Sum exceeding One hundred Pounds, it ſhall be lawful for the Party againſt whom ſuch Decree or Judgement ſhall be given or made to appeal therefrom to His Majeſty in Council, having firſt given Notice of ſuch Intention, and having entered into Security, to be approved by the Chief Juſtice, in double the Sum for which ſuch Judgement or Decree was given or made within Two Days after the giving or making of ſuch Judgement or Decree, for duly proſecuting ſuch Appeal; and in all Caſes of Appeal, as ſoon as Notice ſhall be given and Security entered into as aforeſaid, Execution ſhall be ſtayed, but not otherwiſe.

When Goods attached, if it ſhall appear the Party is inſolvent, the Court ſhall order his Effects to be collected and diſtributed.

VI. And whereas it will greatly contribute to the Advancement of the Trade and Fiſhery of *Newfoundland*, if ſuch Effects as Perſons becoming Inſolvent in the ſaid Iſland of *Newfoundland* and the Iſlands aforeſaid were poſſeſſed of or entitled unto within the ſaid Iſland or in the Iſlands or Seas aforeſaid, or on the Banks of *Newfoundland*, ſhould be divided among their Creditors with more Equality than hath hitherto been practiſed; be it further enacted, That as often as the Goods, Debts, and Credits of any Perſon

Perſon ſhall be attached, and it ſhall be made appear to the Court out of which the Proceſs of Attachment hath iſſued, that the Goods, Debts, and Credits ſo attached are not ſufficient to pay Twenty Shillings in the Pound to all thoſe who ſhall be Creditors by reaſon of Debts contracted within the Iſland of *Newfoundland* and on the Iſlands and Seas aforeſaid, or on the Banks of *Newfoundland*, or in *Great Britain* and *Ireland*, it ſhall be lawful for ſuch Court to ſummon the Party whoſe Goods, Debts, and Credits are ſo attached, together with the Plaintiff or Plaintiffs who have ſued out any Attachment, and alſo ſuch Perſons who are known to be Creditors as aforeſaid of the Defendant, to appear in Court at a certain Day; and if upon a due Examination of the Defendant and the ſaid Creditors, it ſhall appear that he or ſhe is inſolvent, the Court ſhall declare him or her inſolvent accordingly, and ſhall immediately proceed to take order for diſcovering, collecting, and ſelling the Effects and Debts of ſuch Perſon, and diſtributing the Produce thereof rateably amongſt all the ſaid Creditors of ſuch Perſon ſo declared inſolvent, and for that Purpoſe ſhall authorize any One or more Creditors of the ſaid Defendant, who ſhall be choſen by the major Part in Value of ſuch Creditors, whoſe Debts amount reſpectively to the Sum of Ten Pounds and upwards, to perform the ſame; and that ſuch Court ſhall from Time to Time make ſuch Order therein as ſhall be deemed proper for better diſcovering, collecting, and ſelling the Effects and Debts, and making a rateable Diſtribution thereof among the ſaid Creditors.

Diſtribution of Effects of inſolvent Parties.

VII. And be it further enacted, That in the Diſtribution to be made of the Eſtate and Effects of ſuch Perſon ſo declared inſolvent, every Fiſherman and Seaman employed in the Fiſhery, who ſhall be a Creditor for Wages become due in the then current Seaſon, ſhall firſt be paid Twenty Shillings in the Pound ſo far as the Effects will go; and in the next Place every Perſon who ſhall be a Creditor for Supplies furniſhed in the current Seaſon ſhall be paid Twenty Shillings in the Pound; and in the next Place every Perſon who ſhall have become a Creditor within Two Years ſhall be paid Twenty Shillings in the Pound; and laſtly, all other Creditors ſhall be paid equally as far as the Effects will go.

Certificate of the Court to be a Bar to Suits for Debt prior to Declaration of Inſolvency.

VIII. And be it further enacted, That if ſuch inſolvent Perſon ſhall make a true Diſcloſure and Diſcovery of all his or her Goods and Effects whatſoever, and ſhall conform him or herſelf to the Order and Direction of the ſaid Court, the ſame ſhall and may (with the Conſent of One-half in Number and Value of his or her Creditors) be certified by the ſaid Court, and ſuch Certificate, when pleaded, ſhall be a Bar to all Suits and Complaints for Debts contracted within the Iſland of *Newfoundland* and on the Iſlands and Seas aforeſaid, and on the Banks of *Newfoundland*, and in *Great Britain* or *Ireland*, prior to the Time when he or ſhe was declared Inſolvent.

Chief Juſtice may grant Adminiſtration of Effects.

IX. And be it further enacted, That the ſaid Chief Juſtice, or any Perſon or Perſons appointed by him for that Purpoſe under his Hand and Seal, ſhall have Power to grant Adminiſtration of the Effects of Inteſtates, and the Probate of Wills, and that the Effects of deceaſed Perſons ſhall not be adminiſtered within the Iſland of *Newfoundland* or on the Iſlands and Seas aforeſaid, or on the Banks of *Newfoundland*, unleſs Adminiſtration thereof, or Probate of Wills reſpecting the ſame, ſhall have been duly granted by ſuch Authority as aforeſaid.

X. And

X. And be it further enacted, That an Act paſſed in the Thirty-third Year of His preſent Majeſty's Reign, intituled, *An Act for eſtabliſhing Courts of Judicature in the Iſland of* Newfoundland, *and the Iſlands adjacent*, which has by ſeveral ſubſequent Acts been continued to the Twenty-fifth Day of *March* One thouſand eight hundred and nine, ſhall be and continue in Force until the opening of the Supreme Court inſtituted by virtue of this Act, and no longer; and every Suit or Complaint which ſhall at that Time be depending in the ſaid Court of Civil Juriſdiction ſhall and may be proceeded upon in the ſaid Supreme Court, in the ſame Manner as any Suit or Complaint originally commenced in the ſaid Supreme Court. 33 G. 3. c 76. continued until the opening of the Supreme Court.

XI. And be it further enacted, That it ſhall not be lawful for any Court in the Iſland of *Newfoundland*, or Iſlands aforeſaid (except the Supreme Court and the Surrogate Courts appointed by virtue of this Act) to hold Plea of any Suit or Complaint of a Civil Nature, any Law Cuſtom or Uſage to the contrary notwithſtanding: Provided nevertheleſs, that the Court of Vice Admiralty having Juriſdiction in the ſaid Iſland, ſhall and may hold Plea of Maritime Cauſes (except only the Wages of Seamen and Fiſhermen, which are to be heard and determined in Manner herein-after directed,) and Cauſes of the Revenue, as heretofore practiſed and uſed: Provided alſo, that all Diſputes which ſhall ariſe concerning the Wages of any Seaman or Fiſherman, and all Offences which ſhall be committed by any Hirer or Employer of ſuch Seaman or Fiſherman, againſt this or any other Act relating to the Iſland of *Newfoundland* or the Iſlands and Seas aforeſaid, or the Fiſhery thereof, and all Diſputes concerning Seamen or Fiſhermen wilfully abſenting themſelves from their Duty or Employ, without the Leave or Conſent of their Hirer or Employer, or wilfully neglecting or refuſing to work, ſhall and may be heard and determined; and the Penalties and Forfeitures thereby incurred ſhall and may be recovered in the Court of Seſſion, or before any Two Juſtices of the Peace. For holding Pleas.

XII. Provided alſo, and be it further enacted, That it ſhall be lawful for the Court of Seſſion in a ſummary Way to hear and determine all Suits for the Payment of Debts not exceeding Forty Shillings, and not contracted more than One Year before the Commencement of ſuch Suits reſpectively; and it ſhall be lawful for the Court of Seſſion, or ſuch Two Juſtices reſpectively, to award Coſts therein; and ſuch Determination and Award ſhall be final, and ſhall be carried into Execution by Attachment and Sale of the Goods and Effects of the Party againſt whom the Determination was made. Determining Suits for Debts under 40s.

XIII. And be it further enacted, That it ſhall be lawful for the ſaid Chief Juſtice to ſettle ſuch Forms of Proceſs, and ſuch Rules of Practice and Proceeding, for the Conduct of all Pleas, Suits, and Complaints, and for the Diſpatch of the Buſineſs of the ſaid Supreme Court and Surrogate Courts, and of the Buſineſs in the Courts of Seſſion, or before any One or more Juſtices of the Peace reſpectively, and to appoint ſuch reaſonable Fees to be taken for the Conduct and Diſpatch of Pleas, Suits, Complaints and other Buſineſs as aforeſaid, and for the granting Adminiſtration of the Effects of Inteſtates, and for the Probate of Wills, as ſhall ſeem neceſſary and proper for expediting Matters with the moſt Convenience and leaſt Expence to the Parties concerned therein, and ſuch Proceſs and Rules Chief Juſtice to ſettle Forms of Proceſs, and appoint Fees.

of Practice and Proceeding ſhall be followed and obeyed, and ſuch Fees ſhall be paid accordingly, and no other; and that all ſuch Fees received in any Surrogate Court ſhall be paid and accounted for by the Surrogate in the ſaid Supreme Court; and that it ſhall be lawful for the ſaid Chief Juſtice, and he is hereby required to ſettle and limit what Fees and Poundage ſhall be taken by the Sheriff of *Newfoundland*, and the ſame ſhall be taken, and none other; provided, that no ſuch Fees for the Diſpatch of Pleas, Suits and Complaints, or other Buſineſs as aforeſaid, or for granting Adminiſtration or Probate of Wills, and no Fees or Poundage to be taken by the Sheriff, ſhall be taken until the Rate and Table of every Fee or Poundage ſo to be taken ſhall have been approved by the Governor of the ſaid Iſland of *Newfoundland*, and ſuch Approbation ſignified under his Hand and Seal.

Re-annexing Part of the Coaſt of Labrador and the Iſlands lying on the ſaid Coaſt to the Government of Newfoundland.

XIV. And whereas His Majeſty by His Proclamation of the Seventh Day of *October* One thouſand ſeven hundred and ſixty-three, was pleaſed to declare that he had put the Coaſt of *Labrador* from the River *Saint John* to *Hudſon's Streights*, with the Iſlands of *Anticoſti* and *Madelaine*, and all other ſmaller Iſlands lying on the ſaid Coaſt, under the Care and Inſpection of the Governor of *Newfoundland*: And whereas by an Act paſſed in the Fourteenth Year of the Reign of His preſent Majeſty, intituled, *An Act for making more effectual Proviſion for the Government of the Province of* Quebec *in* North America, all ſuch Territories, Iſlands and Countries, as ſince the Tenth Day of *February* One thouſand ſeven hundred and ſixty-three had been made part of the Government of *Newfoundland*, were, during His Majeſty's Pleaſure, annexed to and made Part of the Province of *Quebec*, as created by the ſaid Proclamation: And whereas in purſuance of an Act paſſed in the Thirty-firſt Year of His preſent Majeſty's Reign, intituled, *An Act to repeal certain Parts of an Act, paſſed in the Fourteenth Year of His Majeſty's Reign, intituled, 'An Act for making more effectual 'Proviſion for the Government of the Province of* Quebec *in* North America,' *and to make further Proviſion for the Government of the ſaid Province*, the ſaid Province of *Quebec* was divided into Two Provinces of *Upper* and *Lower Canada*, the latter including the Parts of the Coaſt of *Labrador*, and the ſaid Iſlands ſo formerly annexed to the Government of *Newfoundland*: And whereas it is expedient that the ſaid Coaſt of *Labrador*, and the adjacent Iſlands (except the Iſlands of *Madelaine*) ſhould be re-annexed to the Government of *Newfoundland*; be it therefore enacted, That ſuch Parts of the Coaſt of *Labrador* from the River *Saint John* to *Hudſon's Streights* and the ſaid Iſland of *Anticoſti*, and all other ſmaller Iſlands ſo annexed to the Government of *Newfoundland* by the ſaid Proclamation of the Seventh Day of *October* One thouſand ſeven hundred and ſixty-three, (except the ſaid Iſlands of *Madelaine*) ſhall be ſeparated from the ſaid Government of *Lower Canada*, and be again re-annexed to the Government of *Newfoundland*; any thing in the ſaid Act paſſed in the Thirty-firſt Year of His preſent Majeſty's Reign, or any other Act, to the contrary notwithſtanding.

31 G. 3. c. 31.

Supreme Court to hold Pleas ariſing within ſuch Parts.

XV. And be it further enacted, That it ſhall be lawful for the ſaid Supreme Court of Judicature of the Iſland of *Newfoundland* to hold Plea of all Crimes and Miſdemeanors committed, and of all Suits and Complaints of a Civil Nature ariſing within ſuch Parts of the Coaſt of *Labrador* from the River *Saint John* to *Hudſon's Streights* and the ſaid Iſland of *Anticoſti*, and

all other ſmaller Iſlands ſo re-annexed to the Government of *Newfoundland*, or on the Iſlands, Seas, and Harbours, to which Ships and Veſſels repair from the Parts of the Coaſt of *Labrador* and the Iſland and Iſlands ſo re-annexed to the Government of *Newfoundland* for carrying on the Fiſhery, in the ſame Manner as the ſaid Supreme Court holds Plea of Crimes and Miſdemeanors committed, and of Suits and Complaints of a Civil Nature ariſing within the Iſland of *Newfoundland*, and on the Iſlands and Seas aforeſaid, and on the Banks of *Newfoundland*.

Recovery and Application of Penalties.

XVI. And be it further enacted, That all Fines, Penalties, and Forfeitures impoſed by any Act of Parliament made or which ſhall hereafter be made, relating to the Iſland of *Newfoundland* or the Fiſhery thereof, may be recovered in a ſummary Way in the ſaid Supreme Court or in any Surrogate Court; and every Penalty and Forfeiture of the Sum of Ten Pounds or under may be recovered in the Court of Seſſion or before any One or more Juſtices of the Peace; and all Fines, Penalties, and Forfeitures impoſed, paid, or levied in any Surrogate Court, or in any Court of Seſſion, or before any One or more Juſtices of the Peace, ſhall be forthwith eſtreated and paid into the ſaid Supreme Court by the Surrogate, or by the Juſtice or Juſtices of the Peace reſpectively before whom they were recovered; and it ſhall be lawful for the ſaid Supreme Court to iſſue Proceſs for better compelling ſuch Juſtices and Surrogates to bring to account all Monies which ought to be ſo paid and accounted for as aforeſaid; and all Money ariſing from ſuch Fees, Fines, Penalties, and Forfeitures ſhall be applied and appropriated towards defraying the Expence of carrying this Act into Execution.

Limitation of Actions.

General Iſſue.

Treble Coſts.

XVII. And be it further enacted, That if any Action or Suit ſhall be brought or commenced againſt any Perſon for any Thing done in purſuance of this Act, ſuch Action or Suit ſhall be commenced within Six Months next after the Matter or Thing done; and the Defendant in ſuch Suit or Action may plead the General Iſſue, and give this Act and the Special Matter in Evidence at any Trial to be had thereupon; and if a Verdict ſhall paſs for the Defendant or Defendants, or the Plaintiff ſhall be nonſuited or diſcontinue his Action after the Defendant has appeared, or if Judgement ſhall be given upon any Verdict or Demurrer againſt the Plaintiff, the Defendant ſhall recover Treble Coſts, and have the like Remedy for the ſame as Defendants have in other Caſes by Law.

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