

ANNO TRICESIMO TERTIO

Georgii III. Regis.

CAP. LXXVI.

An Act for eſtabliſhing Courts of Judicature in the Iſland of *Newfoundland*, and the Iſlands adjacent. [17th *June* 1793.]

Preamble.

FOR the better Adminiſtration of Juſtice in the Iſland of Newfoundland, and the Iſlands adjacent; be it 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,

His Majeſty, under the Great Seal, may inſtitute a Court of Criminal and Civil

Jurisdiction at *Newfoundland*, &c.

Newfoundland, with full Power and Authority to hold Plea of all Crimes and Misdemeanors committed within the Island of Newfoundland, 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 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, and on the Islands and Seas aforesaid, and on the Banks of Newfoundland; 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 Misdemeanours, 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 the Advice of the 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 and Seas aforesaid, and on the Banks of Newfoundland; 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 in the Supreme and Surrogate Courts.

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, then that the Party who is to answer such Suit or Complaint may be caused to appear by 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.

In Actions exceeding 40 *s.* Jurors may be summoned, but if a sufficient Number should not appear, Two Assessors, with the Chief Justice or Surrogates, may proceed to Trial.

IV. And be it further enacted by the Authority aforesaid, That, where the Cause of Action shall exceed the Sum of Forty Shillings, and it shall be prayed by the 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.

Appeals may be made from Judgements for Sums exceeding 40 *l.* in the Surrogate Court, and exceeding 100 *l.* in the Supreme Court.

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.

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 on 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 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, 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, or to authorize some Person or Persons, being a Creditor or Creditors, to perform the same, such Person

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

son or Persons first entering into a Recognizance in such Sum as the Court shall think fit, for the due Performance of his or their Duty therein; 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.

Directions for the Distribution of the Effects of insolvent Persons.

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 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 the 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, prior to the Time when he or she was declared insolvent.

Suits, where the Cause shall arise before *Aug.* 1, 1793, to be commenced within Six Years.

IX. And be it further enacted, That where any Cause of Action shall have arisen before the First Day of August One thousand seven hundred and ninety-three, no Suit or Complaint shall be commenced thereon at the Distance of more than Six Years from the Time when such Cause of Action arose.

Chief Justice may grant Administration, &c.

X. And be it further enacted, That the said Chief Justice, or any Person or Persons appointed by him for that

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.

32 *Geo.* III, Cap. 46, continued till the Opening of the Supreme Court.

XI. And be it further enacted, That an Act passed in the last Session of Parliament, intituled, An Act for establishing Courts of Judicature in the Island of *Newfoundland*, and the Islands adjacent, for a limited Time, which Act was to have continued in Force to the Tenth Day of June One thousand seven hundred and ninety-three, and from thence to the End of the then next Session of Parliament, 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.

No Court, except the Supreme and Surrogate Courts, to hold Pleas of a Civil Nature.

XII. 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

Vice Admiralty Court may hold Plea of Maritime Causes (except for Wages), and Causes of Revenue.

Disputes respecting Wages of Seamen, &c. may be heard in the Court of Sessions, or before Two Justices.

or any other Act, relating to the Island of Newfoundland, or the Islands and Seas aforesaid, or the Fishery thereof, shall and may be heard and determined, and the Penalties and Forfeitures thereby incurred shall and may be recovered in the Court of Sessions, or before any Two Justices of the Peace.

Suits for Debts not exceeding 40 *s.* may be determined in a summary Way, *&c.*

XIII. 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.

Chief Justice to settle Forms of Process, and appoint the Fees to be taken in the Courts, *&c.*

XIV. 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 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

Fees in Surrogate Courts to be accounted for in the Supreme Court.

Sheriff of Newfoundland, and the same shall be taken, and none other.

XV. 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. For the Recovery and Application of Penalties.

XVI. 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 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. Limitation of Actions. General Issue. Treble Costs.

XVII. And

Continuance of this Act.

XVII. And be it further enacted, That this Act shall continue in Force until the Tenth Day of June One thousand seven hundred and ninety-four, and from thence to the End of the then next Session of Parliament.

FINIS.