

ANNO QUADRAGESIMO TERTIO

GEORGII III. REGIS.

CAP. LIII.

An Act to render the Proceſs of His Majeſty's Courts of King's Bench, Common Pleas, and Exchequer, in Perſonal Actions, in *Ireland*, more beneficial, and alſo to prevent frivolous and vexatious Arreſts; and to repeal ſo much of an Act, paſſed in the Parliament of *Ireland* in the Twenty-firſt and Twenty-ſecond Years of the Reign of His preſent Majeſty, intituled, *An Act for enlarging the Time for Trials by* Niſi Prius *in the City and County of* Dublin; *and for making the Proceſs of the Court of Exchequer more effectual*, as relates to compelling the Appearance of Defendants in Perſonal Actions.

[11th *June* 1803.]

WHEREAS it would tend to the more ſpeedy and beneficial Adminiſtration of Juſtice in that Part of the United Kingdom called *Ireland*, that the Proceſs for compelling the Appearance of Defendants in Actions to be hereafter inſtituted in His Majeſty's Courts

So much of *Irish* Act, 21 & 22 Geo. 3. as respects Defendants not appearing to Subpœnas, and Plaintiffs filing Declarations, and proceeding to Judgment,

of King's Bench, Common Pleas, and Exchequer, in that Part of the United Kingdom called *Ireland*, be assimilated each to the others, and, as far as may be, to the Process of the superior Courts in that Part of the United Kingdom called *England*; and that frivolous and vexatious Arrests be prevented: And whereas, by an Act of Parliament of *Ireland*, made in the Twenty-first and Twenty-second Years of the Reign of His present Majesty, intituled, *An Act for enlarging the Time for Trials by* Nisi Prius *in the City of* Dublin *and County of* Dublin; *and for making the Process of the Court of Exchequer more effectual against Persons, who being served therewith, refuse to appear*, it is, among other Things, enacted, that in all Cases, from and after passing the said Act, where a Subpœna or Subpœnas shall issue out of the Pleas or Common Law Side of the said Court, requiring any Defendant or Defendants to appear thereto, and that such Defendant or Defendants being duly served therewith according to the then Practice or Course of the said Court, should suffer Process of Contempt to a Serjeant at Arms to be entered against him, her, or them, for not appearing on such Service, the said Court, upon the Attachment of the Serjeant at Arms being filed with the proper Officer of the said Court, with a Return made thereon by the Serjeant at Arms of the said Court, that the said Defendant or Defendants is or are not to be found, should and might, in every such Case, appoint an Attorney to enter an Appearance or Appearances for such Defendant or Defendants so in Contempt, and upon the said Appearance or Appearances being so entered, the Plaintiff or Plaintiffs at whose Suit the said Subpœna or Subpœnas should have issued, should be at Liberty forthwith to file his, her, or their Declaration, and to proceed thereon to Judgement, and issue Execution, as effectually as if such Defendant or Defendants had duly and actually appeared on the Service of such Subpœna or Subpœnas; 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 so much of the said recited Act as is herein-before set forth, shall, from and after the First Day of *Michaelmas* Term in the Year One thousand eight hundred and three, be repealed, and the same is hereby, from and after the said First Day of *Michaelmas* Term, repealed.

repealed;

but not to affect any Subpœna sued out before the First Day of *Michaelmas* Term 1803.

II. Provided always, That nothing herein contained shall avoid or in any Manner affect any Process of Subpœna heretofore sued out, or any Proceedings thereon, or any such Process of Subpœna which shall be sued out before the said First Day of *Michaelmas* Term One thousand eight hundred and three, but all and every such Process of Subpœna, and all Actions, Suits, Judgements, and Proceedings thereon, shall proceed in like Manner, and have the same Force and Effect, as if this present Act had not been made.

From the First Day of *Michaelmas* Term, no Person to be held to Special Bail on any Process issuing out of the Court of of King's Bench, *etc.*

III. And be it further enacted by the Authority aforesaid, That, from and after the said First Day of the said *Michaelmas* Term, no Person shall be held to Special Bail upon any Process issuing out of His said Majesty's said Court of King's Bench, Common Pleas, or Exchequer, in that Part of the said United Kingdom called *Ireland*, where the Cause of Action shall not amount to the Sum of Ten Pounds or upwards, nor out of any inferior Court where the Cause of Action shall not amount to the Sum of Forty Shillings or upwards; and that in all Cases where the Cause of

Action shall not amount to the Sum of Ten Pounds or upwards in any of the said superior Courts, or to Forty Shillings or upwards in any such inferior Courts (and the Plaintiff or Plaintiffs shall proceed by the Way of Process against the Person), he, she, or they shall not arrest or cause to be arrested the Body of the Defendant or Defendants, but shall serve him, her, or them personally with a Copy of the Process; and if such Defendant or Defendants shall not appear at the Return of the Process, or within Eight Days after such Return, in such Case it shall and may be lawful to and for the Plaintiff or Plaintiffs, upon Affidavit being made and filed in the proper Court, of the personal Service of such Process as aforesaid, (which said Affidavit shall be filed *gratis*), to enter a Common Appearance, or file Common Bail for the Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had entered his, her, or their Appearance, or filed Common Bail; any Law or Usage to the contrary notwithstanding.

in *Ireland*, where the Action shall not amount to 10*l.*; or 40*s.* out of an inferior Court; but the Defendants shall be served with a Copy of the Process.

Defendants not appearing, to be proceeded against as if they had entered Appearance.

IV. And be it further enacted by the Authority aforesaid, That such Affidavit of Service of such Process, shall and may be made before any Judge or Commissioner of the Court out of which such Process shall issue, authorized to take Affidavits in such Court.

Affidavit of Service of Process to be made before a Judge, *etc.*

V. And be it further enacted by the Authority aforesaid, That, from and after the said First Day of *Michaelmas* Term One thousand eight hundred and three, in all Cases where the Cause of Action shall amount to the Sum of Ten Pounds, or Forty Shillings, or upwards, as aforesaid, Affidavit shall be made and filed of such Cause of Action (which Affidavit may be made before any Judge or Commissioner of the Court out of which such Process shall issue, authorized to take Affidavits in such Court), and the Sum or Sums specified in such Affidavit, shall be indorsed on such Writ or Process, for which Sum or Sums so indorsed, the Sheriff or other Officer to whom such Writ or Process shall be directed shall take Bail, and for no more; and if, after the First Day of the said *Michaelmas* Term One thousand eight hundred and three, any Writ or Process shall issue for the Sum of Ten Pounds or upwards, and no Affidavit or Indorsement shall be made as aforesaid, the Plaintiff or Plaintiffs shall not proceed to arrest the Body of the Defendant or Defendants, but shall proceed in like Manner as is by this Act directed in Cases where the Cause of Action does not amount to the Sum of Ten Pounds, or Forty Shillings, or upwards, as aforesaid.

Affidavit of the Cause of Action shall be made and filed, and the Sum indorsed on the Writ, for which Bail shall be taken, *etc.*

VI. And be it further enacted by the Authority aforesaid, That upon every Copy of such Process to be served upon any Defendant, shall be written a Notice to such Defendant of the Intent and Meaning of such Service, to the Effect following; (that is to say),

Notice to be given to Defendants in the following Form.

'*A. B.* you are served with this Process, to the Intent that you may, by your Attorney, appear in His Majesty's Court of at the Return thereof, being the Day of [*as the Case shall happen to be*], in order to your Defence in this Action.'

Which

Which ſaid Notice ſhall be ſigned by the Attorney of the Plaintiff or Plaintiffs with his Chriſtian and Surname, and thereunto ſhall be added his Place of Reſidence, and for which ſaid Notice no Fee or Reward ſhall be demanded or taken.

Common Appearance ſhall not be entered for a Defendant, unleſs Affidavit be made to the Service, *etc.*

VII. Provided always, and it is hereby further enacted by the Authority aforeſaid, That no Plaintiff ſhall enter a Common Appearance, or file Common Bail for any Defendant, unleſs the Plaintiff or his Attorney, or the Attorney employed for the Purpoſe of having the Proceſs perſonally ſerved, ſhall make Affidavit, in Writing, that ſuch Plaintiff or Attorney, (as the Caſe may be) knows the Perſon ſo ſwearing to ſuch Service, and that ſuch Plaintiff or Attorney (as the Caſe may be), believes that ſuch Proceſs has been perſonally ſerved on the Defendant at ſuch Time as ſuch Perſon ſhall have ſworn to, and in which Affidavit, the Addition and Place of Reſidence of the Perſon ſo ſwearing to ſuch Service ſhall be inſerted; which ſaid Affidavit ſhall be filed *gratis*.

In Caſes where it appears that Proceſs cannot be perſonally ſerved, the Court may iſſue other Kind of Service.

VIII. Provided always, and be it further enacted, That whenever it appears to the Court out of which the Proceſs iſſues, that all due Diligence has been uſed to have the Proceſs of the Court perſonally ſerved, yet that under the Special Circumſtances of the Caſe, appearing to the Court by the Affidavit of the Plaintiff or his Attorney, or the Attorney employed for the Purpoſe of having the Proceſs perſonally ſerved, that it was impoſſible to procure perſonal Service, that then and in ſuch Caſe it ſhall and may be lawful for the Court out of which the Proceſs iſſues, to ſubſtitute ſuch other Kind of Service as to them ſhall ſeem fit.

Compenſation to be made to Patentee Officers of the Court of Exchequer for Reduction of Fees, in Manner herein mentioned.

IX. And whereas by the Operation and Effect of this Act, the lawful Fees and Emoluments heretofore received for Buſineſs done and tranſacted on the Pleas or Law Side of His Majeſty's Court of Exchequer by the ſeveral Officers of the ſaid Court, may be reduced: And whereas it is juſt and reaſonable, that in lieu of ſuch Reduction a full Compenſation ſhould be made to the ſaid Officers of the ſaid Court, who now hold their reſpective Offices under His Majeſty's Letters Patent; be it therefore enacted, That Compenſation ſhall be made to the ſaid ſeveral Officers ſo holding by His Majeſty's Letters Patent in Manner following, that is to ſay; the Chief Juſtice of His Majeſty's Court of King's Bench in *Ireland* for the Time being; the Maſter of the Rolls in *Ireland* for the Time being; and the Chief Juſtice of His Majeſty's Court of Common Pleas in *Ireland* for the Time being, or any Two of them, ſhall, within Three Months after the paſſing of this Act, enquire by Examination upon Oath as well as otherwiſe, which Oath they, or any One of them, are and is hereby empowered to adminiſter, and ſhall aſcertain what ſhall have been the average annual Amount for Three Years, ending on the laſt Day incluſive of *Eaſter* Term in this preſent Year, of the lawful Fees and Emoluments received ſeverally by or for the Patentee Officers aforeſaid, and ſhall certify under their Hands in Writing, the reſpective Amount thereof to the Lord High Treaſurer, or the Lords Commiſſioners of the Treaſury for the Time being in *Ireland*, and which Certificate ſhall be final and concluſive to all Intents and Purpoſes.

X. And

X. And be it further enacted by the Authority aforeſaid, That the Commiſſioners for auditing the publick Accounts in *Ireland* for the Time being, or any Three of them, ſhall, on the Requiſition in Writing of all or any of the Patentee Officers who now hold Offices in the Court of Exchequer in *Ireland*, during the Time that any of the ſaid Patentee Officers ſhall continue to hold their reſpective Offices, aſſemble on ſuch Day or Days in each Year, between the laſt Day of *Trinity* Term and the firſt Day of *Michaelmas* Term, as they ſhall think fit, and enquire, as well by Examination on Oath as otherwiſe; which Enquiry they, or any Three of them, are hereby empowered to make, and which Oath they, or any Three of them, are hereby empowered to adminiſter, and ſhall aſcertain whether there ſhall have been any and what Diminution in the Amount of the lawful Fees and Emoluments of any Patentee Officer, who ſhall have made ſuch Requiſition in Writing, for the Year ending on the laſt Day of *Eaſter* Term immediately preceding ſuch Examination, when compared with the Amount which ſhall have been certified as aforeſaid to the Lord High Treaſurer, or the Lords Commiſſioners of the Treaſury in *Ireland* for the Time being, by the ſaid Lord Chief Juſtice of the King's Bench, the Maſter of the Rolls, or the Chief Juſtice of the Common Pleas, or any Two of them, the Amount of which Diminution ſo aſcertained ſhall, upon the ſame being certified in Writing under the Hands of the ſaid Commiſſioners for auditing the publick Accounts, or any Three of them, to the Lord High Treaſurer, or the Lords Commiſſioners of the Treaſury for the Time being in *Ireland*, forthwith become a Charge on the Conſolidated Fund, and ſhall be iſſued as if the Amount of ſuch Diminution had been ſpecifically mentioned in this Act, and ſhall be payable and paid accordingly by the ſaid Lord High Treaſurer, or the Lords Commiſſioners of the Treaſury for the Time being in *Ireland*, to ſuch Patentee Officer or Officers, ſo long as he or they ſhall continue to hold their reſpective Offices without any Deduction for Fells, Poundage, or otherwiſe.

Commiſſioners for auditing publick Accounts in *Ireland*, on Requiſition of ſuch Patentee Officers, ſhall enquire into the Diminution of their Fees, which being certified to the Treaſury, ſhall become a Charge on the Conſolidated Fund.

XI. And be it further enacted, That it ſhall and may be lawful for the Lord Lieutenant, or other Chief Governor or Governors of *Ireland* for the Time being, to direct Enquiry to be made from Time to Time by the Commiſſioners for auditing the publick Accounts in *Ireland*, or any Three of them, by Examination on Oath or otherwiſe, and which Oath they, or any Three of them, are hereby empowered to adminiſter reſpecting the Reduction which may have been occaſioned by the Operation and Effect of this Act, in the lawful Fees and Emoluments of the Officers in the Court of Exchequer in *Ireland*, who now hold their ſeveral Offices otherwiſe than by Patent, and to direct that there be paid to the ſaid Officers during the Period they ſhall continue in their ſeveral Offices, by the Lord High Treaſurer, or the Lords Commiſſioners of the Treaſury for the Time being in *Ireland*, ſuch Allowances, rateably and according to their reſpective Loſſes, as the Lord Lieutenant, or other Chief Governor or Governors of *Ireland* for the Time being, ſhall think fit: Provided always, that the ſaid Loſſes ſhall have been aſcertained and certified to the ſaid Lord High Treaſurer, or Lords Commiſſioners of the Treaſury for the Time being in *Ireland*, by the Commiſſioners for auditing the publick

Lord Lieutenant to direct Enquiry to be made into the Reduction of Fees of other than Patentee Officers, and order ſuch Allowances to be made for their Loſſes as he ſhall think fit; but ſuch Loſſes ſhall be certified to the Treaſury, and ſhall not exceed 3000*l.* *per Annum.*

publick Accounts in *Ireland*, or any Three of them; and that the aggregate Amount of the Allowances ſo to be made to the ſaid Officers holding their reſpective Offices otherwiſe than by Patent, ſhall not in any Year exceed the Sum of Three thouſand Pounds a Year.

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