

Chief Justice Reeves having returned to England after his visit of observation and experiment, the act of 32, Geo. III., c. 46,\* was, under his auspices, passed, for the establishment of a Supreme Court of Criminal as well as Civil Jurisdiction; and also Surrogate Courts of Civil Jurisdiction in Newfoundland.

This act has formed the basis of all the subsequent Judicature Laws of the Colony, and empowered the Supreme Court to hold plea of all crimes and misdemeanors committed in Newfoundland, and on the islands and seas of its fisheries, in the same manner as plea is holden of crimes and misdemeanors committed in England; and also to hold plea of all suits and complaints of a civil nature, arising in Newfoundland, as aforesaid, and to determine such complaints and suits, according to the law of England, as far as the same can be applied to such suits, &c.

Such Supreme Court to be holden by a Chief Justice, to be appointed by His Majesty, with full power to hear, &c. aforesaid.

Governor empowered (with advice of Chief Justice) to institute Surrogate Courts of civil jurisdiction, as occasion shall require, to hear and determine, in a summary manner, all suits and complaints as aforesaid, according to the laws of England, as far as aforesaid; and such Surrogates to be appointed by the Governor.

The said Supreme and Surrogate Courts are respectively empowered, in all cases depending, to cause appearance, from day to day, of all persons interested in such suits, &c.; and to examine, on oath, such of them as it shall deem proper; and, after due consideration thereon, to make such order and decree, and award such damages and costs, as the case shall require.

And when cause of complaint shall not exceed £5, to proceed by summons of the defendant; and if such summons shall be disobeyed, or cause of suit exceed £5, then the party, who is to answer such suit, &c., may be caused to appear by attachment of his goods or effects, or arrest of person.

When the cause of action exceeds £10, and if the defendant shall pray a jury, Chief Justice or Surrogate, respectively, to cause twenty-four persons to be summoned, of whom twelve to be the jury; and such number having been summoned, and a sufficiency of jurors not appearing to be sworn, for such trial; then the Governor to nominate two proper persons, to be assessors to the Chief Justice or Surrogate, who shall respectively proceed to trial, in like manner as though such jury had not been prayed.

Appeal from Surrogate Court to Supreme Court allowed, under security, by appellant, when judgment exceeds forty pounds.

Appeal from Supreme Court to the King in Council, from judgment exceeding one hundred pounds.

When goods, &c. of debtor attached, are found to be insufficient to pay twenty shillings in the pound to all creditors, by reason of debts contracted, within the jurisdiction aforesaid, such debtor and the plaintiff, and all such his creditors aforesaid, to be summoned and examined by the Court; and, if the debtor be found insolvent, the said Court to declare such debtor insolvent accordingly; and to take order for collecting and selling the effects and debts of the insolvent, and distributing the proceeds thereof among such his creditors aforesaid; or appoint some fit person or persons, being a creditor or creditors, to perform the same, taking suitable recognizance for due performance thereof.

Distribution of assets of insolvent's estate prescribed in the following order of Priority:—

1st.—Every fisherman and seaman for wages of the then current season, to be first paid twenty shillings in the pound, as far as the effects will go.

2d.—Every creditor for supplies (to the fishery) furnished in the then current season, to be next paid twenty shillings in the pound as far as effects go.

3d and lastly.—All other creditors twenty shillings in the pound as far as effects will go.

By consent of one-half in number and value of such creditors, Court may certify insolvent; and such certificate to be a bar to all suits, &c. for debts contracted within Newfoundland, and the jurisdiction aforesaid, prior to such insolvency.

Cause of action arising before the 1st August, 1792, no suit, &c. to be commenced beyond the period of six years, from time when cause of action arose.

Chief Justice empowered to grant Administration of Intestate Estates and Probate of Wills.

No Court in Newfoundland, except said Supreme and Surrogate Courts, to hold plea of civil causes; but saving jurisdiction to Vice-Admiralty Court in maritime causes, (excepting suits, &c. as to wages of seamen and fishermen, and revenue causes)—providing, also, that all disputes concerning wages of such seamen and fishermen, and all offences by the hirer or employer of

such, and all penalties in respect thereof, to be heard, &c. before any two or more Justices of the Peace.

Courts of Session of Justices of the Peace to have jurisdiction, in a summary way, in all suits of debt not exceeding forty shillings, if not contracted more than one year before action brought.

Chief Justice to settle forms of process, rules of practice, and amount of fees, in all pleas, suits, &c. in Supreme and Surrogate Courts, and in Courts of Sessions of Justices of the Peace.

All fines, penalties, and forfeitures, imposed by any statute then made, or to be made, relating to Newfoundland or its Fisheries, may be recovered in a summary way, in the Supreme or Surrogate Courts; and that such penalties, not exceeding, in amount, the sum of ten pounds, may be recovered in the said Courts of Sessions, or before one or more Justices of the Peace.

This act was made to endure for one year only, when, from its trial, resulted the statute 33d Geo. III., c. 36,\* which differs from the preceding act, only in a few particulars.

1st.—Dispensing with the advice of the Chief Justice in the Governor's institution of Surrogate Courts.

2d.—Transferring from the Governor to the Surrogates the authority to appoint Assessors to sit with Surrogates in the trial of civil causes, on failure of jury appearing.

3d.—Giving to defendant in civil causes in the Supreme and Surrogate Courts, the right to claim a Jury, where the cause of action exceeds forty shillings—(ten pounds having been the limitation of the former act.) With these emendations, the Act of 33, Geo. III., c. 76,† continued to be the Judicature Law of Newfoundland until March, 1809, when the statute of 49, Geo. III., c. 27,‡ was enacted, altogether on the basis of the last expired judicature law, but differing from it in a few particulars.

1st.—Extending the civil jurisdiction of the Supreme and Surrogate Courts to all suits and complaints of a civil nature arising in Great Britain or Ireland. (But note) not to suits, &c. arising in other Colonies.

2d.—Extending to plaintiff as well as defendant in civil actions exceeding forty shillings the right of demanding a jury.

3d.—Trustees of insolvent estates to be elected by the creditors, (not nominated by the Court as theretofore used.)

4th.—Extending the discharge of insolvents under the certificate to debts contracted in Great Britain and Ireland, (co-extensively with jurisdiction).

The 49th Geo. III., c. 27, continued to be the Judicature Law of Newfoundland until the 5th Geo. IV., c. 67,§ came into operation in January, 1826, being eighteen months after its enactment.

Before I proceed further, I beg especially to observe, that the constitution of the Courts of Civil Judicature, and summary mode of proceedings prescribed by 49 Geo. 3, are, under the best opinion I have been able to form from experience and mature reflection, better adapted to the general purposes and condition of this Colony than the rules prescribed under the now-existing law of 5 Geo. 4, c. 67. It is true that, previous to the enactment of the latter statute, great complaints had reached His Majesty's Government of the defective administration of justice. But referring to the nature of those complaints, it will be found that the gist of the evil lay in the alleged deficiency of legal knowledge, and unfitness of naval officers of ships of war, and other persons, then usually appointed to execute the duties of Surrogate Judges in civil actions, and Justices of the Peace in Sessions; the latter of whom then exercised, under 15 Geo. III., c. 31, and 49 Geo. III., c. 27, a summary jurisdiction over claims of fishermen's wages, and forty shilling debts; and exercised also, under their commission of the peace, an extensive jurisdiction over criminal offences.

Under the summary proceedings prescribed by the 49th Geo. III., parties were not compelled in any civil action to submit the cause to a Jury; but either party, plaintiff or defendant, might, at their election, resort to that mode. For the dispatch and proper decision of the great mass of cases ordinarily occurring in the civil courts, I feel warranted, by more than twenty years' experience, in the opinion I have formed, that this summary mode is best adapted, is cheaper, and also more consonant to the habits and wishes of the people, who have been hitherto pretty much used to conduct their own causes of ordinary occurrence. I know that my opinion in this particular coincides with that often expressed by Mr. Forbes, while he was Chief Justice of Newfoundland; and Mr. Reeves, in his evidence before a committee of the House of Commons in 1793, on this point, concludes by saying, "Upon the whole I am of opinion, that Trial by Jury cannot and ought not to be the general practice in Newfoundland, and I do not know that it can be put upon a better foot-

ing than it stands upon in the present act"—(32 Geo. III., c. 46.) Mr. Reeves had, the two preceding years, been Chief Justice of Newfoundland; and, after reading his evidence on this occasion, no person conversant with the incidents and character of this Colony and its inhabitants, can fail to admire the sedulous industry and zeal with which he must have applied his great talents, and knowledge of law and of human nature, to ascertain the true condition and relations of that society for whose benefit he was especially chosen to digest a system of judicature.

Since that period, numerically, the inhabitants of Newfoundland are greatly increased, but except in St. John's, their condition and relations, so far as an attentive observation enables me to judge, are not essentially changed in character, nor are there, I conceive, in the capabilities of the Island at large, any means by which material change, in this respect, can be produced for many years to come, if ever. In St. John's, however, the seat of its government, great changes have been wrought, during the period of my own residence, as regards the extension and diversity of its trade, no less than the increase of its inhabitants;—and therefore, while even now the far larger portion of civil causes continue there to be still such as are suitable to summary decision, without the aid of a jury, it is equally obvious, that cases arising out of extensive mercantile transactions in foreign as well as domestic trade, and respecting title to property in lands, &c., often occur, to require the aid of that popular branch of English Judicature, and also a Court of superior character. I regret to say, that as respects the mode of administering justice, the changes made by the existing law (5 Geo. IV.,) have not appeared to me productive any where of the public benefit expected from them; and that as respects the outposts and distant places of the Island generally, the change has resulted in almost total failure.

Efficient Judges could have been supplied to administer justice under the previous law, as effectually within the attainment of the inhabitants generally, residing at a distance from St. John's, as the Naval Surrogates, in their numerous ships, carried their less perfect administration of it to remote settlements at all needful seasons, that, in my opinion, if not all that was desirable, would have proved more valuable and satisfactory to the Colony at large than all the benefits that have been conferred under the present system; which, while much more expensive to suitors, it must be acknowledged has left the widely-scattered inhabitants of the outport districts nearly destitute of available legal resource for the protection of their civil rights, and often for the due punishment of criminal injury, unless the parties had the means of repairing to St. John's, which those even whose poverty or remote distance did not preclude could rarely do, unless at the probable sacrifice of their interests then pending in the fisheries of the season.

Although the present judicature law was passed in June, 1824, it did not come into operation until January, 1826; nor in effect, until 3 months after that period; for that additional interval was required for publication of the rules of the Court under the provisions of the Charter.

By the effect of this Act, under the construction held by the Judges of the Supreme Court, in conjunction with the opinion they also entertain of the very limited application of the general statute law of England to this Colony, as noticed above, a very great change has been effected in the judicature, and it may be said also of the jurisprudence, of this Colony.

This restricted operation thus assigned to the English Statute Law, as the law of the Colony, was brought under the notice of His Majesty's Government by Chief Justice Tucker soon after he succeeded Mr. Forbes to the Bench in May, 1823, while the court subsisted under the 49, Geo. III., c. 27; and there this important consideration has rested ever since, although the same point has in the interval been several times mooted, and in two instances recently, the one as to the applicability of the Catholic Relief Bill to this Colony, and the other upon the conviction of Michael Fogarty,\* under the Act of 9, Geo. IV., c. 31, for feloniously violating a female under ten years of age.

Consequential to this opinion entertained by the superior courts of this Colony, the Criminal Statute Law of England is found available but in a very limited degree for the repression and punishment of crime, and when the 5, Geo. IV., became the judicature law of the Colony, the limited criminal jurisdiction thence-before exercised by the Sessions Courts of Justices of the Peace, in St. John's and in other parts of the Island, since 1729, under commissions issued by

the Governor, ceased; so that all criminal offences are now triable only in the Supreme or the Circuit Courts.

The jurisdiction therefore of Justices of the Peace in Sessions became strictly circumscribed within the provisions of the 22d section of 5, Geo. IV., c. 67, limited to suits of debt not exceeding 40s., and to suits concerning wages of seamen and fishermen to any amount, and for bait-money, boat-hire and fish-curing to the extent of £5.

It may be essential to notice here, that, in all the outports, no inhabitants are found but such as are engaged in the trade and fisheries—merchants or their agents (chiefly the latter), planters and fishermen, occasionally a resident missionary of the Church of England or of the Wesleyan persuasion, a Catholic Priest, or a Surgeon.

The reasons that have been often urged against the propriety of appointing clerical magistrates in England, apply, I conceive, with greater force to the circumstances of this Colony. And if among those persons who are engaged in trade, persons could be found of competent education and intelligence, which in my experience has rarely occurred in the outport,—it becomes evident that, that portion of magisterial jurisdiction now remaining with Justices of the Peace in Sessions, is precisely of that species which their peculiar interest disqualifies them from exercising with propriety or satisfaction to the public. And as regards medical men or surgeons (who are not of the most intelligent order in this case), it is well known that they are so much dependant on the merchants in outports, for the collection and payment of the dues and fees they receive from planters and fishermen, that their interests, like those of the merchant, must inevitably conflict with the just exercise of such magisterial duties.

Imperfect as at all times the Sessions Courts of Justices of the Peace were in their administration, still they were not void of benefit to the public; more especially in parts remote from St. John's, where they were often found useful in opposing some check to insubordinate servants in the fisheries, and also, under public authority, in affording some protection from acts of violence and outrages of lawless people that are to be found in all communities.

But limited as the utility of such Courts of Session may have been, when constituted by the resident merchants and the visiting Naval Surrogates, it cannot, I think, be said that the Circuit Courts have proved in practice of equal public benefit. The experience afforded by a five years' trial of those Courts sufficiently demonstrates their inadequacy to accomplish the purposes for which they were instituted; nor am I able to point out how they could be rendered, with two Judges only, more efficient to meet the exigencies and reasonable wishes of the public in the northern and southern districts. An inspection of the charts of the coast will give a general notion of the extent of the shores which the Judges of the northern and southern districts must traverse, in order to hold a Court, once in the season, at some of the principal settlements; for the casualties and obstructions incident to the fogs, the winds, and the weather, rarely indeed admit of the Courts visiting all the places mentioned in the Proclamation. Moreover the situation of many locations within deep bays, renders them peculiarly difficult, and often dangerous, of access during the autumnal months, which is the period when the presence of the Circuit Court is most needed. It becomes, therefore, quite problematical whether the Court may be able to visit any place at the time appointed, or some of them at all; and the time given for their stay at most places is much too short to admit of their being of great benefit; for in numbers of instances, before process can be served on parties, disposed at all times to evade it,—and in frequent cases, before it is possible to convey it to parties living in the neighbouring harbours or coves, the Court has determined its sittings and proceeded towards the next stations.

The time when the presence of such Courts is especially required in all the districts, is, identically the same period,—from the 10th of October, until the end of November; which is the season of the discharge and payment of fishermen and servants, and of general settlement of accounts for the year. But St. John's, in the central district, and Harbour Grace, Carbonar, &c. in the northern district, require, also, the effective benefit of such court during one half of the month of April and the whole of May;—a period when much litigation occurs, in the termination of the sealing voyage, and payment of the men, and on the outfit of the Labrador cod-fishery.

One such court would be sufficient to meet the exigencies of the central district, where also the Supreme Court is held; but two Judges cannot fulfil all the duties of the other districts, where courts are every where required, at or about the same period of time, at so many populous places.

To be concluded in our next number.

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\* A.D. 1793. Statute 33d, Geo. III., c. 76, the third Colonial Judicature Law.

† A.D. 1809. Statute of 49, Geo. III., c. 27, the fourth Judicature Law.

‡ A.D. 1826. Statute 5th, Geo. IV., c. 67, being the fifth Colonial Judicature Law, came into operation though not until 18 months after its enactment.

\* Since this portion of the Report was written, His Majesty's Secretary of State for the Colonies has transmitted to the Local Government, the opinions of His Majesty's Attorney and Solicitor-Generals on this case of Fogarty, who concur in considering this conviction to be good, and that, since the passing of the 5th Geo. IV., c. 67, the whole of the English Statute Law became the Law of Newfoundland.

\* A.D. 1792. Statute 32, Geo. III., c. 46—the second judicature law.

† Semb. With intent only to save lawful colonial customs and usages.—Vide Mr. Reeves' Evidence before Committee of House of Commons in 1793.