

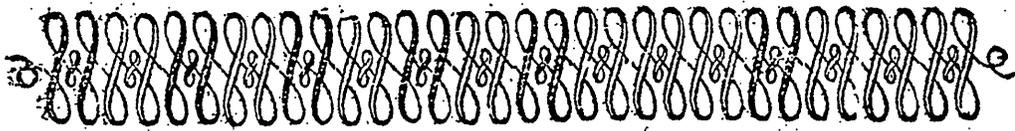
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B I L L

[AS AMENDED]

For making perpetual an Act of the thirty-third year of His present Majesty, for establishing Courts of Judicature in the Island of *Newfoundland* and the Islands adjacent; for re-annexing part of the Coast of *Labrador* and the Islands lying on the said Coast to the Government of *Newfoundland*; and for amending the said Act.

Ordered, by The House of Commons, to be printed,
17th March 1809.

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Note.—The Figures in the Margin denote the Number of the Folios in the written Copy.

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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:

Preamble.

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 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

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

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on the Banks of *Newfoundland*, and in Great Britain or Ireland; which Court shall determine such Suits and Complaints of a general 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.

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.

And be it further Enacted, That it shall be lawful for the said Supreme Courts and Surrogate Courts respectively, where 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 Judgment 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 of his or her Goods Debts or Effects, or by Arrest of the Person, and that the execution of any Order Judgment 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 Judgment 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

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5 enquiring of hearing and determining of any Crime or Misdemeanor, or any Suit or Complaint of a Civil nature.

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.

For summoning Jurors.

6 And be it further Enacted, That upon any Decree or Judgment given in a Surrogate Court, for any sum exceeding forty Pounds, it shall be lawful for the Party against whom such Decree or Judgment 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 Judgment or Decree was given or made, within two days after making or giving such Judgment or Decree, for duly prosecuting such Appeal; and upon any Decree or Judgment given in the Supreme Court for any sum exceeding one hundred Pounds, it shall be lawful for the Party against whom such Decree or Judgment 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 Judgment or Decree was given or made within two days after the giving or making of such Judgment 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.

Allowing Appeals.

7 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 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

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

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. 8

Distribution of Effects of insolvent Parties.

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.

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. 9

Chief Justice may grant Administration of Effects.

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.

Act 23 Geo. III. c. 76. continued until the opening of the Supreme Court.

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. 10

For holding Pleas.

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

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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 hereinafter 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.

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.

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 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 Suits 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.

Chief Justice to settle Forms of Process, and appoint Fees,

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 Straights*, 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 Pro-

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

“vince 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 farther 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 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 Straights* 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. 14

Supreme Court to hold Pleas arising within such parts.

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 Straights* 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*. 15

Recovery and Application of Penalties.

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. 16

And

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 Judgment 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.