



CAP. XXXVI.

An Act in addition to and in amendment of an Act passed in the twenty-sixth year of the reign of His late Majesty King George the Third, intituled "An Act for relief against Absconding Debtors."

Passed 22d March 1834.

WHEREAS the Laws now in force relating to Absconding Debtors have in many respects been found defective, and in some cases oppressive;

I. Be it therefore enacted by the Lieutenant Governor, Council and Assembly, That the fourth, seventh and eleventh Sections of the said recited Act, be and the same are hereby repealed.

II. Be it enacted, That if any Sheriff or Sheriffs shall by virtue of any warrant or warrants hereafter to be issued in pursuance of this or the above recited Act, through ignorance or want of proper information, seize and take any goods, chattels or effects which shall or may be claimed or challenged by any person or persons as his or their property, it shall and may be lawful for such Sheriff, thereupon to summon and swear a Jury of twelve discreet persons, competent by Law to serve as Petit Jurors, to inquire into and try the right of property thereof; and if such Jury shall, upon such inquest, find the right of property of such goods, chattels or effects to be in the person or persons so claiming the same, or in any other than the person or persons against whose estate or effects such warrant or warrants did issue, such Sheriff shall, forthwith after such inquest had and taken, deliver such goods, chattels or effects in the like good order and condition in which they were seized and taken, to the person or persons in whom the property thereof shall be so found, or to his, her or their Agent, Attorney or Assigns; and such Sheriff shall not in such case be liable to any suit or prosecution, for his having seized and taken such goods, chattels or effects through ignorance or for want of proper information, and all reasonable charges arising from such seizure, and inquest as aforesaid, shall be allowed, and certified by the Judge or Judges who issued such warrant, and paid by the trustees out of the effects or Estate of absconding or concealed person or persons, against whose estate and effects such warrant issued, if the property of such goods, chattels or effects so claimed shall by such inquest be found to be in any other than the person or persons against whose estate or effects such warrant issued, but if the property of the goods, chattels or effects so claimed shall by such inquest be found to be in the person or persons against whose estate or effects the warrant of attachment which caused them to be seized did issue, then all costs, charges and expenses accrued or arising by such claim and inquisition, or either of them, shall be paid and borne by the person or persons who claimed the same from the Sheriff, or applied for inquisition to be had, or occasioned the same to be had and taken, to be recovered by action of debt or assumpsit, at the suit of the Trustees on the said estate.

III. And be it enacted, That the decision of the Jury on any such inquisition, shall in all cases be final and conclusive, and a good Bar to any action that may thereafter be brought by the party or parties against whom such inquisition may be found, unless written notice to the contrary shall be given by the party or parties failing on that inquisition to the Sheriff or person holding such inquisition, within six days after taking such inquisition, and unless such action be brought within three Calendar months from the time of taking the same; and that all inquisitions had and taken by any Sheriff by virtue of this Act, shall be returned in writing under the hands and seals of the Sheriff and Jury taking the same, and filed by him in the Court out of which such warrant issued.

IV. And be it enacted, That if any person or person, against whose estate or effects such warrant or warrants of attachment shall have issued, shall at any time before the appointment of Trustees for all the creditors of such debtor, be made, either by himself or by his Attorney or Agent by petition to the Judge or Judges who issued such warrant, or to any other Judge of the same Court, offer to prove to the Court of which the Judge who issued such warrant is a Judge, in open Court, that he, she or they, against whose estate and effects such warrant or warrants issued, is or are resident within this Province, and was or were not at the time such warrant issued, nor within thirty days preceding, nor at any time since, an absconding or concealed debtor, and thereby pray, that the same may be heard and determined at the then next sitting of such Court, and shall and do at the same time execute and deliver to the Creditor or Creditors who applied for and obtained such warrant or warrants of attachment, a Bond with good and sufficient security, to be approved of by the said Judge or Judges, if in the Supreme Court, in the sum of forty pounds, if in any of the Inferior Courts, in the sum of twenty pounds, with a condition thereunder written, that if such person or person by name against whose estate or effects such warrant or warrants issued, do and shall well and truly pay or cause to be paid all the expenses the obligees or obliges may be put to, in opposing or attending such application, to be taxed and allowed by the Court issuing such warrant, in case the person or persons against whom such warrant or warrants issued, do not prove to the satisfaction of the said Court out of which such warrant issued, at the then next term, or at such other time as the said Court may order and appoint for hearing the same, that he, she or they is or are then resident within this Province, and was or were not at the time such warrant or warrants issued, nor within thirty days preceding the issuing thereof, nor at any time after, an absconding or concealed debtor within the meaning of this Act, then the said obligation to be void, otherwise to remain in full force and virtue; then and in every such case the Judge or Judges who issued such warrant or warrants shall report his or their proceedings in the premises to the next Court whereof he or they is or are Judges; which Court is hereby fully authorized and empowered to compel the parties, and their witnesses to come into Court, and hear the proofs and allegations of the parties and their witnesses in a summary way, and thereupon to determine whether the matter and things in such Petition have been fully proved and supported, and if such Court shall adjudge and determine that the matters and things contained in such petition have been fully proved and supported, then such Court shall grant a Supersedeas to such warrant or warrants, and the person or persons against whose estate or effects such warrant or warrants did issue shall recover his, her or their costs, (to be taxed by the said Court in open Court,) of the Creditor or Creditors, who procured such warrant or warrants of attachment, to be issued by action of debt or attachment out of the said Court, and shall also have an action of damages against the Creditor or Creditors, or other person or persons on whose application such warrant issued: Provided always, that where the Court out of which such warrant issued, shall on or immediately after granting such supersedeas, certify that there was probable cause of suspicion, and no malice on the part of the party or parties causing such warrant to be issued, then and in such case such certificate shall and may be pleaded in bar to such action.

V. And be it enacted, That if any person or person indebted to such absconding or concealed debtor or debtors, or having the custody of any goods, chattels or effects, or other thing or things whatsoever, of such absconding or concealed person or persons, shall conceal the same, and not deliver a just account thereof, to such Trustees as aforesaid, or one of them, by the day for that purpose by them appointed, he, she or they so concealing shall forfeit double the sum of the debt or debts, or double the value of the goods, chattels, effects or other thing or things so concealed, to be recovered by the said Trustees in any Court within this Province having Jurisdiction to the amount of such forfeiture, and applied as hereinafter is directed; which said Courts or either of them are hereby respectively fully empowered, by order of Court, on the application of the said Trustees, to compel to come before such Court all and every person and persons suspected of concealing, or of being concerned in concealing, the debts, goods, chattels and effects of the said absconding or concealed debtors, and then respectively to examine upon oath touching the premises, and to commit them or either of them, if they refuse to be so examined, or being so examined refuse to answer fully and satisfactorily to such Court, or refuse to obey the order and decision of such Court.

VI. And be it enacted, That in order to obviate the difficulties and inconveniences felt in remote situations in this Province, where there are no Judges or Judges of the Supreme Court residing, arising from the necessity of sending to a Judge of the Supreme Court, where the

proceedings are intended to be instituted in that Court, to obtain a warrant against an absconding debtor's estate, that it shall and may be lawful hereafter for the Judges of the Supreme Court, during Term time, and they are hereby fully authorized and empowered to appoint three Commissioners in such situations or places in the several Counties in this Province as in the opinion of such Court require the same, for the purpose of taking the examination of the person or persons applying for a warrant against an absconding or concealed debtor or debtors' goods, chattels and effects; which said Commissioners or any two of them when so appointed and sworn as hereinafter directed, are hereby fully authorized and empowered to take the examination in writing of any person or persons applying for such warrant, and upon the proof required by the above recited Act, of which this is an amendment, being duly made before them or any two of them of the debt due, and of the absconding or concealment of the debtor or debtors, to their satisfaction, to issue a warrant or warrants against such absconding or concealed debtor's goods, in the name of the Chief and Senior Justice of the said Supreme Court, and returnable therein, and in every respect agreeable to the form of the warrant issued and adopted by the Judges of the same Court; which warrants when so issued shall be as valid and effectual, to all intents and purposes, as if issued by the Judges of the said Court or one of them, and the same proceedings shall be had therein as if issued by the said Court, or any one of the Judges thereof, anything herein contained to the contrary thereof in anywise notwithstanding: Provided always, that the said Commissioners taking such examination, and issuing such warrants, shall forthwith after the taking such examination and issuing such warrant transmit the examination and proof upon which they issued such warrant to the Chief Justice, or in his absence to the Senior next Judge of the said Court, with a memorandum of the date and time of issuing such warrant, also of the name of the Creditor or Creditors at whose instance such warrant was issued, and of the person or persons against whom such warrant issued.

VII. And be it enacted, That before the said Commissioners or any of them, enter upon the duties of their said Office, they shall be respectively sworn before the said Court, or one of the Judges thereof, or before a Commissioner of the said Court for taking affidavits, or before a Commissioner to be for that purpose appointed by His Excellency the Lieutenant Governor or Commander in Chief for the time being, to administer such oath, to the due and faithful discharge of the duties of their said Office, which oath shall be endorsed on the back of their Commission or respective Commissions appointing them to such Office.

VIII. And whereas by the sixteenth section of the said Act of which this is an amendment it is among other things enacted, that if any surplus shall remain after all just debts and legal charges and commissions lawfully paid and satisfied, such surplus shall be paid and delivered to the said absconding or concealed person or persons, his, her or their Executors, Administrators or Assigns; but in the event of no such person or persons appearing or being present to whom such surplus should be paid or delivered, it is necessary that some person should be authorized to receive the same; Be it therefore enacted, That the said surplus shall in that case be paid or delivered to a receiver to be appointed by the Court wherein the proceedings have been had.

IX. And be it enacted, That when the account of the proceedings and accounts of such Trustees are duly filed with the Clerk of said Court agreeably to the directions of the twenty fourth section of said Act, and the same is satisfactory to such Court, the said Court shall be and is hereby authorized by rule or order of said Court to discharge such Trustees from their appointment, and from the performance of all further duties or liabilities thereunder.

CAP. XXXVII.

An Act to continue the Acts now in force for the relief of insolvent confined Debtors.

Passed 22d March 1834.

WHEREAS the Acts now in force for the relief of insolvent confined Debtors will expire on the first day of April next, and whereas it is expedient that the same be continued;

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That an Act made and passed in the tenth and eleventh years of the Reign of King George the Fourth, intituled "An Act to repeal all the Acts now in force, for the support and relief of confined Debtors, and to make other, and more effectual provisions in lieu thereof;" and also an Act made and passed in the first year of the Reign of King William the Fourth, intituled "An Act to amend the Laws in force relating to insolvent confined Debtors;" and also an Act made and passed in the second year of the Reign of King William the Fourth, intituled "An Act to continue and amend the Acts relating to the support and relief of confined Debtors;" and also an Act made and passed in the third year of the Reign of King William the Fourth, intituled "An Act further to amend the Acts relating to the support, and relief of confined Debtors;" be and the same are hereby severally continued and declared to be in full force until the first day of April which will be in the year of our Lord one thousand eight hundred and thirty six and no longer.

CAP. XXXVIII.

An Act in addition to and in amendment of an Act made and passed in the fifth year of the reign of His late Majesty King George the third, intituled "An Act to regulate the proceedings in actions of Replevin, and to enable the sale of goods distrained for rent, in case the rent be not paid in a reasonable time, and for the more effectual securing the payment of rents and preventing fraud by Tenants."

Passed 22d March 1834.

WHEREAS the action of Replevin is frequently used in this Country, in other cases than distress for Rent, and frequently in the place of Detinue, Trespass and Trover; and whereas the provisions of the tenth Section of the above recited Act are merely applicable to Cases of distress for Rent which has been found in many cases inconvenient and injurious; for remedy whereof;

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That the tenth Section of the said recited Act, be and the same is hereby repealed; and in lieu thereof;

II. Be it enacted, in order to prevent vexatious Replevins in all cases, that from and after the passing of this Act, all Sheriffs and other Officers having the execution and return of writs of Replevin, may and shall in executing every writ of Replevin, as well in cases of distress for Rent, as in all other cases whatsoever, in which the action of Replevin will lie, take, in the name of the High Sheriff of the County for the time being, from the Plaintiff and two responsible persons as sureties, a bond in double the value of the goods replevied or seized under such writ of Replevin; such value to be ascertained by the oath of one or more credible Witnesses or Witnesses not interested in the goods replevied or seized by the Sheriff or other Officer, under such writ of Replevin; which oath the person executing such writ of Replevin, is hereby authorized and required to administer; and conditioned for prosecuting the suit with effect, and without delay and for duly returning the goods and chattels replevied or seized in case a return shall be awarded before any deliverance be made of the distress or Goods replevied, and that the Sheriff or other Officer taking such Bond, or his Successor, shall, at the request and cost of the avowant or person making connasance in cases of distress, assign such Bond to the avowant or person as aforesaid, and in all other cases in actions of Replevin, at the request, cost and charges of the Defendant, his Executors, Administrators or Assigns, in such action of Replevin, assign such Bond to the said Defendant or Defendants, his or their Executors or Administrators, by endorsement on the back of such Bond, and attesting it under his hand and seal, in the presence of two or more Witnesses, and if the Bond so taken and assigned, be forfeited the person or persons to whom the Sheriff or other Officer taking such Bond by virtue of the provisions of this Act shall assign the same, may bring an action and recover thereon in his own name and the Court wherein such action shall be brought, may, by a rule of the same Court, give such relief to the parties upon such Bond, as may be agreeable to Justice and reason, and such rule shall have the nature and effect of a Defence to such Bond.

III. And be it enacted, That in all actions of Replevin, whether in cases of distress or otherwise, if the Defendant or Defendants in such action by himself, his Attorney or Agent shall, within forty-eight hours after the seizure of the property, under any writ of Replevin, give notice to the Sheriff or other Officer executing the same, that he or they claim an absolute or special property in the goods seized under the said writ, then the said Sheriff shall not deliver the said property to the said Plaintiff, but shall immediately return the said writ of Replevin with such claim of property endorsed thereon to the Attorney who issued the same, upon which shall be immediately issued by the said Plaintiff the writ of *de proprietate probanda* under, which the said Sheriff shall summon a Jury, as soon as may be, at some convenient time and place to try such claim, giving each party six days previous notice thereof, unless they both consent to an earlier day, and in case such Jury shall find such claim good, then the said Sheriff's power, under the said writ of Replevin shall be at an end; and the said Sheriff shall forthwith return the said goods seized to the said Defendant, and the Plaintiff in such case, if he be not satisfied with the verdict given on such claim of property, may resort to his action of trespass or trover; but if such Jury find the property in the Plaintiff; then the said Sheriff shall replevy and deliver the said goods to the Plaintiff; which said writ and inquisition shall be returned by the said Sheriff, to the Attorney who issued such writ of Replevin, who is hereby required forthwith to file the same in the Office of the Court in which such action was commenced: Provided always, That nothing in this Act contained shall prevent the Defendant from appealing to such action, and Pleading property, in the Court out of which such writ issued, or to which it may be removed.

IV. And be it enacted, That the several Sheriffs of this Province, or other Officers to whom any writ of Replevin, or writ of *de proprietate probanda* shall be directed, shall and may demand and have for the executing of the said writs, and doing all things which they are or shall be legally bound or obliged to do, or perform, by virtue of the said writs, no further or other fee or reward directly or indirectly, than as is set forth in the following schedule, that is to say:

For entering the writ of Replevin, and endorsing the time of receiving the same, one shilling:
For mileage in travelling to execute the same, to be computed from the Court House, to the place where the goods and chattels may be found, and back, each mile three pence:
For executing the Replevin, six shillings and eight pence:
For making a return, if common, one shilling:
For making a return, if special, two shillings and six pence:
For entering the writ of *de proprietate probanda*, and endorsing the time of receiving the same, one shilling:
For mileage, to be computed as above, each mile, three pence:
For summoning the Jury, five shillings:
For the constable, two shillings and six pence:
For swearing the Jury, two shillings and six pence:
For swearing each witness, or reading a paper in evidence, six pence:
For attending the Inquest, five shillings:
For making out the inquisition, and returning the writ of *de proprietate probanda*, five shillings:
For an order to restore the goods and chattels, one shilling:
And any Sheriff or other Officer, to whom such writ or writs shall be directed, who shall presume to demand or receive any further or other fee or reward than as is hereby set forth and directed, shall be deemed and taken to be guilty of extortion and liable to be punished for the same according to law.

CAP. XXXIX.

An Act for the Incorporation of the "Saint John Mills and Canal Company."

Passed 22d March 1834.

WHEREAS it is thought that the opening of Canals across the neck of Land at the Falls of the Saint John River near the City of Saint John, would afford a good Water Power for driving Mill and other Machinery, and that it would be essential to the success of the undertaking that an Act of Assembly incorporating a Company for that purpose should be granted; and that the erecting of Mills at that place, would materially benefit the trade of the said City, and be of great advantage to the lumbering interests of the Province;

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That William Walker, James Kirk, John Robertson, William Leavitt, Isaac Woodward, Angus McKenzie, John V. Thurgar, James T. Hanford, Elisha DeW. Ratchford, Moses H. Perley, John Wilson, and Thomas Weyer, and all and every such other person or persons as shall from time to time become proprietors of shares in the Corporation hereby established, their successors and assigns shall be and they are hereby erected into a Company, and declared to be a body politic and corporate, by the name of "the Saint John Mills and Canal Company," and by that name shall have succession and a Common Seal; and by that name shall and may sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended in any Court or Courts of Law or Equity, or place whatsoever, and be able and capable in Law to have, hold, purchase, get, receive, take on lease, erect, set up, possess and enjoy, houses, lands, tenements, hereditaments, Mills, Milldams, booms, waters, water privileges, rents and profits, in fee simple, leasehold, or otherwise, and also goods and chattels, and all other things real, personal and mixed, and also to give, grant, sell, let, assign or convey the same or any part thereof, and to do and execute all other things in and about the same as shall and may be thought necessary and proper for the benefit and advantage of the said Company; and also that the said Company or the major part of them shall from time to time and at all times have full power, authority and license to constitute, ordain, make and establish such byelaws and ordinances, as may be thought necessary for the good rule and government of the said Corporation; provided such byelaws and ordinances be not contradictory or repugnant to the laws and statutes of the Province, and those in force within the same; and provided also, that nothing herein contained shall be held or construed, to give the said Company the privilege of dealing in the lending of money by way of Discount or otherwise, or engaging in any Banking operations whatsoever.

II. And be it further enacted, That this Act shall be accepted and taken and reputed to be a public Act, of which all and every the Judges and Justices of this Province in all Courts, and all other persons, shall take notice on all occasions whatsoever, as if it were a public Act of Assembly relating to the whole Province, anything herein contained to the contrary thereof in anywise notwithstanding.

CAP. XL.

An Act to revive and amend an Act to incorporate sundry persons by the name of the Saint John Water Company.

Passed 22d March 1834.

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That an Act made and passed in the second year of His present Majesty's Reign, intituled "An Act to incorporate sundry persons by the name of the Saint John Water Company," be and the same is hereby declared to be in full force and effect, except as hereby altered and amended.

II. And be it enacted, That the said Company or Corporation shall not directly or indirectly deal or trade in buying or selling Gold and Silver Coins or bullion, or Bills of Exchange or other negotiable instruments, or any Goods, Wares, Merchandise, or Commodities whatsoever, or deal in the lending of money, or in Bills of Exchange, or other negotiable instruments, by way of Discount or otherwise, or engage in any banking operations whatsoever.

III. And be it further enacted, That the time for paying in five per cent. of the Capital Stock of the said Company shall be and the same is hereby extended to two years after the passing of this Act, instead of twelve months, as required by the second section of the said Act.

CAP. XLI.

An Act to establish and regulate a summary practice in the Supreme Court.

Passed 22d March 1834.

WHEREAS the present practice of proceeding in the Supreme Court where the matter in demand is under twenty pounds in value, has been found to be attended with an expense greatly disproportioned to the amount in question;

I. Be it therefore enacted by the Lieutenant Governor, Council and Assembly, That His Majesty's Supreme Court of Judicature in this Province is hereby empowered in all actions of debt covenant, assumpsit, trover and conversion, and trespass to personal property, instituted in the said Court, the sum total whereof shall not exceed twenty pounds, to proceed in a summary way by the examination of witnesses in open Court or other Legal evidence, to try the merits of such causes, wherein no dilatory plea shall be admitted, and to determine thereon according to Law, and enter up judgment accordingly, unless such cause shall be put to issue by a Jury, in which case such cause shall be tried according to the rules and practice of said Court as in other cases.

II. And be it enacted, That in the said causes the Bill of Complaint or declaration shall be inserted in the writ, a copy of which with a Copy of the Particulars of the Plaintiff's demand, in cases where the Defendant is entitled to the same, shall be served on the Defendant or Defendants, who shall at the Term to which the writ is returnable, or within twenty days after, put in bail or enter his or their appearance in the said action, and if he or they intend to defend the same, file the general issue and give a Copy thereof to the said Plaintiff or Plaintiff's Attorney, and the said cause shall be tried and determined by the Court or Jury according to the rules and practice of the said Court made or to be made for such purpose, and in case the Defendant or Defendants shall not at the Term to which the writ is returnable, or within twenty days after as aforesaid, file the general issue in the said cause, and give in the said Plaintiff or Plaintiff's Attorney a Copy thereof, that then judgment may be entered by default in the said cause at the next succeeding Term, and the Court assess the damages as has been heretofore accustomed.

III. And be it enacted, That the Clerk of the said Court, shall keep a book in which shall be entered a memorandum of all final judgments so given in every cause, whether by default, or tried or determined in a summary way, either by the said Court or a Jury under the provisions of this Act, a copy of which said Judgment certified by the said Clerk under the seal of the Court shall be evidence of the said Judgment in all Courts within this Province.

IV. And be it enacted, That the venue in summary causes within the meaning of this Act, shall be set forth in the margin of the writ, subject to be changed by rule or order of the said Court, according to the ordinary practice thereof; and if any cause in which the venue shall be laid or changed in or to any other said, the same shall be tried at nisi prius in the County in or to which the venue is laid or changed in such manner and form as the said Supreme Court by general rule or order thereof shall prescribe and direct.

V. And be it enacted, That the fees attending the prosecution of suits in a summary way as aforesaid shall be as follows, namely, To the Justices of said Court on the entry of every cause, three shillings and four pence; trial, three shillings and four pence; Clerk for signing and sealing the writ and filing precept, one shilling and six pence; filing all other papers six pence each; filing writ and entering cause, one shilling and six pence; taxing costs, one shilling; entering memorandum and signing final judgment, three shillings; entering defendant's

Continued in second page.