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[No. 190.]

House of Assembly, March 8, 1841.

The following Bill passed by the Legislative Council, was read a first and second time in the House of Assembly, and ordered to be printed in the Royal Gazette and Colonial Herald, Newspapers, and to lie over for further consideration until next Session.

WILLIAM CULLEN, Clerk.

AN ACT relating to the Limitation of Personal Actions.

BE IT ENACTED, by the Lieutenant Governor, Legislative Council and Assembly, and by the authority of the same, That all actions of debt for rent upon an Indenture of demise, all actions of covenant, or debt upon any bond or other specialty, and all actions of debt or *Scire Facias* upon any judgment or recognizance; and also, all actions of Debt upon any award where the submission is not by specialty; and all actions for penalties, damages, or sums of money given to the party grieved, by any Statute or Act of Assembly, now or hereafter to be in force, that shall be sued or brought, shall be commenced and sued within the time and limitation hereinafter expressed, and not after— (that is to say) the said actions of debt for rent upon an Indenture of demise, or covenant, or debt upon any bond or other specialty, actions of debt or *Scire Facias* upon any judgment or recognizance, within ten years after the passing of this Act, or within twenty years after the cause of such actions or suits, but not after, the said actions of the party grieved, one year after the passing of this Act, or within two years after the cause of such actions or suits, but not after, and the said other actions, within three years after the passing of this Act, or within six years after the cause of such actions or suits, but not after: Provided, that nothing herein contained shall extend to any action given by any Statute when the time for bringing such action is, or shall be by any Statute specially limited.

And be it further enacted, That if any person or persons that is or are, or shall be entitled to any such action or suit, or to such *Scire Facias*, is or are, or shall be at the time any such cause of action accrued within the age of Twenty-one years, *feme covert*, non-compositis, or beyond the Seas, then such person or persons shall be at liberty to bring the same actions, so as they commence the same within such times after their coming to, or being of full age, discover, of sound memory, or returned from beyond the Seas, as other persons having no such impediment should, according to the provisions of this Act, have done; and that if any person or persons against whom there shall be any such cause of action, is or are, or shall be at the time such cause of action accrued, or beyond the Seas, then the person or persons entitled to any such cause of action, shall be at liberty to bring the same against such person or persons within such times as are before limited after the return of such person or persons from beyond the Seas: Provided always, that if any acknowledgment shall have been made, either by writing signed by the party liable by virtue of such Indenture, specialty, judgment or recognizance, or his agent, or by part payment, or part satisfaction on account of any principal or interest being due thereon, it shall and may be lawful for the person or persons entitled to such actions, to bring his or their action for the money remaining unpaid and so acknowledged to be due, within twenty years after such acknowledgment by writing, or part payment, or part satisfaction as aforesaid; or in case the person or persons entitled to such action, shall at the time of such acknowledgment be under such disability as aforesaid, or the party making such acknowledgment be at the time of making the same beyond the Seas, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond the Seas, as the case may be; and the plaintiff or plaintiffs in any such action on any Indenture, specialty, judgment or recognizance, may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid, in answer to a plea of this Statute.

And nevertheless, be it enacted, if in any of the said actions, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in the plaintiff, that he take nothing by his Plea, Writ, or Bill, but that in all such cases, the party plaintiff, his Executors and Administrators, as the case shall require, may commence a new action or suit from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, and not after: Provided always, that nothing in this section shall extend to, or affect any contract, promise, or agreement made and subsisting before the passing of this Act.

And whereas by an Act of the General Assembly of this Island, made and passed in the Twenty-first year of the Reign of King George the Third, intituled, "An Act for the limitation of actions, and for avoiding Law-suits," it was amongst other things enacted, that all accounts of account and upon the case, (other than such accounts as concern the trade of Merchandise between Merchant and Merchant, their factors or servants; all actions of debt grounded upon any lending or contract without specialty; and all actions of debt for arrearsages of Rent), should be commenced within three years next after the end of the then present Session of the General Assembly, or within Six years next after the cause of such actions or suits, and not after: and whereas various questions have arisen in actions founded on simple contract, as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments, and it is expedient to prevent such questions, and to make provision for giving effect to the said enactments, and to the intention thereof. Be it further enacted, that in actions of debt, or upon the case, grounded upon any simple contract, no acknowledgment or promise by words only, made after the passing of this Act, shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereon; and that where there shall be two or more joint Contractors, or Executors or Administrators of any Contractor, or no such joint Contractor, Executor or Administrator shall lose the benefit of the said enactments, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any one of them: Provided always, that nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whatsoever: Provided also, that in actions to be commenced against two or more such joint Contractors, or Executors or Administrators, if it shall appear at the trial or otherwise, that a plaintiff, though barred by the recited Act of the Assembly, or the Twenty-first year of King George the Third, or this Act, as to one or more of such joint Contractors, or Executors, or Administrators, shall nevertheless be entitled to recover against any other or others of the defendant by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed to the plaintiff, as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

And be it further enacted, That if any defendant or defendants in any action on any simple contract, shall plead any matter in abatement, to the effect that any other person or persons ought to be jointly sued, and issue be joined on such plea, and it shall appear at the trial that the action could not by reason of the said recited Act of the General Assembly of the Twenty-first year of the Reign of King George the Third, or this Act, be maintained against the other person or persons named in such plea, or any of them, the issue joined in such plea shall be found against the party pleading the same.

And be it further enacted, That no Indorsement or Memorandum of any payment written or made, after the passing of this Act upon any Promissory Note, Bill of Exchange, or other writing, by, or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the said recited Act of the General Assembly of the Twenty-first year of King George the Third, or of this Act.

And be it further enacted, That the said recited Act of the General Assembly of the Twenty-first year of King George the Third, and this Act, shall be deemed and taken respectively to apply to the case of any debt alleged by way of set-off on the part of any defendant, either by plea, notice, or otherwise, according to the nature of such debt, whether by record, specialty, or simple contract.

And be it further enacted, That all parts of the world beyond the limits of this Island shall be deemed to be beyond the Seas, within the meaning of this Act, and of the said recited Act of the General Assembly passed in the Twenty-first year of the Reign of King George the Third, so far as the same relates to personal actions.

In the House of Assembly, the following Bill was presented, read a first and second time, ordered to be printed in the Royal Gazette and Colonial Herald, Newspapers, and to lie over for further consideration until next Session.

WILLIAM CULLEN, Clerk.

AN ACT to extend the Jurisdiction of Justices of the Peace and Commissioners in matters of Small Debt.

WHEREAS it is deemed expedient to extend the Jurisdiction of the Justices of the Peace and of Commissioners in matters of Small Debt:

Be it enacted, by the Lieutenant Governor, Council and Assembly, that from and after the passing of this Act, it shall and may be lawful for any two of the Commissioners appointed under an Act of this Island, intituled "An Act to consolidate and amend the several Acts of the General Assembly therein mentioned, relating to the recovery of Small Debts," to issue summonses in the different Counties for which such Commissioners shall have been appointed, for any Sums above Five Pounds, and not exceeding Ten Pounds, and to make such summonses returnable at their usual monthly meetings; and then to hear and determine all such matters of Debt, after the same manner and according to the same forms as are now directed and prescribed under and by virtue of the above recited Act, and after judgment given, to issue Writs of Execution, in a similar way.

And be it enacted, That the said Commissioners in the whole of their proceedings under and by virtue of this Act, shall be guided and regulated by the tenor of the above recited Act and the enactments of which shall apply to this Act in the same manner as they now apply to the above recited Act.

And be it enacted, That during the continuance of this Act, no action or suit for any sum not exceeding Ten Pounds, and which is recoverable under and by virtue of this Act, shall be commenced or brought in any Court of Record within this Island, any law, usage or custom to the contrary notwithstanding.

Provided always, ad be it further enacted, That nothing in the hereinbefore recited Act contained shall prevent, or be construed to prevent, any person duly authorised, other than an Attorney of the Supreme Court, from appearing before any Commissioner or Commissioners, Justice or Justices as aforesaid, to represent any Corporate Body in any cause or matter before any such Commissioner or Commissioners, Justice or Justices, in which any such Corporate Body may be concerned, either as Plaintiff or Defendant.

And be it enacted, That in all cases where a Capias shall be required against any absconding debtor, it shall and may be lawful for one of the said Commissioners or one Justice of the Peace to issue such Capias for any Debt above Five Pounds, and not exceeding Ten Pounds; and such Capias shall be made returnable before such Commissioner or Justice as may issue the same, together with any other Commissioner or Justice; and it shall be the duty of the Plaintiff in the action to notify such second Commissioner or Justice of the time and place of hearing; and such Commissioner or Justice shall hear and determine all such matters of debt after the same manner and forms as are now directed and prescribed under and by virtue of an Act of this Island, intituled "An Act to authorise Justices of the Peace and Commissioners under the Small Debt Act, to issue Writs of Summary Capias against persons about to leave this Island."

And be it further enacted, That it shall and may be lawful for the said Commissioners, and they are hereby authorised, to hear and determine all actions of Trover, and for damages sustained by injury or deterioration of property, provided the sum set for shall not exceed Ten Pounds; subject, however, in all cases to an appeal in the usual manner to the Supreme Court.

And be it further enacted, That when either Plaintiff or Defendant, in any such action or suit, shall three days before the day of trial, lodge with the Commissioner of Small Debts issuing such summons, a writing, as in the Schedule to this Act annexed, together with the fees of said Jury, requiring a jury, then and in such case, the said Commissioner of Small Debts shall summon a jury of three impartial householders, who shall be sworn to give a verdict on any fact or facts disputed between the parties; and that on the said Jury agreeing, in their verdict, the finding thereof shall be held as final and conclusive in regard to such fact or facts in the procedure to be had subsequent thereto before such Commissioners of Small Debts—but that if said Jury cannot within six hours agree as to the verdict, they shall be dismissed, and it shall not be competent to either Plaintiff or Defendant to insist upon another Jury being called, but the whole matter at issue shall be decided on by the said Commissioners of Small Debts; and that the summons for said Juries shall be served in the same mode as subpoenas to appear before the Commissioners of Small Debts.

And be it enacted, That in all cases of appeal from the decision or judgment of the said Commissioners or Justices to the Supreme Court, the Chief Justice or Justices of the said Court shall be regulated in their proceedings thereon by the above recited Act, so far as they relate to the rehearing in the said Court.

Provided always, and be it enacted, That when on the rehearing of any cause by appeal in the said Court, the matter of fact shall appear doubtful; or when either of the parties shall desire it, and so elect, it shall and may be lawful for the said Court, in all such cases, to order

a Jury for the trial of such matter of fact; and judgment on the verdict shall or may be entered up and signed for the party in favor of whom the same shall have been given.

And be it further enacted, That, on the judgment being in favor of the Plaintiff for any sum exceeding Five Pounds, then, on the Defendant's entering into recognizance, with sufficient security, in the same way as is prescribed in the act before mentioned for the recovery of Small Debts, no execution shall be issued against him or his securities for the space of three months after the said judgment.

And be it enacted, That before any Commissioner or Commissioners, or Justice or Justices of the Peace, shall grant any Appeal as is directed by this or any former Act, for every paper which it may be necessary to transmit, if the Appeal should be insisted in, to the Prothonotary, and such Commissioner or Commissioners or such Justice or Justices shall transmit the sum so paid to the Prothonotary, together with the Appeal papers.

And be it enacted, That the term of imprisonment under and by virtue of this Act, for any sum above Five Pounds and not exceeding Seven Pounds, exclusive of costs, shall be for the space of Six months; and for any sum above Seven Pounds, and not exceeding Ten Pounds, exclusive of costs, shall be for the space of Eight months; after which imprisonment the Debtor or Debtors shall be discharged therefrom, and also fully exonerated and freed from the Debt or Debts, for which such person or persons shall have been confined: Provided, such Debtor or Debtors shall not have taken advantage of the limits and rules of the Jail in which he, she, or they shall have been confined, as hereinafter provided.

Provided also, and be it further enacted, That nothing herein contained shall be construed to prevent any person being in custody or confined in Jail on any judgment for Debt under this Act, when the same shall exceed the sum of Five Pounds, from being allowed all the privileges and advantages arising under and by virtue of an Act, intituled "An Act to repeal an Act made and passed in the Tenth year of the Reign of the late King George the Fourth, intituled An Act for the appointment of limits and rules for the Jail of Charlottetown, and to make other provisions in lieu thereof," any thing in the said Act contained to the contrary notwithstanding: And also providing that all persons confined in Jail under and by virtue of this Act shall be entitled to the benefit of the Act intituled "An Act for the relief of Insolvent Debtors," passed in the 26th of Geo. 3d, Cap. 2.

Provided also, and be it further enacted, That when the original stipulation was that the Plaintiff was to be paid in grain deliverable at the domicile of the Plaintiff, and that the Defendant shall find security as aforesaid, and that the Summons shall be issued within nine months after the furnishing of the last article in the account sued for, then it shall be competent to the Defendant any time within six weeks from the date of the judgment, on his paying the Commissioners the whole costs of suit, to pay to the Plaintiff, at his, the Plaintiff's domicile, in merchantable grain of the same kind, and at the same price, as was originally stipulated, the amount of the judgment, the said defendant being previously bound to hand to the Plaintiff the acknowledgment by the Commissioners as to the payment of costs.

Providing also, and declaring, that nothing in this Act contained shall authorize any one to sue for rent, before any Commissioner of Small Debts.

And be it enacted, That the following Fees shall be taken, under and by virtue of this Act.—

For issuing every Summons, - - -	£0 5 0
For every Subpoena, - - -	0 1 0
For every Summons to a Juror, - - -	0 1 0
For every Capias, - - -	0 5 0
For every Execution, - - -	0 1 4
For every Oath, - - -	0 1 0
For drawing and engrossing every Affidavit, - - -	0 1 6
For every Recognizance, - - -	0 1 6
To every Jury for every trial, - - -	0 3 0

together with three pence per mile, going and returning. And be it further enacted, That this Act shall continue and be in force for the space of years, and from thence to the end of the then next Session of the General Assembly, and no longer.

SCHEDULE to which this Act refers.
(Plaintiff or Defendant, as the case may be)
I, _____ hereby intimate to you _____ the Commissioner of Small Debt, who issued the Summons in said case, that I require a Jury to be summoned in said case.

HOUSE OF ASSEMBLY.
MONDAY, March 8.

The Bill to prevent the carrying of sticks and other weapons during Elections, was, according to order, read a second time, committed, reported with amendments, and engrossed.

Resolved, That a committee be appointed to consider if any and what further proceedings should be taken by this House, during the present session, for obtaining redress for the American Loyalists and disbanded Provincial Troops and their Representatives—with power to send for persons, papers and records.

Ordered, That Mr. Rae, Mr. Le Lacheur and Mr. Fraser do compose the said committee.

A member in his place acquainted the House that the Messenger of this House had been served with a subpoena to give evidence in a civil action before the Supreme Court, about to meet at Georgetown.

Ordered, That the subject matter thereof be referred to a Committee of privileges.

The House accordingly resolved itself into the said Committee.

The Chairman reported, that the Committee had made some progress, and had directed him to move for leave to sit again—which the House agreed to.

Mr. Rae moved to resolve, that Henry William Lobban, the individual subpoenaed to appear before the Supreme Court at Georgetown, being an officer of this House, be directed punctually to continue his attendance on this House, unless, on leave being asked by the party requiring his attendance, this House see fit to grant the same—which being seconded and put, was agreed to by the House.

The Order of the day, for the House in Committee, on the engrossed Bill from the Council, intituled "An Act relating to the limitation of Personal Actions," being read;

The House accordingly resolved itself into the said Committee; and after some time spent therein,

Mr. Hudson (the Chairman) reported, that the Committee had gone through the Bill, without making any amendment thereto.

Ordered, That the said Bill be printed in the Royal Gazette and Colonial Herald Newspapers, and that the further consideration thereof be postponed until next Session.

Mr. Longworth, from the Committee appointed to wait upon His Excellency the Lieutenant Governor, with the Address relative to the employment of a Steamboat for the conveyance of the Mails, reported that their Address had been presented to His Excellency, and that he was pleased to say he would comply with the desire of the House.

Adjourned.

TUESDAY, March 9.

Resolved, That this House do now resolve itself into a Committee of the whole House, on the further consideration of the Bill to extend the jurisdiction of Justices of the Peace and Commissioners in matters of Small Debt.

The House accordingly resolved itself into the said Committee, and after some time spent therein, the Chairman reported progress, and asked leave to sit again.

Mr. Le Lacheur reported, from the Committee to whom was referred the several Petitions presented to the House this Session, praying aid towards the relief and support of Paupers and Lunatics; and he read the Report in his place, and delivered it in at the Clerk's Table, where it was again read, and is as followeth:—

Your Committee having maturely considered the subject to them referred, recommend that the petitioners and others, for whom aid is solicited, be relieved to the extent specified in the following Schedule:—

QUEEN'S COUNTY.	
Elizabeth Le Page, - - -	£10 0 0
Nancy Keilley, - - -	3 0 0
John Ready, - - -	5 0 0
Rosanna Mitchell, - - -	5 0 0
Catherine Hilliard, - - -	5 0 0
Helen Reilley, - - -	4 0 0
James Conway, - - -	5 0 0
Hercules Freeze, New London, - - -	8 0 0
James Maddox, - - -	8 0 0
Joanna Redmond, - - -	5 0 0
Margaret Finlayson, Belfast, - - -	8 0 0
Christiana M'Phee, - - -	3 0 0
Mary M'Alay, towards the support of her son, John, - - -	10 0 0
Archibald Macnevin, - - -	3 0 0
William Purcell, - - -	10 0 0
Three blind persons of the name of Mackay, New London, - - -	12 0 0
John Joseph A. Betteur, do. - - -	8 0 0
Robert Winter, - - -	5 0 0
Ann M'Donald, Belfast, - - -	3 0 0
John Masters, - - -	5 0 0
Thomas Welsh, Lot 66, - - -	5 0 0
William Macleod, Fort Augustus, - - -	3 0 0
Pierre Doucette, sen., Rustico, - - -	5 0 0
Mrs. Quin, Lot 56, - - -	3 0 0
Patrick Macara, - - -	5 0 0
Mary Macara, - - -	3 0 0
Alex. Macnevin, Elliot River, - - -	2 0 0
Flora Macleod, Point Prim, - - -	4 0 0
Catherine Macdonald, Elliot River, - - -	2 10 0
Ewen Macleod, Donald Munn, and John Campbell, Belfast, - - -	7 10 0
To reimburse the Rev. John Macleennan, for advances made by him, - - -	10 0 0
Henry Windsor, New London, - - -	2 10 0
John Bell, Belfast, - - -	3 0 0
To the Ladies' Benevolent Society, towards the support of John Macnamara & Mathew Flinn, - - -	15 0 0
To Donald Macdonald, Esq., for the purpose of paying the passage of John Hines, to New Brunswick, - - -	5 0 0

KING'S COUNTY.	
Margaret Campbell, towards the support of her idiot son, - - -	2 10 0
John Rowan, - - -	3 0 0
Thomas Devereaux, - - -	4 0 0
Angus M'Kellock, - - -	3 0 0
John Griffin, - - -	5 0 0
Elizabeth Brow, - - -	2 10 0
John Smith, - - -	3 0 0
Christiana Maceachern, - - -	3 0 0
Widow Patience, - - -	3 0 0
Henry Prouse, Montague River, - - -	4 0 0
Catherine Partridge, St. Peter's Bay, - - -	2 10 0
Mary Morrison, Lot 45, - - -	2 10 0

PRINCE COUNTY.	
James English, - - -	3 0 0
Daniel Quigley, - - -	5 0 0
Mary Hickey, - - -	3 0 0
Peter Macmillan, - - -	5 0 0
Robert Currie, - - -	2 10 0
William Macneill, - - -	5 0 0
Jesse Duroche, towards the support of Wm. and Madalaine Holmes, - - -	10 0 0
Maurice Curran, - - -	3 0 0
Mary Gallant, Lot 17, - - -	2 10 0
George Murray, Lot 11, - - -	2 10 0
Mary Ann Warren, Lot 5, - - -	3 0 0
Jeremiah Dalton, Lot 7, - - -	5 0 0

Your Committee are of opinion, that it is expedient to grant the prayer of the Petitions from or on behalf of the following persons, viz: Simon Mackinnon, Newtown; James Macleod, Wood Island Road; Charles Russell, Teacher; George Hayden, Vernon River; Donald Mackay, Skye Settlement, Lot 67; Lawrence Macguire, Lot 45; Dominic Gallant, Egmont Bay.

Your Committee have also to state, that they have had before them Petitions from several aged and infirm persons, praying aid, whose children, or other near relatives, ought to support them; and they are of opinion, that, to countenance such applications, would tend to dissolve the ties of natural affection, and to invalidate the claims which the aged and infirm have to be supported by their children and relatives.

Your Committee also deem it their duty to state to the House, that they have had before them various Petitions from disabled and blind persons, who have recently immigrated in that state to this Island; and as such cases cannot prove otherwise than a grievous burthen upon the community, your Committee would therefore recommend the House to adopt such measures as would best conduce to remove so great an evil, by preventing the landing of such persons, unless provided with means for their support, independent of the public funds.

Ordered, that the said Report do lie on the table. Resolved, That this House do now resolve itself into a Committee of the whole House, on the further consideration of the Bill to extend the jurisdiction of Justices of the Peace and Commissioners in matters of Small Debt.

The House accordingly resolved itself into the said Committee.

The Hon. J. S. Macdonald (the Chairman) reported that the Committee had gone through the Bill, and made several amendments thereto, which amendments were agreed to by the House.

Ordered, That the said Bill be printed in the Royal Gazette and Colonial Herald, Newspapers, and that the further consideration thereof be postponed until next Session.

Adjourned.

WEDNESDAY, March 10.

Resolved, That this House do now resolve itself into a Committee of Privileges, on the further consideration of the case of an officer of this House having been served with a Subpoena, to appear before the Supreme Court at Georgetown.

The House accordingly resolved itself into the said Committee.

Mr. Hudson (the Chairman) reported, that the Committee had come to the following Resolution; which Resolution was agreed to by the House:—

Resolved, That it is the opinion of this Committee, from the evidence which has been adduced, and from the satisfactory explanation given by Henry Palmer, Esq., relative to the service of a Subpoena on Mr. Lobban, the Messenger of this House, that the whole transaction originated through inadvertency, and that there was no intention, on the part of any of the parties concerned in the matter, to infringe on the privileges of this House.

An engrossed Bill from the Council, to establish Criminal Sessions in Queens County, was read the first time, and ordered to be read a second time on Wednesday next.

Mr. Le Lacheur, from the Special Committee to whom was referred the Bill for the appointment of Fish Inspectors, and to continue, and amend the Act for regulating the size and quality of Fish Barrels and Tierces, reported, that the Committee had gone through the Bill, and made several amendments thereto.