

CHAPTER 62.

Of the recovery of penalties upon the forfeiture of certain Recognizances.

SECTION

- 1.—Rule *nisi* to declare recognizances forfeited, and further proceedings.
- 2.—Justice may return forfeited recognizance to Supreme Court.

SECTION

- 3.—Court may submit question to jury.
 - 4.—Order for payment may be enforced by attachment.
- Schedule.

1. Whenever any recognizance returned into or given to the Supreme Court shall become forfeited by breach of the condition thereof, the Court may by a rule *nisi*, to be made upon sufficient affidavits shewing the execution and forfeiture of such recognizance, and to be served upon such of the parties executing the same as shall be within the jurisdiction of the Court, require such parties to show cause why the said recognizance should not be declared to be forfeited, and the amount of the penalty thereof paid by them; and thereupon, after hearing the parties to such rule, or such of them as may appear upon the same, or in default of appearance, make an order pronouncing such recognizance forfeited and directing the payment into Court of the penalty thereof by the parties liable, or discharging such rule *nisi*, as may be lawful in that behalf: provided that the Court, upon sufficient special cause, may if it shall see fit to do so, lessen or altogether remit the amount of such penalty.

2 When any recognizance for the doing or not doing of any matter or thing, other than the appearance of any person before the Supreme Court aforesaid, and made to any Justice or Court of Session, shall become forfeited, such Justice, or in case of his death or incapacity, any

other Justice of the district or the Clerk of Peace or the Court of Session, as the case may be, may make return of such recognizance and of the forfeiture thereof under his hand and seal, in the form substantially in the schedule annexed, to the Supreme Court, and thereupon the like proceedings shall be had for declaring the forfeiture of such recognizance and for the recovering of the penalty as are hereinbefore directed for other cases.

3. The Court in which any such rule *nisi* shall be pending may, in any case wherein the recognizance is conditioned for the performance of any act not to be done in or before or to such Court, should they consider it expedient for the ends of justice and the discovery of the truth, submit any question in controversy upon such rule *nisi* to the determination of a jury, in like manner as if such question came before the Court upon a special case; and after such determination such further order shall be made by the Court as hereinbefore directed.

4. Every such order for the payment in whole or in part of any such penalty shall be enforced by the Court making the same, by process of contempt and by attachment of the property of the party liable in that behalf. The form of such process and attachment shall be as prescribed in the schedule annexed, and the amount levied thereunder shall be paid over by the Court to the Receiver General for the use of the colony.

SCHEDULE.

RETURN OF RECOGNIZANCE BY JUSTICE OF THE PEACE.

I, G. H., of _____, one of Her Majesty's Justices of the Peace for the _____ district of Newfoundland, do hereby certify and return unto the Honorable the Supreme Court that the recognizance heretofore annexed, marked by me, was on or about the _____ taken before _____ and that the same has become forfeited by breach of the condition thereof by X. Y., therein named.

Given under my hand and seal at _____ this _____ day of _____ 18____

(Signed), G. H. [L. S.]

[If the return be made by any other than the Justice before whom the recognizance was entered into, or the breach of condition occurred, or was shewn, let the words "all which is satisfactorily proven to me," be added after the word "named."]

FORM OF ATTACHMENT OF THE PERSON FOR CONTEMPT OF ORDER OF COURT.

[L. S.] Victoria, by the Grace of God, of the United Kingdom
of Great Britain and Ireland, Queen, Defender of
the Faith, &c., &c

To the Sheriff of , greeting :

We command you that you arrest A. B., of , &c., and
him commit to prison, there to remain until he shall have paid into the
Supreme Court the sum of in obedience to the order of our said
Court, dated , or until he be discharged in due course of law.

Witness the Honorable Justice of our Supreme Court of
Newfoundland, at , this day of (date of issuing).

By the Court,

M. W. W., C. C. & R.

FORM OF ATTACHMENT OF PROPERTY.

[L. S.] Victoria, by the Grace of God, &c.

To the Sheriff of , greeting :

We command you that of the property of A. B., of , &c., you
cause to be made dollars, which the said A. B. was, by order of
our Supreme Court, dated , ordered to pay into our said Court ;
and the amount levied you pay over to the Chief Clerk of our said Court,
to abide the order of the said Court herein.

Witness the Honorable Justice of our Supreme Court of
Newfoundland, at , this day of (date of issuing).

By the Court,

M. W. W., C. C. & R.