



ANNO QUARTO & QUINTO

# GULIELMI IV. REGIS.

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## *Cap. xcii.*

An Act for amending the Proceedings and Practice of the Court of Passage of the Borough of *Liverpool* in the County Palatine of *Lancaster*.

[30th July 1834.]

**W**HEREAS there is in the Borough of *Liverpool* in the County Palatine of *Lancaster* an ancient Court of Record for the Trial of Civil Actions called the Court of Passage, held before the Mayor and Bailiffs of the said Borough: And whereas it is expedient that the Mode of proceeding in and the Practice of the said Court should in certain respects be amended: And whereas the said Court of Passage is held before the Mayor and the Two Bailiffs of the said Borough, and it would tend to prevent Delay if the said Court could be held before the said Mayor only, or before the said Bailiffs only, or before the said Mayor and One of the said Bailiffs only: May it therefore please Your Majesty that it may be enacted; and be it 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 the said Court of Passage may, from and after the passing of this Act, for all Purposes be held before the said Mayor and Bailiffs, or before the said Mayor and One of the said Bailiffs, or before the said Mayor alone, or before the said Two Bailiffs only; but that in every such Case all Proceedings in the said Court shall be had and entitled, and all Entries shall be made, and all Judgments given and entered up in the same Manner and Form as if the said Court had been

Court may be held before the Mayor and One Bailiff, or before the Mayor alone, or Two Bailiffs only.

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held before the said Mayor and Bailiffs; and all Bills of Exceptions shall be under the Seals of the said Mayor and Bailiffs, although the Cause wherein such Bill shall have been tendered shall have been tried before One or Two of them only.

Assistant  
Barrister to  
be appointed.

II. And be it further enacted, That it shall and may be lawful for His Majesty, His Heirs and Successors, to appoint a Barrister at Law of not less than Seven Years standing to be Assistant to the said Mayor and Bailiffs in the said Court of Passage upon the Trial of all Causes and the hearing of all special Arguments in the said Court; and that the said Mayor and Bailiffs shall not, nor shall any of them, sit upon the Trial of such Causes, or the hearing of such special Arguments, without the Assistance of the Barrister so appointed as aforesaid, and that such Barrister shall not be removed from such Office during his good Behaviour therein: Provided always, that in case of the Death, Sickness, or necessary Absence of the Barrister so appointed as aforesaid, it shall be lawful for the Recorder of the said Borough to be Assistant to the said Mayor and Bailiffs upon the Trial of Causes and the hearing of special Arguments in the said Court, until another Barrister shall be appointed to be Assistant in manner aforesaid, or until the Recovery or Return of such Barrister so appointed as aforesaid: Provided also, that no such Barrister shall, during the Time of his holding the said Appointment of Assistant to the said Mayor and Bailiffs, practise or act as Counsel or Pleader in any Action, Suit, or other Business arising in the said Court of Passage, or at the Quarter Sessions of the Peace in and for the said Borough of *Liverpool*, or any Adjournment thereof.

Assistant  
Barrister to  
have a Salary.

III. And be it enacted, That there shall be paid by the Common Council of the said Borough, out of the Funds of the said Corporation, to the Barrister so selected and appointed as aforesaid, a sufficient yearly Salary by equal half-yearly Payments as a Remuneration for the Duties hereby directed to be executed by him.

Power to  
make Rules  
for regu-  
lating the  
Period of  
holding  
Courts.

IV. And whereas the Court for the Trial of Causes in the said Court of Passage is held once in every Quarter of the Year, and the Court for the Execution of Writs of Inquiry is held once in every Month, and it may be expedient that Courts should be held more frequently; be it therefore enacted, That the said Court of Passage shall have Power to make such Rules and Orders with regard to the Periods and the Days of the Week on which the Courts for the Trial of Causes, or for the Execution of Writs of Inquiry, or for other Purposes, in the said Court of Passage, shall be held, and also with regard to the Adjournment of such Courts respectively, as to the said Court of Passage shall seem fit: Provided always, that nothing in this Act contained shall abridge or affect any Powers of Adjournment now possessed by the said Court.

No Causes  
to be re-  
moved under  
20l. unless  
by Writ of  
Error or un-  
der 19 G. 3.

V. And whereas it is expedient that Actions brought in the said Court of Passage, wherein the Debt or Damages or Things demanded do not amount to the Sum of Twenty Pounds, should not be removable therefrom into any other Court otherwise than by Writ of Error; be it therefore enacted, That if in any Action, Plaint, Suit, or Cause which shall, after the passing of this Act, be brought or commenced in the said Court of Passage, (excepting Actions, Suits, Plaints, or Causes concerning the



Inheritance or Freehold or Title to Land, and except Actions of Ejectment,) it shall appear by the Declaration that the Debt, Damages, or Value of the Things demanded do not amount to the Sum of Twenty Pounds, then such Action, Plaint, Suit, or Cause shall not be removed out of the said Court of Passage into any other Court whatever: Provided always, that nothing in this Act contained shall prevent any Person or Persons against whom any Judgment or Judgments shall be given in any Action or Actions in the said Court of Passage from removing the Record of such Judgment or Judgments by Writ of Error: Provided also, that nothing in this Act contained shall prevent any of His Majesty's Superior Courts of Record at *Westminster*, upon the Application of any Plaintiff or Plaintiffs who shall have recovered a Judgment in any Action brought in the said Court of Passage, from causing the Record of such Judgment to be removed into such Superior Court, pursuant to the Provisions of an Act passed in the Nineteenth Year of the Reign of His late Majesty King *George* the Third, intituled *An Act for extending the Provisions of an Act made in the Twelfth Year of the Reign of King George the First, intituled 'An Act to prevent frivolous and vexatious Arrests,' and for other Purposes.*

Proviso.

19 G. 3. c.70.

VI. And whereas it would tend to the Relief of Persons imprisoned on Mesne Process issuing out of the said Court of Passage if the Provisions of an Act passed in the Forty-third Year of the Reign of King *George* the Third, intituled *An Act for the more effectual Prevention of frivolous and vexatious Arrests and Suits, and to authorize the levying of Poundage upon Executions in certain Cases*, as such Provisions are extended by an Act passed in the Seventh and Eighth Years of the Reign of King *George* the Fourth, intituled *An Act to prevent Arrests upon Mesne Process where the Debt or Cause of Action is under Twenty Pounds, and to regulate the Practice of Arrests*, so far as the same relate to the Deposit of Money with the Sheriff by Persons arrested on Mesne Process, and to the depositing and paying Money into Court, were extended to Arrests on Mesne Process in the said Court of Passage; be it therefore enacted, That all the Provisions of the said first-recited Act so extended as aforesaid, as far as the same relate to depositing with the Sheriff, in lieu of giving Bail, the Sum indorsed on the Writ, or to depositing and paying into Court the Sum indorsed on the Writ, and to all the Proceedings consequent upon such depositing, or depositing and paying into Court, shall apply and extend to all Suits in the said Court of Passage wherein the Defendant or Defendants shall, after the passing of this Act, be arrested on Mesne Process; and that all Matters and Things directed to be done to or by or with respect to the Sheriff in the said last-recited Acts or either of them shall be done to or by or with respect to the Serjeant at Mace of the said Court of Passage: Provided always, that the Sum to be deposited by the Defendant or Defendants in any such Suit in the Hands of the Serjeant at Mace to answer the Costs in the same shall be the Sum of Five Pounds, and not the Sum of Ten Pounds, as required by the said recited Act passed in the Forty-third Year of the Reign of King *George* the Third, and that the Sum to be deposited and paid by any Defendant or Defendants in any such Suit into the said Court of Passage, as a Security for the Costs of the Action, there to abide the Event of the Suit, shall be the Sum of Ten Pounds, and not the Sum of Twenty Pounds, as required by the said Act passed in the Seventh and Eighth Years of the Reign of King *George* the Fourth.

In case of Arrest, Defendant to be allowed to deposit Sum sworn to and Costs in Hands of Serjeant at Mace, or to pay Money into Court, 43 G. 3. c. 46. 7 & 8 G. 4. c. 71.

VII. And



All Writs to be directed to and returned by the Serjeant at Mace, who is to be liable like the Sheriff.

VII. And whereas Doubts have arisen with regard to the Liability of the Serjeant at Mace of the said Court of Passage; for Remedy thereof be it therefore enacted, That all Writs, Precepts, and Process, both mesne and final, issuing out of the said Court, shall be directed to the Serjeant at Mace, who shall thereupon, if he shall think fit, make out his Warrant for the Execution of the same to his Officer or Officers; and that all such Writs, Precepts, and Process shall be returned by and in the Name of the said Serjeant at Mace, who shall be liable for the due Service thereof, and in all other respects in the same Manner as the Sheriff of a County is liable in respect of Writs to him directed.

Power to arrest by Mesne Process Persons about to depart the Realm with Intent to avoid Payment of their Debts.

VIII. And whereas it frequently happens that Persons about to depart the Realm with Intent to avoid the Payment of their just Debts resort to the Port of *Liverpool*, and are found within the Jurisdiction of the said Court of Passage, and it is expedient that such Persons should be subject to be held to Bail by the Process of the said Court, and to be proceeded against therein; be it therefore enacted, That where any Person indebted to any other Person in a greater Sum than Twenty Pounds shall be found within the Jurisdiction of the said Court, although the Cause of Action in respect whereof such Person shall be so indebted shall not have arisen within the Jurisdiction of the said Court, it shall be lawful for the Person to whom he shall be indebted to cause him, by an Order of the said Assessor, or in his Absence of the said Mayor or one of the Bailiffs, to be held to Bail, by Mesne Process issuing out of the said Court, in Double the Amount of such Debt, provided that an Affidavit, or in the Case of a Quaker or Moravian an Affirmation, to the Satisfaction of the said Court, shall be previously made and filed in addition to the usual Affidavit of the Debt, that the Person making such Affidavit or Affirmation verily believes that the Person against whom such Process is to be issued is about to depart the Realm with Intent to avoid the Payment of his just Debts, and shall also set forth in such Affidavit the Facts and Circumstances on which such Belief is founded, which Affidavit shall be sworn, or Affirmation made, before the same Person and in the same Manner as other Affidavits in the said Court are sworn, and Affirmations made; and the Process upon which any such Person shall be so arrested shall state that he is about to depart the Realm with Intent to avoid the Payment of his just Debts; and it shall not be necessary to aver in the Declaration, or in any other of the Proceedings in such Suit, or to prove at the Trial, that the Cause of Action in respect of which such Person was so arrested arose within the Jurisdiction of the said Court, but the Declaration shall in such Case state that the Defendant was about to depart the Realm with Intent to avoid the Payment of his just Debts, which Statement it shall not be necessary for the Plaintiff at the Trial of the Cause to prove; and no Nonsuit, Arrest of Judgment, or Writ of Error shall be permitted or shall prevail in such Case on the Ground that it was not proved, or did not appear upon the Declaration or Record, that the Cause of Action arose within the Jurisdiction of the said Court; and all Laws, Statutes, Rules, Orders, and Practices relating to Suits brought for Causes of Action arising within the Jurisdiction of the said Court shall extend and apply to such Actions as aforesaid wherein the Cause of Action has not arisen within such Jurisdiction; and if in the making of any such Affidavit or Affirmation as aforesaid any Person shall swear or affirm falsely, every such Offender shall be deemed guilty of Perjury, and shall be punished accordingly.

IX. And



IX. And whereas great Inconvenience arises by reason that Witnesses residing out of the Jurisdiction of the said Court of Passage cannot be compelled to attend and give Evidence on the Trial of Causes in such Court by any Process issuing out of the same; for Remedy thereof be it enacted, That where a Subpœna ad testificandum, or any Process in the Nature thereof, shall be issued by either Party in any Suit depending in the said Court, the Service of such Subpœna or other Process in any Part of *England* or *Wales* shall be as valid as if the same had been served within the Jurisdiction of the said Court, and the Party at whose Instance such Subpœna or Process was issued shall have all the same Remedies by way of Action against the Person or Persons named therein, in case of Nonattendance, as he would have had in case such Person or Persons were resident within the Jurisdiction of the said Court, and had been duly served therein with such Subpœna or Process.

Witnesses out of Jurisdiction may be served with Subpœna.

X. And for the Prevention of frivolous Suits, be it enacted, That wherever in any Action brought in the said Court of Passage (not concerning the Freehold or Inheritance or Title to Land) the Debt or Damages recovered in such Action do not exceed the Sum of Forty Shillings, it shall be lawful for the said Court, either upon the Trial of such Action, or afterwards upon the Application of the Defendant or Defendants in such Action, to certify that such Debt or Damages do not exceed such Sum of Forty Shillings; and after such Certificate granted the Plaintiff or Plaintiffs in such Action shall not be entitled to recover from the Defendant or Defendants in the same any Costs of Suit whatsoever: Provided always, that nothing in this Act contained shall affect or alter the Operation of an Act passed in the Twenty-fifth Year of the Reign of His late Majesty King *George* the Second, intituled *An Act for the more easy and speedy Recovery of small Debts in the Town and Port of Liverpool and Liberties thereof, in the County Palatine of Lancaster*, except as herein-after mentioned.

Plaintiff recovering Debt or Damages under 40s. to have no Costs if the Court shall not certify.

Proviso.

25 G. 2. c. 43.

XI. And whereas by an Act passed in the Twenty-fifth Year of the Reign of King *George* the Second, intituled *An Act for the more easy and speedy Recovery of small Debts in the Town and Port of Liverpool and Liberties thereof, in the County Palatine of Lancaster*, it is amongst other Things enacted, that if upon any Action of Debt or Action on the Case upon an Assumpsit for Recovery of any Debt, or upon any Action of Detinue (except as in the said recited Act therein-after is excepted) to be sued or prosecuted against any Person or Persons in the King's Courts at *Westminster*, or other Court or Courts elsewhere out of the said Court of Requests, the Plaintiff or Plaintiffs shall declare for any Sum of Money or other Thing not amounting to or in Value to the Sum of Forty Shillings, the Defendant may plead generally, in bar of such Action, that at the Time of commencing such Action the Defendant was an Inhabitant or Resident or a Sailor within the said Borough and Corporation and Port of *Liverpool*, or the Liberties of the same, and was liable to be warned or summoned before the said Court of Requests, without pleading any other Matter specially; or in case the Plaintiff or Plaintiffs in any such Action shall declare for the Sum of Forty Shillings, or any Sum exceeding the Sum of Forty Shillings, or other Thing as aforesaid of the Value of Forty Shillings, the Defendant may plead generally, over and above such Matters as aforesaid, that the Defendant was not at the Time of committing such Action indebted unto the Plaintiff or Plaintiffs in any Sum of Money

Repeal of so much of 25 G. 2. c. 43. as relates to the Court of Passage.

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amounting to the Sum of Forty Shillings, or that the Thing or Things sued for or detained was not of the Value of Forty Shillings, without pleading any other Matter specially, whereto the Plaintiff or Plaintiffs shall or may reply generally, and deny the Matters pleaded as aforesaid; and if the Plaintiff or Plaintiffs be nonsuited, or discontinue his or their Action, or Verdict pass against him, or Judgment be given on Demurrer, the Defendant shall have Double Costs; or if the Judge or Judges who shall try the said Cause shall not in open Court certify on the Back of the Record that there was a probable Cause of Action for or to the Amount or Value of Forty Shillings or more, or that the Freehold or Title to the Plaintiff's Lands, Tenements, or Hereditaments, or that an Act of Bankruptcy principally came in question, the Plaintiff or Plaintiffs shall not recover, but be nonsuited in such Action, and the Defendant shall in like Manner be entitled to Double Costs of Suit: And whereas the above Provisions have been found productive of Injustice, and it is expedient that the same should, so far as regards the said Court of Passage, be repealed, and other Provisions substituted in the Place thereof; be it therefore enacted, That the above-recited Provisions of the said Act passed in the Twenty-fifth Year of the Reign of King *George* the Second shall, so far as the same regard the said Court of Passage, be and the same are hereby repealed: Provided always, that where at the Time of the passing of this Act any Action shall be depending in the said Court of Passage in which at that Time any Matter allowed by the said recited Act of the Twenty-fifth Year of the Reign of King *George* the Second shall have been pleaded, such Action shall be proceeded in, and such Costs shall be paid therein, as if this Act had not been passed.

As to Actions depending in the Court of Passage for Sums recoverable in the Court of Requests.

XII. And be it enacted, That in all Actions now depending in the said Court of Passage for the Recovery of any Sum of Money, or other Matter or Thing, which is recoverable by virtue of the said recited Act passed in the Twenty-fifth Year of the Reign of King *George* the Second in the said Court of Requests, and wherein the Matters permitted by that Act to be pleaded shall not have been pleaded, and in all Actions hereafter to be brought in the said Court of Passage for the Recovery of any such Sum, Matter, or Thing, it shall be lawful for the Defendant to plead generally that the Sum of Money or other Matter or Thing sought to be recovered does not amount to or to the Value of Forty Shillings, and that the same is recoverable in the said Court of Requests; and if the Plaintiff in such Suit shall not recover the Sum of or to the Value of Forty Shillings or upwards he shall not be entitled to have or recover any Costs of Suit whatsoever, unless the said Court of Passage shall at the Trial of such Action certify that the same was proper to be tried in the said Court, and upon such Certificate being granted the Plaintiff shall be entitled to have and recover his full Costs of Suit.

Confessing Seals to Bill of Exceptions.

XIII. And whereas, where a Bill of Exceptions is sealed by the said Mayor and Bailiffs, and the Record is thereupon removed from the said Court of Passage into a Superior Court by Writ of Error, the Presence of the said Mayor and Bailiffs is required in such Superior Court to confess their Seals to such Bill of Exceptions: And whereas such Practice occasions much Inconvenience and Expence; for Remedy thereof be it enacted, That in any Action now or hereafter to be brought in the said Court of Passage in which a Bill of Exceptions shall have been or shall

be tendered and sealed, and the Record removed by Writ of Error into a Superior Court, it shall not be necessary for the said Mayor and Bailiffs, or any of them, to be present or to attend personally in such Superior Court to confess their Seals, but that it shall be sufficient if such Bill of Exceptions be transmitted to such Superior Court under the Seals of the said Mayor and Bailiffs.

XIV. And be it enacted, That the Charges and Expences of procuring this Act shall be defrayed by the said Common Council of the Borough of *Liverpool* out of the Funds of the said Corporation.

Expences of  
Act.

XV. And be it enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by all Judges, Justices, and others.

Public Act

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