

*At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Wednesday the first day of July, 1761, and in the first year of His Majesty's Reign, and there continued by several prorogations until the 12<sup>th</sup> Day of October, 1764, in the Fourth Year of His Majesty's Reign.*

4 George III – Chapter 1 (Session 2)

**An Act for Reformation of Jeofails and Mispleadings, and to prevent Arrests and Reversals of Judgments, and for the better Advancement of Justice.**

Be it enacted by the Governor, Council and Assembly, that if any issue be tried by the oath of twelve or more indifferent men for the party, plaintiff or defendant, or for the party, tenant or defendant, in any court of record, the justice or justices, by whom the judgment thereof ought to be given, shall proceed and give judgment in the same; any misleading, want of colour, insufficient pleading or jeofail, any miscontinuance or discontinuance or misconveying of process, misjoining of the issue, want of warrant or attorney for the party, against whom the same issue shall happen to be tried, or any other default or negligence of any of the parties, their councellers or attornies had or made to the contrary notwithstanding, and the said judgment shall stand according to the said verdict, without reversal by writ of error or false judgment; provided, that in avoiding of errors through the negligence of attornies, every person named as attorney in actions and suits pleaded to issue, shall from time to time deliver, or cause to be delivered his or their sufficient and lawful warrant of attorney, to be entered of record, for every of the said actions or suits wherein they be named attornies, to the clerk of the court; that is to say, the attorney for the plaintiff or demandant, shall file his warrant of attorney as aforesaid, the same term he declares, and the attorney for the defendant or tenant, shall file his warrant, the same term he appears, upon pain of forfeiting unto our sovereign Lord the King, the sum of five pounds, for not delivering the said warrant of attorney, to be recovered by action of debt, bill, plaint or information.

And be it further enacted, that after verdict as aforesaid, the judgment thereupon shall not be stayed or reversed, for any defect in form in any writ original or judicial, count declaration bill, plaint, suit or demand, or any variance in form only between the original or bill, and the declaration or plaint or for want of any writ, original or judicial, or for any imperfect or insufficient return of any sheriff or other officer.

And be it further enacted, that after verdict, judgment thereupon shall not be stayed or reversed for want of an averment of any life or lives, so as the said person be proved to be alive, or forwarding the venire facias to a wrong officer upon any insufficient suggestion, or because the visne is in some part misawarded or sued out of more or fewer places than it ought to be, so as some one place be right named, or for misnaming any of the jurors in surname or addition in any of the writs or returns thereof, so as it be proved that the said writ was returned by such officer, or by reason that the plaintiff in any ejection firma, or in

any personal action or suit being an infant under the age of one and twenty years, did appear by attorney therein, and the verdict passed for him.

And be it further enacted, that judgment shall not be stayed or reversed after verdicts, for want of pledges, or but one pledge to prosecute, returned upon the original writ, or because the name of the sheriff is not returned on the original writ, or for want of entering pledges upon any bill or declaration, or for not alledging the bringing into court any bond, bill, indenture, or other deed mentioned in the declaration or other pleading, or for want of allegation of bringing into court any letters testamentary, or letters of administration, or for omission of by force and arms, and against the peace, or for mistaking the Christian name or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month or year, by the clerk in any bill, declaration or pleading, where the right name, surname, sum, day, month or year in any writ, plaint, roll or record proceeding, or in the same roll or record, where the mistake is committed, is, or are once truly and rightly alledged, whereupon the plaintiff might have demurred and shewn the same for cause, nor for want of averment of this he is ready to verify, or for, this he is ready to verify by record, or for not alledging, as it appears by records for, that there is no right venue, so as the cause were tried by a jury of the proper county or place, where the action is laid nor for that the increase of costs after a verdict in an action, or upon a non suit in replevin, or not entered to be at the request of the party, for whom the judgment is given, nor by reason that the costs in any judgment whatsoever, are not entered to be by consent of the plaintiff, but that all such omissions, variances, defects and all other matters of the like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered, shall be amended by the justices or other judges of the courts where such judgments are or shall be given, or whereunto the record, is, or shall be removed by writs of error, or by appeal in any action real, personal or mixt, according to the usage and course of proceedings in this province.

And be it further enacted, that where any demurrer shall be joined, and entered in any action or suit in any court of record within this province, the judges shall proceed and give judgment, according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission or defect in any writ, return, plaint, declaration or other pleading, process or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly let down and express together with his demurrer, as causes of the same, although such imperfection, omission or defect be matter of substance, so as sufficient matter appear in the said pleadings, upon which the court may give judgment, according to the very right of the cause, and therefore no advantage or exception shall be taken of, or for an immaterial traverse, or of, or for the default of entering pledges upon any bill or declaration or of or for the default of alledging the bringing into court any bond, bill, indenture or other deed whatsoever mentioned in the declaration or other pleading, or of or for the default of alledging the bringing into court letters testamentary or letters of administration or of or for the omission of, by force and arms, and against the peace or either of them, or of, or for the want of averment of this he is ready to verify, or of, this he is ready to verify by record, or of, or for not alledging as it

appears by the record, but the court shall give judgment according to the very right of the cause as aforesaid; without regarding any such imperfections, omissions and defects, or any other matter of the like nature, except the same shall be specially, and particularly set down and shewn for course of demurrer.

And be it further enacted, that no judgment entered upon confession, nihil dicit, or non sum informatus, in any court of record shall be reversed, nor any judgment upon any writ or inquiry of damages executed thereon be staid or reversed, for, or by reason of any imperfection, omission, defect, matter or thing whatsoever, which by force of this act would have been aided and cured as Jeofails, in case a verdict of twelve men had been given in the said actions or suit, so as there be an original writ or bill, and warrants of attorney duly filed as by this act is directed.

And be it further enacted, that this act shall extend in all jeofails as aforesaid to all suits in any court of record, for recovery of any debt immediately owing, or any revenue belonging to his Majesty his heirs or successors.

Provided always, and be it enacted by the authority aforesaid; that nothing in this act before contained, shall extend to any writ, declaration or suit of appeal for felony of murder, or to any indictment or presentment of treason, felony or murder or other matter, or to any process upon any of them; or to any writ, bill, action or information upon any penal statute.

And be it further enacted, that no dilatory plea shall be received in any court of record, unless the party offering such plea do by affidavit prove the truth thereof, or shew some probable matter to the court to induce them to believe that the fact of such dilatory plea is true.

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