

Taking, respiting or discharging every Recognizance, and discharging a Prisoner by Proclamation,	£0	1	0
Preparing, signing and sealing each Subpcena or Bench Warrant,	0	2	0
Every Subpcena Ticket,	0	0	6
Every Certificate under Seal,	0	2	0
Entering appearance of Defendant upon Indictment,	0	1	0
Entering Judgment of Court, each person,	0	1	0
Trial and Judgment;	0	3	6
Every Warrant of Assessment, and Seal,	0	2	6
Drawing every Order, Rule, Ordinance or Regulation of the Session, per folio,	0	0	6
Calling Special Sessions, and preparing notices to Justices,....	0	10	0
Copying Jurors' Lists, Parish Lists, and Returns from Sessions, and making copies of the same when necessary, per folio, ..	0	0	6
Assisting on Trial before the Sessions, to be allowed by the presiding Justice, not less than half a guinea and not exceeding one guinea.			
Any other service not provided for, to be allowed in the discretion of the Justices in Session.			

Constables Fees.

Serving Summons, and making Return thereto,	£0	1	0
Serving Warrant to arrest, ...	0	1	6
Taking Replevin Bond,	0	2	0
Getting Warrant endorsed,	0	1	0
Serving Warrant of Distress,	0	1	0
And Poundage, 1s. per £1.			
Executing Warrant of Imprisonment,	0	2	0
Serving Subpcena, and Return,....	0	1	0

In addition to these Fees, to have three pence per mile, going and coming, to be charged according to the number of miles actually travelled.

CAP. XXXI.

An Act to consolidate and amend the Laws relating to Insolvent Confined Debtors.

Passed 26th April 1850.

I. **B**E it enacted by the Lieutenant Governor, Legislative Council and Assembly, That whenever any person may be confined within any gaol or the limits thereof, within this Province, for any debt, damages or costs, whether on mesne or final process, and such person so confined shall be unable to provide or obtain his necessary support, it shall and may be lawful for such person immediately, or at any time after the said debtor may be put in confinement, to make application to any Judge of the Supreme Court, or any Justice of the Inferior Court of Common Pleas, together with any Justice of the Peace, being of the quorum, in the County where such person shall be confined, for a weekly support or maintenance; and such Judge or Justices, (after fourteen days previous notice to the plaintiff or person at whose suit such person may be confined, or his Attorney,) shall examine on oath such person so confined, as to his ability to support himself; and if on examination, to be taken in writing on oath as aforesaid, to be filed in the Office of the Clerk of the Court out of which such process may have issued, it shall appear to such Judge or Justices that such person is utterly unable to support himself, and has no property whatever, real or personal, of what nature or kind soever, except necessary bedding, wearing apparel, kitchen utensils,

Confined Debtors may apply for an order for maintenance to a Judge of the Supreme Court or Justice of the Common Pleas and Justice of the quorum.

If he be found unable to support himself, &c., an order for maintenance to be made.

utensils, and necessary tools of his trade or occupation, not exceeding in value in the whole fifteen pounds, and that such confined person hath not at any time since he or she was served with the first or mesne process in the suit in which he may have been confined, or since he had notice of the said suit having been commenced, made over, assigned, transferred or put out of his possession or power, either directly or indirectly, any property whatsoever, whether real or personal, for the purpose of defrauding such plaintiff, or giving any undue preference to any other plaintiff or creditor, that then it shall be lawful for such Judge or Justices to make an order for the party at whose suit such person may be confined, to pay a weekly sum of five shillings, to be applied for the support of such person, which sum shall be paid weekly, and the first payment to be paid at the time such Judge or Justices may in such order direct; and after such order made, it shall be the duty of such party, without any further notice, to pay such weekly support agreeably to such order; and in case of failure thereof, it shall and may be lawful for any such Judge or Justices as aforesaid, on such failure being made known to him or them, to make an order under his or their hands, directed to the Sheriff or Gaoler, to discharge the said person out of confinement by reason of such suit, and such person shall be forthwith discharged by the said Sheriff or Gaoler, without any claim or detention for or by reason of any Sheriff's fees, Gaoler's fees, board found or provided, or any pretence whatsoever; provided that nothing in this Act shall prevent any plaintiff from prosecuting his suit, if on mesne process, to final judgment, or from taking out *fieri facias* against the goods and chattels, lands and tenements of such defendant, or from recovering in any other manner the amount of the judgment obtained in the suit, so always that the person of any debtor so discharged shall be freed from arrest in any proceedings or actions upon such judgment.

On failure of payment an order for discharge to be made.

Not to prevent proceeding to final judgment or taking out *fieri facias*.

Examination of debtor may be taken and order made by any person authorized to take such examination when requested by the person issuing the notice.

Examination to be taken at the appointed time, and an entry to be made of the fact.

Act extended to judgment debtors in the Court of a Justice of the Peace

II. And be it enacted, That in any case where a notice of the examination of any insolvent confined debtor shall have been given under the provisions of this Act by any person or persons authorized to take such examination, it shall and may be lawful (in case of the illness, absence or inability to attend of the person or persons who issued such notice of examination,) for any other person or persons authorized to take examinations of confined debtors, who, at the request of the person or persons who issued the notice of examination, may attend for that purpose, to proceed to the examination of such confined debtor, and to hear and determine the application for support, and to make all such order or orders thereon, and on any proceedings subsequently had in regard to the support or withholding the support of such confined debtor, as to such person or persons taking such examination may seem meet; provided always, that such examination shall be had and taken at the time and place specified in the notice of examination, and that an entry shall be made in the minutes of such examination of the same having been taken by the person or persons who shall take the same, in lieu of the person or persons who issued the notice, and the cause thereof.

III. And be it enacted, That each and every defendant committed to gaol in execution upon any judgment recovered before any Justice of the Peace in such Justice's Court, shall be entitled to the benefit of this Act; and such Justices or any other Justice of the Peace of the County in the gaol of which the defendant shall be confined, upon such application, notice and examination, as are prescribed in the cases mentioned in this Act, shall make the like orders for the relief of such defendant in every respect as if the execution against such defendant had issued out of either of the Courts before mentioned in this Act.

IV. And be it enacted, That upon the application of any such person to any such Judge or Justices as aforesaid for such support, such Judge or Justices is hereby authorized and required to make an order under his or their hand, directed to the Sheriff or Gaoler in whose custody such person may be confined, to bring up such person before him or them at the time and place in such order to be specified, for the purpose of being examined as is hereinbefore provided, and such Sheriff or Gaoler shall not be liable to any action for escape or other suit for or on account of such order, according to the true intent and meaning of this Act.

Sheriff or Gaoler to bring the debtor before the Judge or Justice.

V. And be it enacted, That when any plaintiff or defendant shall have occasion to compel the attendance of any witness or witnesses, to testify or give evidence before the Judge or Justices to or before whom any application, examination or other proceeding may be had under this Act, it shall and may be lawful for such plaintiff or defendant to issue a Subpœna, or if need be, a Subpœna *duces tecum*, out of the Court from which the process under which the person is confined may have issued, commanding and requiring the attendance of such witness, and the production of books and papers before such Judge or Justices, at the time and place in such Subpœna to be specified; which said Subpœna shall be served, and the witness paid or tendered his reasonable expenses in the same manner as if the Subpœna had issued from such Court in the ordinary manner; and the witness or person served therewith shall be subject to the same punishment by such Court, or liable to the like damages in all respects to the party injured, for wilfully refusing or neglecting to obey such Subpœna, as in any other case he would be liable or subject to.

Attendance of witnesses or production of books, &c., to be enforced by Subpœna.

VI. And be it enacted, That when any person so confined shall be possessed of money or debts at the time of his or her confinement or afterwards, and shall have offered to pay or assign the same to the party at whose suit such person may be confined, or in case there be several parties, to them respectively, in part payment of and in proportion to such demand or demands, or when such confined person shall be possessed of either real or personal property, (excepting nevertheless, wearing apparel, bedding, and tools, to the value of fifteen pounds, as before excepted,) and shall have offered to convey and assign the same to the party or parties at whose suit or suits such person may be confined, at a fair price, to be agreed upon, in part payment, or in proportion as aforesaid, and in case of disagreement as to the price or value of such property, shall have offered to pay in manner aforesaid the proceeds arising from the sale of such property, which said property shall be sold at public auction by such confined person, after having first advertised the time and place of the sale thereof for the space of fourteen days, and given the party or parties respectively, or their attorneys, notice of such sale, and the said party or parties shall have refused to accept and receive the said payment or assignments, or the said proceeds arising from the said sale of the said property as aforesaid, that then it shall and may be lawful for the said person so confined to assign or pay over the same to any other *bona fide* creditor or creditors and that when such party or parties may have received such assignment or payment from such confined person as aforesaid, or when the confined person, in case of refusal by such party or parties, may have assigned or paid the same to other *bona fide* creditors as aforesaid, that then in either of such cases the said confined person shall be entitled to the benefit of this Act, in all respects the same as if such person had no such debt or property at the time of confinement or application.

Debtor may assign his property to other creditors: if confining creditor refuse to take it or the proceeds.

After assignment debtor to have the benefit of this Act.

VII. And be it enacted, That such allowance shall be paid to the gaoler of the County in which such debtor may be confined, at any time during the day

Maintenance to be paid to the Gaoler of the County.

(between sunrise and sunset) such allowance becomes due, for the use and support of such confined debtor.

Weekly allowance may be stopped if after order made it shall appear that the debtor has means of supporting himself.

VIII. And be it enacted, That in any case when it shall be made to appear to the satisfaction of any Judge or Justices who may have ordered support to any person, or to any other Judge or Justice of the Court out of which the process may have issued, upon which such person may be confined, after such support ordered, that such person has the means of providing his or her necessary support, whether from property possessed at the time or since obtained, or by any other means, in either of such cases, upon application made to him or them, such Judge or Justices shall be and are hereby authorized and empowered, by order under his or their hand and seal, to suspend the payment of such support for a stated time, or until further orders given in that behalf by such Judge or Justices, or by the Court out of which the process shall have issued; provided always, that in case the said Judge or Justices shall direct the suspending or withholding support until further order from the Court is given in that behalf, it shall and may be lawful for such Court, at the next or any future sitting, to hear and determine upon the same, and make such order as to such Court may appear fit and proper; provided that such Court shall not direct the payment of any greater support than by this Act is authorized; and further provided, that no order shall be made for suspending the payment of support without due notice being given to the confined person of the application for that purpose being made, in order that such person may attend if he or she think proper; and any Judge or Justices aforesaid may order and direct the Sheriff or Gaoler to cause such person to be brought before him or them for that purpose, in the same manner as directed hereinbefore.

Maintenance may be refused or suspended if debtor can earn it.

IX. And be it enacted, That if it shall at any time be made out to the satisfaction of any Judge or Justices as aforesaid, that the person so applying for, or having support under this Act, (and having the benefit of the gaol limits,) can either by labour or otherwise earn or procure his or her necessary support or maintenance, such Judge or Justices shall and may refuse to make such order for support as aforesaid, or in case the same be made, to suspend the same in the manner hereinbefore provided.

Persons not strictly entitled to the benefit of this Act may, after six months confinement, apply to the Supreme Court for relief.

X. And whereas it is expedient in certain cases to authorize and empower the Supreme Court of Judicature of this Province to grant relief or discharge to confined debtors, who by the strict provisions of this Act may not be entitled to the benefit thereof; Be it enacted, That when any person may have been confined in any gaol or limits thereof in this Province, for the space of six months, at the suit of any person for either debt, costs or damages, such confined person may apply to the said Supreme Court in Term time, on affidavit of the circumstances, for relief or discharge, which said Court, on notice having been given of such application to the adverse party or his Attorney, may inquire into the matter on affidavit or otherwise, and if it shall thereupon appear to said Court that the person so confined has no property whatever, real or personal, within his possession, power or control, wherewith he can satisfy such demand or any part thereof, or support himself in custody, such Court may in its discretion make an order either for the maintenance or discharge of such person so confined, in the same manner as any Judge of such Court may do by virtue of this Act, and which order or discharge shall in all respects have the like force and effect as any order or discharge made by any Judge, pursuant to the directions of this Act.

After receipt of weekly allowance for six months,

XI. And be it enacted, That any person who may have received such weekly allowance for the space of six months, shall immediately thereafter be entitled to his

his or her discharge from confinement, at the suit of the party who may have paid the same; and in such case the said Judge or Justices of the Peace who made the order for such weekly support, or any other Judge or Justice of the Peace as aforesaid, is hereby authorized and required to discharge such person from custody at the suit of the party who may have paid the support: provided always, that in case of such discharge, the party shall be entitled to the same remedy by proceeding to final judgment, or taking out execution against goods, chattels, lands and tenements, as is provided hereinbefore.

debtor to be discharged from confinement.

XII. And whereas it is expedient that creditors may have power to discharge debtors without losing the benefit of judgment obtained against such debtors; Be it therefore enacted, That it shall and may be lawful for any creditor or creditors, at whose suit any debtor or debtors is, are or shall be in prison, and taken and charged in execution for any sum of money, by writing signed by such creditor or creditors, or by one of them, for and in behalf of himself or herself, and the others of them, (being complainants in the same action,) to signify or declare his, her or their consent to the discharge of such debtor or debtors from the prison in which he, she or they is, are or shall be confined in execution, at the suit of such creditor or creditors, without losing the benefit of the judgment upon which such execution issued, except as is hereinafter provided; and that notwithstanding the discharge of any debtor or debtors in pursuance of such consent as aforesaid, the judgment upon which such debtor or debtors was or were taken or charged in execution, shall continue and remain in full force to all intents and purposes, except as hereinafter provided; and it shall be lawful for such creditor or creditors at any time to take out execution on every such judgment against the lands, tenements, hereditaments, goods and chattels of such debtor or debtors, or any of them, (other than and except the necessary apparel and bedding of him, her or them, or his, her or their families, and the necessary tools of his, her or their trade or occupation, not exceeding the value of fifteen pounds in the whole,) or to bring an action or actions on every such judgment, or to bring any action, or use any remedy for the recovery of his, her or their demand against any other person or persons liable to satisfy the same, in such and the same manner as such creditor or creditors could or might have had or done in case such debtor or debtors had never been taken or charged in execution upon such judgment; provided always, that no debtor or debtors who shall be discharged in pursuance of this Act, shall at any time afterwards be taken or charged in execution, or convicted upon any judgment hereinbefore declared to continue and remain in full force, or in any action which may be brought on any such judgment; and that no proceeding by *feri facias*, action or otherwise, shall be had against any bail in the action on which such judgment was obtained.

Creditor may consent to discharge his debtor in custody on execution without losing the benefit of the judgment.

Bail discharged.

XIII. And be it enacted, That the Executors and Administrators of any such creditor as aforesaid, shall and may consent to the discharge of any debtor or debtors to their testator or intestate, in such and the same manner, and with the same advantages and consequences in all respects as such creditors if living might or could have done in pursuance of this Act, and such Executors and Administrators respectively, shall not by reason of any such discharge in pursuance of this Act, be deemed guilty of devastavit, or be chargeable with the debt due from the person or persons so discharged.

Executors and administrators may consent to the discharge of debtors.

XIV. And be it enacted, That every Sheriff, Gaoler or keeper, in whose prison, gaol or custody, any debtor or debtors is, are or shall be confined, or detained in execution, shall, and every of them is hereby required, within twenty four hours next after such consent in writing of any creditor or creditors as hereinbefore

Debtor to be set at liberty after consent of creditor in writing being produced, &c.

mentioned

mentioned shall have been produced to and left with such Sheriff, Gaoler or keeper, or his deputy or agent, at such prison or gaol, (the hand writing or mark of such creditor or creditors to such consent in writing being duly proved by affidavit of some creditable person to be thereunto annexed, and to be sworn before one of the Judges of the Court out of which the execution against such debtor or debtors issued, or a Commissioner duly authorized to take affidavits in the County where such debtor or debtors shall be confined,) to discharge and set at liberty the debtor or debtors to whose discharge such consent shall be signified or declared as aforesaid.

False swearing under this Act deemed perjury.

XV. And be it enacted, That every person who shall be convicted of making or taking a false oath to any of the matters hereinbefore described or required to be sworn to, shall be deemed guilty of perjury, and shall be liable to all the pains and penalties to which persons are liable for wilful and corrupt perjury.

Indemnification for discharge of debtor for non-payment of maintenance, or after six months confinement.

XVI. And be it enacted, That in case any confined person may have been discharged in consequence of the weekly support ordered agreeably to the provisions of this Act not having been paid, or after a six months' confinement, agreeably to this Act, all persons whomsoever shall be indemnified, and are hereby freed and discharged against and from all suits, actions and prosecution, informations or judgments whatsoever, that may be had, moved, prosecuted or adjudged against them or any of them, for or by reason or on account of such person having been discharged as aforesaid.

Sheriff may permit persons arrested on mesne process or execution to have liberty within the gaol limits upon bond.

XVII. And be it enacted, That when any person has been arrested in this Province either upon mesne process or execution, the Sheriff or other officer in whose custody such person may be, is hereby authorized and empowered to permit such person to go about and have his liberty within the limits designated for such gaol, upon a bond being given to the Sheriff, by the name of his office, by such person, with two sufficient sureties to the satisfaction of the Sheriff, in double the amount of the sum for which such person shall be in custody, upon condition thereunder written that such defendant shall not go or be at large out of such limits, or escape at any time while he has the liberty of the same as aforesaid, any law or custom to the contrary notwithstanding; and the Sheriff shall be entitled to demand and receive for making such bond five shillings, and no more, and such bond shall be in the form following, that is to say:—

Fee.

Form of Bond.

Know all men by these presents, that we are held and firmly bound to Sheriff of the County (or City and County,) of in the sum of lawful money of New Brunswick, to be paid to the said Sheriff, or to his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made, we bind ourselves, and each of us by himself, for and in the whole, our and each and every of our heirs, executors and administrators, firmly by these presents: Sealed with our seals.—Dated this day of in the year of the Reign of our Sovereign of the United Kingdom of Great Britain and Ireland, &c. &c., and in the year of our Lord one thousand eight hundred and

Whereas the above named Sheriff as aforesaid, hath given permission to the above bounden a person in custody of the Sheriff of the County (or the City and County,) above mentioned, to go about and have his liberty within the limits of the gaol of such County; now the condition of the above obligation is such, that if the said shall not go or be at large out of the said limits of such gaol, or escape at any time while he has the liberty of the same as aforesaid, then this obligation is to be void, otherwise to remain in full force and virtue.—Signed, sealed and delivered in the presence of

Which

Which said bond the said Sheriff or his Deputy, at the request of the plaintiff in such suit, or his Attorney, shall assign to the said plaintiff in such action, by endorsing the same and attesting to it under his hand and seal, in the presence of two or more credible witnesses, and if the said bond or assignment be forfeited, the plaintiff in such action, after such assignment made, may bring an action and sue therefor in his own name; and the Court where the action is brought may by rule or rules of the same Court give such relief to the plaintiff and defendant in the original action, and to the obligors in the said bond as is agreeable to justice and reason, and that said rule or rules of the said Court shall have the nature and effect of a defeasance to such bond.

Bond to be assigned to plaintiff.

XVIII. And whereas in cases where the sureties of any debtor executing a bond under the provisions of this Act may be considered insufficient, or where any Sheriff or other officer may die, resign, or be removed from office, it is considered proper that the Sheriff or other officer, or his successor, should be authorized to require a new bond; Be it therefore enacted, That in any case where the Sheriff or other officer holding any bond taken under the provisions of this Act, or the successor of any such Sheriff or other officer, shall require such new bond from any debtor within the limits, the same shall be given by the debtor in the same manner as if such debtor was in actual custody, and on the refusal or neglect of the debtor to give such bond, it shall be lawful for the Sheriff or other officer to commit such debtor to custody in the same manner as if such debtor had been rendered by his sureties under the provisions of this Act.

New Bond may be required in case of its insufficiency or of the death or removal of a Sheriff.

XIX. And be it enacted, That no Sheriff shall be liable to any action of escape or other suit or information for or on account of any liberty that may be granted to any confined debtor under the provisions and according to the true intent and meaning of this Act; provided always, that if any confined person shall go or be at large in any manner or by any means not authorized by this Act, the Sheriff shall then be liable to all intents and purposes in the same manner as if this Act had not been made.

Sheriff not to be liable to action of escape for liberty given under this Act.

XX. And be it enacted, That in all cases wherein a writ of *feri facias* shall be issued upon any judgment obtained or to be obtained in any Court in the Province, it shall not be lawful for the Sheriff or other officer executing such writ, to seize and levy upon the necessary apparel and bedding of the debtor or debtors against whom such judgment shall be obtained, or of his, her or their family or families, the necessary tools of his, her or their trade or occupation, in satisfaction of such judgment; provided always, that such apparel, bedding and tools so to be exempted from being seized or levied upon as aforesaid, shall not exceed the value of fifteen pounds in the whole to any one debtor, which value shall be ascertained by the oath of three disinterested freeholders in the County, to be appointed by such Sheriff or other officer to appraise the same, which oath the said Sheriff is hereby authorized and empowered to administer.

Sheriff not to levy on the apparel, bedding or tools of a debtor if the same do not exceed £15 in value.

XXI. And be it enacted, That every Sheriff or Gaoler who shall do any thing in obedience to the order of any Judge or Justices, under the provisions of this Act, shall be indemnified for whatsoever shall be done by them respectively, in obedience thereto, and the order of the Judge or Justices for the discharge of any prisoner out of confinement, shall be a sufficient justification to the Sheriff or Gaoler for such discharge; and in any action brought against such Sheriff or Gaoler he may plead the general issue, and give such order in evidence thereunder.

Indemnification to Sheriffs and Gaolers

XXII. And be it enacted, That any debtor having the liberty of the gaol limits, under the provisions of this Act, may render himself or be rendered by his sureties,

Debtor on the gaol limits may render himself or be rendered by his sureties.

dered by his sureties to close custody.

sureties, or one of them, to close custody in the gaol, in discharge of the limit bond, in like manner as a principal may render himself or be rendered in discharge of his bail in cases of special bail, and upon such render being made, the obligation of the said bond shall thenceforth become void.

Mayor or Recorder of the City of Saint John may carry into execution the provisions of this Act within the City and County.

XXIII. And be it enacted, That it shall and may be lawful for either the Mayor or Recorder of the City of Saint John, to carry into execution in the City and County of Saint John, the several provisions of this Act as fully and completely as any Justice of the Inferior Court of Common Pleas, together with any Justice of the Peace being of the quorum for the City and County of Saint John, might or could do by virtue of this Act.

6 W 4, c 31,

7 W 4, c 33,

8 V c 42,
repealed.

Reservations.

XXIV. And be it enacted, That an Act made and passed in the sixth year of the Reign of His late Majesty King William the Fourth, intituled *An Act relating to Insolvent Confined Debtors*; also an Act made and passed in the seventh year of the same Reign, intituled *An Act to amend an Act, intituled 'An Act relating to Insolvent Confined Debtors,'* also an Act made and passed in the eighth year of the Reign of Her present Majesty, intituled *An Act to continue the several Acts now in force relating to Insolvent Confined Debtors*, be and the same are hereby repealed: Provided always, that every act, matter or thing heretofore done under and by virtue of the said recited Acts, shall remain and continue valid and effectual for all intents and purposes; and all bonds, acts or things which may have been taken or done under the said recited Acts, or any of them, shall continue in force, and may be proceeded upon in all respects the same as if said recited Acts were perpetual.

CAP. XXXII.

An Act in further amendment of the Law.

Passed 26th April 1850.

Preamble.

WHEREAS the practice of pleading several matters of defence to the same cause of action, frequently leads to great delay and expense, and tends more to defeat than to advance the cause of Justice;

Imperial Act 4 Anne, c 16, repealed.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the fourth section of an Act of Parliament made and passed in the fourth year of the Reign of Her Majesty Queen Anne, intituled *An Act for the amendment of the Law, and the better advancement of Justice*, which has hitherto been considered in force in this Province, be and the same is hereby declared to be repealed and of no force or effect within this Province, any usage or practice to the contrary notwithstanding; provided always, and be it enacted, that the defendant in any action or suit brought against him as an Executor or Administrator, or the plaintiff or defendant in any action of replevin in any Court of Record in this Province, may plead as many matters thereto as he shall think necessary to his defence, in the same manner and subject to the same provisoes, costs and certificates as if this Act had not been made and passed.

Executors or administrators as defendants, or plaintiff or defendant in any action of replevin, may plead as many matters as are necessary.

Defendant, except in actions of replevin or as executor or administrator, may give in evidence any matter of defence on notice.

II. And be it enacted, That the defendant in any action in any Court of Record in this Province, (except actions of replevin, or where he is sued as Executor or Administrator,) may, in addition to any matter which may be by him pleaded in bar to such action, and put to issue for trial by a jury, give in evidence on the trial thereof any other matter of defence whatsoever; provided that notice of such other matter be given in writing to the plaintiff or his attorney, at the time of the delivery of the plea, (which notice may be proved on the trial to have been delivered either *ore tenus* or by affidavit of the person delivering the same); and provided also, that any such other matter of defence may, without any previous notice

And may be met on the trial by evidence of other matter