

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1786. Saint John, NB: J. Ryan, 1786.

26 George III – Chapter 18

An Act for preventing the multiplicity of Law Suits

I. Whereas a provision for setting mutual debts one against the other is highly just and reasonable at all times, and tends to prevent a multiplicity of law suits.

II. Be it enacted by the Governor, Council and Assembly, That where there are mutual debts between the plaintiff and defendant in any court of record in this province, or if either party sue or be sued as executor or administrator where there are mutual debts between the testator or intestate and either party, one debt may be set against the other, and such matter may be given in evidence upon the general issue or pleading in bar, as the nature of the case shall require so as at the time of his pleading, the general issue where any such debts of the plaintiff his testator or intestate is intended to be insisted on in evidence, notice shall be given of the particular sum or debt so intended to be insisted on and upon what occasion it became due or otherwise, such matter shall not be allowed in evidence upon such general issue.

III. And be it further enacted, That by virtue of this act, mutual debts, may be set against each other, either by being pleaded in bar, or given in evidence on the general issue, in the manner herein before mentioned notwithstanding, that such debts are deemed in law to be of a different nature, unless in cases where either of the said debts shall accrue by reason of a penalty contained in any bond or specialty, and in all cases where either the debt for which the action hath been or shall be brought, or the debt intended to be set against the same, hath accrued or shall accrue by reason of any such penalty the debt intended to be set off, shall be pleaded in bar, in which plea shall be shewn how much is truly and justly due on either side, and in case the plaintiff shall recover in any such action or suit, judgment shall be entered for no more than shall appear to be truly and justly due to the plaintiff after one debt being set against the other as aforesaid. And if upon trial of the issue between the parties, the plaintiff shall become nonsuit, or the jury shall not assess damages to the plaintiff over and above the debt, or sum of which notice of set-off shall have been given as aforesaid, then the plaintiff shall have no costs, but shall pay to the defendants or his attorney costs to be taxed. And if upon such trial, it shall appear to the jury that the plaintiff is over-paid, then they shall find a verdict for the defendant, and therewith certify to the court how much they find the plaintiff to be indebted or in arrear to the defendant more than will answer the debt or sum so set-off, and found due by the same verdict and the sum or sums so certified shall be recorded with the verdict, and shall be deemed as a debt of record, and if the plaintiff refuse to pay the same, the defendant for the recovery thereof, shall have execution for the same together with the costs of the said action, any law, usage or custom to the contrary in anywise notwithstanding.

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