

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 20

An Act for admitting Depositions *de bene esse* of Witnesses, aged, infirm, and otherwise unable to travel, and of Witnesses departing from the Province.

- I. Be it enacted by the Governor, Council and Assembly That when it shall so happen that any of the witnesses which Shall be judged necessary to be produced on the trial of any cause between party and party, shall be infirm, aged, or otherwise unable to travel, or when any such witness or evidence is obliged to leave the province, it shall and may be lawful for any one of the judges of the court where the cause is to be tried after declaration filed, on due notice given to the adverse party to be present (if he see fit) to take the deposition of such infirm or aged person, or persons unable to travel, or who is obliged to leave the province, and such depositions so taken and certified under the hand and seal of the said judge and sealed up, and directed to such court, shall be received as legal evidence in such cause, and also when the title to land shall be in question in all future causes between the same parties or persons holding under them, or the same land.
- II. Provided, That proof be made on oath, that due notice was given to the adverse party of the time and place of taking such depositions.
- III. And provided nevertheless, That if such witnesses shall at the time of the trial of the cause, be in the province, or able to travel, they shall be required to give their testimony viva voce, at such trial, in the same manner, as if such depositions had not been taken.
- IV. Provided also, That all benefit of exceptions to the credit of such deponents shall be reserved in the same manner as on producing witnesses for examination, viva voce, at the trial.
- V. And be it enacted, That every person of the profession of the people called Quakers, who shall be required to take an path as aforesaid, shall instead of an oath be permitted to make his or her solemn affirmation.
- VI. And be it also enacted, That every person who shall have made such oath or solemn affirmation, and shall be convicted of wilfully, falsely and corruptly having sworn or affirmed any thing, shall incur the same penalties as persons convicted of wilful and corrupt perjury.