

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1835. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1835.

5 William IV – Chapter 39 (Session 1)

An Act to amend the Law relating to a summary practice in the Supreme Court. Passed 17th March 1835.

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That in any summary action in the Supreme Court, wherein the Plaintiff may be entitled to judgment by default under the provisions of the second Section of an Act made and passed in the fourth year of the reign of his present Majesty, intituled "An Act to establish and regulate a summary practice in the Supreme Court," the Court or a Judge thereof may let in the defendant to appear and defend in like manner and upon such terms as in actions not summary, by the practice of the said Court, may be done after interlocutory judgment, any thing in the said second Section of the said Act to the contrary notwithstanding.

II. And be it enacted, That in such summary actions the Defendant may file a demurrer to the writ in lieu of the General Issue, and give a copy thereof to the Plaintiff's Attorney; which demurrer shall be in a brief end summary form, and notice in writing of the grounds thereof shall be given to the Plaintiff Attorney at the same time with such copy; and, upon such demurrer the Court shall give judgment according as the very right of the cause shall require, without regarding any imperfection, defect or want of form in the writ; and if Judgment be given for the Plaintiff the Court may proceed to assess the amount to be recovered in like manner in the case of Judgment by default, and no arrest of Judgment shall be allowed in such summary action.

III. And be it enacted, That in such summary actions any matters in bar to the action, which in actions not summary ought to be pleaded specially, may be given in evidence under the General Issue; provided that notice in writing of such matter be given to the Plaintiff's Attorney at the same time with the Plea; and infancy or coverture of the Defendant shall not in any summary action be given in evidence unless such notice thereof be given.