

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1842. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1842.

5 Victoria – Chapter 21

An Act to enable the Supreme Court to give relief against adverse claims made upon persons having no interest in such claims. Passed 29th March 1842.

Whereas it often happens, that a person sued at Law for the recovery of money or goods wherein he has no interest, and which are also claimed by some third party, has no means of relieving himself from such adverse claims but by a suit in Equity against the Plaintiff, and such third party, usually called a Bill of interpleader which is attended with expense and delay; for remedy thereof,

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That upon application made by or on behalf of any Defendant in any action of Assumpsit, Debt, Detinue, Trespass or Trover, depending in the Supreme Court, such application being made after declaration and before plea by affidavit or otherwise, shewing that such Defendant does not claim any interest in the subject matter of the Suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such Defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject matter of the action in such manner as the Court (or any Judge thereof) may order or direct, it shall be lawful for the Court or any Judge thereof, to make Rules and Orders, calling upon such third party to appear and state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such Rule or Order to hear the allegations as well of such third party as of the Plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself Defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be Plaintiff or Defendant on such trial, or with the consent of the Plaintiff and such third party, their Counsel or Attornies, to dispose of the merits of their claims and determine the same in a summary manner, and to make such other Rules and Orders therein as to costs, and all other matters, as may appear to be just and reasonable.

II. And be it further enacted, That the judgment in any action or issue as may be directed by the Court or Judge, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them.

III. And be it further enacted, That if such third party shall not appear upon such Rule or Order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any Rule or Order to be made after appearance, it shall be lawful for the Court or Judge to declare such third party, and all persons claiming by, from or under him to be for ever barred from prosecuting his claim against the original Defendant, his Executors or Administrators, saving nevertheless, the right of such third party against the Plaintiff, and thereupon to make such Order between such Defendant and' the Plaintiff as to costs and other matters, as may appear just and reasonable.

IV. Provided always, and be it further enacted, That every Order to be made in pursuance of this Act by a single Judge not sitting in open Court, shall be liable to be rescinded or altered by the Court in like manner as other Orders made by a single Judge.

V. Provided also, and be it further enacted, That if upon application to a Judge in the first instance, or in any later stage of the proceedings, he shall think the matter more fit for the decision of the Court, it shall be lawful for him to refer the matter to the Court, and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceedings had originally commenced by the Rule of Court instead of the Order of a Judge.

VI. 'And whereas difficulties sometimes arise in the execution of Process against goods and chattels issued by or under the authority of the said Court, by reason of claims made to such goods and chattels by persons not being the parties against whom such process has issued, whereby Sheriffs and other Officers are exposed to the hazard and expense of actions, and it is reasonable to afford relief and protection in such cases to such Sheriffs and other Officers,' Be it therefore enacted, That when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any Process issued out of the Supreme Court, or to the proceeds or value thereof, it shall and may be lawful to and for the Court, upon application of such Sheriff or other Officer made before or after the return of such Process, and as well before or after any action brought against such Sheriff or other Officer, to call before them by Rule of Court, as well the party issuing such Process as the party making such claim, and thereupon to exercise for adjustment of such claims and the relief and protection of the Sheriff or other Officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case, and the costs of all such proceedings shall be in the discretion of the Court.

VII. And be it further enacted, That all Rules, Orders, Matters and Decisions, to be made and done in pursuance of this Act, except only the affidavits to be filed, may together with the declaration in the cause (if any) be entered of Record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times if required, and to secure and enforce the payment of costs directed by any such Rule or Order, and every such Rule or Order so entered shall have the force and effect of a Judgment, except only as to becoming a charge on any Lands, Tenements or Hereditaments; and in case any costs shall not be paid within fifteen days after notice of taxation, and amount thereof given to the party ordered to pay the same, his Agent or Attorney, Execution may issue for the same by *Fieri Facias* or *Capias ad satisfaciendum* adapted to the case, together with the costs of such entry and of the execution ; and such Writ and Writs may bear teste on the day of issuing the same, whether in the Term or Vacation, and the Sheriff or other Officer executing any such Writ shall be entitled to the same fees and no more as upon any similar Writ grounded upon a Judgment of the Court.