

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1850. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1850.

13 Victoria – Chapter 32

An Act in further amendment of the Law. Passed 26th April 1850.

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;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the forth 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of Justice, which has hitherto been considered in force in this Province*, be and the same is hereby declared to be repealed and of no force or effect within this Province, any usage or practice to the contrary notwithstanding; provided always, and be it enacted, that the defendant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 provisos, costs and certificates as if this Act had not been made and passed.

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 thereof, be met on the trial by evidence of any matter which might have been pleaded thereto by way of replication, in case such other matter had been pleaded, and so *toties quoties* by either party.

III. And be it enacted, That the defendant may be allowed either by the Court or any judge thereof wherein the action is brought, to amend or add to such notice in like manner and upon the same terms as defendants can now by the practice of the Court be allowed to add or amend pleas.

IV. And be it enacted, That the notice of any such other matter of defence shall be in a general and brief form, and shall be deemed sufficient unless the plaintiff shall make it appear to the Court or Judge before whom the trial is had, that he has been misled by the defect or generality of such notice.

V. 'And whereas the insertion of several counts in the declaration for the same subject matter of complaint, often tends to unnecessary prolixity and expense;' Be it therefore enacted, That where there is more than one count in the plaintiff's declaration, and he fails to establish a distinct subject matter of complaint in respect to each count, a verdict and judgment may at the instance of the defendant, pass against the plaintiff upon each count which he shall have so failed to establish, and he shall also be liable to the defendant for the reasonable costs occasioned by such count, including those of the evidence, pleading and notices relating to such count, unless the Judge before whom the trial is had shall certify that there was a reasonable cause for the insertion of such count.

VI. And be it enacted, That in action brought on any note, bill of exchange, bond, or other writing, where damages may be assessed by the Court or a Judge, after judgment on demurrer or by default, costs only shall be allowed the plaintiff for one count in the declaration, or in case there be several causes of action in the same declaration, on such counts as the damages may be assessed upon, unless the Court or Judge making the assessment shall certify that there was a reasonable cause for the insertion of other counts.