

mentioned in the same rule, and may sometimes be used indifferently for the same practical object, that they are therefore co-extensive. Counter-claim may include every legal demand, but set-off is no new introduction, but a remedy well known and long settled—enlarged by the rule it is true, but left in other respects as it was before the rule." See also *Chamberlain v. Chamberlain*, 11 P. R. 503. Set-off cannot be said to be used in the New Brunswick Act in this sense, but in an extensive and new sense, and as the equivalent of counter-claim or cross-action when relating to a claim in damages set up by a defendant.

As has already been pointed out, set-off under the statute of George II., was a defence to the plaintiff's action, and was only operative in the event of plaintiff establishing his claim. A set-off supposed that there was something against which the defendant's claim could be balanced. If there was nothing against which it could be set-off it fell to the ground and the defendant had to sue upon it in a new action. It could not be tried and disposed of concurrently with the claim of the plaintiff in the event of the failure of the plaintiff to make out his claim. If the debt due to the defendant exceeded that due from him to the plaintiff he was not entitled to judgment for the excess. That could only be recovered in a separate action. If the plaintiff discontinued his action the set-off could not be tried. In the event of the set-off equalling or over-topping the amount of the plaintiff's claim judgment with costs was entered for the defendant. The New Brunswick statute provides an altogether different procedure. A set-off is allowed which does not operate as a defence but as an independent action. If the plaintiff's action is defeated defendant's action may be tried and verdict recovered therein. Judgment may be entered for the defendant for the residue of his claim in excess of the plaintiff's demand. If the plaintiff discontinues his action it is submitted that the defendant's action may still be proceeded with. See *McGowan v. Middleton*, 11 Q.B.D. 464, overruling *Vavasour v. Krupp*, 15 Ch. D. 474. Where defendant's action is not in pure set-off and both parties establish their causes of action, there may be separate judgments with costs to each: *Stumore v. Campbell*, [1891] 1 Q.B. 317; *McGowan v. Middleton*, 11 Q.B.D. 470; *Amon v. Bobbett*, 22 Q.B.D. 543; *Hewitt v. Blumer*, 3 Times Rep. 221; *Shrapnel v. Laing*, 20 Q.B.D. 334. Differences so fundamental as these between the statute of set-off of George II. and the New