

*At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on the Eighteenth day of November, 1806, and continued by several prorogations to Thursday the Fourteenth day of February, 1811, in the Fifty-first year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith &c. &c. being the Seventh Session of the Ninth General Assembly, convened in the said Province. From Henry H. Cogswell, The Statutes at Large passed in the General Assembly held in His Majesty's Province of Nova Scotia: from the Sixth Session of the Eighth General Assembly, to the Fifty-Sixth year of his Majesty's Reign. John Howe and Son, 1816.*

51 George III – Chapter 10

### **An Act for the more easy recovery of Debts against Co-Partners and Joint Debtors.**

Whereas co-partners, and other persons, often contracts debts jointly, and some of such joint debtors being resident out of the province, or absent from it, the recovery of such debts is thereby delayed and impeded: for remedy thereof:

I. Be it enacted, by the Lieutenant-Governor, Council and Assembly, that where co-partners or others are or shall become jointly indebted by specialty or simple contract to any person or persons, and any one or more of such joint debtors shall be absent or resident out of the province, the creditor or creditors in all suits in such cases hereafter to be instituted, may proceed to recover such debts by purchasing out of the supreme court a writ or writs of mesne process against all the said co-partners or joint debtors, which shall be served in the usual manner upon such of the defendants as shall be in the province; and if such mesne process shall be a writ of attachment, the sheriff or officer to whom the same shall be directed, may, and is hereby authorised, to levy such attachment on the joint property of all the co-partners or joint debtors, and hold the same to respond the judgment to be given in such case.

II. Provided always, and be it enacted, that if it shall be made appear to the said court, by affidavit or plea in abatement, that the names of any of the said co-partners or joint debtors, are omitted in the writ, or that any of them who were in the province at the time of issuing such mesne process as aforesaid, have not been duly served with the same, in the usual manner, it shall be lawful for the court to abate the writ, or to stay the proceedings, as the case may require, any thing herein contained to the contrary notwithstanding.

III. And be it further enacted, that in all cases as aforesaid, the plaintiff or plaintiffs may file his or their declaration against such of the co-partners, or joint debtors, as have been duly served with mesne process, and may suggest in the said declaration, that the other co-partners, or joint debtors, (naming them) were absent out of the province, and without the jurisdiction of the court, at the time of issuing the process, and at the time of filing such declaration, and thereupon the plaintiff or plaintiffs, may proceed according to the usual practice of the court, to obtain judgment against the said co-partners according to the usual

practice of the court, to obtain judgment against the said co-partners, or joint debtors, who have been so duly served with process, in the same manner as is practiced in England against a defendant, whose co-partner, or joint debtor, has been outlawed.

IV. And be it further enacted, that it shall be lawful for the plaintiff or plaintiffs, after judgment recovered as aforesaid, to take out execution thereon, and to cause the same to be extended on the joint or separate property, or on the persons of all the said co-partners or joint debtors. Provided always, that it shall not be lawful by virtue of this act to execute any such writ or process against the body, goods or estate, the sole property of any person not brought into court as a party to such suit.

And provided also, that if any such defendant shall make affidavit that it is necessary for him to receive instruction or information respecting such suit from his absent partner or joint debtor, and that he cannot safely proceed to the trial of the cause without communication with the said absentee, and that he is not seeking for delay only, it shall be lawful for the court, on application, grounded on such affidavit, or other sufficient cause, to grant to the defendant or defendants, a reasonable imparlance allowed in common cases.

V. And be it further enacted, that if any co-partner, or joint debtor, being absent as aforesaid, and not served with mesne process, shall come into the province before the final determination of the suit against his co-partner, or joint debtor, and shall apply to the court to be admitted to appear to defend the said action, the court shall admit him accordingly, and shall cause such amendment to be made in the proceedings as may be required to make the same regular and consistent.

VI. And be it further enacted, that if any such absent debtor or co-partner shall come into the province after final judgment given in any such cause, it shall be lawful for the plaintiff or plaintiffs, in case he or they shall not have received full satisfaction on such judgment, to sue out a writ of scire facias against such last mentioned co-partner or joint debtor, requiring him to appear and shew cause why execution should not be had against him, his goods, chattels, lands and tenements, to satisfy the said judgment, or whatever may remain due thereon, and such defendant shall be allowed to plead either in bar to the original suit, or in answer to the said scire facias, and thereupon the court shall proceed to try and determine the same, and to give judgment as in other causes instituted by such writ.

VII. And be it further enacted, that nothing herein contained shall be construed to affect or prevent any proceedings which may, or shall hereafter, be instituted against any absent or absconding debtors, pursuant to the act in such case made and provided.

VIII. And be it further enacted, that this act shall continue and be in force for the space of three years from the publication hereof, and from thence to the end of the next session of the general assembly.