

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Wednesday, the First day of February, 1826, in the Seventh year of the Reign of our Sovereign Lord George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith &c. &c. being the Sixth Session of the Twelfth General Assembly, convened in the said Province.

7 George IV – Chapter 11

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

Whereas, co-partners and other persons often contract 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 authorized, 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 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 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.