

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1836.* Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1836.

6 William IV – Chapter 51

**An Act relating to the limitation of personal actions. Passed 16th March 1836.**

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That all actions of debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, and all actions of debt or *scire facias* upon any judgment or recognizance, and also all actions of debt upon any award where the submission is not by specialty, and all actions for penalties, damages or sums of money given to the party grieved by any Statute or Act of Assembly now or hereafter to be in force, that shall be sued or brought, shall be commenced and sued within the time and limitation hereinafter expressed and not after; that is to say, the said actions of debt for rent upon an indenture of demise, or covenant or debt upon any bond or oilier specialty, actions of debt or *scire facias* upon any judgment or recognizance, within ten years after the passing of this Act, or within twenty years after the cause of such actions or suits, but not after; the said actions by the party grieved one year after the passing of this Act or within two years after the cause of such actions or suits, but not after; and the said other actions within three years after the passing of this Act or within six years after the cause of such actions or suits, but not after; provided that nothing herein contained shall extend to any action given by any statute when the time for bringing such action is or shall be by any statute specially limited.

II. And be it further enacted, That if any person or persons that is or are or shall be entitled to any such action or suit, or to such *scire facias*, is or are or shall be at the time of any such cause of action accrued within the age of twenty one years, *feme covert*, non compos mentis or beyond the seas, then such person or persons shall be at liberty to bring the same actions so as they commence the same within such times after their coming to or being of full age, discover, of sound memory or returned from beyond the seas, as other persons having no such impediment should according to the provisions of this Act have done; and that if any person or persons against whom there shall be any such cause of action is or are or shall be at the time such cause of action accrued beyond the seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited after the return of such person or persons from beyond the seas: Provided always, that if any acknowledgment shall have been made either by writing signed by the party liable by virtue of such indenture, specialty, judgment or recognizance, or his agent, or by part payment or part satisfaction on account of any principal or interest being then due thereon, it shall and may be lawful for the person or persons entitled to such actions to bring his or their action for the money remaining unpaid and so acknowledged to be due within twenty years after such acknowledgment by writing or part payment or part satisfaction as aforesaid, or in case the person or persons entitled to such action shall at the time of such acknowledgment be under such disability as aforesaid, or the party making such acknowledgment be at the time of making the same beyond the seas, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond seas as the case may be; and the plaintiff

or plaintiffs in any such action on any indenture, specialty, judgment or recognizance, may by way of replication state such acknowledgment, and that such action was brought within the time aforesaid in answer to a plea of this statute.

III. And nevertheless be it enacted, if in any of the said actions judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, that in all such cases the party plaintiff, his executors or administrators as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed or such judgment given against the plaintiff and not after: Provided always, that nothing in this section shall extend to or affect any contract, promise or agreement made and subsisting before the passing of this Act.

IV. 'And whereas by an Act of Parliament passed in England in the twenty first year of the reign of King James the First, and in force in this Province, intituled *An Act for limitation of actions and for avoiding of suits at law*, it was among other things enacted, that all actions of account and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent, should be commenced within three years after the end of the then present Session of Parliament or within six years next after the cause of such actions or suits, and not after: And whereas various questions have arisen in actions founded on simple contract as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments, and it is expedient to prevent such questions and to make provision for giving effect to the said enactments and to the intention thereof;' Be it further enacted, That in actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only made after the passing of this Act shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the said enactments of the said Act of Parliament, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby, and that where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the said enactments so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever: Provided also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by the recited Act of Parliament of the twenty first year of King James the First or this Act, as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

V. And be it further enacted, That if any defendant or defendants in any action on any simple contract shall plead any matter in abatement, to the effect that any other person or persons ought to be jointly sued, and issue be joined on such plea, and it shall appear at the trial that the action could not by reason of the said recited Act of Parliament of the twenty first year of King James the First or this Act be maintained against the other person or persons named in such plea or any of them, the issue joined in such plea shall be found against the party pleading the same.

VI. And be it further enacted, That no endorsement or memorandum of any payment written or made after the passing of this Act upon any promissory note, bill of exchange or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of the said recited Act of Parliament of the twenty first year of King James the First or of this Act.

VII. And be it further enacted, That the said recited Act of Parliament of the twenty first year of King James the First and this Act shall be deemed and taken respectively to apply to the case of any debt alleged by way of set off on the part of any defendant, either by plea, notice or otherwise, according to the nature of such debt, whether by record, specialty or simple contract.

VIII. And be it further enacted, That all parts of the world beyond the limits of this Province shall be deemed to be beyond the seas within the meaning of this Act and of the said recited Act of the Parliament of England passed in the twenty first year of the reign of King James the First, and of an Act of Parliament passed in England in the fourth year of the reign of Queen Anne and in force in this Province, intituled *An Act for the amendment of the Law and the better advancement of Justice*, so far as relates to personal actions.