

Laws of Her Majesty's Province of Newfoundland, passed in the year 1849.

12 Victoria – Chapter 10

An Act for the Limitation of Personal Actions at Law, and for rendering a Written Memorandum necessary to the validity of certain Promises and Engagements. (Passed 23d April, 1849.)

Whereas the laws relating to the limitation of personal actions have of late years been greatly amended, and it is desirable that the same should be consolidated into one act:

Be it therefore enacted, by the Governor, Council and Assembly of Newfoundland, in General Assembly convened, and by the authority of the same, 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 recognizance; all actions of debt upon any award where the submission is not by specialty, or for an escape, or for money levied on any fieri facias; all actions of trespass quare clausum fregit, actions of trespass, detinue, trover, and replevin for taking away of goods or cattle; all actions of account and upon the case (other than such accounts as concern the trade of merchandise 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, all actions or suits in the Court of Vice Admiralty for seamen's wages, and all actions of assault, menace, battery, wounding and imprisonment, or any of them, and all actions for penalties, damages or sums of money given to the party grieved by any statute now or hereafter to be in force, which shall be commenced, sued, or brought, at any time after the end of the, present session of the legislature, 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, covenant, or debt upon any bond or other specialty, actions of debt or scire facias upon recognizance, within ten years after the end of this present session, or within twenty years after the cause of such actions, but not after; the said actions of debt upon any award where the submission is not by specialty, or for an escape, or for money levied on any fieri facias, the said actions upon the case (other than for slander), and the said actions for account, and the said actions for trespass, debt, detinue, trover and replevin for goods or cattle, and the said actions of trespass quare clausum fregit, and actions or suits in the Court of Vice Admiralty for seamen's wages, within six years next after the causes of such actions or suits, and not after; and the said actions of trespass, of assault, battery, wounding, imprisonment, or any of them, within four years next after the cause of such actions and not after; and the said actions for penalties, damages, or sums of money by the party grieved, within two years after the cause of such actions; and also the said actions upon the case for words, within two years next after the words spoken, and not after: Provided that nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited.

II. And nevertheless be it enacted, That if in any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed by any Court of competent jurisdiction, 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.

III. 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, femes covert, non compos mentis, or beyond the seas, then such person or persons shall be at liberty to bring the same action, so as they commence the same within such times after their coming to or being of full age, dis-covert, 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 respectively as are before limited after the return of such person or persons from beyond the seas.

IV. And be it further enacted, That in any action of debt for rent upon an indenture of demise, action of covenant or debt upon any bond or other specialty, action of debt or scire facias upon any recognizance, and in all actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only, shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the first section of this act, 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, or his agent: and that when 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 first section of this act 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 principal or interest made by any person whatever: 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 said first section of 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. Provided always, and be it further enacted, That if any acknowledgment shall have been made either by writing signed by the party, or by the agent of the party, liable by virtue of such indenture, specialty or recognizance, or liable in any action of debt or upon the case, grounded upon any simple contract, 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 such periods of time respectively after such acknowledgment by writing, or part payment, or part satisfaction as aforesaid, as are hereinbefore prescribed for commencing such actions; 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 such respective periods of time as aforesaid, after such disability shall have ceased, or the party shall have returned from beyond seas, as the case may be; and the plaintiff or plaintiffs in any such action 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.

VI. And be it further enacted, That by the terms “beyond the seas,” in this act, shall be meant any place beyond the limits of the government of Newfoundland.

VII. And be it further enacted, That if any defendant or defendants in any action of debt for rent upon any indenture of demise, action of covenant or debt upon any bond or other specialty, action of debt or scire facias upon any recognizance, or 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 in such plea, and it shall appear at the trial, that the action could not by reason of the first section of this act be maintained against the other person or persons named in such plea, or any of them, the issue joined in any such plea shall be found against the party pleading the same.

VIII. And be it further enacted, That no indorsement or memorandum of any payment written or made after the passing of this act upon any promissory note, bill of exchange, or upon any recognizance, bond, specialty, 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 first section of this act.

IX. And be it further enacted, That this act shall be taken to apply to the case of any debt on any specialty or any simple contract or otherwise, which may now or at any time hereafter by law be alleged by way of set off on the part of any defendant, either by plea, notice, or otherwise.

X. And be it further enacted, That no action hereafter to be brought shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.