

Laws of Her Majesty's Province of Upper Canada, passed in the year 1840. York: Robert Stanton, 1840.

3 Victoria – Chapter 8

An Act to make perpetual certain parts of an Act passed in the fifth year of the reign of His late Majesty King William the Fourth, entitled, “An Act to prevent the unnecessary multiplication of Law Suits, and increase of Costs in Actions on Notes, Bonds, Bills of Exchange and other Instruments” and for other purposes therein-mentioned. Passed 10th February, 1840.

Whereas an Act passed in the fifth year of the reign of His late Majesty King William the Fourth, entitled, “An Act to prevent the unnecessary multiplication of Law Suits, and increase of Costs in Actions on Notes, Bonds, Bills of Exchange and other Instruments,” is about to expire, and it is expedient to continue the said Act and make it permanent: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, “An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, ‘An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,” and by the authority of the same, That the fourth, sixth, seventh, tenth and fourteenth clauses of the said Act be and the same are hereby repealed.

II. And be it further enacted by the authority aforesaid, That the Plaintiff in any joint Action against the Drawers, Makers, Endorsers and Acceptors, or any of them, of any Bill of Exchange or Promissory Note, may declare in the form contained in the Schedule hereto annexed upon such Bill or Note, varying the same according to the circumstances of the case.

III. And be it further enacted by the authority aforesaid, That in any such Action the person sued shall be entitled to set off against the said Plaintiff any payment, claim or demand, whether joint or several, which in its nature and circumstances arises out of or is connected with the Bill or Promissory Note, which is the subject of such joint Action, or the consideration thereof, in the same manner and to the same extent as though such Defendant had been sued in the form heretofore used; and if the Jury shall allow any demand as a set off, and still find a balance in favour of the Plaintiff, they shall state in the verdict the amount which they allow to each Defendant as a set off against the Plaintiff's demand.

IV. And be it further enacted by the authority aforesaid, That any proceedings now pending under the said recited Act, shall be conducted to a final end, in the same manner as if this Act had not been passed.

Schedules.

1.—On a Promissory Note.

For that whereas the said _____, (the maker of the Note,) on the _____ day of _____, at _____, made his Promissory Note in writing, and thereby promised _____, (setting forth the Note in the usual manner,) and the said, _____, (the first, second or other Endorsers,) afterwards duly endorsed the same, and the said _____ (the last Endorser) delivered the said Note so endorsed to the said Plaintiff. (aver presentment, notice, &c. where by law necessary in the particular case.) By reason whereof the said _____ (all the Defendants) became jointly and severally liable to pay to the said Plaintiff the said sum of Money in the said Note specified, and being so liable, afterwards jointly and severally promised the said Plaintiff to pay him the same. (Add the usual breach.)

2.—On a Bill of Exchange.

For that Whereas the said _____ (the drawer,) on the _____ day of _____, at _____, drew his certain Bill of Exchange, directed to _____, (setting forth the Bill according to its tenor and effect,) and the said _____, (the drawee) afterwards duly accepted, the same, and the said _____, (the first and other endorser) afterwards duly endorsed the said Bill of Exchange, and the said _____, (the last endorser) delivered the said Bill so endorsed to the said Plaintiff, (averment, presentment, protest, notice, &c., where by law necessary in the particular case.) By reason whereof the said _____ (all the Defendants) became jointly and severally liable to pay to the said Plaintiff the said sum of Money in the said Bill specified, and being so liable, afterwards jointly and severally promised the said Plaintiff to pay him the same. (Add the usual breach.)