



ANNO DECIMO ET UNDECIMO
VICTORIÆ REGINÆ.

CAP. XI.

An Act to repeal a certain Act therein mentioned, and to make better provision for the Limitation of Actions in Lower Canada.

[28th July, 1847.]

WHEREAS by an Act passed in England in the twenty-first year of the Reign of King James the First, and intituled, *An Act for Limitation of Actions, and for avoiding of Suits in Law*, it is 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, and all actions of debt grounded upon any lending or contract without specialty, shall be commenced and sued within six years next after the cause of such actions or suits and not after: And whereas, under the law of Lower Canada, whereby it is provided that in proof of all facts concerning commercial matters, recourse shall be had in all Courts of Civil Jurisdiction to the rules of evidence laid down by the Laws of England, doubts have arisen whether the enactment above cited is applicable in Lower Canada as a rule of evidence, and if it be so applicable what acknowledgment or promise within the said period of six years is sufficient to take out of the operation of the said enactment any case which would otherwise be within the same; for the removal of such doubts, Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That no action of account or upon the case, nor any action grounded upon any lending or contract without specialty, shall be maintainable in or with regard to any commercial matter, unless such action be commenced within six years next after the cause of such action; any law, custom or usage to the contrary notwithstanding.

II. And be it enacted, That 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 next preceding section, 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

Preamble.

English Act.
21st James I,
cap. 16, cited.

Doubts re-
cited.

No actions of
account, &c.
in commercial
cases main-
tainable unless
commenced
within six
years after
cause of ac-
tion.

No verbal pro-
mise to be suf-
ficient evi-
dence of a
new contract
to take the
case out of
the reach of
sect. 1.

the

Case of joint contractors, &c.

Proviso as to effect of payment.

Proviso: in case of joint contractors, &c. plaintiff may recover as against some, though he may fail as against others.

the said section 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 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.

Provision when defendant shall plead that others ought to be sued with him, who are not liable under this Act.

III. And be it enacted, That if any defendant or defendants, in any action on any simple contract in or with regard to any commercial matter, 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 or otherwise, that the action could not by reason of this Act be maintained against the other person or persons named in such plea or any of them, the issue joined on such plea shall be found against the party pleading the same.

No indorsement of payment on a promissory note, &c. by the party to whom such payment is made shall take the case out of this Act. This Act to apply to debts pleaded by way of set-off.

No action to be maintained against a person for a promise made to pay a debt contracted while a minor, unless such promise be in writing.

Cases of guarantee in which a written memorandum shall be necessary.

IV. And be it enacted, That no indorsement or memorandum of any payment written or made upon any promissory note, bill of exchange or other writing, by or on 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 this Act.

V. And be it enacted, That this Act shall apply to the case of any debt of a commercial nature, alleged by way of set-off on the part of any defendant, either by plea, notice, or otherwise.

VI. And be it enacted, That in or with regard to any commercial matter, no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon ratification after full age of any promise or contract in any such matter made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

VII. And be it enacted, That in or with regard to any commercial matter, no action shall be maintainable whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods thereupon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

Recital.

English Statute 29th Carol. II., c. 3, cited.

VIII. And whereas it hath been doubted whether the enactments of the Act passed in England in the twenty-ninth year of the Reign of King Charles the Second, and intituled, *An Act for prevention of Frauds and Perjuries*, do extend in Lower Canada to certain executory contracts for the sale of goods which nevertheless are within the mischief intended to be remedied by the said Act, and it is expedient to extend the same

same to such executory contracts: Be it therefore enacted, That the provisions of the said Act shall extend to all contracts for the sale of goods of the value of ten pounds sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

Provisions of the said Act to extend to contracts for goods to the value of £10 sterling.

IX. And whereas divers errors have crept into the Act passed in the eighth year of Her Majesty's Reign, and intituled, *An Act for the Limitation of Actions, for avoiding Suits at Law, and for rendering a written memorandum necessary to the validity of certain promises and engagements, in that part of the Province which heretofore constituted the Province of Lower Canada*, whereby the sense and intent of the said Act have been marred: Be it therefore enacted, that the said Act shall be and is hereby repealed.

8 Vict. c. 31, repealed.

X. And be it enacted, That this Act shall apply only to "Lower Canada," which words in this Act shall be understood to mean all that portion of this Province which formerly constituted the Province of Lower Canada.

This Act shall apply to Lower Canada only.

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