

VII. And be it enacted, That on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that such matters charged should be published ; and that to entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information, it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof : And that if after such plea the defendant shall be convicted on such indictment or information, it shall be competent to the Court in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea, and by the evidence given to prove or disprove the same : Provided always, that the truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification : Provided also, that in addition to such plea, it shall be competent for the defendant to plead not guilty, and that no defence shall be taken away or prejudiced under the plea of not guilty, which the defendant can now make under such plea to any indictment or information for a defamatory libel.

Truth being pleaded, may be inquired into, but shall not be a defence, except in certain cases.

Reply may be general.

As to aggravation or mitigation of offence by such plea.

Proviso.

Proviso.

VIII. And be it enacted That whenever upon the trial of any indictment or information for the publication of a libel, under the plea of not guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent or knowledge, and that the said publication did not arise from want of due care or caution on his part.

In certain cases defendant may prove publication without his authority, &c.

IX. And be it enacted, That in the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment be given against the defendant, he shall be liable for the costs sustained by the prosecutor by reason of such indictment or information ; and if judgment be given for the defendant, he shall be entitled to recover from such prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs so to be recovered by the prosecutor or defendant respectively, to be taxed by the Clerks of the Courts of Queen's Bench or Common Pleas in Toronto, or their respective Deputies in the counties where such trial shall be had, at the option of the party in whose favor such costs are to be taxed ; such costs to be recoverable by Writ of Attachment on the order of any Judge of the Superior Courts of Common Law, or of any Judge of the County Court in the county in which such indictment or information shall have been tried, and all proceedings for the recovery of such costs shall be entitled in the Court of Oyer and Terminer for the County in which such trial has been had, and such Writ of Attachment shall be returnable in either of the Superior Courts of Common Law as in other cases of Attachment, and on its return, such proceedings shall be had thereon as may now be had in any case of Attachment for non-payment of costs, pursuant to any order or rule of either of the said Superior Courts.

Private prosecutor, if successful, entitled to costs, and so of Defendant.

How recoverable.

Proceedings for recovery, how entitled.

X. And be it enacted, That this Act shall be in force in Upper Canada only.

Act to apply to U. C. only.

C A P . L X I .

An Act for rendering a Written Memorandum necessary to the validity of certain Promises and Engagements.

[24th July, 1850.]

WHEREAS by an Act passed in England in the twenty-first year of the reign of King James the First, 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

Preamble.

English Act 21 James I, c. 16, recited.

upon any lending or contract without specialty, and all actions of debt for arrearages of rent, should be commenced within six years after the cause of such action or suit, and not after; And whereas questions have arisen upon the proof of acknowledgments and promises to take the cases in such actions out of the operation of the said Statute: Be it therefore 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 in all actions on simple contract or debt of the nature hereinbefore mentioned, 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 said 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; 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 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, or by reason of any payment of any principal or interest made by any other or others of them; Provided always, that in actions commenced against two or more such joint contractors, executors or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by the said recited Act 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, promise or payment as aforesaid, 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.

II. And be it enacted, That if upon any plea in abatement in any of the said actions for the non-joinder of any person or persons, who, it is alleged, ought to be sued jointly, it shall appear at the trial or otherwise, that the action could not, by reason of the said recited Act or this Act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the finding and judgment on such plea, shall be against the party pleading the same; and if after the pleading of such plea, the plaintiff, instead of proceeding in the said action, shall abandon or discontinue the same, and commence a new action against the defendant or defendants pleading such plea and the person or persons named therein, as jointly liable with such defendant or defendants, and it shall appear upon the trial or pleadings in such new action that such action could not, by reason of the said recited Act or this Act, be maintained against the person or persons named in the said plea in abatement and joined in the said new action, but against the original defendant or defendants alone, the plaintiff shall thereupon be entitled to recover against the original defendant or defendants, in the said new action, as well the costs of the original action so abandoned or discontinued on such plea in abatement, as the costs awarded to such other defendant or defendants so joined in the said action by reason of the pleading of such plea, in addition to the debt or damages and costs recoverable against the said original defendant or defendants, and the said other defendant or defendants so joined in the said new action, and not liable therein, shall recover his or their costs against the plaintiff.

III. And be it enacted, That no indorsement or memorandum of any payment written or made after the time appointed for this Act to take effect, 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 the said Statute.

IV. And be it enacted, That the said recited Act and this Act, shall be deemed and taken to apply to the case of any debt on simple contract, or of the nature hereinbefore mentioned,

Written memorandum required to take the case out of Statute.

Case of two or more joint contractors, &c.

Proviso: Where Plaintiff may be barred as to one or more Defendants, but not as to all.

As to non-joinder of Defendants who have good defence under the said Act and this Act.

As to costs in new action, the first being discontinued on such plea.

Indorsement, &c. made by the payee, not to take a note, &c. out of the Statute.

Statute to apply to set-off.

mentioned, alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise.

V. And be it enacted, That 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 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.

As to ratification of promise made during non-age.

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VI. And be it enacted, That no action shall be brought 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 money, goods or credit thereupon, unless such representation or assurance be made in writing signed by the party to be charged therewith.

As to representation regarding the character, credit, &c. of a third party.

VII. And be it enacted, That the seventeenth section of an Act passed in England, in the twenty-ninth year of the Reign of King Charles the Second, intituled, *An Act for the prevention of Frauds and Perjuries*, shall extend to all contracts for the sale of goods of the value of Ten Pounds currency, 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.

Statute of Frauds extended to contracts for goods to be delivered at a future time, &c.

VIII. And be it enacted, That this Act shall extend to Upper Canada alone, and shall take effect and commence on the First day of January, one thousand eight hundred and fifty-two.

Extent of Act. Commencement.

CAP. LXII.

An Act to alter and amend the Act requiring Mortgages of Personal Property in Upper Canada to be filed.

[24th July, 1850.]

WHEREAS the Law now in force in Upper Canada requiring Mortgages of Personal Property to be filed requires amendment, so as to require that every sale of goods and chattels which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things sold, shall be in writing; and so as to require that a copy thereof be filed in the same manner as a mortgage or conveyance by the said Act is required to be filed; and so as to require an affidavit that the mortgages and conveyances mentioned in the said Act, and the bills of sale in writing mentioned in this Act, are *bonâ fide* and just and not for the purpose of protecting such goods and chattels in the possession of the mortgagee, or bargainee against the creditors of the mortgagor or bargainor: Be it therefore 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 the first Section of the Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act requiring Mortgages of Personal Property in Upper Canada to be filed*, be and the same is hereby amended by adding to the end thereof, as follows: " And that every sale of goods and chattels which shall not be accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions

Preamble.

Sect. 1. of 12 Vict. c. 74, amended.

The amendment as to sales of goods not immediately delivered.