

Provincial Statutes of Canada, passed in the year 1845. Montreal: Stewart Derbishire & George Desbarats, 1845.

8 Victoria – Chapter 31

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. (29th March, 1845.)

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 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 a similar enactment is contained in an Act passed in Ireland, in the tenth year of the Reign of King Charles the First: And whereas various questions have arisen in that part of the Province which heretofore constituted the Province of Lower Canada, in actions grounded on debts, promises, contracts and agreements of a mercantile nature between Merchant and Merchant, Trader and Trader, so reputed and understood according to Law, not only 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, but as to the existence of the said Statutes, as part of the law of the land in Lower Canada aforesaid, 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 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, 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 grounded on debts, promises, contracts and agreements of a mercantile nature, between merchant and merchant, trader and trader, so reputed and understood according to law, 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 enactments, or either of them, 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, or either of them, 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 either of the said recited Acts 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.

II. And be it enacted, That if any defendant or defendants in any action or 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 Acts or Act, or of either of them, 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.

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 either of the said Statutes.

IV. And be it enacted, That the said recited Acts and this Act, shall be deemed and taken to apply to the case of any debt of a mercantile nature as aforesaid 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 contract of a mercantile nature as aforesaid, made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

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 credit, money or goods thereupon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

VII. And whereas by an Act passed in England, in the twenty-ninth year of the Reign of King Charles the Second, intituled, "An Act for the preventing of frauds and perjuries," it is among other things enacted, That from and after the twenty-fourth day of June, one thousand six hundred and seventy-seven, no contract for the sale of any goods, wares and merchandize, for the price of ten pounds sterling and upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized: And whereas a similar enactment is contained in an Act passed in Ireland, in the seventh year of the Reign of King William the Third: And whereas it has been held that the said

recited enactments do not extend to certain executory contracts for the sale of goods, which nevertheless are within the mischief thereby intended to be remedied, and it is expedient to extend the said enactments to such executory contracts: Be it enacted, That the said enactments 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.