

Laws of Her Majesty's Province of Upper Canada, passed in the year 1850. Toronto: Stewart Derbshire & George Desbarats, 1850.

13 & 14 Victoria – Chapter 61

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 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 Table 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, 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.

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.

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.

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.