

have been so joined, and the Defendant shall not at or before the time of pleading have given notice in writing that he objects to such non-joinder, specifying therein the name or names of such person or persons, such mis-joinder or non-joinder may be amended as a variance at the trial by any Court of Record holding plea in civil actions, and by any Judge sitting at *nisi prius*, or other presiding officer, in like manner as to the mode of amendment and proceedings consequent thereon, or as near thereto as the circumstances of the case will admit, as in the case of amendment of variances under the Act of the Parliament of Upper Canada, passed in the seventh year of the Reign of King William the Fourth, intitled, *An Act for the further amendment of the law and the better advancement of Justice*, if it shall appear to such Court or Judge or other presiding officer, that such mis-joinder or non-joinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid, consent either in person or by writing under his, her or their hands to be so joined, or that the person or persons to be struck out as aforesaid were originally introduced without his, her or their consent, or that such person or persons consent in manner aforesaid to be so struck out, and such amendment shall be made upon such terms as the Court or Judge or other presiding officer by whom such amendment is made, shall think proper; and when any such amendment shall have been made, the liability of any person or persons, who shall have been added as co-Plaintiff or co-Plaintiffs shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such action.

appear at the trial; or an omission to join those who ought to be joined.

Act of U. C.
7 W. 4, c. 2.

Liability of persons ordered to be joined as Plaintiffs.

LXIX. In case such notice be given, or any plea in abatement of non-joinder of a person or persons as co-Plaintiff or co-Plaintiffs (in cases where such plea in abatement may be pleaded) be pleaded by the Defendant, the Plaintiff shall be at liberty, without any order, to amend the writ and other proceedings before plea, by adding the name or names of the person or persons named in such notice or plea in abatement, and to proceed in the action without any further appearance, on payment of the costs of and occasioned by such amendment only, and in such case the Defendant shall be at liberty to plead *de novo*.

If such non-joinder be pleaded in abatement.

LXX. It shall be lawful for the Court or a Judge in the case of the joinder of too many Defendants in any action on contract, at any time before the trial of such cause to order that the name or names of one or more of such Defendants be struck out, if it shall appear to such Court or Judge that injustice will not be done by such amendment, and the amendment shall be made upon such terms as the Court or Judge by whom such amendment is made shall think proper; and in case it shall appear at the trial of any action on contract, that there has been

Mis-joinder of Defendants discovered before trial in action on contract.

And at trial.