

acquired, how will the payment by a joint party affect the other joint debtor, if it be made without his privity or consent? This may be very clear, but, looking at the wording of the Act, it is not so to our mind. In the second proviso we have the same expressions—contractors in actions founded upon debts, promises, contracts, and agreements, and executors and administrators, as comprehending all administrative and representative capacity in Lower Canada. It enacts that “in actions to be commenced, two or more such joint contractors or administrators, if it should appear at the trial or otherwise, that the plaintiff, though barred by either of the two 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 such defendant or defendants against whom he shall recover, and for the other defendant or defendants *against* the plaintiff.” This clause will render it necessary that plaintiffs act with great caution where there are two or more joint contractors, or the personal representative of any contractor; for, not only will the joint contractor or personal representative be not bound by the written acknowledgment or promise signed by his co-contractor or joint representative, but if any action be commenced against them, and it shall appear at the trial or otherwise, (as the Act is worded), that one of the defendants has signed, but not the others, though the plaintiff will recover against those who have signed, yet judgment shall be given, with *costs*, for the defendants who have not signed.

The second section provides for cases of parties pleading in abatement the *non joinder* of parties originally liable, or of any personal representative; and, in that case, if it appear at the trial that the action could not, by reason of the Statute of Limitations, or of the Statute 8th Vic., Cap. 31, be maintained against the persons named in such plea, or any of them, the issue joined in such plea shall be given against the parties pleading the same. The opening words of this clause are, “that if any defendant or defendants, in any action or (on?) any *simple contract*, shall plead, &c.” The terms *simple contract* here, are copied literally from the English Act; but, unfortunately, the undigested phrase, *debts, promises, contracts, and agreements*,” is not. Whether they mean exactly the same things, and are convertible terms, we do not, as before intimated, pretend to decide.

The third section enacts, that no endorsement 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 statutes.” We would remark upon this clause, first, that there is no time fixed for the Act taking effect. These words