

Case of plea of non-joinder of Defendants who have a good defence under the said Act and this Act, provided for.

As to costs in a new action, the first being discontinued in consequence of such plea.

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 on 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.

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

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.

Statute to apply to debts alleged by way of set off.

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 or 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.

As to ratification of promise made during non-age.

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.