

ACKNOWLEDGMENT OF DEBT

CONTRACTED DURING INFANCY (c).

I, —, the undersigned, of —, being of full age, hereby promise to pay to — a debt of — dollars being the sum [or, a part of the sum of — dollars] lent to me by —, [or, due from me to —, or as the case may be,] which debt was contracted by me during my infancy and is still owing and unpaid.

Dated —.

[Signature of debtor or his agent.]

out of the operation of that part of the Statute of Limitations which relates to personal actions any case falling within its provisions respecting actions (a) of account and upon the case, (b) on simple contract or of debt grounded upon any lending or contract without specialty; and, (c) of debt for arrears of rent, or to deprive any party of the benefit thereof, unless such acknowledgment or promise is made or contained by, or in some writing signed by the party chargeable thereby, or by his agent duly authorized to make such acknowledgment or promise, and that where there are two or more joint debtors or joint contractors, or joint obligors or covenantors, executors or administrators of any debtor or contractor, no such joint debtor, joint contractor, joint obligor or covenantor or 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, or by reason of any payment of any principal or interest made by any other or others of them (ss. 55, 56). An acknowledgment, however, by one executor, though not binding on his co-executors, will bind the estate of which they are executors, the principle being that, though he has no power to bind his co-executors personally, he has power to dispose of the assets so as to bind them (*In re Macdonald* [1897] 2 Ch. 181). In actions against two or more such joint contractors, executors or administrators, the plaintiff, though barred by the Statute of Limitations as to one or more of them, may recover against any others of the defendants by virtue of a new acknowledgment, promise or payment as aforesaid (ib. s. 57). After an administration order has been made, an executor cannot give an acknowledgment to a creditor of the estate so as to bar the operation of the statute; he cannot do anything to alter the rights of the parties after an administration order, but is bound to take the objection of the statute of limitation, and any creditor or other person interested in the estate can insist on having that defence set up: See *Phillips v. Beal* [1862], 32 Beav. 26; See also *Re Wenham*, [1892] 3 Ch. 59, in which case an executor was compelled to set up this defence without administration proceedings being actually commenced.

(c) This form and the one following are drawn under the authority of "The Statute of Frauds," R.S.O. 1914, c. 102, s. 7, which enacts 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 the promise or ratification is made by some writing signed by the party to be charged therewith, or by his agent duly authorized to make the promise or ratification." The original of the section is found in the Statute of Limitations (21 Jac. 1, c. 16), but the last line—relating to signature by an agent—was added by 26 Vict. c. 45, s. 8 (Can.).