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No. 7.

3d Session, 3d Parliament, 13 Victoria, 1850.

BILL.

An Act for rendering a Written Memorandum necessary to the validity of certain Promises and Engagements.

Received and Read a first time, Tuesday, 21st
May, 1850.

Second Reading Monday, 27th May, 1850.

Hon. MR. CAMERON, (of Cornwall.)

y.

BILL.

An Act for rendering a Written Memorandum necessary to the validity of certain promises and engagements.

WHEREAS by an Act passed in England in the Preamble.
twenty-first year of the reign of King James the
Second, it was among other things enacted, that all English Act
actions of account and upon the case, other than such 21 James 2, c.
5 accounts as concern the trade of merchandize between 16, recited.
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
10 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, &c.

And it is hereby enacted by the authority of the same,
15 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
20 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
25 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
30 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
35 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 afore-
said, judgment may be given and costs allowed for the
40 plaintiff as to such defendant or defendants against whom
he shall recover, and for the other defendant or defen-
dants against the plaintiff.

Written memorandum required to take the case out of the said Statute.

Case of two or more joint contractors, &c. provided for.

Proviso: Where Plaintiff may be barred as to one or more Defendants, but not as to all.

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.

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 5 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.

As to representation or assurance regarding the character, credit, &c. of a third party.

VII. And be it enacted, That the seventeenth section 10 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 sterling and upwards, notwithstanding the goods 15 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.

Statute of Frauds extended to contracts for sale of goods to be delivered at a future time, &c.

20 VIII. And be it enacted, That this Act shall extend to Upper Canada alone, and shall take effect and commence at the expiration of three months from the passing thereof.

Act to apply to Upper Canada only; commencement.