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No. 98.

1st Session, 6th Parliament, 21 Victoria, 1858.

BILL.

An Act to amend the Laws of Upper Canada, affecting the relation of Debtor and Creditor.

Received and read, first time, Monday, 26th
April, 1858.

Second reading, Wednesday, 28th April, 1858.

MR. MOWAT.

TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to amend the laws of Upper Canada affecting
the relation of Debtor and Creditor.

WHEREAS it is expedient to amend the laws of Upper Canada as hereinafter mentioned ;

Preamble.

Her Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Canada enacts as follows :

5 I. No writ of *feri facias* or other writ of execution and no writ of attachment against the goods of any person, shall prejudice a title thereto acquired by any other person *bona fide* for a valuable consideration before the actual seizure or attachment of the goods by virtue of the writ, provided such person at the time he acquired his title had not notice 10 that the writ, or any writ by virtue of which the goods of the other might be seized or attached, had been delivered to, and remained unexecuted in the hands of, the sheriff or coroner.

Bona fide purchasers goods after execution and before seizure protected.

II. In every action in either of the Superior Courts of Common Law, or in any County Court, for breach of contract to deliver specific goods 15 for a price in money, on the application of the plaintiff and by leave of the Judge before whom the cause is tried, the jury, if they find the plaintiff entitled to recover, shall find by their verdict—

Judgment may be obtained in certain cases for specific delivery of goods sold.

(1.) What are the goods in respect of the non-delivery of which the plaintiff is entitled to recover, and which remain undelivered :

20 (2.) What (if any) is the sum which the plaintiff would have been liable to pay for the delivery thereof :

(3.) What damages (if any) the plaintiff would have sustained if the goods should be delivered under execution as hereinafter mentioned : and

25 (4.) What damages if not so delivered :

And if judgment is given for the plaintiff, the Court or any Judge thereof may, on the application of the plaintiff, order an execution to issue for the delivery of the goods on payment of the sum (if any) which was found payable by the plaintiff; and the writ of execution 30 may be for the delivery of the goods : And if the goods or any part thereof cannot be found, then (unless the Court or Judge otherwise orders) the sheriff or coroner shall, at the option of the plaintiff, either distrain the defendant by all his lands and chattels within the county or united counties in which the sheriff or coroner has authority, till the

defendant deliver the goods, or cause to be made of the defendant's property the assessed value or damages or a due proportion thereof; and the plaintiff shall by either the same or a separate writ of execution be entitled to have made of the defendant's property the damages, costs and interest in the suit.

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The consideration for a written promise to answer for another need not be expressed in the writing.

III. No special promise of any person to answer for the debt, default, or miscarriage of another, hereafter made in writing, signed by the party to be charged therewith or by some other person thereunto lawfully authorised, shall be deemed invalid to support a suit or other proceeding, by reason only that the consideration for the promise does not appear in writing. 10

Surety, &c., to be entitled to an assignment of securities when he pays the debt.

IV. Every person who, being surety for any debt or duty of another, or being liable with another for any debt or duty, pays the debt or performs the duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security, held by the creditor in respect of the debt or duty, whether such judgment, specialty or other security would or would not (independently of this Act,) be deemed at law to have been satisfied by such payment of the debt or such performance of the duty: 15

And such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and (if need be, and upon giving a proper indemnity) to use the name of the creditor, in any suit or other proceeding at law or in equity, in order to obtain from the principal debtor, the co-surety, co-contractor or co-debtor, indemnification for the advances made and loss sustained by the person who so paid the debt or performed the duty: 25

And such payment or performance by him shall not be pleadable in bar of any action or other proceeding by him:

But no co-surety, co-contractor or co-debtor shall, by the means aforesaid recover from any other co-surety, co-contractor or co-debtor, more than the just proportion to which, as between those parties themselves, the latter may be justly liable. 30

Creditor to be entitled to assignment of counter securities held by surety, &c., from the debtor.

V. In case any person who is surety for any debt or duty of another, or is liable with another for any debt or duty, do hereafter obtain from such other a counter-security to indemnify him against or in respect of the suretyship or joint liability, the creditor or person to whom the debt or duty is owing shall, on discharging the surety, co-debtor, or co-contractor from or in respect of the debt or duty for which the counter security is held, be entitled to an assignment of the counter security, whether the same would or would not (independently of this Act) be deemed to have been satisfied by such discharge; 35 40

And the creditor shall be entitled to stand in the place of the surety or person holding such security, and to use all the remedies and (if need be and on giving a proper indemnity) to use the name of the surety or other person aforesaid, in any suit or other proceeding at law or in equity, in order to obtain payment or performance of the debt or duty, to the same extent as the surety or other person aforesaid could have procured indemnification by means thereof for having paid the debt or performed the duty in case he had done so; 45

And the discharge of the surety, co-contractor or co-debtor shall not be pleadable in bar of any suit or other proceeding by the creditor.

VI. No acceptance of a bill of exchange, whether inland or foreign, made after the 31st day of December next, shall bind any person, unless the same is in writing on the bill (or on one part thereof if there is more than one part of the bill,) and is signed by the acceptor or some person authorised by him.

An acceptance must be in writing on the Bill.

VII. Every action of account or other suit for any such 'account as concerns the trade of merchandize between merchant and merchant, their factors or servants,' shall be commenced within six years after the accruing of the cause of the action or suit, or in case the same has already accrued, then within six years after the passing of this Act;

Limitation in actions of account.

And no claim in respect of a matter which arose more than six years before the commencement of the suit, shall be enforceable by reason only of some other matter or claim comprised in the same account, having arisen within six years before the suit.

VIII. No person entitled to bring a suit, the period for bringing which is limited by law, shall henceforward be entitled to an extended time for bringing the same, by reason only of his having been beyond seas, or out of Upper Canada, or imprisoned, at the time the cause of action arose, except in the cases provided for by the 28th section of the Real Property Act, passed by the Parliament of Upper Canada in the fourth year of the Reign of His late Majesty, King William the Fourth, and chaptered one.

Time for bringing a suit not to be extended by reason only of the plaintiff's absence or imprisonment when cause of action accrued.

IX. Where there is a cause of action against two or more joint debtors, and one of the debtors is, and the other is not, beyond seas or out of Upper Canada when the cause of action accrues, the absence of the one shall not extend the time for commencing a suit against the other; and a judgment recovered against the one not so absent shall be no bar to a suit against the other after his return.

Absence of one joint debtor shall not extend time for suing the other when not absent.

X. For the purpose of extending the period limited by law for bringing a suit, an acknowledgment or a promise contained in writing, signed by an agent of the party chargeable thereby, duly authorised to make such acknowledgment or promise, shall have the same effect as if the writing had been signed by the party himself.

To extend time for bringing suit written acknowledgment through agent to be as effectual as if signed by party himself.

XI. The 313th, 314th, and 315th Sections of the Common Law Procedure Act, 1856, and the 9th Section of the County Courts Amendment Act, 1857, shall be deemed incorporated with this Act, as if the provisions therein contained had been repeated in this Act and expressly made to apply thereto.

Certain clauses of the Common Law Procedure Act to apply to this Act.

XII. This Act applies to Upper Canada only.