

No. 76.

2nd Session, 7th Parliament, 26 Victoria, 1863.

BILL.

**An Act to amend the Laws of Upper Canada
affecting Trade and Commerce.**

Received and read, 1st time, Monday, 2nd
March, 1863.

Second reading, Friday, 6th March, 1863.

Hon. Mr. WILSON.

QUEBEC:

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An Act to amend the Laws of Upper Canada affecting Trade and Commerce.

WHEREAS it is desirable to amend the Law of Upper Canada Preamble. in certain respects affecting trade and commerce.

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

5 **1.** No writ of Fieri Facias or other writ of execution, and no writ of attachment against the goods of a debtor, shall prejudice the title to such goods acquired by any person *bona fide* and for a valuable consideration, before the actual seizure or attachment thereof by virtue of such writ ; provided such person had not at the time when he acquired such title, notice that such writ or any other writ, by virtue of which the goods of such owner might be seized or attached, had been delivered to and remained unexecuted in the hands of the Sheriff, or other officer.

Writ of Execution not to prejudice title to goods acquired, without notice before seizure.

15 **2.** In all actions and suits for breach of contract to deliver specific goods 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 shall, if they find the plaintiff entitled to recover, find by their verdict,—

Finding of the Jury, and writ for delivery of goods, in cases of breach of contract to deliver specific goods.

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 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.

3. And thereupon, if judgment is given for the plaintiff, the Court or any judge thereof at their or his discretion, on the application of the plaintiff, shall have power to order execution to issue for the delivery of the said goods, on payment of such sum (if any) as shall have been found to be payable by the plaintiff for the same, without giving the defendant the option of retaining the same upon paying the damages assessed, and the writ of execution may be for the delivery of such goods.

On judgment for plaintiff, order may be made for delivery of the goods.

4. If such goods so ordered to be delivered, or any part thereof, cannot be found, and unless the Court or such Judge as aforesaid shall otherwise order, the Sheriff or other officer of the Court shall distrain the defendant by all his lands and chattles within the jurisdiction of the Sheriff or other officer, till the defendant delivers such goods, or at the option of the plaintiff, causes to be made of the defendant's goods the assessed value or damages, or a due proportion thereof.

Provision if goods or any part thereof cannot be found.

As to costs of suit. **5.** The plaintiff shall either by the same, or by a separate writ of execution, be entitled to have made of the defendant's goods the damages, costs and interests in such action or suit.

Consideration for promises to answer for another, need not be in writing. **6.** No special promise to be made by any person after the passing of this Act, to answer for the debt, default or miscarriage of another person, being in writing and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit or other proceeding to charge the person by whom such promise has been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document. **5**

As to such promises to or on behalf of a Firm. **7.** No promise to answer for the debt, default or miscarriage of another made to a firm consisting of two or more persons, or to a single person trading under the name of a firm,—and no promise to answer for the debt; default or miscarriage of a firm consisting of two or more persons, or of a single person trading under the name of a firm, shall be binding on the person making such promise, in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of the firm, unless the intention of the parties that such promise shall continue to be binding notwithstanding such change, shall appear by express stipulation or by necessary implication from the nature of the firm or otherwise. **15**

Right of Sureties paying the principal debt, &c., to assignment. **8.** Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him or a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or the performance of the duty. **25**

And to remedies on such assignment. **9.** 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 on proper indemnity, to use the name of the creditor in any action or other proceeding at law or in equity, in order to obtain from the principal debtor or any co-surety, co-contractor or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who has so paid such debt or performed such duty; and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him. **30**

What only one co-surety, &c., may recover from another. **10.** No co-surety, co-contractor or co-debtor shall be entitled to recover from any other co-surety, co-contractor or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last mentioned person shall be justly liable. **40**

Acceptance of Foreign Bills. **11.** No acceptance of any Bill of Exchange, whether inland or foreign, made after the day of next, shall be sufficient to charge any person, unless the same be in writing on such Bill, or if there be more than one part of such Bill, on one of the said parts, and signed by the acceptor or by some person duly authorized by him. **50**

12. All actions of account or for not accounting, and suits for such accounts as concern the trade of merchandize between merchant and merchant, their factors and servants, shall be commenced, and sued within six years after the cause of such actions or suits, or when such cause has already arisen, then within six years after the passing of this Act; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit, shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account, having arisen within six years next before the commencement of such action or suit.

Actions of account, &c., to be commenced within six years.

13. No person or persons who shall be entitled to any action or suit with respect to which the period of limitation within which the same shall be brought is fixed by the Imperial Act of the twenty-first year of the reign of King James the first, chapter sixteen, section three, or by any Act now in force in Upper Canada, shall be entitled to any time within which to commence and sue such action or suit beyond the period so fixed for the same by the enactments aforesaid, by reason only of such person or some one or more of such persons being at the time of such cause of action or suit accrued without Upper Canada aforesaid, or in the cases in which, by virtue of any of the aforesaid enactments, imprisonment is now a disability, by reason of such person or some one or more of such persons being imprisoned at the time of such cause of action or suit accrued.

Limitation of actions not to be affected by absence from U. C., &c.

14. Where such cause of action or suit, with respect to which the period of limitation is fixed by the enactments aforesaid, or any of them, lies against two or more joint debtors, the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be without Upper Canada, at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time such cause or action accrued without Upper Canada.

As to cases where some of Joint Debtors have been within and some without U. C.

15. And such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors, who was or were without Upper Canada at the time the cause of action or suit accrued, after his or her return to Upper Canada, by reason only that judgment was already recovered against any one or more of such joint debtors, who was not or were not without Upper Canada at the time aforesaid.

The same.

16. In reference to the provisions of the Consolidated Statutes for Upper Canada, chapter forty-four, an acknowledgement or promise made or contained by or in a writing signed by the agent of the party chargeable thereby, duly authorized to make such acknowledgement or promise, shall have the same effect as if such writing had been signed by the party himself.

Cons. Stat. U. C., c. 44 explained, as to signatures by agents.

17. This Act shall apply to Upper Canada only.

Act limited to U. C.