

No. 48.

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

BILL.

An Act to amend the Law relating to Prescription and Limitation of Actions in Lower Canada.

Received and read, first time, Friday, 27th
February, 1863.

Second reading, Monday, 2nd March, 1863.

Mr. O'HALLORAN.

QUEBEC :

PRINTED FOR THE CONTRACTORS BY HUNTER,
ROSE & LEMIEUX, ST. URSULE ST.

An Act to amend the Laws relating to Prescription and Limitation of Actions in Lower Canada.

- W**HEREAS, much discrepancy exists in the Laws and Customs of Lower Canada, relating to the various Prescriptions and Limitation of Actions, founded upon the presumption of payment or discharge of the obligation or cause upon which such actions are predicated; and
- 5 whereas, it is desirable to define and establish a uniform Prescription or plea in bar, *fin de non recevoir*, in all cases in which the same may now by law be invoked against actions founded upon personal obligation, contract or *quasi* contract, which shall be in accordance with the equitable spirit of the laws and customs of Lower Canada: Therefore,
- 10 Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:
1. In all actions founded upon any bill, note, promise, obligation, contract, or quasi-contract, written or verbal, express or implied, whether the same be of a commercial or of a non-commercial nature, in
- 15 which by law mere lapse of time may now be invoked as a bar, *fin de non recevoir*, to such action, such lapse of time shall only raise a presumption of the payment, discharge or extinguishment of the obligation, contract, quasi-contract or cause upon which such action is founded, and shall not be held to be an absolute bar to such action. Lapse of time not to be an absolute bar, but to raise a presumption only of payment, &c.
- 20 2. In every such action, the party or parties invoking or pleading any such Prescription or Limitation, founded upon mere lapse of time, shall be held to accompany such plea with a tender of oath of payment discharge or extinguishment of the obligation or cause upon which such
- 25 of the party pleading such Prescription to corroborate the same by his or her oath, such plea of prescription shall be dismissed, and the action shall be proceeded with as if no such plea had been filed. Plea founded on lapse of time must be supported by oath.
3. In every such action, in which a plea of Prescription shall be pleaded as prescribed by this Act, and corroborated by the party invoking such plea, by his or her oath, (and in the case of heirs and *ayants cause*, according to the best of their knowledge and belief,) such plea, so corroborated, shall be an absolute bar, *fin de non recevoir*, to the
- 30 action or *demande* against which it is pleaded. Plea and oath to be an absolute bar.
4. In every such action, either party shall be entitled to examine the adverse party, *sur faits et articles* or *sur surment decisioree*; and any acknowledgement or admission made under such examination, shall be held to be admissible evidence to be weighed by the court or jury, of a new or continuing contract, whereby to take the case out of the operation of such prescription; and to deprive any party of the benefit
- 40 thereof. Either party may examine the other: effect of admissions.
5. This Act shall extend to causes of action alleged by way of set-off on the part of any defendant, and shall be construed to apply, whether the Prescription be invoked by plea, answer or otherwise. Application of Act to set-off, &c.

Repeal of inconsistent provisions.

6. Any provision or enactment contained in the sixty-fourth, sixty-seventh, seventy-second, and eighty-second Chapters of the Consolidated Statutes for Lower Canada, or in any other law or custom now in force in Lower Canada, which is inconsistent with this Act, is hereby repealed.

Exception of pending cases.

7. This Act shall not apply to any suit or proceeding now pending and shall extend to Lower Canada only.