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No. 64.

4th Session, 6th Parliament, 24 Victoria, 1861

BILL.

An Act for amending the Laws of Upper
Canada in certain particulars affecting the
relation of Debtor and Creditor.

Received and read, first time, Thursday,
4th April, 1861.

Second reading, Monday, 8th April, 1861.

Hon. Mr. MOWAT.

QUEBEC:

PRINTED BY THOMPSON, HUNTER, & CO.,
ST. URSULE STREET.

An Act to amend the law of Upper Canada, in certain particulars affecting the relation of Debtor and Creditor.

HER MAJESTY by and with the advice and consent of the Legislative Council and Assembly of Canada enacts as follows: Preamble.

I. 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 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—

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What the Jury shall find on a verdict for Plaintiff in actions 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.

10 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

15 4. What damages, if not so delivered.

II. In case 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 may be

20 for the delivery of the goods.

Judgment in such case.
Writ.

III. In case 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

25 cause to be made of the defendant's property the assessed value or damages or a due proportion thereof.

How it shall be executed.

IV. The plaintiff shall also by either the same or a separate writ of execution be entitled to have made of the defendant's goods or lands the damages, costs and interest in the suit.

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Separate writ for damages, costs, etc.

V. 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 discharged therewith or by some other person thereunto lawfully authorised, shall be deemed invalid to support a suit or other

35 proceeding, by reason only that the consideration for the promise does not appear in writing.

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

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

VI. When any person who is surety for a debt or duty of another, or is liable with another for any debt or duty, pays the debt or performs the duty, he 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 security would or would not (independently of this Act,) be deemed at law to have been satisfied by such payment or performance : 5

His rights thereunder.

And the person so discharging the debt or duty 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 also the name of the creditor, in any suit or 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 : 10

And such payment or performance by him shall not be pleadable in bar of any action or other proceeding by him. 15

As against his co-surety, &c.

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. 20

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

VII. In case any person who is surety for any debt or duty of another or is liable with another for a 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 ; 25

His rights thereunder.

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 ; - 30 35

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.

An acceptance must be written on the Bill.

VIII. 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. 40

Limitation of suits in actions of account.

IX. 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 ; 45

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 this suit. The same.

5 X. 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 cases provided for by the 45th section of the Real
10 Property Act, Chapter 88 of the Consolidated Statutes of Upper Canada.

Time for bringing a suit not to be extended by reason only of the plaintiff's absence or imprisonment when cause of action accrued. Exception of one joint debtor shall not extend time for suing the other when not absent.

XI. When 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
15 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.

XII. For the purpose of extending the period limited by law for bringing a suit, an acknowledgement or a promise contained in writing, signed
20 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.

Time may be extended by written acknowledgement through agent

XIII. In case any settlement of real or personal property in contemplation and consideration of a marriage is hereafter made under
25 circumstances that would, either wholly or in part, invalidate as against creditors a transfer of the property for any other valuable consideration paid by the intended husband or wife, the marriage settlement, if not otherwise invalid, shall, to a corresponding extent, be void as against the same creditors.

Marriage settlement of property void against creditors, as far as a transfer of the same property would be.

XIV. Where a person has a judgment which was recovered in a Court of competent jurisdiction out of Upper Canada, and the defendant does not reside in Upper Canada, but has real or personal property therein, the defendant may be sued on such judgment in Upper Canada,
30 though there is not a cause of action that arose there or in respect of the breach of a contract made there: And in such case the like proceedings, so far as applicable, may be taken as provided by the Common Law Procedure Act, sections 43 to 47, for the case of absent defendants sued on a cause of action which arose in Upper Canada.

Proceedings on judgment out of U.C., on defendant having property there.

XV. The 333 to the 340th section inclusive, of the Common Law Procedure Act, shall be deemed incorporated in this Act, as if the provisions therein contained had been repeated in this Act and expressly made to
40 apply thereto.

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

XVI. This Act applies to Upper Canada only.

Act for U. C. only.