

CHAPTER 85.

Of the Limitation of Personal Actions, and of Guarantees and Sureties.

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SECTION

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1. All actions for rent upon an indenture of demise, all actions upon any bond or other specialty, and all actions upon any recognizance; all actions upon any award where the submission is not by specialty, or for an escape, or for money levied on any *fieri facias*; all actions of trespass *quare clausum fregit*, actions of trespass, detinue, trover and replevin for taking away of goods or cattle; all actions of account and upon the case (other than such accounts as concern the trade of merchandize between 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; all actions or suits on the Admiralty side of the Supreme Court for seamen's wages, and all actions of assault, menace, battery, wounding and imprisonment, or any of them, and all actions for penalties, damages or sums of money given to the party grieved by any statute now or hereafter to be in force, shall be commenced and sued within the time and limitation hereinafter expressed, and not after; that is to say: the said actions for rent upon an indenture of demise, upon any bond or other specialty, actions upon recognizance, within twenty years after the cause of such actions, but not after; the said actions upon any award where the submission is not by specialty, or for an escape, or for money levied on any *fiery facias*, the said actions upon the case, (other than slander,) and the said actions for account, and the said actions for trespass, debt, detinue, trover and replevin for goods or cattle, and the said actions for trespass *quare clausum fregit*, and actions or suits on the Admiralty side of the Supreme Court for seamen's wages, within six years next after the causes of such actions or suits, and not after; and the said actions of trespass, of assault, menace, battery, wounding, imprisonment, or any of them, within four years next after the cause of such actions, and not after; and the said actions for penalties, damages, or sums of money by the party grieved, within two years after the cause of such action; and also the said actions upon the case for words, within two years next after the words spoken, and not after: Provided that nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited.

2. If in any of the said actions or suits judgment be given for the plaintiff, and the same be reversed by any Court of competent jurisdiction, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, in all such cases the party plaintiff, his executors or administrators, as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed, or such judgment given against the plaintiff, and not after.

3. If any person who is or shall be entitled to any such action or suit, or to such *scire facias*, is, or shall be at the time of any such cause of action accrued, within the age of twenty-one years, a feme covert, *non compos mentis*, or beyond the seas, then such person may bring the same action, so as such person commences the same within such times after coming to or being of full age, discover, of sound memory, or returned from beyond the seas, as any other person having no such impediment should, according to the provisions of this chapter, have done; and if any person against whom there shall be any such cause of action is, or shall be at the time such cause of action accrued, beyond the seas, then the person entitled to any such cause of action may bring the same against such person within such times respectively as are before limited after the return of such person from beyond the seas.

4. In any action for rent upon an indenture of demise, action upon any bond or other specialty, action upon any recognizance, and in all actions grounded upon any simple contract, 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 first section of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing signed by the party chargeable thereby, or his agent; and when there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator, shall lose the benefit of the said first section of this chapter so as to be chargeable in respect or by reason only of any written acknowledgment or promise made or signed by any other or others of them: Provided that nothing herein contained shall alter or take away or lessen the effect of any payment of principal or interest made by any person whatever; and also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise, that the plaintiff, though barred by the first section of this chapter as to 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 or promise, or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

5. If any acknowledgment shall have been made either by writing signed by the party, or the agent of the party liable by virtue of such indenture, specialty or recognizance, or liable in any action grounded upon any simple contract, or by part payment or part satisfaction, on account of any principal or interest being then due thereon, the person entitled to such action may bring his action for money remaining unpaid, and so acknowledged to be due, within such periods of time respectively after such acknowledgment by writing, or part payment, or part satisfaction as aforesaid, as are hereinbefore prescribed for commencing such action; or in case the person entitled to such action shall, at the time of such acknowledgment, be under such disability as aforesaid, or the party making such acknowledgment be at the time of making the same beyond the seas, then within such respective periods of time as aforesaid, after such disability shall have ceased, or the party shall have returned from beyond the seas, as the case may be; and the plaintiff in any such action may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid in answer to a plea of this chapter.

6. By the term "beyond the seas," in this chapter, shall be meant any place beyond the limits of the Government of Newfoundland.

7. No indorsement or memorandum of any payment witten or made upon any promissory note, bill of exchange, or any recognizance, bond,

specialty, 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 the said first section of this chapter.

8. This chapter shall apply to the case of any debt on any specialty or any simple contract or otherwise, which may now or at any time hereafter by law be alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise.

9. No action hereafter to be brought 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.

10. No special promise to be made by any person 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 shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

11. Every person who, being surety for debt or duty of another, or, being liable with another for any debt, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to 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 performance of the duty; 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 a 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, co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have paid such debt or performed such duty; and such payment or performances so made by such surety shall not be pleadable in bar of any such action or other proceeding by him: Provided that 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.

12. All actions of account, or for not accounting, and suits for such accounts as concern the trade of merchandize between merchant and mer-

chant, their factors or servants, or other persons, shall be commenced and sued within six years after the cause of such actions or suits; 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 or claim, comprised in the same account, having arisen within six year next before the commencement of such action or suit.

13. When there shall be two or more co-contractors, or co-debtors whether bound or liable jointly only, or jointly and severally, or executors or administrators of any contractor, no such co-contractor, or co-debtor, executor or administrator, shall lose the benefit of the enactments mentioned in this chapter, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money, by any others of such co-contractors or co-debtors, executors or administrators.
