

No. 5.—1844.

AN ORDINANCE for Prevention of Frauds, and for the Amendment of the Law in certain particulars.

(L. S.) H. MACLEOD.

WHEREAS it is expedient for prevention of many fraudulent practices that certain parts of an Act of Parliament, made and passed in the twenty-ninth year of the reign of His Majesty King Charles the Second, intituled "An Act for Prevention for Frauds and Perjuries," should be put in force in this Colony, and that certain other amendments should be also made in the Laws thereof for the purpose of assimilating the same to the law of England: Be it therefore enacted and ordained by His Excellency the Governor and Commander-in-Chief in and over the said Island of Trinidad and its Dependencies, Vice-Admiral thereof, by and with the advice and consent of the Council of Government thereof, That from and after the promulgation of this Ordinance, no contract, agreement, or promise thereafter to be made or entered into by any person by words spoken, or by any writing not being a specialty, shall be of any force or effect in law, or shall bind any party thereto, unless such contract, agreement, or promise shall be founded upon some valuable thing, or consideration sufficient according to the principles of the law of England, to support the same against the party sought to be charged therewith.

No contract or promise to be binding unless founded on a consideration sufficient according to the law of England.

Not to extend to specialties.

What shall be specialties.

2. Provided always and be it further enacted and ordained, That nothing herein contained shall extend to alter or affect the law as at present established with respect to any contract, agreement, promise, or obligation contained in any specialty, and that no deed, instrument, or writing shall be held or taken in law to be a specialty, save and except all deeds duly enregistered in the office of the Registrar of deeds in this Colony, and save and except also all deeds, bonds, or obligations executed within the Colony, and signed or acknowledged and delivered by the party to be charged therewith in the presence of and attested by three or more witnesses to the execution thereof, and save and except also all

The underlined words repeated by Ord 15—1884

deeds, bonds, or obligations executed out of this Colony, and duly sealed and delivered by the party to be charged therewith in the presence of and attested by one or more credible witness or witnesses to the execution thereof.

3. And be it further enacted and ordained, That from and after the promulgation of this Ordinance no action shall be brought whereby to charge any heir, executor, or administrator upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract of sale of lands, tenements, hereditaments, or any interest in or concerning them, or upon any agreement which is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

Promises and agreements by parol.

4. And be it further enacted and ordained, That from and after the promulgation of this Ordinance, no contract for the sale of any goods, wares, and merchandizes, for the price of ten pounds sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit, or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

Contracts for sale of goods for ten pounds or more.

5. And be it further enacted and ordained, That from and after the promulgation of this Ordinance, in any action for the recovery of any debt or damages 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

In actions on contract no acknowledgment be deemed sufficient unless it be in writing or by part payment.

Joint Con-
tracts.

Proviso in case
of joint con-
tractors.

take any case out of the operation of any Law or Ordinance, establishing any prescription or limitation of action affecting such contract, or for giving relief to persons insolvent, or making cession of their property for the benefit of their creditors, or to deprive any party of the benefit of any such Law or Ordinance, unless such acknowledgment or promise shall be made or contained in or by some writing, to be signed by the party chargeable thereby; and that where there shall be two or more joint contractors, or heirs, or executors, or administrators, of any contractor, no such joint contractor, heir, executor, or administrator, shall lose the benefit of such Law or Ordinance, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided always, that nothing herein contained shall lessen the effect of any payment of any principal or interest made by any person whatsoever: Provided also, that in actions to be commenced against two or more such joint contractors, or heirs, or executors, or administrators, if it shall appear at the trial or otherwise, that the plaintiff, though barred by any such Law or Ordinance, as to one or more of such joint contractors, or heirs, 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.

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*Sec. 6 repealed by Ordinance 15 of 1881,
and by Ordinance 6 of 1882.*

Indorsements
of payments.

7. And be it further enacted and ordained, That no indorsement or memorandum of any payment written or made after the promulgation of this Ordinance, upon any promissory note, bill of exchange, or other writing, by or on the 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 this Ordinance, or of any other such Law or Ordinance as is hereinbefore mentioned.

8. And be it further enacted and ordained, That this Ordinance shall be deemed and taken to apply to the case of any debt on simple contract, alleged by way of set off on the part of any defendant.

Simple contract debts alleged by way of set off.

9. And be it further enacted and ordained, That from and after the promulgation of this Ordinance, no action shall be maintained whereby to charge any person upon any promise made after full age, to pay any debt contracted during minority, or upon any ratification after full age, of any promise or simple contract made during minority, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

Confirmation of promises made by Minors.

10. And be it further enacted and ordained, That from and after the promulgation of this Ordinance, no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made, or given concerning, or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

Representations of character.

11. And be it further enacted and ordained, That where any action shall be brought against any defendant or defendants upon any contract to be made or entered into after the passing of this Ordinance whereby such defendant or defendants shall be bound as a surety or sureties or to answer for the debt, default, or miscarriage of any other person, such defendant or defendants shall not be admitted to plead any plea founded upon the benefit of excussion, but such action shall and may be pursued and judgment thereon recovered and enforced against such defendant or defendants, notwithstanding that the person for whose debt, default, or miscarriage such defendant or defendants shall have become answerable shall not have been first impleaded or proceeded against.

In actions against a surety, or on any contract to answer for the debt of another.

Pleas founded on the benefit of excussion, not to be pleaded.

12. And be it further enacted and ordained, That from and after the promulgation of this Ordinance, every contract or promise in writing made or entered into by any woman as a surety, or to answer for the debt, default,

Women to be sued on their contracts as sureties in the same way as

on other contracts.

or miscarriage of another person, shall be binding upon and chargeable against her in the like manner, and to the same extent as other contracts or promises lawfully made or entered into by such woman.

Pleas founded on the benefit of division, not to be allowed.

13. And be it further enacted and ordained, That from and after the promulgation of this Ordinance, it shall not be lawful for any defendant or defendants in any action founded upon any joint contract to plead any plea, founded upon the benefit of division, and that upon judgment to be recovered in any such action, it shall be lawful for the plaintiff to levy the whole amount of the debt or damages awarded by such judgment against any one or more of the defendants in such action against whom he shall recover, as to the plaintiff shall seem fit.

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Sections 14, 15, 16, and 17 repealed by Ordinance 15 of 1881, and by Ordinance 6 of 1882.

In certain actions initials may be used.

18. And be it further enacted and ordained, That in all actions upon bills of exchange, or promissory notes, or other written instruments, any of the parties to which are designated by the initial letters, or letter, or some contraction of the christian or first name, or names, it shall be sufficient in the process or declaration to designate such persons by the same initial letter, or letters, or contraction of the christian or first name, or names, instead of stating the christian or first name or names in full.

Power to amend in case of variance between any matter in writing or print and the setting forth of the same on the Record.

19. And be it further enacted and ordained, That it shall and may be lawful for any superior Court of Record, or Judge thereof in this Colony, if such Court or Judge shall see fit so to do, to cause the record on which any trial may be pending before them or him in any civil action, or in any prosecution for any misdemeanor, where any variance shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular by some officer of the Court on payment of such costs (if any) to the other party as such Court or Judge shall

think reasonable, and thereupon the trial shall proceed as if no such variance had appeared.

20. And be it further enacted and ordained, That it shall be lawful for any superior Court of Record or Judge thereof, if such Court or Judge shall see fit so to do, to cause the record, on which any trial may be pending before such Court or Judge in any civil action where any variance shall appear between the proof and the recital or setting forth on the record, on which the trial is proceeding, of any contract, custom, or prescription, name, or other matter in any particular or particulars in the judgment of such Court or Judge, not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action or defence to be forthwith amended by some officer of the Court or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend on such terms as to payment of costs to the other party or postponing the trial or both payment of costs and postponement as such Court or Judge shall think reasonable; and in case such variance shall be in some particular or particulars in the judgment of such Court or Judge not material to the merits of the case, but such as that the opposite party may have been prejudiced thereby in the conduct of his action or defence, then such Court or Judge shall have power to cause the same to be amended upon payment of costs to the other party and withdrawing the record or postponing the trial as aforesaid, as such Court or Judge shall think reasonable, and after any such amendment the trial shall proceed, in case the same shall be proceeded with in the same manner in all respects both with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had appeared.

Power to amend in cases of variance between the proof and the recital or setting forth of any matter not material.

21. And be it further enacted and ordained, That it shall be lawful for the parties in any action after issue joined, by consent and by order of any Judge of any superior Court, to state the facts of the case in the form of a special case for the opinion of the Court and to agree that a judgment shall be entered for the plaintiff or defendant, in such manner as shall be so agreed immediately after the decision of the case or otherwise, as

Parties may after issue joined, state a special case.

the Court may think fit, and judgment shall be entered accordingly.

Court or
Judge may
allow interest
in certain
cases.

22. And be it further enacted and ordained, That upon all debts or sums certain, payable at a certain time or otherwise, the Court or Judge before whom the action shall be tried, may, if the Court or Judge shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: Provided that interest shall be payable in all cases in which it is now payable by law.

Court or Judge
may give
damages in
the nature of
interest in
certain cases.

23. And be it further enacted and ordained, That the Court or Judge on the trial may, if they or he shall think fit, give damages in the nature of interest, over and above the value of the goods, at the time of the conversion or seizure, in all actions in the nature of Trover or Trespass de Bonis Asportatis, and over and above the money recoverable in all actions on policies of assurance made after the passing of this Ordinance.

Repeal of all
laws repug-
nant to this
Ordinance.

24. And be it further enacted and ordained, by the authority aforesaid, That from and after the promulgation of this Ordinance, the second Law of the 16th title of the 5th book de las Leyes de la Recopilacion, and the first Law of the 11th title of the 5th Partida, and the 2nd, 7th, 8th, 9th, and 10th Laws of the 12th title of the 5th Partida, and the 10th Law of the 1st title, of the 10th book of the Novissima Recopilacion, together with all other Laws, Ordinances, or Orders of Government, so far as the same or any part thereof are or is repugnant to, or inconsistent with any provision of this Ordinance shall be, as the same are hereby declared to be, repealed.

Operation of
Ordinance.

25. And be it further enacted and ordained, That this Ordinance shall come into force and take effect from and immediately after the expiration of three calendar months from and after the promulgation thereof.