

No. XVII.

An Act for adopting and applying a certain Act of Parliament for rendering a written Memorandum necessary to the validity of certain Promises and Engagements. [13th June, 1834.]

IMPERIAL ACT
ADOPTION.

WHEREAS a certain Act of Parliament was passed in the ninth year of the reign of His late Majesty King George the Fourth intitled “ *An Act for rendering a written Memorandum necessary to the validity of certain Promises and Engagements*” and the same was made to commence and take effect on the first day of January one thousand eight hundred and twenty-nine And whereas it is expedient to adopt and apply the said recited Act of Parliament in the Administration of Justice in New South Wales Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That the said recited Act of Parliament and every clause provision and enactment therein contained shall be and the same is and are hereby adopted and directed to be applied in the Administration of Justice in the said Colony and its Dependencies in like manner as other Laws of England are therein applied and as if the same and every part thereof had been repeated and re-enacted in this Act or Ordinance.

Preamble.

9 Geo. IV. c. 14.

Adopted and directed
to be applied in the
Administration of
Justice.

English Written Contracts Act Adopted, 9 G. 4, c. 14.

ANNO NONO GEORGH IV. REGIS.

CAP. XIV.

ENGLISH WRITTEN
CONTRACTS ACT
ADOPTED.

An Act for rendering a written Memorandum necessary to the validity of certain Promises and Engagements. [9th May, 1828.]

English Act 21 Jam.
I. c. 1.

Irish Act 10 Car.
I. sess. 2 c. 6.

In actions of debt or
upon the case no
acknowledgment
shall be deemed
sufficient unless it
be in writing or by
part payment.

Joint contractors.

Proviso for the case
of joint contractors.

Pleas in abatement.

WHEREAS by an Act passed in England in the twenty-first year of the reign of King James the First it was among other things enacted That all actions of account and upon the case other than such accounts as concern the trade of merchandise 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 should be commenced within three years after the end of the then present Session of Parliament or within six years next after the cause of such actions or suit and not after And whereas a similar enactment is contained in an Act passed in Ireland in the tenth year of the reign of King Charles the First And whereas various questions have arisen in actions founded on simple contract as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments And it is expedient to prevent such questions and to make provision for giving effect to the said enactments and to the intention thereof Be it therefore enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same That in actions of debt or upon the case 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 said enactments or either of them or to deprive any party of the benefit thereof unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby and that where 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 enactments or either of them 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 alter or take away or 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 executors or administrators if it shall appear at the trial or otherwise that the plaintiff though barred by either of the said recited Acts or this Act 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.

2. And be it further enacted That if any defendant or defendants in any action on any simple contract shall plead any matter in abatement to the effect that any other person or persons ought to be jointly sued and issue be joined on such plea and it shall appear at the trial that the action could not by reason of the said recited Acts or this Act or of either of them be maintained against the other person or persons named in such plea or any of them the issue joined on such plea shall be found against the party pleading the same.

English Written Contracts Act Adopted, 9 G. 4, c. 14.

3. And be it further enacted That no indorsement or memorandum of any payment written or made after the time appointed for this Act to take effect 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 either of the said Statutes.

Indorsements of payments.

4. And be it further enacted That the said recited Acts and this Act 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 either by plea notice or otherwise.

Simple contract debts alleged by way of set-off.

5. And be it further enacted That no action 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.

Confirmation of promises made by infants.

6. And be it further enacted That 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 * Sic. writing signed by the party to be charged therewith.

Representations of character.

7. And whereas by an Act passed in England in the twenty-ninth year of the reign of King Charles the Second intituled “*An Act for the prevention of Frauds and Perjuries*” it is among other things enacted that from and after the twenty-fourth day of June one thousand six hundred and seventy-seven no contract for the sale of any goods wares and merchandises 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 And whereas a similar enactment is contained in an Act passed in Ireland in the seventh year of the reign of King William the Third And whereas it has been held that the said recited enactments do not extend to certain executory contracts for the sale of goods which nevertheless are within the mischief thereby intended to be remedied and it is expedient to extend the said enactments to such executory contracts Be it enacted That the said enactments shall extend to all contracts for the sale of goods of the value of ten pounds sterling and upwards 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.

29 Car. II. c. 3.

Irish Act 7 Gul. III. c. 12.

Powers of recited Acts extended to contracts for goods of £10 or upwards although the delivery be not made.

8. And be it further enacted That no memorandum or other writing made necessary by this Act shall be deemed to be an agreement within the meaning of any statute relating to the duties of stamps.

Memorandums exempted from stamps.

9. And be it further enacted That nothing in this Act contained shall extend to Scotland.

Net to extend to Scotland.

10. And be it further enacted That this Act shall commence and take effect on the first day of January one thousand eight hundred and twenty-nine.

Commencement of Act.