

Whether or no they have not heard the creditor in his life-time acknowledge that debt, or any and what part thereof, to be satisfied, or whether or not (upon sight of the creditor's books, writing or accounts,) they have not seen credit given to the debtor since the day of the making the said bills, bonds, or beginnings of the accounts so sued for; all which, in like manner, is to be certified by the public notary, or other officer thereunto appointed, under his hand and seal, to be sent to this country, together with the testimony of the witnesses, or any of them, that have testified to the said bonds, bills, accounts, or otherwise, all which, if the said executor or administrator refuse or neglect to do, then the said matter and thing, by the public notary, or other officer appointed, as aforesaid certified, shall not be received in evidence for valid against the debtor.

II. AND BE IT ENACTED, by the authority aforesaid, That all and every the attorney and attornies, who shall be employed in the prosecution of such suit, shall put in security, to pay the defendant all such costs and charges as shall be by the defendant in that case expended, in case the plaintiff be cast in the suit.

Attorney to give security.

III. AND, to the end no honest debtor that hath not fled from the place or country where he contracted his debt, nor wilfully absconded himself, or fled from justice, shall be surpris'd by unnecessary and vexatious suits at law, BE IT ENACTED, by the authority, advice, and consent aforesaid, That no person whatsoever, residing or trading in or to this province, their executors, administrators, agents, factors or assigns, shall, for any sum or sums of tobacco or money due and owing to him by account upon book or otherwise, (and for which the debtor hath not passed his hand and seal to such his creditor,) sue and implead such debtor, his executors or administrators, in any court of record within this province, unless he shall first demand and require the same of such debtor's proper person, or otherwise, at the habitation or place of residence of the said debtor, in the county where he shall dwell, to prove which demand, the creditor's or demandant's own oath shall be sufficient; and if the debtor be not at home to be spoke with, then such demandant shall leave a note, under the hand of such creditor or demandant, or those he shall empower to receive the same, with the time, and to whom the same shall be paid, and if thereupon the same be not paid accordingly, then it shall and may be lawful for such creditor to sue and implead such his debtor, and recover against him all such costs and damages, as upon legal trial in any court of this province, having cognizance of the cause, shall be adjudged as before the making this act.

No book debt, &c. to be sued, &c.

IV. BUT, in case any person or persons shall sue and implead such his debtor as aforesaid without making demand as aforesaid, and the debtor plead that the debt was never demanded, by such plea the debtor shall be taken to admit the plaintiff's declaration to be good, and shall only put the demand in issue, which issue, if the plaintiff do not join, then the plaintiff shall be taken to have made no demand, and shall only have judgment for his damages, and shall lose all his own costs; and if the plaintiff join in issue upon the demand, and it be found against him, then the plaintiff shall lose his own costs, and pay costs of such trial to the defendant; yet the said plaintiff shall have judgment to recover his debt or damages for which he sues, or for so much thereof as appears due upon balance.

Creditor suing, &c. to lose his costs, &c.

V. AND BE IT FURTHER ENACTED, That if any debtor or debtors be sued by any creditor or creditors, for any sum or sums of money or tobacco due upon the debtor's assumption, or due by bill or bond, under the hand and seal of the said debtor, and the debtor confess the assumption, or such part thereof as he shall think fit to plead discount to, and acknowledge his act or deed, but saith further, that he hath an account of his own against the creditor, that hath arisen due to the debtor since the passing such bill or bond, or after such assumption as aforesaid, which he desires may be discounted, or shall give any account proved according to the directions of this act, and lodged or filed in court, in evidence upon the general issue, it shall and may be lawful for the justices before whom such matter shall be depending, upon good proof made of such account, to cause the same (although of a less or inferior nature,) to be discounted in court, and give judgment thereupon against the defendant for so much only as shall be remaining to the plaintiff, with cost of suit, provided the balance exceed four hundred pounds of tobacco, or three and thirty shillings and four pence, in the county court, and fifteen hundred pounds of tobacco, or six pounds five shillings sterling, in the provincial court, otherwise the plaintiff shall be nonsuited, as by other laws are provided.

Account plead- ed shall be dis- counted, &c.

VI. PROVIDED NEVERTHELESS, That nothing in this act contained shall be construed to give the said provincial court any other jurisdiction than what is agreeable to the act of assembly for relieving the inhabitants of this province from some aggressions in the prosecution of suits at law, any thing herein contained to the contrary notwithstanding.

Proviso.