

were lost, whereby said commissioners may be much embarrass'd, which might be cas'd by papers, books or receipts in other persons' hands,—

Be it enacted and declared,

Commissioners
empowered to
demand papers.

[SECT. 6.] That said commissioners be and hereby they are authorized and impowred to demand and receive of the late directors, treasurer, endorser, partners and clerks of the said late company, any and all papers they shall judge needful, giving receipt for them, and to examine the said persons on oath touching the affairs of said late company. And the said commissioners, or a major part of them, are directed to meet, for the first four weeks after the publication of this act, two days in each week, and for the next four weeks, one day in each week, and after that, one day each alternate or every other week, 'till the scheme be finished, and no oftener, unless, on a representation made to the governour and council, they shall direct the commissioners to meet more frequently. [*Passed January 3, 1748—49.*]

CHAPTER 17.

AN ACT IN ADDITION TO, AND FOR EXPLANATION OF, AN ACT ENTITLED "AN ACT FOR LIMITATION OF ACTIONS, AND FOR AVOIDING SUITS AT LAW, WHERE THE MATTER IS OF LONG STANDING."

Preamble.

1740-41, chap. 4,
§ 1.

WHEREAS, in and by an act made in the thirteenth year of his present majesty's reign, entitled "An Act for limitation of actions, and for avoiding suits in law where the matter is of long standing," it is, among other things, enacted, "That all actions for arrearages of rent, or grounded on any lending or contract, without specialty, should be brought within four years next after the cause of such action, in cases where the cause of action should arise after the publication of the said act, and, in those cases where the cause of action had arisen before, within four years after the publication thereof, and not afterwards"; and whereas the latter part of the said clause was, at the time of making the said act, generally understood to be meant and intended only of such actions grounded on lending or contract, without specialty, as are express'd in the act of parliament, which was pass'd in the twenty-first year of the reign of King James the First, entituled "An Act for limitation of actions and avoiding suits at law"; from which act the before-recited law of this province is, with respect to the actions therein mentioned, in a great measure copied; but yet the same, construed in it's utmost latitude, may be understood to include actions of the case upon bill or note of hand, and has lately been so adjudged by some of the courts of judicature within this province; and by the like construction may be deem'd to extend to all actions of account and upon the case, whatsoever, not excepting such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants;—by which construction, in the courts of judicature, very many creditors have been greatly surprized and injured, who, upon the aforesaid general understanding of the said clause of the aforesaid provincial act, and thro' lenity to their debtors, have foreborn to bring actions for the recovery of debts due to them by promissary note, or otherwise howsoever, upon simple contract, within the time limited in the aforesaid law of this province for bringing actions grounded upon lending or contract, without specialty, and will thereby, upon the aforesaid construction of the latter part of said recited clause, be barr'd from bringing actions for the recovery of the same, and great mischief and

inconvenience may arise in the trade of merchandize, and dealings between merchant and merchant, and other traders within this province: now, for remedying and preventing the same,—

Be it declared and enacted by the Governour, Council and House of Representatives,

[SECT. 1.] That all actions of account, or upon the case, grounded on any lending or contract or otherwise howsoever, in which the cause of action has arisen before the publication of this act, and which have not yet been commenced or prosecuted to effect, may be brought and prosecuted at any time within four years after the publication hereof; and in cases where such actions have been commenced, and judgment hath been given upon plea in bar, or on tryal, for the defendant, the plaintiff or plaintiffs in such action, their executors or administrators, may bring and prosecute a writ of review of the said action in such court where the same was tried,—within three years after the making up such judgments,—for the reversing the same, and recovering of their debt, anything in the aforesaid act contain'd to the contrary notwithstanding; and shall have the like advantage for recovering the same, as if the said act had never been made: and that 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 (the cause whereof shall arise after the publication of this act), shall be brought within the term of four years next after the cause of such actions, and not afterwards; and that all actions of account, which concern the trade of merchandize between merchant and merchant, their factors or servants, as aforesaid, may be brought and prosecuted at any time after the cause of such action, at the pleasure of such persons as may be concerned; anything in the aforesaid act to the contrary in anywise notwithstanding.

Further time allowed for bringing actions of account and on the case.

Time limited for bringing actions of account and on the case.

Provided always, and be it further enacted,

[SECT. 2.] That this act shall not be understood to bar any infant, feme-covert, person imprisoned, beyond the seas, or *non compos mentis*, from bringing either of the actions before mentioned within the term, before set and limited for bringing such actions, reckoning from the time that such impediment shall be removed.

Proviso.

And whereas it may happen that some debtors may be out of this province during the whole or some considerable part of the term of time by this act allowed and limited for bringing such actions as aforesaid, and the creditors in such case not have like advantage with other creditors for recovering their debts,—

Preamble.

It is therefore hereby further provided and enacted,

[SECT. 3.] That if any debtor shall continue out of this province more than twelve months within the aforesaid term, in such case the creditor shall be allowed such further time for bringing his action and recovering his debt as shall appear, to the satisfaction of the court in which such action shall be brought, that the debtor had continued out of the province within the four years before mentioned. [*Passed February 1, 1748-49.*]

Proviso where debtor continues out of the province.