

CHAPTER 275

THE MERCANTILE LAW AMENDMENT ACT

Arrangement of Sections

Section

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MERCANTILE LAW AMENDMENT

(21st April, 1876.)

211876.
1211949.
S.R.O. 2211956.
1811989.

1. This Act may be cited as the Mercantile Law Amendment Act. **Short title.**

2. No special promise, to be made by any person after the passing of this Act, 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. **Consideration for guarantee need not appear by writing.**

3. No promise to answer for the debt, default, or miscarriage of another, made to a firm consisting of two or more persons, or to a single person trading under the name of a firm. and no promise to answer for the debt, default, or miscarriage of a firm consisting of two or more persons, or of a single person trading under the name of a firm, shall be binding on the person making such promise, in respect of anything done or omitted to be done after a change shall have taken place in one or more of the persons constituting the firm, or in the person trading under the name of a firm. unless the intention of the parties, that such promise shall continue to be binding notwithstanding such change, shall appear, either by express stipulation, or by necessary implication from the nature of the firm or otherwise. **Guarantee to or for a firm to cease upon a change in the firm, except in special cases.**

4. Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, speciality, or other security, which shall be held by the creditor in respect of such debt or duty, whether such **A surety, who discharges the liability, to be entitled to assignment of all securities held by the creditor.**

judgment, speciality, 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, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt, or performed such duty; and such payment or performance, 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 persons shall be justly liable.

Acknowledgements of debts may be made by agents.

5. An acknowledgement or promise, made or contained by or in writing signed by an agent of the party chargeable thereby, duly authorized to make such acknowledgement or promise, shall have the same effect as if such writing had been signed by such party himself.

Limitation of actions for "Merchants' accounts."

6. All actions of account or for not accounting, and suits for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued within six years after the cause of such actions or suits arose; 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 of claim, comprised in the same account, having arisen within six years next before the commencement of such action or suit.

Absence beyond seas or imprisonment of a creditor not to be a disability.

7. The provisions of the Acts of the United Kingdom of the twenty-first year of the reign of King James the First, chapter sixteen, section three, and of the fourth year of the reign of Queen Anne, chapter sixteen, section seventeen, and of the third and fourth years of the reign of King William the Fourth, chapter twenty-seven, sections forty-one and

forty-two, and chapter forty-two, section three, and of the sixteenth and seventeenth years of the reign of Queen Victoria, chapter one hundred and thirteen, section twenty, are hereby expressly declared to be in force in Antigua and Barbuda; and no person or persons, who shall be entitled to any action or suit, with respect to which the period of limitation, within which the same shall be brought, is fixed by any one or other of the enactments aforesaid, shall be entitled to any time, within which to commence and sue such action or suit, beyond the period so fixed for the same by the enactments aforesaid, by reason only of such person, or some one or more of such persons, being at the time of such cause of action or suit accrued, beyond the seas, or, in the cases in which, by virtue of any of the aforesaid enactments, imprisonment is now a disability, by reason of such person, or some one or more of such persons, being imprisoned, at the time of such cause of action or suit accrued, any local law to the contrary notwithstanding.

8. Where such cause of action or suit, with respect to which the period of limitation is fixed by the enactments in and by the preceding section declared to be in force in Antigua and Barbuda, or by any of them, lies against two or more joint debtors, the person or persons, who shall be entitled to the same, shall not be entitled to any time, within which to commence and sue any such action or suit against any one, or more, of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were, at the time such cause of action accrued, beyond the seas; and such person or persons, so entitled as aforesaid, shall not be barred from commencing and suing an action or suit, against the joint debtor, or joint debtors, who was or were beyond the seas at the time the cause of action or suit accrued, after his or their return from beyond the seas, by reason only that judgment was already recovered against any one, or more, of such joint debtors who was not, or were not, beyond the seas at the time aforesaid.

Period of limitation to run as to joint debtors in Antigua and Barbuda though some are beyond seas. Judgment recovered against joint debtors in Antigua and Barbuda to be no bar to proceeding against others beyond seas after their return.

Part payment by one contractor, &c., not to prevent bar by certain statutes of limitations in favour of another contractor, &c.

9. In reference to the provisions of the Act of the twenty-first year of the reign of King James the First, chapter sixteen, section three, and of the Act of the third and fourth years of the reign of King William the Fourth, chapter forty-two, section three, and of the Act of the sixteenth and seventeenth years of the reign of Queen Victoria, chapter one hundred and thirteen, section twenty, by section 7 of this Act declared to be in force in Antigua and Barbuda, 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 or debtor, no such co-contractor, or co-debtor, executor, or administrator, shall lose the benefit of the said enactments, or any of them, so as to be chargeable in respect, or by reason only, of payment of any principal, interest, or other money, by any other or others of such co-contractors, co-debtors, executors or administrators.

Power to make rules of court.

10. Rules of court for the purpose of giving effect to this Act (including the framing of writs and proceedings) may be made in the same manner as rules of court for the High Court may be made.
