

THE MERCANTILE LAW AMENDMENT ACT

Cap. 243.

[1st July, 1872.]

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

Guarantees and Sureties

2. No special promise, to be made by any person 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 any 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.

A surety who discharges liability to be entitled to assignment of all securities held by the creditor.

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, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, 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 always, 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 person shall be justly liable.

Debts of Infants

Provision respecting debts contracted during infancy.

5. 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.

Action on Representation, etc.

6. 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 thereupon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

No action to be brought upon representation concerning character, etc., of any person.

Stamps

7. No memorandum or other writing, made necessary by sections 5 and 6 shall be deemed to be an agreement within the meaning of the Stamp Duty Act.

Provision as to stamps.

Abolition of Consignee's Lien

8. No lien or charge shall be deemed to arise by operation or implication of law, by way of factors' or consignees' lien or otherwise, upon any pen, plantation or land, or on the live or dead stock thereon, or belonging to the same, or on the crops or produce thereof, in respect of moneys or stores advanced or supplied to the proprietor thereof, or to any other person, for the cultivation or carrying on of the same or otherwise, or of any services rendered to such proprietor or other person in or about the cultivation or management of the same, or the disposal of the produce thereof.

Consignee's lien by operation of law abolished.

9. Any instrument conferring any lien or charge upon any land, or upon the stock thereon or belonging thereto, or upon the crops or produce thereof, in favour of the consignee thereof or of any other person in respect of any moneys, stores or services as aforesaid, whether already or to be hereafter advanced, supplied or rendered, shall be duly executed by the parties whose estates or interests are intended to be charged or affected, and shall be stamped

Instruments of lien to be executed, stamped and recorded as mortgages.

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with the stamp duty payable on a mortgage, and recorded in the Record Office within the time applicable to an instrument of that nature, and shall then, as against any conveyance, mortgage, charge or other instrument conferring any lien or charge upon the same land, stock, crops or produce, take effect according to priority of record.