

TASMANIA.

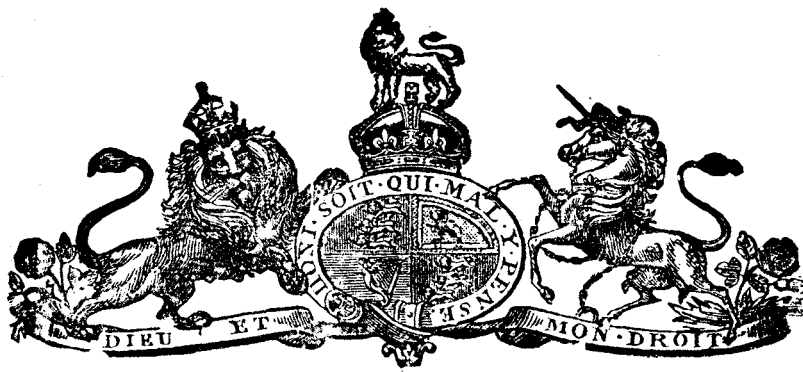
THE MERCANTILE LAW ACT 1935.

ANALYSIS.

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1503

T A S M A N I A.



1935.

ANNO VICESIMO SEXTO

GEORGII V. REGIS.

No. 92.



AN ACT to consolidate and amend certain Statutes relating to Trade and Commerce and the Limitation of Actions.

A.D.
1935.

[16 January, 1936.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

- 1 This Act may be cited as the *Mercantile Law Act 1935*. Short title.
- 2 The enactments enumerated in the schedule are hereby repealed.
- 3 All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, action *sur trover*, and replevin for taking away of goods and cattle; 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; all actions of debt for arrearages of rent; and all actions of assault, menace, battery, wounding, and imprisonment, or any of them, shall be commenced and sued within the

Limitations of personal actions.
21 Jac. 1, c. 16, s. 3.

Mercantile Law.

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time and limitation hereafter expressed, and not after (that is to say), the said actions upon the case (other than for slander), and the said actions for account, and the said actions for trespass, debt, detinue, and replevin for goods or cattle, and the said action of trespass *quare clausum fregit*, within six years next after the cause of such actions, and not after; and the said actions of trespass, of assault, battery, wounding, imprisonment, or any of them, within four years next after the cause of such actions, and not after; and the said actions upon the case for words, within two years next after the words spoken, and not after.

Infants, &c.,
excepted.

21 Jac. 1, c.
16, s. 7.

4 If any person entitled to any such action of trespass, detinue, action *sur trover*, replevin, actions of accounts, actions of debts, actions of trespass for assault, menace, battery, wounding, or imprisonment, actions upon the case for words, be, or shall be at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years, *non compos mentis*, imprisoned, or beyond the seas; such person shall be at liberty to bring the same actions, so as he take the same within such times as are before limited, after his coming to or being of full age, of sane memory, at large, and returned from beyond the seas, as other persons having no such impediment should have done.

Limitation of
actions for
"merchants'
accounts."

22 Vict. No. 3,
s. 5.

5 All actions of account or for not accounting, and actions 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; and no claim in respect of a matter which arose more than six years before the commencement of such action shall be enforceable by action 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.

Promises and
agreements by
parol.

29 Car. II., c.
3, s. 4.

6 No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.

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7—(1) In actions 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 this Act, 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 this Act, 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.

A.D. 1935.

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In actions of debt no acknowledgment sufficient unless in writing or by part payment.

Joint contractors.

9 Geo. IV., c. 14, s. 1.

(2) 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.

(3) 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 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.

(4) Any such acknowledgment or promise as aforesaid made or contained by or in a writing signed by an agent of the party chargeable thereby, duly authorised to make such acknowledgment or promise, shall have the same effect as if such writing had been signed by such party himself.

22 Vict. No. 3, s. 6.

8 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, no such co-contractor or co-debtor, executor or administrator shall lose the benefit of section three hereof or of section three of the *Civil Procedure Act 1833*, 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 or co-debtors, executors, or administrators.

Part payment by one contractor not to prevent bar in favour of another contractor.

Ib., s. 7.

9 No indorsement or memorandum of any payment written or made 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 exclude the operation of this Act.

Indorsements of payment.

9 Geo. IV., c. 14, s. 3.

Mercantile Law.

A.D. 1935.

Simple contract debts alleged by way of set-off.

Ib., s. 4.

Representations of character.

Ib., s. 6.

10 The provisions of this Act shall 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.

11 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 thereby obtain credit, money, or goods, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

Consideration for guarantee need not appear in writing.

22 Vict. No. 3, s. 1.

12 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 authorised, 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.

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

Ib., s. 3.

13—(1) 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.

(2) 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 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.

(3) Such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him.

(4) No co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, in manner aforesaid, more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable.

Mercantile Law.

14 In all actions of trespass *quare clausum fregit* wherein the defendant shall disclaim in his plea to make any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought, whereupon, or upon some of them, the plaintiff shall be enforced to join issue; and, if the said issue be found for the defendant, or the plaintiff be non-suited, the plaintiff shall be barred from the action and all other proceedings concerning the same.

A.D. 1935.

After judgment or non-suit in *quare clausum fregit* plaintiff barred.

21 Jac. I., c. 16, s. 5.

15 For the purposes of this Act "action" shall include any form of proceeding appropriate to the matter in relation to which the term is used.

Interpretation.

THE SCHEDULE.

REPEALS.

Regnal Year and Number.	Title of Act.	Extent of Repeal.
21 Jac. I., c. 16	<i>An Act for Limitation of Actions and for awarding Suits in Law</i>	The whole Act
29 Car. II., c. 3	<i>An Act for Prevention of Frauds and Perjuries</i>	The whole Act
9 Geo. IV., c. 14	<i>An Act for rendering a Written Memorandum necessary to the Validity of certain Promises and Engagements</i>	The whole Act
22 Vict., No. 3	<i>The Mercantile Law Act 1858</i>	The whole Act

