



Mercantile Act 1867

Current as at 31 March 1998—revised version

Reprint note—

This reprint has been reformatted to reflect current drafting styles.
This version was updated on 13 February 2014.

Information about this reprint

This reprint shows the legislation current as at the date on the cover and is authorised by the Parliamentary Counsel.

A new reprint of the legislation will be prepared by the Office of the Queensland Parliamentary Counsel when any change to the legislation takes effect. This change may be because a provision of the original legislation, or an amendment to it, commences or because a particular provision of the legislation expires or is repealed.

When a new reprint is prepared, this reprint will become a historical reprint. Also, if it is necessary to replace this reprint before a new reprint is prepared, for example, to include amendments with a retrospective commencement, an appropriate note would be included on the cover of the replacement reprint and on the copy of this reprint at www.legislation.qld.gov.au.

The endnotes to this reprint contain detailed information about the legislation and reprint. For example—

- The table of reprints endnote lists any previous reprints and, for this reprint, gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it.
- The list of legislation endnote gives historical information about the original legislation and the legislation which amended it. It also gives details of uncommenced amendments to this legislation. For information about possible amendments to the legislation by Bills introduced in Parliament, see the Queensland Legislation Current Annotations at www.legislation.qld.gov.au/Leg_Info/information.htm.
- The list of annotations endnote gives historical information at section level.

All Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints are not continued.



Queensland

Mercantile Act 1867

Contents

| | | Page |
|-----------------|--|------|
| Part 1 | Satisfied securities | |
| 4 | A surety who discharges the liability to be entitled to assignment of all securities held by the creditor. | 3 |
| Part 2 | Gaming securities | |
| 43 | All notes etc. mortgages etc. Where the consideration is for money won by gaming. Or for repayment of money lent at such gaming etc. shall be deemed made etc. for illegal consideration . | 4 |
| 51 | Lands first conveyed with condition of revocation or alteration and after sold for money or other good consideration | 5 |
| 52 | Mortgages lawfully made | 5 |
| Part 3 | Commencement and short title | |
| 69 | Commencement of Act. Short title | 6 |
| Endnotes | | |
| 1 | Index to endnotes. | 7 |
| 2 | Key | 7 |
| 3 | Table of reprints | 7 |
| 4 | List of legislation. | 8 |
| 5 | List of annotations | 9 |

Mercantile Act 1867

[as amended by all amendments that commenced on or before 31 March 1998]

An Act to consolidate and amend the laws relating to mercantile matters

Part 1 Satisfied securities

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

- (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 the person or to a trustee for the person 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) 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 or her.
- (3) However, no co-surety co-contractor or co-debtor shall be entitled to recover from any other co-surety co-contractor or

[s 43]

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.

Part 2 Gaming securities

43 All notes etc. mortgages etc. Where the consideration is for money won by gaming. Or for repayment of money lent at such gaming etc. shall be deemed made etc. for illegal consideration

- (1) All notes bills bonds judgments mortgages or other securities or conveyances whatsoever given granted drawn or entered into or executed by any person or persons whatsoever where the whole or any part of the consideration of such conveyances or securities shall be for any money or other valuable thing whatsoever won by gaming or playing at cards dice tables tennis bowls or other game or games whatsoever or by betting on the sides or hands of such as do game at any of the games aforesaid or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting as aforesaid or lent or advanced at the time and place of such play to any person or persons so gaming or betting as aforesaid or that shall during such play so play or bet that shall be deemed and taken to have been made drawn accepted given or executed for an illegal consideration to all intents and purposes whatsoever any statute law or usage to the contrary thereof in anywise notwithstanding.
- (2) However, nothing herein contained shall prejudice or affect any note bill or mortgage which would have been good and valid if this Act had not been passed.

51 Lands first conveyed with condition of revocation or alteration and after sold for money or other good consideration

If any person or persons having heretofore made or who shall hereafter make any conveyance gift grant demise charge limitation of use or uses or assurance of in or out of any lands tenements or hereditaments with any clause provision article or condition of revocation determination or alteration at his, her or their will or pleasure of such conveyance assurance grants limitations of uses or estates of in or out of the said lands tenements or hereditaments or of in or out of any part or parcel of them contained or mentioned in any writing deed or indenture of such assurance conveyance grant or gift and after such conveyance grant gift demise charge limitation of uses or assurance so made or had shall or do bargain sell demise grant convey or charge the same lands tenements or hereditaments or any part or parcel thereof to any person or persons bodies politic and corporate for money or other good consideration paid or given (the said first conveyance assurance gift grant demise charge or limitation not by him, her or them revoked made void or altered according to the power and authority reserved or expressed unto him, her or them in and by the said secret conveyance assurance gift or grant) that then the said former conveyance assurance gift demise and grant as touching the said lands tenements and hereditaments so after bargained sold conveyed demised or charged against the said bargainees vendees lessees grantees and every of them their heirs successors executors administrators and assigns and against all and every person and persons which have shall or may lawfully claim anything by from or under them or any of them shall be deemed taken and adjudged to be void frustrate and of none effect by virtue and force of this present Act.

52 Mortgages lawfully made

However, no lawful mortgage made or to be made bona fide and without fraud or covin upon good consideration shall be impeached or impaired by force of this Act but shall stand in the like force and effect as the same should have done if this

[s 69]

Act had never been had or made anything in this Act to the contrary in anywise notwithstanding.

Part 3 Commencement and short title

69 Commencement of Act. Short title

This Act shall commence on 31 December 1867 and may be referred to as the *Mercantile Act 1867*.

Endnotes

1 Index to endnotes

| | Page |
|-----------------------------|------|
| 2 Key | 7 |
| 3 Table of reprints | 7 |
| 4 List of legislation | 8 |
| 5 List of annotations | 9 |

2 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|---------|---|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No. [X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | rv | = revised version |
| num | = numbered | s | = section |
| o in c | = order in council | sch | = schedule |
| om | = omitted | sdiv | = subdivision |
| orig | = original | SIA | = Statutory Instruments Act 1992 |
| p | = page | SIR | = Statutory Instruments Regulation 2012 |
| para | = paragraph | SL | = subordinate legislation |
| prec | = preceding | sub | = substituted |
| pres | = present | unnum | = unnumbered |
| prev | = previous | | |

3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory

Endnotes

requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments to | Effective | Reprint date |
|-------------|-----------------|-----------------|-----------------|
| 1 | 1974 Act No. 76 | 1 December 1975 | 7 June 1976 |
| 1A | 1996 Act No. 73 | 9 December 1996 | 20 January 1997 |
| 2 | 1996 Act No. 73 | 9 December 1996 | 31 March 1998 |

| Current as at | Amendments included | Notes |
|------------------|---------------------|---------|
| 31 March 1998 rv | 1996 Act No. 73 | RA s 43 |

4 List of legislation

Mercantile Act 1867 31 Vic No. 36

date of assent 28 December 1867
 commenced 31 December 1867 (see s 69)
 amending legislation—

Bills of Sale Act 1891 55 Vic No. 23 s 19

date of assent 5 November 1891
 commenced 1 January 1892 (see s 2)

Factors Act 1892 56 Vic No. 8 s 15

date of assent 23 August 1892
 commenced on date of assent

Sale of Goods Act 1896 60 Vic No. 6 s 60 sch

date of assent 7 September 1896
 commenced 1 January 1897 (see s 2)

Mercantile Amendment Act 1896 60 Vic No. 10 s 12

date of assent 5 October 1896
 commenced 1 January 1897 (see s 2)

Criminal Code Act 1899 63 Vic No. 9 s 3(2) sch 3

date of assent 28 November 1899
 commenced on date of assent

Acts Citation Act 1903 3 Edw 7 No. 10 s 8(2) sch 2, s 10 sch 3 (prev Acts Shortening Act Amendment Act 1903)

date of assent 13 November 1903
commenced on date of assent

Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1

date of assent 23 December 1908
commenced on date of assent

Bills of Sale and Other Instruments Act 1955 4 Eliz 2 No. 16 s 4 sch 1

date of assent 22 April 1955
commenced 3 October 1955 (proc pubd gaz 23 July 1955 p 1321)

Property Law Act 1974 No. 76 s 3(2) sch 6 pt 3

date of assent 1 November 1974
commenced 1 December 1975 (see s 1(2))

Sea-Carriage Documents Act 1996 No. 73 ss 1, 11 sch

date of assent 9 December 1996
commenced on date of assent

5 List of annotations

Assignment to self and others

s 1 om 1974 No. 76 s 3(2) sch 6 pt 3

Conveyances &c. under certain powers of attorney executed after death or revocation and before notice thereof to be valid

s 2 om 1974 No. 76 s 3(2) sch 6 pt 3

Persons acquiring title to goods before they have been seized or attached under a writ against the seller protected

s 3 om 1896 60 Vic No. 6 s 60 sch

BILLS OF LADING

hdg prec s 5 om 1996 No. 73 s 11 sch

Preamble

s 5 om 1996 No. 73 s 11 sch

Not to affect right of stoppage in transitu or claims for freight

s 6 om 1996 No. 73 s 11 sch

Bill of lading in hands of consignee etc. conclusive evidence of the shipment as against master etc.

s 7 om 1996 No. 73 s 11 sch

Meaning of the term "document of title"

s 8 om 1892 56 Vic No. 8 s 15

Factors or agents having goods &c. in possession deemed owners so as to give validity to contracts with persons dealing bona fide upon the faith of such property

s 9 om 1892 56 Vic No. 8 s 15

Person in possession of bills of lading &c. deemed owner so far as to make valid contracts

s 10 om 1892 56 Vic No. 8 s 15

Bona fide advance to persons entrusted with the possession of goods or documents of title though known to be agents protected

s 11 om 1892 56 Vic No. 8 s 15

Bona fide deposits in exchange protected

s 12 om 1892 56 Vic No. 8 s 15

But the statute to be construed to protect only transactions bona fide without notice that the agent pledging is acting without authority or mala fide against the owner

s 13 om 1892 56 Vic No. 8 s 15

No person to acquire a security upon goods in the hands of an agent for an antecedent debt beyond amount of agent's interest in the goods

s 14 om 1892 56 Vic No. 8 s 15

Persons may contract with known agents in the ordinary course of business or out of that course if within agent's authority notwithstanding notice

s 15 om 1892 56 Vic No. 8 s 15

What interest persons accepting and taking goods &c. in pledge from known agents may acquire

s 16 om 1892 56 Vic No. 8 s 15

Agents civil responsibility not to be diminished

s 17 om 1892 56 Vic No. 8 s 15

Proviso for right of true owner to follow his goods while in the hands of agents or his assignee in case of bankruptcy or insolvency or to recover them from a third person upon paying his advances secured upon them

s 18 om 1892 56 Vic No. 8 s 15

Right of owner to redeem

s 19 om 1892 56 Vic No. 8 s 15

Interpretation of terms

s 20 om 1891 55 Vic No. 23 s 19

Bills of sale to be void unless the same or a copy thereof be filed within thirty days in like manner as warrants of attorney

s 21 om 1891 55 Vic No. 23 s 19

Defeasance or condition of every bill of sale to be written on the same paper or parchment

s 22 om 1891 55 Vic No. 23 s 19

Officer of court to keep a book containing particulars of each bill of sale

s 23 om 1891 55 Vic No. 23 s 19

Office fee of 2s. 6d. for filing bill of sale

s 24 om 1891 55 Vic No. 23 s 19

Office copies or extracts to be given on paying as for copies of judgments

s 25 om 1891 55 Vic No. 23 s 19

Satisfaction may be entered

s 26 om 1891 55 Vic No. 23 s 19

Right of lienee to ensuing clip of wool

s 27 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Right of lienee to wool

s 28 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Right of mortgagee where possession in mortgagor

s 29 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Particulars of registration by registrar

s 30 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Lien granted by mortgagor

s 31 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Indorsement of liens

s 32 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Cancelling of preferable liens

s 33 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Registration of receipt from mortgagee

s 34 om 1955 4 Eliz 2 No. 16 sch 1

Frauds by mortgagor

s 35 om 1899 63 Vic No. 9 s 3(2) sch 3

Waste lands of Crown

s 36 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Interpretation

s 37 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Liens on yearly crops realized

s 38 amd 1896 60 Vic No. 10 s 12
om 1955 4 Eliz 2 No. 16 s 4 sch 1

Liens not affected by sale &c. of land

s 39 om 1955 4 Eliz 2 No. 16 s 4 sch 1

List in registry open to inspection

s 40 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Duration of lien

s 41 om 1955 4 Eliz 2 No. 16 s 4 sch 1

Penalties for frauds on lienee

s 42 om 1899 63 Vic No. 9 s 3(2) sch 3

Fraudulent assurances of lands or goods to deceive creditors shall be void

s 44 om 1974 No. 76 s 3(2) sch 6 pt 3

All deeds of gift of goods to defraud creditors shall be void

s 45 om 1974 No. 76 s 3(2) sch 6 pt 3

Fraudulent deeds made to avoid the debts of others shall be void and the penalties of the parties to such fraudulent assurances

s 46 om 1974 No. 76 s 3(2) sch 6 pt 3

The forfeiture of the parties to fraudulent deeds

s 47 amd 1899 63 Vic No. 9 s 3(2) sch 2; 1908 8 Edw 7 No. 18 s 2 sch 1
om 1974 No. 76 s 3(2) sch 6 pt 3

Estates made upon good consideration and bona fide

s 48 amd 1908 8 Edw 7 No. 18 s 2 sch 1
om 1974 No. 76 s 3(2) sch 6 pt 3

The penalty of the parties to fraudulent conveyances who do avow the same

s 49 amd 1899 63 Vic No. 9 s 3(2) sch 3
om 1974 No. 76 s 3(2) sch 6 pt 3

Conveyances made upon good considerations and bona fide

s 50 amd 1908 8 Edw 7 No. 18 s 2 sch 1
om 1974 No. 76 s 3(2) sch 6 pt 3

Lands first conveyed with condition of revocation or alteration and after sold for money or other good consideration

s 51 amd 1908 8 Edw 7 No. 18 s 2 sch 1

PARTNERSHIP

hdg prec s 53 om 1996 No. 73 s 11 sch

Limited partnerships may be formed except for banking and insurance

s 53 om 1996 No. 73 s 11 sch

General and special partners and their liabilities

s 54 om 1996 No. 73 s 11 sch

Certificate to be made by the partners specifying names capital etc.

s 55 om 1996 No. 73 s 11 sch

Style of partnership

s 56 om 1996 No. 73 s 11 sch

Certificate to be acknowledged and recorded. If false all shall be liable as general partners

s 57 om 1996 No. 73 s 11 sch

Certificate to be published for 4 weeks

s 58 om 1996 No. 73 s 11 sch

Duration of partnership limited

s 59 om 1996 No. 73 s 11 sch

Provision for renewal of partnership

s 60 om 1996 No. 73 s 11 sch

Capital stock not to be withdrawn

s 61 om 1996 No. 73 s 11 sch

Suits to be by and against general partners

s 62 om 1996 No. 73 s 11 sch

Dissolutions how effected

s 63 om 1996 No. 73 s 11 sch

Liabilities not specially provided for

s 64 om 1996 No. 73 s 11 sch

Accounting

s 65 om 1996 No. 73 s 11 sch

Frauds by partners

s 66 amd 1899 63 Vic No. 9 s 3(2) sch 3
om 1996 No. 73 s 11 sch

Books of account to be kept and to be open to inspection

s 67 om 1996 No. 73 s 11 sch

As to liability of special partners if proper books be not kept or be incorrectly kept

s 68 om 1996 No. 73 s 11 sch

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