

No. VIII.

AN ACT to amend the Laws affecting Trade and Commerce. [28th September, 1860.]

TRADE AND
COMMERCE.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act shall be "*The Mercantile Law Amendment Act, 1860.*" Short Title.

2. No writ of *fieri facias* or other writ of execution and no writ of attachment against the goods of a debtor shall prejudice the title to such goods acquired by any person *bona fide* and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ: Provided such person had not, at the time when he acquired such title, notice that such writ or any other writ by virtue of which the goods of such owner might be seized or attached had been delivered to and remained unexecuted in the hands of the Sheriff. Persons acquiring title to goods before they have been seized or attached under writ against the seller protected.

3. In all actions and suits in any Court of Record for breach of contract to deliver specific goods for a price in money, on the application of the plaintiff and by leave of the Judge before whom the cause is tried, the jury shall, if they find the plaintiff entitled to recover, find by their verdict what are the goods in respect of the non-delivery of which the plaintiff is entitled to recover and which remain undelivered; what (if any) is the sum the plaintiff would have been liable to pay for the delivery thereof; what damages (if any) the plaintiff would have sustained if the goods should be delivered under execution, as hereinafter mentioned, and what damages if not so delivered; and thereupon, if judgment shall be given for the plaintiff, the Court or any Judge thereof, at their or his discretion, on the application of the plaintiff, shall have power to order execution to issue for the delivery of the said goods on payment of such sum (if any) as shall have been found to be payable by the plaintiff as aforesaid, without giving the defendant the option of retaining the said goods upon paying the damages assessed; and such writ of execution may be for the delivery of such goods; and if such goods so ordered to be delivered or any part thereof cannot be found, and unless the Court or such Judge as aforesaid shall otherwise order, the Sheriff or other officer of such Court of Record shall distrain the defendant by all his lands and chattels in the said Sheriff's bailiwick, or within the jurisdiction of such Court of Record, till the defendant deliver such goods, or, at the option of the plaintiff, cause to be made of the defendant's goods the assessed value or damages or a due proportion thereof: Provided that

Specific delivery of goods sold.

the

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the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages costs and interest in such action or suit.

Consideration for
guarantee need not
appear by writing.

4. 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.

Guarantee to or for
a firm to cease upon
a change in the firm,
except in special
cases.

5. 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.

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

6. Every person who, being surety for the debt or duty of another or being liable with another for any debt or duty, shall pay or satisfy such debt or perform such duty, shall be entitled to have assigned to him, or 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 or satisfied such debt or performed such duty, and such payment satisfaction 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.

Acceptance of a bill,
inland or foreign, to
be in writing on it
and signed by the
acceptor or his agent.

7. No acceptance of any bill of exchange, whether inland or foreign, made after the thirty-first day of December, one thousand eight hundred and sixty, shall be sufficient to bind or charge any person unless the same be in writing on such bill, or if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or some person duly authorized by him.

Limitation of actions
for "Merchants'
Accounts."

8. 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, or when such cause has already arisen, then within six years after the passing of this Act; 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

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comprised in the same account having arisen within six years next before the commencement of such action or suit.

9. 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 the Act of the twenty-first year of the reign of King James the First, chapter sixteen, section three, or by the Act of the fourth year of the reign of Queen Anne, chapter sixteen, section seventeen, or by the Act of the fifty-third year of the reign of King George the Third, chapter one hundred and twenty-seven, section five, or by the Acts of the third and fourth years of the reign of King William the Fourth, chapter twenty-seven, sections forty, forty-one, and forty-two, and chapter forty-two, section three, 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 beyond the seas at the time such cause of action or suit accrued, 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 such cause of action or suit accrued.

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

10. Where such cause of action or suit with respect to which the period of limitation is fixed by the enactments aforesaid or 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 any action or suit against the joint debtor or joint debtors who was or were beyond seas at the time the cause of action or suit accrued after his or their return from beyond 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 seas at the time aforesaid.

Period of limitation to run as to joint debtors in the Colony though some are beyond seas.

Judgment recovered against joint debtors in the Colony to be no bar to proceeding against others beyond seas after their return.

11. In reference to the provisions of the Act of the Imperial Parliament of the ninth year of the reign of King George the Fourth, chapter fourteen, sections one and eight, an acknowledgment or promise made or contained by or in writing signed by an agent of the party chargeable thereby duly authorized to make such acknowledgment or promise shall have the same effect as if such writing had been signed by such party himself.

Provisions of 9 Geo. IV. c. 14, ss. 1 and 8, extended to acknowledgments by agents.

12. In reference to the provisions of the Acts 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, 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 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 or co-debtors, executors or administrators.

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