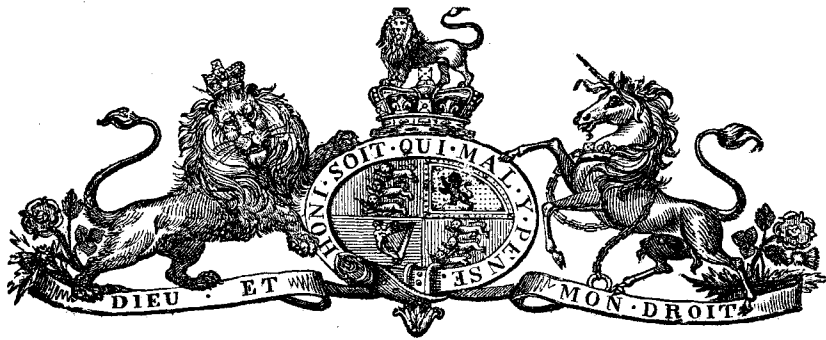


T A S M A N I A.



1858.

ANNO VICESIMO-SECUNDO

VICTORIÆ REGINÆ,

No. 3.

*Act. by 42 (V. 1858) p. 1
see 19 & 20 (V. 1857) c. 97.*

AN ACT to amend the Laws affecting Trade and Commerce. [1 October, 1858.]

WHEREAS it is expedient to amend the Laws relating to some matters of common occurrence in the course of Trade: Be it therefore 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:—

PREAMBLE.

1 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 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.

19 & 20 (V. 1857) c. 97 p. 3

Consideration for Guarantee need not appear in writing.

2 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

ibid p. 12

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

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.

Abid p. 5
A Surety who discharges the liability to be entitled to an Assignment of all Securities held by the Creditor.

3 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.

Abid p. 6
Handhaug
o. Blakey
L.R. 1878
G.P. Div.
6. P. 136
Acceptance of a Bill whether inland or foreign to be in writing on it, and signed by the Acceptor or his Agent.

Ann. by H.C. 1870 p. 1
4 No Acceptance of any Bill of Exchange, whether inland or foreign, made after the Thirty-first day of December, One thousand eight hundred and fifty-eight, 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 authorised by him.

Abid p. 9
Limitations of actions for "Merchants' Accounts."

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

Abid p. 13
Provisions of 9th Geo. 4th, c. 14, sec. 1, extended to acknowledgments by Agents.

6 In reference to the provisions of the Act of the Ninth year of the reign of King George the Fourth, Chapter Fourteen, Section One, an acknowledgment or promise 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.

Abid p. 14
Part payment by one Contractor, &c. not to prevent bar by certain

7 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, 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. Statutes of Limitations in favour of another Contractor.

8 In citing this Act it shall be sufficient to use the expression *The Short Title. Mercantile Law Amendment Act, 1858.*

