

CHAPTER 183.

MERCANTILE LAW.

AN ORDINANCE RELATING TO MERCANTILE LAW.

*Ordinances*No. 81,
,, 83, ss. 2, 4,
7, & 8.

[26th January, 1845.]

Short title.

1. This Ordinance may be cited as the Mercantile Law Ordinance.

Contract or
promise not
binding
unless
founded on
sufficient
considera-
tion.

2. No contract, agreement, or promise made or entered into by any person by words spoken, or by any writing not being a specialty, shall be of any force or effect in law, or shall bind any party thereto, unless such contract, agreement, or promise shall be founded upon some valuable thing or consideration sufficient, according to the principles of the law of England, to support the same against the party sought to be charged therewith.

Not to
extend to
specialties.

3. Nothing herein contained shall extend to alter or affect the law with respect to any contract, agreement, promise, or obligation contained in any specialty.

Promises and
agreements
by parol.

4. No action shall be brought whereby to charge any heir, 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 miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract of sale for lands, tenements, hereditaments, or any interest in or concerning them, or upon any agreement which 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 authorized.

5. No special promise 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. (*S. 2 of 83 incorporated.*)

Consideration for guarantee need not appear in writing.

6. In any action for the recovery of any debt or damages 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 any law or Ordinance establishing any prescription or limitation of action affecting such contract, or for giving relief to persons insolvent, or making cession of their property for the benefit of their creditors, or to deprive any party of the benefit of any such law or Ordinance, unless such acknowledgment or promise shall be made or contained in or by some writing, to be signed by the party chargeable thereby; and where there shall be two or more joint contractors, or heirs, or executors, or administrators of any contractor, no such joint contractor, heir, executor, or administrator shall lose the benefit of such law or Ordinance, 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: Provided that 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: Provided also, that in actions to be commenced against two or more such joint contractors, or heirs, or executors, or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by any such law or Ordinance, as to one or more of such joint contractors, or heirs, 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.

Acknowledgment of debts.

Acknowledgments by agents.

7. An acknowledgment or promise made or contained by or in a writing signed by an agent of the party chargeable thereby, duly authorized to make such acknowledgment or promise, shall have the same force and effect in all cases as if such writing had been signed by such party himself. (*S. 7 of 83 incorporated.*)

Indorsements of payments.

8. 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 take the case out of the operation of this Ordinance, or of any other such law or Ordinance as is hereinbefore mentioned.

Simple contract debts alleged by way of set-off.

9. This Ordinance shall be deemed and taken to apply to the case of any debt on simple contract, alleged by way of set-off on the part of any defendant.

Representations of character.

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

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

11. 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 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. (*S. 4 of 83 incorporated.*)

12. Whenever 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 or debtor, no such co-contractor or co-debtor, executor, or administrator shall lose the benefit of any statute, law, or Ordinance relating to the limitation of actions, 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. (*S. 8 of 83 incorporated.*)

Co-contractors.