

Queensland



MERCANTILE ACT 1867

**Reprinted as in force on 23 June 1994
(includes amendments up to Act No. 76 of 1974)**

Reprint No. 1

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 23 June 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (Pt 4, Div 2)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- use different spelling consistent with current legislative drafting practice (s 26(2))
- use standard punctuation consistent with current legislative drafting practice (s 27)
- use expressions consistent with current legislative drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current legislative drafting practice (s 35)
- omit unnecessary referential words (s 41)
- omit historical notes (s 42)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43).

Also see Endnotes for—

- **details about when provisions commenced**
- **any provisions that have not commenced and are not incorporated in the reprint**
- **further information about editorial changes made in the reprint, including—**
 - **Table of renumbered provisions**
 - **Table of comparative legislation.**

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MERCANTILE ACT 1867

[as amended by all amendments that commenced on or before 23 June 1994²]

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

SATISFIED SECURITIES

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

4.(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 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.

BILLS OF LADING

Preamble

5.(1) Whereas by the custom of merchants a bill of lading of goods being transferable by endorsement the property in the goods may thereby pass to the endorsee but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner and it is expedient that such rights should pass with the property.

(2) And whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board and it is proper that such bills of lading in the hands of a bona fide holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid.

Rights under bills of lading to vest in consignee or endorsee

(3) Now therefore be it enacted that every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement shall have transferred to and vested in the consignee or endorsee all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself or herself.

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

6. Nothing herein contained shall prejudice or affect any right of stoppage in transitu or any right to claim freight against the original shipper or owner or any liability of the consignee or endorsee by reason or in consequence of being such consignee or endorsee or of his or her receipt of the goods by reason or in consequence of such consignment or endorsement.

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

7. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master

or other person signing the same notwithstanding that such goods or some part thereof may not have been so shipped unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board.

GAMING SECURITIES

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

43.(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.

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

51. 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, hers 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.

Mortgages lawfully made

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

PARTNERSHIP

Limited partnerships may be formed except for banking and insurance

53.(1) Limited partnerships may be formed for the transaction of agricultural mining mercantile mechanical manufacturing or other business

by any number of persons upon the terms and subject to the conditions and liabilities hereinafter prescribed.

(2) However, nothing herein shall authorise any such partnership for the purpose either of banking or insurance.

General and special partners and their liabilities

54. Every such partnership may consist of general partners who shall be jointly and severally responsible as general partners are now by law and of persons to be called special partners who shall contribute to the common stock specific sums in money as capital beyond which they shall not be responsible for any debt of the partnership except in the cases hereinafter provided for.

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

55. All the persons forming any such partnership shall before commencing business sign a certificate containing the style of the firm under which the partnership is to be conducted the names and places of residence of all the partners distinguishing the general from the special partners the amount of capital which each special partner contributes and also if any of the amount contributed by the general partners to the common stock the general nature of the business to be transacted the principal place at which it is to be transacted the time when such partnership is to commence and when it is to terminate.

Style of partnership

56. Such style or firm shall contain the names of general partners only or the name of 1 such partner with in either case the addition of the words 'and another' or 'and others' and the general partners only shall transact the business of the partnership and if in the carrying on of such business or in any contract connected therewith the name of any special partner shall be used with the special partner's consent or privity or if the special partner shall personally make any contract respecting the concerns of the partnership every such special partner shall be deemed to be a general partner with respect to the contract or matter in which the special partner's

name has been so used or as to which the special partner shall have so contracted.

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

57.(1) No such partnership shall be deemed formed until such certificate as aforesaid shall have been acknowledged by each partner before some justice of the peace and registered in the office of the Registry of Deeds in Brisbane in a book to be kept for that purpose open to public inspection and if any false statement shall be made in any such certificate all the persons interested in the partnership shall be liable for all the engagements thereof as general partners.

(2) However, no clerical error or matter not of substance shall be deemed false within the meaning of this section unless some person may have been prejudiced thereby in which case the special partners shall be liable to the person so prejudiced.

Certificate to be published for 4 weeks

58. A copy of such certificate shall for 4 weeks next after such registration be published once at least in the Gazette and in some newspaper printed nearest to the intended principal place of business of the partnership and in case such publication be not so made the partnership shall be deemed general.

Duration of partnership limited

59. No partnership under this Act shall be entered into for a longer period than 7 years but such partnership may be renewed at the end of that period or at the termination of any shorter period for which a partnership may be formed provided that the partners sign a fresh certificate in the terms of this Act and acknowledge and register the same in the same manner as if the partnership were an original partnership with limited liability.

Provision for renewal of partnership

60. Upon every renewal or continuation of a limited partnership beyond

the time originally agreed upon for its duration a certificate thereof shall be signed acknowledged registered and published in like manner as the original certificate and every partnership which shall be renewed or continued otherwise that in conformity with the provisions of this section shall be deemed general.

Capital stock not to be withdrawn

61. During the continuance of any partnership under the provisions of this Act no part of the certified capital thereof shall be withdrawn nor shall any division of interest or profit be made so as to reduce such capital below the aggregate amount stated in the certificate and if any part of such capital shall be so withdrawn or any such division be made so that at any time during the continuance or at the termination of the partnership the assets shall not be sufficient to pay the partnership debts the special partners shall severally be liable to refund every sum by them respectively received in diminution of such capital or by way of such interest or profit and all such sums may be recovered as money had and received by them respectively to the use of the general partners and may in the case of any judgment having been obtained against the general partners be recovered by the plaintiff against the special partners or either of them by process of execution to be issued under such judgment by leave of the Supreme Court.

Suits to be by and against general partners

62. All suits respecting the business of any partnership established under this Act shall be prosecuted by and against the general partners only except in the cases in which it is provided by this Act that special partners shall or may be deemed general partners in which cases every special partner who shall have become liable as a general partner may be joined in the suit as a defendant at the discretion of the party suing.

Dissolutions how effected

63. No dissolution of a limited partnership shall take place except by operation of law before the time specified in the certificate unless a notice of such dissolution shall be signed acknowledged registered and published in like manner as the original certificate.

Liabilities not specially provided for

64. In all cases not hereinbefore otherwise provided for all the members of a limited partnership shall be subject to the liabilities and entitled to the rights of general partners.

Accounting

65. The general partners shall be liable to account to each other and to the special partners for their management of the concern both in law and equity as other partners now are by law.

Frauds by partners

66. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of the damage.

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

67. If the general partners shall not at all times cause regular books of account to be kept or shall not have the same open at all reasonable times to the inspection of the special partners such special partners shall on default herein be entitled to have the partnership dissolved and the accounts thereof taken by the Supreme Court.

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

68. The special partners shall be bound to see that such books are so kept and if such books shall not be so kept or shall with the knowledge or privity of the special partners or any of them be kept incorrectly or contain any false or deceptive entries whereby the ascertainment of the matters mentioned in the first part of section 61 shall or may be affected the certified capital of such special partners or such 1 or more of them having such knowledge or privity as aforesaid shall as against creditors be deemed to have been withdrawn and the special partner or partners shall be liable accordingly under the provisions of section 61.

COMMENCEMENT AND SHORT TITLE**Commencement of Act. Short title**

69. This Act shall commence on 31 December 1867 and may be referred to as the *Mercantile Act 1867*³⁻⁶.

ENDNOTES**1 Index to Endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 23 June 1994. Future amendments of the Mercantile Act 1867 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation**Mercantile Act 1867 31 Vic No. 36**

date of assent 28 December 1867

commenced 31 December 1867 (see s 69)

as amended by—

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 Shortening Act Amendment Act 1903 3 Edw 7 No. 10 s 8(2) Sch 2, s 10 Sch 3

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))

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

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

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 realizeds 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 deedss 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

Frauds by partners

s 66 amd 1899 63 Vic No. 9 s 3(2) Sch 3

5 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

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4, 1st sentence	4(1)
4, 2nd sentence	4(2)
4, proviso	4(3)
5, 1st sentence	5(1)
5, 2nd sentence	5(2)
5, 3rd sentence	5(3)
43, 1st sentence	43(1)
43, proviso	43(2)
53, 1st sentence	53(1)
53, proviso	53(2)
57, 1st sentence	57(1)
57, 2nd part, proviso	57(2)

6 Table of comparative legislation

s 4	28 Vic No. 6 s 5
s 5	18 & 19 Vic c 111
s 5(3)	18 & 19 Vic c 111 s 1
s 6	18 & 19 Vic c 111 s 2
s 7	18 & 19 Vic c 111 s 3
s 43	9 Ann c 14 s 1; 5 & 6 Wm c 41 s 1; vide 5 & 6 Wm 4 c 41 s 3
s 51	27 Eliz c 4 s 5
s 52	27 Eliz c 4 s 6
s 53	17 Vic No. 9 s 1
s 54	17 Vic No. 9 s 2
s 55	17 Vic No. 9 s 3
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s 61	17 Vic No. 9 s 9
s 62	17 Vic No. 9 s 10
s 63	17 Vic No. 9 s 11
s 64	17 Vic No. 9 s 12
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s 67	17 Vic No. 9 s 15
s 68	17 Vic No. 9 s 16

