



# Mercantile Act 1867

Current as at 9 December 1996—revised version

## Reprint note

This reprint has been reformatted to reflect current drafting styles.

© State of Queensland 2021



This work is licensed under a Creative Commons Attribution 4.0 International License.



Queensland

# Mercantile Act 1867

## Contents

---

		Page
<b>Part 1</b>	<b>Satisfied securities</b>	
4	A surety who discharges the liability to be entitled to assignment of all securities held by the creditor .....	3
<b>Part 2</b>	<b>Gaming securities</b>	
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
<b>Part 3</b>	<b>Commencement and short title</b>	
69	Commencement of Act. Short title .....	6



---

# Mercantile Act 1867

## 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 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

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*.