

(B.)

IN THE SUPREME COURT OF HONGKONG,

On the day of A.D. 186

Hongkong (to wit) A. B. in his own Person [or by his Attorney]
sue out a writ against C. D. indorsed as follows.

[Here copy Indorsement of Plaintiff's claim]

And the said C. D. has not appeared

Therefore it is considered that the said A. B. recover against the said C. D. Dollars
together with Dollars for Costs of Suit.

HONGKONG.

ANNO VICESIMO OCTAVO VICTORIÆ REGINÆ.

No. 13 of 1864.

By His Excellency SIR HERCULES GEORGE ROBERT ROBINSON, Knight, Governor and Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-Admiral of the same, with the Advice of the Legislative Council of Hongkong.

HERCULES G. R. ROBINSON,

Title. *An Ordinance to amend the Laws of Trade and Commerce.*

[13th September, 1864.]

Preamble. Whereas it is expedient that the Matters embraced by Ordinance No. 3 of 1857 should be provided for by separate and distinct Ordinances: Be it enacted by His Excellency the Governor of Hongkong, with the Advice of the Legislative Council thereof, as follows:

Part of Ordinance No. 3 of 1857 repealed. I. So much of Ordinance No. 3 of 1857 as relates to "The Mercantile Law Amendment Act, 1856" (Imperial) shall be and the same hereby is repealed, except as to anything done before, or any Proceeding pending at, the time of the passing of this Ordinance.

Protection to Persons acquiring Title to goods before seizure, &c. under writ against seller. II. 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 *bonâ 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.

Specific Delivery of goods. III. In all Actions and Suits in either Court of Record in this Colony 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 or (if the Case be tried without a Jury,) the Judge shall, if they or he find the Plaintiff entitled to recover, find by their Verdict or his Decision, as the case may be, 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 at its discretion, on the application of the Plaintiff shall have power to order Execution to issue for the Delivery, on payment of such Sum, (if any) as shall have been found to be payable by the Plaintiff as aforesaid, of the said Goods without giving the Defendant the Option of retaining the same 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 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 Colony, 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 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.

IV. No special Promise to be made by any Person, after the passing of this Ordinance 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.

Consideration for guarantee need not appear by writing.

V. 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.

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

VI. 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.

A Surety who discharges the Liability to be entitled to Assignment of all Securities held by the Creditor.

VII. No Acceptance of any Bill of Exchange, whether Inland or Foreign, made after the 14th Day of February 1857, 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.

Acceptance of any Bill of Exchange to be in writing.

VIII. 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; 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.

Limitation of Actions for "Merchants Accounts."

IX. 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 21 Jac. 1. c. 16. s. 3, or by the Act 4 Anne. c. 16. s. 17, or by the Act 53 Geo. 3. c. 127. s. 5, or by the Act 3 & 4 Will. 4. c. 27. ss. 40, 41, and 42, and c. 42. s. 3, or by the Act 16 & 17. Vict. c. 113. s. 20, 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 at the time of such Cause of Action or Suit accrued absent from the Colony, 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 of such Cause of Action or Suit accrued.

Absence or Imprisonment of a Creditor not to be a Disability.

X. 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

Period of Limitation to run as to Joint Debtors in Colony though some absent.

more of such Joint Debtors who shall not be absent from the Colony 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 so absent, 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 so absent at the time the Cause of Action or Suit accrued after his or their Return to this Colony, by reason only that Judgment was already recovered against any One or more of such Joint Debtors who was not or were not absent at the Time aforesaid.

Imperial Acts extended to acknowledgments by Agents.

XI. In reference to the Provisions of the Imperial Acts 9 Geo. 4. c. 14. ss. 1. and 8, and the 16 & 17 Vict. c. 113. s. 24, 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 Effect as if such Writing had been signed by such Party himself.

Part payment by one Contractor, &c., not to prevent Bar by certain Statutes of Limitations in favor of another Contractor.

XII. In reference to the Provisions of the Imperial Acts 21 Jac. 1. c. 16. s. 3, and of the Act 3 & 4 Will. 4. c. 42. s. 3, and of the Act 16 & 17 Vict. c. 113. s. 20, 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.

Rules and Regulations may be made and Writs and Proceedings framed for the Purposes of this Ordinance.

XIII. It shall be lawful for the Chief Justice to make Rules and Regulations, and to frame Writs and Proceedings for the purpose of giving effect to this Ordinance, and from time to time to amend such Rules, Orders and Forms, and such Rules, Orders or Forms, or amended Rules, Orders and Forms shall be submitted to the Legislative Council, who may allow, disallow, or alter the same, and the Rules, Orders and Forms so allowed or altered, shall be of the same Force and Effect as if they had been specially inserted herein.

Short Title.

XIV. In citing this Ordinance it shall be sufficient to use the Expression "The Mercantile Law Amendment Ordinance 1864."

Passed the Legislative Council of Hongkong, this 13th Day of September, 1864.

L. D'ALMADA E CASTRO,
Clerk of Councils.

No. 145.

GOVERNMENT NOTIFICATION.

It is hereby notified, that the Honorable W. H. RENNIE, Esquire, has, with the sanction of His Excellency the GOVERNOR, undertaken to act for the Honorable the COLONIAL SECRETARY, during that Officer's temporary absence from the Colony on vacation leave.

By Order,

W. H. RENNIE,
for the Colonial Secretary.

Colonial Secretary's Office, Hongkong, 17th September, 1864.

No. 146.

GOVERNMENT NOTIFICATION.

Tenders will be received at the Surveyor General's Office on or before Monday the 17th Proximo, for the erection of the Hongkong Mint. Plans and Specification may be seen on application between the hours of 11 A. M. and 3 P. M.

By Order,

W. H. RENNIE,
for the Colonial Secretary.

Colonial Secretary's Office, Hongkong, 17th September, 1864.