

Act No. 28, 1899.

An Act to consolidate the enactments relating
to advances made to agents intrusted with
Goods. [23rd November, 1899.]

FACTORS.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Factors Act, 1899." Short title.
2. The Act thirtieth Victoria number thirteen is hereby repealed. Repeal.
3. The Imperial Acts fourth George the Fourth chapter eighty-three and sixth George the Fourth chapter ninety-four are hereby declared to be in force in New South Wales. Imperial Acts.
30 Vic. No. 13, s. 1.

4. In this Act, unless the context or subject-matter otherwise indicates or requires :— Interpretation.
Ibid. s. 4.

"Advance" means any loan or advance made upon the security of goods or documents of title thereto, whether the payment in respect of such loan or advance is made in money, or by bill of exchange, or other negotiable security, and includes a further or continuing advance. *Ibid.* ss. 1, 4.

"Document of title" includes any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant, or order for the delivery of goods, and any other document used
in

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- in the ordinary course of business as proof of the possession or control of goods, and any document which by indorsement or delivery authorises, or purports to authorise, the holder to transfer or receive the goods thereby represented.
- 30 Vic. No. 13, ss. 1, 4. “Factor” means an agent intrusted with the possession of goods, or of the documents of title to goods.
- Intrusting, &c., of document of title. *Ibid.* s. 4. “Owner” means the owner of any goods, or any documents of title to goods, intrusted to any factor.
- Possession. *Ibid.* 5. For the purposes of this Act—
- Possession of documents of title. *Ibid.* (a) every contract giving a lien upon, or pledging, any document of title to goods shall be deemed to give a lien upon, or pledge of, the goods indicated in and by such document ;
- Possession evidence of intrusting. *Ibid.* (b) where any goods or documents of title to goods are held by any person on behalf, or subject to the control, of any factor, the same shall be deemed to be in the possession of such factor ;
- Bona fide contracts with factor valid. *Ibid.* s. 1. (c) any factor possessed of any documents of title to goods, whether (i) derived immediately from the owner of the goods, or (ii) obtained by reason of his having been intrusted with the possession of the goods, or of any other document of title thereto, shall be deemed to have been intrusted with the possession of the goods represented by such documents of title ;
- Goods delivered after advance made. *Ibid.* s. 4. (d) every agent in possession of goods, or of any document of title to goods, shall be deemed to have been intrusted therewith by the owner, unless the contrary is shown in evidence.
- Bona fide exchange valid. *Ibid.* s. 2. 6. (1) Any contract, not otherwise invalid, bona fide made by any person with any factor by way of pledge of, or lien or other security over, or for an advance upon the security of goods, or the documents of title to goods, in the possession of such factor, shall be valid and binding upon, and good against, any owner of such goods, although such person had notice that such factor was not the true owner of such goods.
- (2) Any advance on the faith of any contract in writing to consign, deposit, transfer, or deliver any goods or documents of title, shall, if the goods or documents are received by the person making the advance, without notice that the factor had no authority to pledge or give security over the same, be taken to be an advance on the security of such goods or documents, although they are not received by such person until after the advance is made.
7. Where any such contract for pledge, lien, or security is made in consideration of the delivery or transfer to such factor of any other goods, or document of title to goods, or negotiable security upon which such person had at the time a valid and available lien or security for, or in respect of, a previous advance by virtue of a contract made with such factor, such contract, if bona fide on the part of such person, shall be deemed to be a contract for an advance within the last preceding section :
Provided

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Provided that the lien acquired under the last-mentioned contract, upon the goods or documents deposited in exchange, shall not exceed the value of the goods, or documents of title, or negotiable security, delivered or exchanged. Proviso. 30 Vic. No. 13, s. 2.

8. (1) Nothing in this Act shall be construed to validate any contract or to protect any advance or exchange— Limited construction of this Act. Ibid. s. 3.

(a) which is not made bona fide; or

(b) which is made by a person having notice that such factor has not authority to make the same, or is acting mala fide in respect thereof; and

this Act shall not be construed;

(c) to extend to or protect any lien, or pledge, for or in respect of any antecedent debt owing by any factor to any person with or to whom such lien or pledge is given; nor

(d) to authorise any factor to deviate from any express order, or authority, received from the owner.

(2) Nothing in this Act shall be construed to lessen or affect the civil liability of any factor for any breach of duty or contract, or for failing to fulfil his orders or authority in respect of any such contract, lien, or pledge. Civil liability of factor. Ibid. s. 5.

9. (1) Nothing in this Act shall be construed to prevent any owner— Owner may redeem. Ibid. s. 7.

(a) from having the right to redeem any goods or documents of title to goods pledged as aforesaid, at any time before the goods have been sold, upon repayment of the amount of the lien thereon, or restoration of the securities in respect of which such lien exists, and upon payment and satisfaction to such factor, if by him required, of any sum of money for or in respect of which such factor would be entitled to retain the said goods or documents, by way of lien against such owner; or

(b) from recovering from the person with whom such goods or documents have been pledged, or who has any lien thereon, any sum of money remaining in his hands as the produce of the sale of such goods after deducting the amount of such pledge, or lien.

(2) In case of the bankruptcy of such factor the owner so redeeming such goods shall, in respect of the sum paid by him on account of such factor for such redemption, be held to have paid such sum for the use of such factor before his bankruptcy; or, if the goods have not been so redeemed, the owner shall be deemed a creditor of such factor for the value of the goods so pledged at the time of the pledge, and shall in either case be entitled to prove for, or set off, the sum so paid or the value of such goods as the case may be. Bankruptcy of factor. Ibid.