

Act No. 43, 1902.

USURY, BILLS OF
LADING, AND
WRITTEN
MEMORANDA.

An Act to consolidate enactments relating to usury, interest, and to certain instruments and contracts. [21st August, 1902.]

BE it enacted by the King'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:—

Short title.

1. This Act may be cited as the "Usury, Bills of Lading, and Written Memoranda Act, 1902."

Repeal.

2. The enactments mentioned in the Schedule to this Act are, the extent therein expressed, hereby repealed.

Usury and interest.

Imperial usury Acts.
5 Wm. IV. No. 10,
s. 1.

3. No Imperial Act relating to usury shall extend or be deemed applicable to New South Wales.

Interest allowed
where no rate fixed.
Ibid. s. 2.

4. In all cases where interest for the loan of money or upon any other contract may be recovered in any action or suit, the amount so recovered shall not, where the rate of interest has not been previously agreed upon by the parties, exceed eight per centum per annum.

Bills of lading.

Rights under bills of
lading to vest in con-
signee or endorsee.
20 Vic. No. 13, s. 1.

5. 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 him 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.

6.

Usury, Bills of Lading, and Written Memoranda.

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 his being such consignee or endorsee, or of his receipt of the goods, by reason or in consequence of such consignment or endorsement.

Not to affect right of stoppage in transitu or claims for freight.
27 Vic. No. 13, s. 2.

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 has had actual notice, at the time of receiving the same, that the goods had not been in fact laden on board.

Bill of lading in hands of consignee, &c., conclusive evidence of the shipment as against master, &c.
Ibid. s. 3.

Guarantees.

8. No special promise made after the twenty-first day of November, one thousand eight hundred and eighty-two, by any person to answer for the 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 authorised shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise has 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.
46 Vic. No. 4, s. 1.

Memoranda in writing.

9. No action shall be maintained whereby to charge any person—

Debts and contracts of infants.
4 Wm. IV No. 17, adopting 9 Geo. IV, c. 14, s. 5.

- (a) upon any promise made after full age to pay any debt contracted during infancy, or
- (b) upon any ratification after full age of any promise or simple contract made during infancy,

unless such promise or ratification is made by some writing signed by the party to be charged therewith.

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

Representations of character, &c.
Ibid. s. 6.

11. So much of the Imperial Act passed in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for the prevention of frauds and perjuries," as enacted that "no contract

Executory contracts for the sale of good
Ibid. s. 7.

for

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for the sale of any goods, wares, and merchandises for the price of ten pounds sterling or upwards shall be allowed to be good except the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the bargain or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorised," shall extend to all contracts for the sale of goods of the value of ten pounds sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof or rendering the same fit for delivery.

Exemption from stamp duties.
4 Wm. IV No. 17, adopting 9 Geo. IV, c. 14, s. 8.

12. No memorandum or other writing made necessary by sections nine, ten, or eleven shall be deemed to be an agreement within the meaning of any Act relating to stamp duties.

SCHEDULE.

| Number of Act. | Title. | Extent of repeal. |
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| 4 Wm. IV No. 17 | An Act for adopting and applying a certain Act of Parliament for rendering a written memorandum necessary to the validity of certain promises and engagements. | The unrepealed portion so far as it adopts sections 5, 6, 7, 8, 9 and 10 of 9 Geo. IV, c. 14. |
| 5 Wm. IV No. 10 | An Act for removing doubts respecting the application to New South Wales of the Laws and Statutes of England relating to usury and to limit and define the rate of interest which may be recovered in cases where it hath not been previously agreed on between the parties. | The whole. |
| 20 Vic. No. 13 ... | An Act to amend the law relating to Bills of Lading. | The whole. |
| 46 Vic. No. 4 ... | An Act to amend the law relating to Guarantees. | The whole. |