Legislative Council.

28° VICTORIÆ, 1865.

A BILL

To amend the Law relating to Advances *bonâ fide* made to Agents intrusted with Goods.

[MR. ALEXANDER CAMPBELL;—19 *April*, 1865.]

WHEREAS by an Act passed in the sixth year of the reign of His late Majesty King George the Fourth intituled "*An Act* "*to alter and amend an Act for the better protection of the property of* "*Merchants and others who may hereafter enter into contracts or* "*agreements in relation to goods wares and merchandise intrusted to* "*Factors or Agents*" validity is given under certain circumstances to contracts or agreements made with persons intrusted with and in possession of the documents of title to goods and merchandise and consignees making advances to persons abroad who are intrusted with any goods and merchandise are entitled under certain circumstances to a lien thereon but under the said Act and the present state of the law advances cannot safely be made upon goods or documents to persons known to have possession thereof as agents only And whereas by the said Act it is amongst other things further enacted that it shall be lawful to and for any person to contract with any agent intrusted with any goods or to whom the same may be consigned for the purchase of any such goods and to receive the same of and to pay for the same to such agent and such contract and payment shall be binding upon and good against the owner of such goods notwithstanding such person shall have notice that the person making such contract or on whose behalf such contract is made is an agent Provided such contract or payment be made in the usual and ordinary course of business and that such person shall not when such contract is entered into or payment made have notice that such agent is not authorized to sell the same or to receive the said purchase money And whereas advances on the security of goods and merchandise have become an usual and ordinary course of business and it is expedient

6 Geo. 4 c. 94.

and

and necessary that reasonable and safe facilities should be afforded thereto and that the same protection and validity should be extended to *bonâ fide* advances upon goods and merchandise as by the said recited Act is given to sales and that owners intrusting agents with the possession of goods and merchandise or of documents of title thereto should in all cases where such owners by the said recited Act or otherwise would be bound by a contract or agreement of sale be in like manner bound by any contract or agreement of pledge or lien for any advances *bonâ fide* made on the security thereof And whereas much litigation has arisen on the construction of the said recited Act and the same does not extend to protect exchanges of securities *bonâ fide* made and so much uncertainty exists in respect thereof that it is expedient to alter and amend the same and to extend the provisions thereof and to put the law on a clear and certain basis Be it therefore 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 That from and after the passing of this Act any agent who shall thereafter be intrusted with the possession of goods or of the documents of title to goods shall be deemed and taken to be owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge lien or security *bonâ fide* made by any person with such agent so intrusted as aforesaid as well for any original loan advance or payment made upon the security of such goods or documents as also for any further or continuing advance in respect thereof and such contract or agreement shall be binding upon and good against the owner of such goods and all other persons interested therein notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

Bona fide advances to persons intrusted with the possession of goods or documents of title though known to be agents protected.

Bona fide deposits in exchange protected.

2. And be it enacted that where any such contract or agreement for pledge lien or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise or document of title or negotiable security upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent such contract and agreement if *bonâ fide* on the part of the person with whom the same may be made shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act and shall be

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as valid and effectual to all intents and purposes and to the same extent as if the consideration for the same had been a *bonâ fide* present advance of money Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which or the documents of title to which or the negotiable security which shall be delivered up and exchanged.

But no lien beyond the value of the goods given up.

3. Provided always and be it enacted that this Act and every matter and thing herein contained shall be deemed and construed to give validity to such contracts and agreements only and to protect only such loans advances and exchanges as shall be made *bonâ fide* and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same or is acting *malâ fide* in respect thereof against the owner of such goods and merchandise and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given nor to authorize any agent intrusted as aforesaid in deviating from any express orders or authority received from the owner but that for the purpose and to the intent of protecting all such *bonâ fide* loans advances and exchanges as aforesaid (though made with notice of such agent not being the owner but without any notice of the agent's acting without authority) and to no further or other intent or purpose such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods.

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.

4. And be it enacted that any bill of lading India warrant dock warrant warehouse-keeper's certificate warrant or order for the delivery of goods or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by indorsement or by delivery the possessor of such document to transfer or receive goods thereby represented shall be deemed and taken to be a document of title within the meaning of this Act And any agent intrusted as aforesaid and possessed of any such document of title whether derived immediately from the owner of such goods or obtained by reason of such agent's having been intrusted with the possession of the goods or of any other document of title thereto shall be deemed and taken to have been intrusted with the possession of the goods represented by such document of title as aforesaid and all contracts pledging or giving a lien

Meaning of the term "Document of Title."

And when agent intrusted.

lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates and such agent shall be deemed to be possessed of such goods or documents whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf And where any loan or advance shall be *bonâ fide* made to any agent intrusted with and in possession of any such goods or documents of title as aforesaid on the faith of any contract or agreement in writing to consign deposit transfer or deliver such goods or documents of title as aforesaid and such goods or documents of title shall actually be received by the person making such loan or advance without notice that such agent was not authorized to make such pledge or security every such loan or advance shall be deemed and taken to be a loan or advance on the the security of such goods or documents of title within the meaning of this Act though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto and any contract or agreement whether made direct with such agent as aforesaid or with any clerk or other person on his behalf shall be deemed a contract or agreement with such agent and any payment made whether by money or bills of exchange or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act and an agent in possession as aforesaid of such goods or documents shall be taken for the purposes of this Act to have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

And when in possession.

Contract or agreement and advance.

Possession evidence of intrusting.

5. Provided always and be it enacted that nothing herein contained shall lessen vary alter or affect the civil responsibility of an agent for any breach of duty or contract or non-fulfilment of his orders or authority in respect of any such contract agreement lien or pledge as aforesaid.

Agent's civil responsibility not to be diminished.

6. Provided always and be it enacted that if any agent intrusted as aforesaid shall contrary to or without the authority of his principal in that behalf for his own benefit and in violation of good faith make any consignment deposit transfer or delivery of any goods or documents of title so intrusted to him as aforesaid as and by way of a pledge lien or security or shall contrary to or without such authority for his own benefit and in violation of good faith accept any advance on the faith of any contract or agreement to consign deposit transfer or deliver such goods or documents of title as aforesaid every such agent

Agent making consignments contrary to instruction of principal guilty of misdemeanor.

agent shall be deemed guilty of a misdemeanor and being convicted thereof shall be sentenced to transportation for any term not exceeding *fourteen* years nor less than *seven* years or to suffer such other punishment by fine or imprisonment or by both as the Court shall award And every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment deposit transfer or delivery or in accepting or procuring such advance as aforesaid shall be deemed guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court shall award as hereinbefore last mentioned Provided nevertheless that no such agent shall be liable to any prosecution for consigning depositing transferring or delivering any such goods or documents of title in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment deposit transfer or delivery was justly due and owing to such agent from his principal together with the amount of any bills of exchange drawn by or on account of such principal and accepted by such agent Provided also that the conviction of any such agent so convicted as aforesaid shall not be received in evidence in any action at law or suit in equity against him And no agent intrusted as aforesaid shall be liable to be convicted by any evidence whatsoever in respect of any act done by him if he shall at any time previously to his being indicted for such offence have disclosed such act on oath in consequence of any compulsory process of any Court of law or equity in any action suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Bankrupt.

Right of owner to redeem

7. Provided also and be it enacted that nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods or documents of title pledged as aforesaid at any time before such goods shall have been sold upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien may exist and upon payment or satisfaction to such agent if by him required of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or documents or any of them by way of lien as against such owner or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged or who shall have any such lien thereon as aforesaid any balance or sum of money remaining in his hands as the produce of the sale of such goods

or to recover balance of proceeds.

after

after deducting the amount of the lien of such person under such contract or agreement as aforesaid Provided always that in case of the bankruptcy of any such agent the owner of the goods which shall have been so redeemed by such owner as aforesaid shall in respect of the sum paid by him on account of such agent for such redemption be held to have paid such sum for the use of such agent before his bankruptcy or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge and shall if he shall think fit be entitled in either of such cases to prove for or set off the sum so paid or the value of such goods as the case may be.

In case of bankruptcy owner to prove for amount paid to redeem or for value of goods if unredeemed.

Interpretation of Act.

8. And be it enacted that in construing this Act the word "person" shall be taken to designate a body corporate or company as well as an individual and that words in the singular number shall when necessary to give effect to the intention of the said Act import also the plural and *vice versâ* and words used in the masculine gender shall when required be taken to apply to a female as well as a male.

Not to affect any contract before passing of this Act.

9. Provided also and be it enacted that nothing herein contained shall be construed to give validity to or in anywise to affect any contract agreement lien pledge or other act matter or thing made or done before the passing of this Act.

Sydney: Thomas Richards, Government Printer.—1865.

[*Price*, 6*d*.]

Legislative Council.

28° VICTORIÆ, 1865.

A BILL

(As amended in Committee of the Whole Council.)

To amend the Law relating to Advances *bonâ fide* made to Agents intrusted with Goods.

WHEREAS by an Act of the Imperial Parliament passed in the sixth year of the reign of His late Majesty King George the Fourth intituled "*An Act to alter and amend an Act for the better* "*protection of the property of Merchants and others who may hereafter* "*enter into contracts or agreements in relation to goods wares and* "*merchandise intrusted to* "*Factors or Agents*" validity is given under certain circumstances to contracts or agreements made with persons intrusted with and in possession of the documents of title to goods and merchandise and consignees making advances to persons abroad who are intrusted with any goods and merchandise are entitled under certain circumstances to a lien thereon but under the said Act and the present state of the law advances cannot safely be made upon goods or documents to persons known to have possession thereof as agents only And whereas by the said Act it is amongst other things further enacted that it shall be lawful to and for any person to contract with any agent intrusted with any goods or to whom the same may be consigned for the purchase of any such goods and to receive the same of and to pay for the same to such agent and such contract and payment shall be binding upon and good against the owner of such goods notwithstanding such person shall have notice that the person making such contract or on whose behalf such contract is made is an agent Provided such contract or payment be made in the usual and ordinary course of business and that such person shall not when such contract is entered into or payment made have notice that such agent is not authorized to sell the same or to receive the said purchase money And whereas advances on the security of goods and merchandise have

6 Geo. 4 c. 94.

become an usual and ordinary course of business and it is expedient and necessary that reasonable and safe facilities should be afforded thereto and that the same protection and validity should be extended to *bonâ fide* advances upon goods and merchandise as by the said recited Act is given to sales and that owners intrusting agents with the possession of goods and merchandise or of documents of title thereto should in all cases where such owners by the said recited Act or otherwise would be bound by a contract or agreement of sale be in like manner bound by any contract or agreement of pledge or lien for any advances *bonâ fide* made on the security thereof And whereas the said recited Act does not extend to protect exchanges of securities *bonâ fide* made and so much uncertainty exists in respect thereof that it is expedient to alter and amend the same and to extend the provisions thereof and to put the law on a clear and certain basis Be it therefore 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:—

Bona fide advances to persons intrusted with the possession of goods or documents of title though known to be agents protected.

1. That from and after the passing of this Act any agent who shall thereafter be intrusted with the possession of goods or of the documents of title to goods shall be deemed and taken to be owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge lien or security *bonâ fide* made by any person with such agent so intrusted as aforesaid as well for any original loan advance or payment made upon the security of such goods or documents as also for any further or continuing advance in respect thereof and such contract or agreement shall be binding upon and good against the owner of such goods and all other persons interested therein notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

Bona fide deposits in exchange protected.

2. And be it enacted that where any such contract or agreement for pledge lien or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise or document of title or negotiable security upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent such contract and agreement if *bonâ fide* on the part of the person with whom the same may be made shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act and shall be as valid and effectual to all intents and purposes and to the same extent as if the consideration for the same had been a *bonâ fide* present advance of money Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which or the documents of title to which or the negotiable security which shall be delivered up and exchanged.

But no lien beyond the value of the goods given up.

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.

3. Provided always and be it enacted that this Act and every matter and thing herein contained shall be deemed and construed to give validity to such contracts and agreements only and to protect only such loans advances and exchanges as shall be made *bonâ fide* and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same or is acting *malâ fide* in respect thereof against the owner of such goods and merchandise and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given nor to authorize any agent intrusted

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as aforesaid in deviating from any express orders or authority received from the owner but that for the purpose and to the intent of protecting all such *bonâ fide* loans advances and exchanges as aforesaid (though made with notice of such agent not being the owner but without any notice of the agent's acting without authority) and to no further or other intent or purpose such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods.

Meaning of the term "Document of Title."

4. And be it enacted that any bill of lading India warrant dock warrant warehouse-keeper's certificate warrant or order for the delivery of goods or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by indorsement or by delivery the possessor of such document to transfer or receive goods thereby represented shall be deemed and taken to be a document of title within the meaning of this Act And any agent intrusted as aforesaid and possessed of any such document of title whether derived immediately from the owner of such goods or obtained by reason of such agent's having been intrusted with the possession of the goods or of any other document of title thereto shall be deemed and taken to have been intrusted with the possession of the goods represented by such document of title as aforesaid and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates and such agent shall be deemed to be possessed of such goods or documents whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf And where any loan or advance shall be *bonâ fide* made to any agent intrusted with and in possession of any such goods or documents of title as aforesaid on the faith of any contract or agreement in writing to consign deposit transfer or deliver such goods or documents of title as aforesaid and such goods or documents of title shall actually be received by the person making such loan or advance without notice that such agent was not authorized to make such pledge or security every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto and any contract or agreement whether made direct with such agent as aforesaid or with any clerk or other person on his behalf shall be deemed a contract or agreement with such agent and any payment made whether by money or bills of exchange or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act and an agent in possession as aforesaid of such goods or documents shall be taken for the purposes of this Act to have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

And when agent intrusted.

And when in possession.

Contract or agreement and advance.

Possession evidence of intrusting.

Agent's civil responsibility not to be diminished.

5. Provided always and be it enacted that nothing herein contained shall lessen vary alter or affect the civil responsibility of an agent for any breach of duty or contract or non-fulfilment of his orders or authority in respect of any such contract agreement lien or pledge as aforesaid.

Agent making consignments contrary to instruction of principal guilty of misdemeanor.

6. Provided always and be it enacted that if any agent intrusted as aforesaid shall contrary to or without the authority of his principal in that behalf for his own benefit and in violation of good faith make any consignment deposit transfer or delivery of any goods or documents of title so intrusted to him as aforesaid as and by way of a pledge lien or security or shall contrary to or without such authority for his own benefit and in violation of good faith accept any advance

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on the faith of any contract or agreement to consign deposit transfer or deliver such goods or documents of title as aforesaid every such agent shall be deemed guilty of a misdemeanor and being convicted thereof shall be sentenced to such punishment by hard labour on the roads or other public works for any term not exceeding five years or to suffer such other punishment by imprisonment not exceeding three years or by fine or by both as the Court shall award And every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment deposit transfer or delivery or in accepting or procuring such advance as aforesaid shall be deemed guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court shall award as hereinbefore last mentioned Provided nevertheless that no such agent shall be liable to any prosecution for consigning depositing transferring or delivering any such goods or documents of title in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment deposit transfer or delivery was justly due and owing to such agent from his principal together with the amount of any bills of exchange drawn by or on account of such principal and accepted by such agent Provided also that the conviction of any such agent so convicted as aforesaid shall not be received in evidence in any action at law or suit in equity against him And no agent intrusted as aforesaid shall be liable to be convicted by any evidence whatsoever in respect of any act done by him if he shall at any time previously to his being indicted for such offence have disclosed such act on oath in consequence of any compulsory process of any Court of law or equity in any action suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Insolvency.

Right of owner to redeem

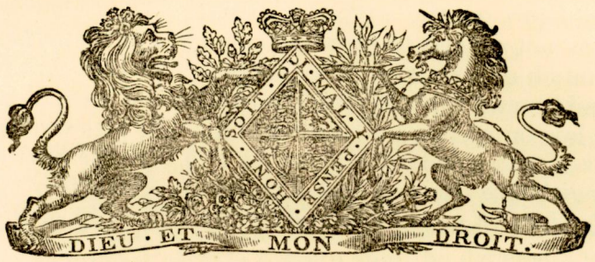
7. Provided also and be it enacted that nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods or documents of title pledged as aforesaid at any time before such goods shall have been sold upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien may exist and upon payment or satisfaction to such agent if by him required of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or documents or any of them by way of lien as against such owner or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged or who shall have any such lien thereon as aforesaid any balance or sum of money remaining in his hands as the produce of the sale of such goods after deducting the amount of the lien of such person under such contract or agreement as aforesaid Provided always that in case of the insolvency of any such agent the owner of the goods which shall have been so redeemed by such owner as aforesaid shall in respect of the sum paid by him on account of such agent for such redemption be held to have paid such sum for the use of such agent before his insolvency or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge and shall if he shall think fit be entitled in either of such cases to prove for or set off the sum so paid or the value of such goods as the case may be.

or to recover balance of proceeds.

In case of insolvency owner to prove for amount paid to redeem or for value of goods if unredeemed.

Not to affect any contract before passing of this Act.

8. Provided also and be it enacted that nothing herein contained shall be construed to give validity to or in anywise to affect any contract agreement lien pledge or other act matter or thing made or done before the passing of this Act.



This Public Bill *originated in the* Legislative Council, *and, having this day passed, is now ready for presentation to the* Legislative Assembly *for its concurrence.*

Legislative Council Chamber,
Sydney, 12 *May*, 1865.

R. O'CONNOR,
Clerk of the Parliaments.

New South Wales.

ANNO VICESIMO OCTAVO

VICTORIÆ REGINÆ.

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No. .

An Act to amend the Law relating to Advances *bonâ fide* made to Agents intrusted with Goods.

6 Geo. 4 c. 94.

WHEREAS by an Act of the Imperial Parliament passed in the sixth year of the reign of His late Majesty King George the Fourth intituled "*An Act to alter and amend an Act for the better* "*protection of the property of Merchants and others who may hereafter* "*enter into contracts or agreements in relation to goods wares and* "*merchandise intrusted to* "*Factors or Agents*" validity is given under certain circumstances to contracts or agreements made with persons intrusted with and in possession of the documents of title to goods and merchandise and consignees making advances to persons abroad who are intrusted with any goods and merchandise are entitled under certain circumstances to a lien thereon but under the said Act and the present state of the law advances cannot safely be made upon goods or documents to persons known to have possession thereof as agents only And whereas by the said Act it is amongst other things further enacted that it shall be lawful to and for any person to contract with any agent intrusted with any goods or to whom the same may be consigned for the purchase of any such goods and to receive the same of and to pay for the same to such agent and such contract and payment shall be binding upon and good against the owner of such goods notwithstanding such person shall have notice that the person making such contract or on whose behalf such contract is made is an agent Provided such contract or payment be made in the usual and ordinary course of business and that such person shall not when such contract is entered into or payment made have notice that such agent is not authorized to sell the same or to receive the said purchase money And whereas advances on the security of goods and merchandise have

become an usual and ordinary course of business and it is expedient and necessary that reasonable and safe facilities should be afforded thereto and that the same protection and validity should be extended to *bonâ fide* advances upon goods and merchandise as by the said recited Act is given to sales and that owners intrusting agents with the possession of goods and merchandise or of documents of title thereto should in all cases where such owners by the said recited Act or otherwise would be bound by a contract or agreement of sale be in like manner bound by any contract or agreement of pledge or lien for any advances *bonâ fide* made on the security thereof And whereas the said recited Act does not extend to protect exchanges of securities *bonâ fide* made and so much uncertainty exists in respect thereof that it is expedient to alter and amend the same and to extend the provisions thereof and to put the law on a clear and certain basis Be it therefore 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:—

Bona fide advances to persons intrusted with the possession of goods or documents of title though known to be agents protected.

1. That from and after the passing of this Act any agent who shall thereafter be intrusted with the possession of goods or of the documents of title to goods shall be deemed and taken to be owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge lien or security *bonâ fide* made by any person with such agent so intrusted as aforesaid as well for any original loan advance or payment made upon the security of such goods or documents as also for any further or continuing advance in respect thereof and such contract or agreement shall be binding upon and good against the owner of such goods and all other persons interested therein notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

Bona fide deposits in exchange protected.

2. And be it enacted that where any such contract or agreement for pledge lien or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise or document of title or negotiable security upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent such contract and agreement if *bonâ fide* on the part of the person with whom the same may be made shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act and shall be as valid and effectual to all intents and purposes and to the same extent as if the consideration for the same had been a *bonâ fide* present advance of money Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which or the documents of title to which or the negotiable security which shall be delivered up and exchanged.

But no lien beyond the value of the goods given up.

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.

3. Provided always and be it enacted that this Act and every matter and thing herein contained shall be deemed and construed to give validity to such contracts and agreements only and to protect only such loans advances and exchanges as shall be made *bonâ fide* and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same or is acting *malâ fide* in respect thereof against the owner of such goods and merchandise and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given nor to authorize any agent intrusted

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as aforesaid in deviating from any express orders or authority received from the owner but that for the purpose and to the intent of protecting all such *bonâ fide* loans advances and exchanges as aforesaid (though made with notice of such agent not being the owner but without any 5 notice of the agent's acting without authority) and to no further or other intent or purpose such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods.

Meaning of the term "Document of Title."

4. And be it enacted that any bill of lading India warrant dock warrant warehouse-keeper's certificate warrant or order for the 10 delivery of goods or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by indorsement or by delivery the possessor of such document to transfer or receive goods thereby represented shall be deemed and taken to be a document of title 15 within the meaning of this Act And any agent intrusted as aforesaid and possessed of any such document of title whether derived immediately from the owner of such goods or obtained by reason of such agent's having been intrusted with the possession of the goods or of any other document of title thereto shall be deemed and taken to have 20 been intrusted with the possession of the goods represented by such document of title as aforesaid and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates and such agent shall be deemed to be possessed of 25 such goods or documents whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf And where any loan or advance shall be *bonâ fide* made to any agent intrusted with and in possession of any such goods or documents of title as aforesaid on the faith of any contract 30 or agreement in writing to consign deposit transfer or deliver such goods or documents of title as aforesaid and such goods or documents of title shall actually be received by the person making such loan or advance without notice that such agent was not authorized to make such pledge or security every such loan or advance shall be 35 deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto and any contract or agreement whether made direct with such agent 40 as aforesaid or with any clerk or other person on his behalf shall be deemed a contract or agreement with such agent and any payment made whether by money or bills of exchange or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act and an agent in possession as aforesaid of such 45 goods or documents shall be taken for the purposes of this Act to have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

And when agent intrusted.

And when in possession.

Contract or agreement and advance.

Possession evidence of intrusting.

Agent's civil responsibility not to be diminished.

5. Provided always and be it enacted that nothing herein contained shall lessen vary alter or affect the civil responsibility of an 50 agent for any breach of duty or contract or non-fulfilment of his orders or authority in respect of any such contract agreement lien or pledge as aforesaid.

Agent making consignments contrary to instruction of principal guilty of misdemeanor.

6. Provided always and be it enacted that if any agent intrusted as aforesaid shall contrary to or without the authority of his principal 55 in that behalf for his own benefit and in violation of good faith make any consignment deposit transfer or delivery of any goods or documents of title so intrusted to him as aforesaid as and by way of a pledge lien or security or shall contrary to or without such authority for his own benefit and in violation of good faith accept any advance

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on the faith of any contract or agreement to consign deposit transfer or deliver such goods or documents of title as aforesaid every such agent shall be deemed guilty of a misdemeanor and being convicted thereof shall be sentenced to such punishment by hard labour on the roads or other public works for any term not exceeding five years or to suffer such other punishment by imprisonment not exceeding three years or by fine or by both as the Court shall award And every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment deposit transfer or delivery or in accepting or procuring such advance as aforesaid shall be deemed guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court shall award as hereinbefore last mentioned Provided nevertheless that no such agent shall be liable to any prosecution for consigning depositing transferring or delivering any such goods or documents of title in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment deposit transfer or delivery was justly due and owing to such agent from his principal together with the amount of any bills of exchange drawn by or on account of such principal and accepted by such agent Provided also that the conviction of any such agent so convicted as aforesaid shall not be received in evidence in any action at law or suit in equity against him And no agent intrusted as aforesaid shall be liable to be convicted by any evidence whatsoever in respect of any act done by him if he shall at any time previously to his being indicted for such offence have disclosed such act on oath in consequence of any compulsory process of any Court of law or equity in any action suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Insolvency.

Right of owner to redeem

7. Provided also and be it enacted that nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods or documents of title pledged as aforesaid at any time before such goods shall have been sold upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien may exist and upon payment or satisfaction to such agent if by him required of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or documents or any of them by way of lien as against such owner or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged or who shall have any such lien thereon as aforesaid any balance or sum of money remaining in his hands as the produce of the sale of such goods after deducting the amount of the lien of such person under such contract or agreement as aforesaid Provided always that in case of the insolvency of any such agent the owner of the goods which shall have been so redeemed by such owner as aforesaid shall in respect of the sum paid by him on account of such agent for such redemption be held to have paid such sum for the use of such agent before his insolvency or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge and shall if he shall think fit be entitled in either of such cases to prove for or set off the sum so paid or the value of such goods as the case may be.

or to recover balance of proceeds.

In case of insolvency owner to prove for amount paid to redeem or for value of goods if unredeemed.

Not to affect any contract before passing of this Act.

8. Provided also and be it enacted that nothing herein contained shall be construed to give validity to or in anywise to affect any contract agreement lien pledge or other act matter or thing made or done before the passing of this Act.

Sydney: Thomas Richards, Government Printer.—1865.

[*Price*, 3*d*.]

Legislative Council.

29° VICTORIÆ, 1865.

A BILL

To amend the Law relating to Advances bona fide made to Agents intrusted with Goods.

[MR. ALEXANDER CAMPBELL;—25 *October*, 1865.]

WHEREAS by an Act of the Imperial Parliament passed in the sixth year of the reign of His late Majesty King George the Fourth intituled "*An Act to alter and amend an Act for the better* "*protection of the property of Merchants and others who may hereafter* "*enter into contracts or agreements in relation to goods wares and* "*merchandise intrusted to* "*Factors or Agents*" validity is given under certain circumstances to contracts or agreements made with persons intrusted with and in possession of the documents of title to goods and merchandise and consignees making advances to persons abroad who are intrusted with any goods and merchandise are entitled under certain circumstances to a lien thereon but under the said Act and the present state of the law advances cannot safely be made upon goods or documents to persons known to have possession thereof as agents only And whereas by the said Act it is amongst other things further enacted that it shall be lawful to and for any person to contract with any agent intrusted with any goods or to whom the same may be consigned for the purchase of any such goods and to receive the same of and to pay for the same to such agent and such contract and payment shall be binding upon and good against the owner of such goods notwithstanding such person shall have notice that the person making such contract or on whose behalf such contract is made is an agent Provided such contract or payment be made in the usual and ordinary course of business and that such person shall not when such contract is entered into or payment made have notice that such agent is not authorized to sell the same or to receive the said purchase money And whereas advances on the security of goods and merchandise have

6 Geo. 4 c. 94.

become an usual and ordinary course of business and it is expedient and necessary that reasonable and safe facilities should be afforded thereto and that the same protection and validity should be extended to *bonâ fide* advances upon goods and merchandise as by the said recited Act is given to sales and that owners intrusting agents with the possession of goods and merchandise or of documents of title thereto should in all cases where such owners by the said recited Act or otherwise would be bound by a contract or agreement of sale be in like manner bound by any contract or agreement of pledge or lien for any advances *bonâ fide* made on the security thereof And whereas the said recited Act does not extend to protect exchanges of securities *bonâ fide* made and so much uncertainty exists in respect thereof that it is expedient to alter and amend the same and to extend the provisions thereof and to put the law on a clear and certain basis Be it therefore 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 :—

Bona fide advances to persons intrusted with the possession of goods or documents of title though known to be agents protected.

1. That from and after the passing of this Act any agent who shall thereafter be intrusted with the possession of goods or of the documents of title to goods shall be deemed and taken to be owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge lien or security *bonâ fide* made by any person with such agent so intrusted as aforesaid as well for any original loan advance or payment made upon the security of such goods or documents as also for any further or continuing advance in respect thereof and such contract or agreement shall be binding upon and good against the owner of such goods and all other persons interested therein notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

Bona fide deposits in exchange protected.

2. And be it enacted that where any such contract or agreement for pledge lien or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise or document of title or negotiable security upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent such contract and agreement if *bonâ fide* on the part of the person with whom the same may be made shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act and shall be as valid and effectual to all intents and purposes and to the same extent as if the consideration for the same had been a *bonâ fide* present advance of money Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which or the documents of title to which or the negotiable security which shall be delivered up and exchanged.

But no lien beyond the value of the goods given up.

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.

3. Provided always and be it enacted that this Act and every matter and thing herein contained shall be deemed and construed to give validity to such contracts and agreements only and to protect only such loans advances and exchanges as shall be made *bonâ fide* and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same or is acting *malâ fide* in respect thereof against the owner of such goods and merchandise and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given nor to authorize any agent intrusted

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as aforesaid in deviating from any express orders or authority received from the owner but that for the purpose and to the intent of protecting all such *bonâ fide* loans advances and exchanges as aforesaid (though made with notice of such agent not being the owner but without any notice of the agent's acting without authority) and to no further or other intent or purpose such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods.

Meaning of the term "Document of Title."

4. And be it enacted that any bill of lading India warrant dock warrant warehouse-keeper's certificate warrant or order for the delivery of goods or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by indorsement or by delivery the possessor of such document to transfer or receive goods thereby represented shall be deemed and taken to be a document of title within the meaning of this Act And any agent intrusted as aforesaid and possessed of any such document of title whether derived immediately from the owner of such goods or obtained by reason of such agent's having been intrusted with the possession of the goods or of any other document of title thereto shall be deemed and taken to have been intrusted with the possession of the goods represented by such document of title as aforesaid and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates and such agent shall be deemed to be possessed of such goods or documents whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf And where any loan or advance shall be *bonâ fide* made to any agent intrusted with and in possession of any such goods or documents of title as aforesaid on the faith of any contract or agreement in writing to consign deposit transfer or deliver such goods or documents of title as aforesaid and such goods or documents of title shall actually be received by the person making such loan or advance without notice that such agent was not authorized to make such pledge or security every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto and any contract or agreement whether made direct with such agent as aforesaid or with any clerk or other person on his behalf shall be deemed a contract or agreement with such agent and any payment made whether by money or bills of exchange or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act and an agent in possession as aforesaid of such goods or documents shall be taken for the purposes of this Act to have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

And when agent intrusted.

And when in possession.

Contract or agreement and advance.

Possession evidence of intrusting.

Agent's civil responsibility not to be diminished.

5. Provided always and be it enacted that nothing herein contained shall lessen vary alter or affect the civil responsibility of an agent for any breach of duty or contract or non-fulfilment of his orders or authority in respect of any such contract agreement lien or pledge as aforesaid.

Agent making consignments contrary to instruction of principal guilty of misdemeanor.

6. Provided always and be it enacted that if any agent intrusted as aforesaid shall contrary to or without the authority of his principal in that behalf for his own benefit and in violation of good faith make any consignment deposit transfer or delivery of any goods or documents of title so intrusted to him as aforesaid as and by way of a pledge lien or security or shall contrary to or without such authority for his own benefit and in violation of good faith accept any advance

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on the faith of any contract or agreement to consign deposit transfer or deliver such goods or documents of title as aforesaid every such agent shall be deemed guilty of a misdemeanor and being convicted thereof shall be sentenced to such punishment by hard labour on the roads or other public works for any term not exceeding five years or to suffer such other punishment by imprisonment not exceeding three years or by fine or by both as the Court shall award And every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment deposit transfer or delivery or in accepting or procuring such advance as aforesaid shall be deemed guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court shall award as hereinbefore last mentioned Provided nevertheless that no such agent shall be liable to any prosecution for consigning depositing transferring or delivering any such goods or documents of title in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment deposit transfer or delivery was justly due and owing to such agent from his principal together with the amount of any bills of exchange drawn by or on account of such principal and accepted by such agent Provided also that the conviction of any such agent so convicted as aforesaid shall not be received in evidence in any action at law or suit in equity against him And no agent intrusted as aforesaid shall be liable to be convicted by any evidence whatsoever in respect of any act done by him if he shall at any time previously to his being indicted for such offence have disclosed such act on oath in consequence of any compulsory process of any Court of law or equity in any action suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Insolvency.

Right of owner to redeem

7. Provided also and be it enacted that nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods or documents of title pledged as aforesaid at any time before such goods shall have been sold upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien may exist and upon payment or satisfaction to such agent if by him required of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or documents or any of them by way of lien as against such owner or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged or who shall have any such lien thereon as aforesaid any balance or sum of money remaining in his hands as the produce of the sale of such goods after deducting the amount of the lien of such person under such contract or agreement as aforesaid Provided always that in case of the insolvency of any such agent the owner of the goods which shall have been so redeemed by such owner as aforesaid shall in respect of the sum paid by him on account of such agent for such redemption be held to have paid such sum for the use of such agent before his insolvency or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge and shall if he shall think fit be entitled in either of such cases to prove for or set off the sum so paid or the value of such goods as the case may be.

or to recover balance of proceeds.

In case of insolvency owner to prove for amount paid to redeem or for value of goods if unredeemed.

Not to affect any contract before passing of this Act.

8. Provided also and be it enacted that nothing herein contained shall be construed to give validity to or in anywise to affect any contract agreement lien pledge or other act matter or thing made or done before the passing of this Act.

Sydney: Thomas Richards, Government Printer.—1865.

[*Price, 3d.*]

Legislative Council.

29° VICTORIÆ, 1865.

A BILL

(As amended in Committee of the Whole Council.)

To amend the Law relating to Advances bona fide made to Agents intrusted with Goods.

WHEREAS an Act of the Imperial Parliament was passed in the fourth year of the reign of His late Majesty King George the Fourth intituled "*An Act for the better protection of the property of* "*Merchants and others who may hereafter enter into contracts or* "*agreements in relation to goods wares or merchandises intrusted to* "*Factors or Agents*" And whereas by another Act of the Imperial Parliament passed in the sixth year of the reign of His late Majesty King George the Fourth intituled "*An Act to alter and amend an Act for* "*the better protection of the property of Merchants and others who may* "*hereafter enter into contracts or agreements in relation to goods wares* "*and merchandise intrusted to Factors or Agents*" the said first-mentioned Act was altered and amended in certain respects and validity is given under certain circumstances to contracts or agreements made with persons intrusted with and in possession of the documents of title to goods and merchandise and consignees making advances to persons abroad who are intrusted with any goods and merchandise are entitled under certain circumstances to a lien thereon but under the said Act and the present state of the law advances cannot safely be made upon goods or documents to persons known to have possession thereof as agents only And whereas by the said Act it is amongst other things further enacted that it shall be lawful to and for any person to contract with any agent intrusted with any goods or to whom the same may be consigned for the purchase of any such goods and to receive the same

4 Geo. IV c. 83.

6 Geo. IV c. 94.

of and to pay for the same to such agent and such contract and payment shall be binding upon and good against the owner of such goods notwithstanding such person shall have notice that the person making such contract or on whose behalf such contract is made is an agent Provided such contract or payment be made in the usual and ordinary course of business and that such person shall not when such contract is entered into or payment made have notice that such agent is not authorized to sell the same or to receive the said purchase money And whereas advances on the security of goods and merchandise have become an usual and ordinary course of business and it is expedient and necessary that reasonable and safe facilities should be afforded thereto and that the same protection and validity should be extended to *bonâ fide* advances upon goods and merchandise as by the said recited Act is given to sales and that owners intrusting agents with the possession of goods and merchandise or of documents of title thereto should in all cases where such owners by the said recited Act or otherwise would be bound by a contract or agreement of sale be in like manner bound by any contract or agreement of pledge or lien for any advances *bonâ fide* made on the security thereof And whereas the said recited Act does not extend to protect exchanges of securities *bonâ fide* made and so much uncertainty exists in respect thereof that it is expedient to alter and amend the same and to extend the provisions thereof and to put the law on a clear and certain basis Be it therefore 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:—

Bona fide advances to persons intrusted with the possession of goods or documents of title though known to be agents protected.

1. That the said two Acts of the Imperial Parliament extended to and are in force in this Colony And that from and after the passing of this Act any agent who shall thereafter be intrusted with the possession of goods or of the documents of title to goods shall be deemed and taken to be owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge lien or security *bonâ fide* made by any person with such agent so intrusted as aforesaid as well for any original loan advance or payment made upon the security of such goods or documents as also for any further or continuing advance in respect thereof and such contract or agreement shall be binding upon and good against the owner of such goods and all other persons interested therein notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

Bona fide deposits in exchange protected.

2. And be it enacted that where any such contract or agreement for pledge lien or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise or document of title or negotiable security upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent such contract and agreement if *bonâ fide* on the part of the person with whom the same may be made shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act and shall be as valid and effectual to all intents and purposes and to the same extent as if the consideration for the same had been a *bonâ fide* present advance of money Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which or the documents of title to which or the negotiable security which shall be delivered up and exchanged.

But no lien beyond the value of the goods given up.

3.

3. Provided always and be it enacted that this Act and every matter and thing herein contained shall be deemed and construed to give validity to such contracts and agreements only and to protect only such loans advances and exchanges as shall be made *boná fide* and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same or is acting *malâ fide* in respect thereof against the owner of such goods and merchandise and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given nor to authorize any agent intrusted as aforesaid in deviating from any express orders or authority received from the owner but that for the purpose and to the intent of protecting all such *boná fide* loans advances and exchanges as aforesaid (though made with notice of such agent not being the owner but without any notice of the agent's acting without authority) and to no further or other intent or purpose such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods.

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.

4. And be it enacted that any bill of lading India warrant dock warrant warehouse-keeper's certificate warrant or order for the delivery of goods or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by indorsement or by delivery the possessor of such document to transfer or receive goods thereby represented shall be deemed and taken to be a document of title within the meaning of this Act And any agent intrusted as aforesaid and possessed of any such document of title whether derived immediately from the owner of such goods or obtained by reason of such agent's having been intrusted with the possession of the goods or of any other document of title thereto shall be deemed and taken to have been intrusted with the possession of the goods represented by such document of title as aforesaid and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates and such agent shall be deemed to be possessed of such goods or documents whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf And where any loan or advance shall be *boná fide* made to any agent intrusted with and in possession of any such goods or documents of title as aforesaid on the faith of any contract or agreement in writing to consign deposit transfer or deliver such goods or documents of title as aforesaid and such goods or documents of title shall actually be received by the person making such loan or advance without notice that such agent was not authorized to make such pledge or security every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto and any contract or agreement whether made direct with such agent as aforesaid or with any clerk or other person on his behalf shall be deemed a contract or agreement with such agent and any payment made whether by money or bills of exchange or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act and an agent in possession as aforesaid of such goods or documents shall be taken for the purposes of this Act to have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

Meaning of the term "Document of Title."

And when agent intrusted.

And when in possession.

What to be deemed a contract or agreement and advance.

Possession *primâ facie* evidence of intrusting.

5.

Agent's civil responsibility not to be diminished.

5. Provided always and be it enacted that nothing herein contained shall lessen vary alter or affect the civil responsibility of an agent for any breach of duty or contract or non-fulfilment of his orders or authority in respect of any such contract agreement lien or pledge as aforesaid. 5

Agent making consignments contrary to instruction of principal guilty of misdemeanor.

6. Provided always and be it enacted that if any agent intrusted as aforesaid shall contrary to or without the authority of his principal in that behalf for his own benefit and in violation of good faith make any consignment deposit transfer or delivery of any goods or documents of title so intrusted to him as aforesaid as and by way of a 10 pledge lien or security or shall contrary to or without such authority for his own benefit and in violation of good faith accept any advance on the faith of any contract or agreement to consign deposit transfer or deliver such goods or documents of title as aforesaid every such agent shall be deemed guilty of a misdemeanor and being convicted 15 thereof shall be sentenced to such punishment by hard labour on the roads or other public works for any term not exceeding five years or to suffer such other punishment by imprisonment not exceeding three years or by fine or by both as the Court shall award And every clerk or other person who shall knowingly and wilfully act and assist 20 in making any such consignment deposit transfer or delivery or in accepting or procuring such advance as aforesaid shall be deemed guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any such of the punishments herein-before mentioned as the Court shall award Provided nevertheless that 25 no such agent shall be liable to any prosecution for consigning depositing transferring or delivering any such goods or documents of title in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment deposit transfer or delivery was justly due and 30 owing to such agent from his principal together with the amount of any bills of exchange drawn by or on account of such principal and accepted by such agent Provided also that the conviction of any such agent so convicted as aforesaid shall not be received in evidence in any action at law or suit in equity against him And no agent intrusted as 35 aforesaid shall be liable to be convicted by any evidence whatsoever in respect of any act done by him if he shall at any time previously to his being indicted for such offence have disclosed such act on oath in consequence of any compulsory process of any Court of law or equity in any action suit or proceeding which shall have been *boná fide* insti- 40 tuted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Insolvency.

Right of owner to redeem

7. Provided also and be it enacted that nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods or documents of title pledged as aforesaid at any time 45 before such goods shall have been sold upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien may exist and upon payment or satisfaction to such agent if by him required of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or docu- 50 ments or any of them by way of lien as against such owner or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged or who shall have any such lien thereon as aforesaid any balance or sum of money remaining in his hands as the produce of the sale of such goods 55 after deducting the amount of the lien of such person under such contract or agreement as aforesaid Provided always that in case of the insolvency of any such agent the owner of the goods which shall have been so redeemed by such owner as aforesaid shall in respect

or to recover balance of proceeds.

In case of insolvency owner to prove for amount paid to redeem or for value of goods if unredeemed.

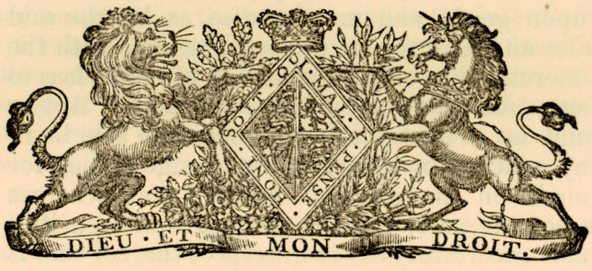
respect of the sum paid by him on account of such agent for such redemption be held to have paid such sum for the use of such agent before his insolvency or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge and shall if he shall think fit be entitled in either of such cases to prove for or set off the sum so paid or the value of such goods as the case may be.

Not to affect any contract made before passing of this Act.

8. Provided also and be it enacted that nothing hereby enacted shall be construed to give validity to or in anywise to affect any contract agreement lien pledge or other act matter or thing made or done before the passing of this Act.

Sydney: Thomas Richards, Government Printer.—1865.

[*Price*, 6*d*.]



This **Public Bill** *originated in the* **Legislative Council**, *and, having this day passed, is now ready for presentation to the* **Legislative Assembly** *for its concurrence.*

Legislative Council Chamber,
Sydney, 6 *December,* 1865. }

R. O'CONNOR,
Clerk of the Parliaments.

New South Wales.

ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

* *

No. .

An Act to amend the Law relating to Advances *bonâ fide* made to Agents intrusted with Goods.

4 Geo. IV c. 83.

6 Geo. IV c. 94.

WHEREAS an Act of the Imperial Parliament was passed in the fourth year of the reign of His late Majesty King George the Fourth intituled "*An Act for the better protection of the property of* "*Merchants and others who may hereafter enter into contracts or* "*agreements in relation to goods wares or merchandises intrusted to* "*Factors or Agents*" And whereas by another Act of the Imperial Parliament passed in the sixth year of the reign of His late Majesty King George the Fourth intituled "*An Act to alter and amend an Act for* "*the better protection of the property of Merchants and others who may* "*hereafter enter into contracts or agreements in relation to goods wares* "*and merchandise intrusted to Factors or Agents*" the said first-mentioned Act was altered and amended in certain respects and validity is given under certain circumstances to contracts or agreements made with persons intrusted with and in possession of the documents of title to goods and merchandise and consignees making advances to persons abroad who are intrusted with any goods and merchandise are entitled under certain circumstances to a lien thereon but under the said Act and the present state of the law advances cannot safely be made upon goods or documents to persons known to have possession thereof as agents only And whereas by the said Act it is amongst other things further enacted that it shall be lawful to and for any person to contract with any agent intrusted with any goods or to whom the same may be consigned for the purchase of any such goods and to receive the same

of and to pay for the same to such agent and such contract and payment shall be binding upon and good against the owner of such goods notwithstanding such person shall have notice that the person making such contract or on whose behalf such contract is made is an agent Provided such contract or payment be made in the usual and ordinary course of business and that such person shall not when such contract is entered into or payment made have notice that such agent is not authorized to sell the same or to receive the said purchase money And whereas advances on the security of goods and merchandise have become an usual and ordinary course of business and it is expedient and necessary that reasonable and safe facilities should be afforded thereto and that the same protection and validity should be extended to *bonâ fide* advances upon goods and merchandise as by the said recited Act is given to sales and that owners intrusting agents with the possession of goods and merchandise or of documents of title thereto should in all cases where such owners by the said recited Act or otherwise would be bound by a contract or agreement of sale be in like manner bound by any contract or agreement of pledge or lien for any advances *bonâ fide* made on the security thereof And whereas the said recited Act does not extend to protect exchanges of securities *bonâ fide* made and so much uncertainty exists in respect thereof that it is expedient to alter and amend the same and to extend the provisions thereof and to put the law on a clear and certain basis Be it therefore 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:—

Bona fide advances to persons intrusted with the possession of goods or documents of title though known to be agents protected.

1. That the said two Acts of the Imperial Parliament extended to and are in force in this Colony And that from and after the passing of this Act any agent who shall thereafter be intrusted with the possession of goods or of the documents of title to goods shall be deemed and taken to be owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge lien or security *bonâ fide* made by any person with such agent so intrusted as aforesaid as well for any original loan advance or payment made upon the security of such goods or documents as also for any further or continuing advance in respect thereof and such contract or agreement shall be binding upon and good against the owner of such goods and all other persons interested therein notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

Bona fide deposits in exchange protected.

2. And be it enacted that where any such contract or agreement for pledge lien or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise or document of title or negotiable security upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent such contract and agreement if *bonâ fide* on the part of the person with whom the same may be made shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act and shall be as valid and effectual to all intents and purposes and to the same extent as if the consideration for the same had been a *bonâ fide* present advance of money Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which or the documents of title to which or the negotiable security which shall be delivered up and exchanged.

But no lien beyond the value of the goods given up.

3.

3. Provided always and be it enacted that this Act and every matter and thing herein contained shall be deemed and construed to give validity to such contracts and agreements only and to protect only such loans advances and exchanges as shall be made *bonâ fide* and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same or is acting *malâ fide* in respect thereof against the owner of such goods and merchandise and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given nor to authorize any agent intrusted as aforesaid in deviating from any express orders or authority received from the owner but that for the purpose and to the intent of protecting all such *bonâ fide* loans advances and exchanges as aforesaid (though made with notice of such agent not being the owner but without any notice of the agent's acting without authority) and to no further or other intent or purpose such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods.

But the statute to be construed to protect only transactions *bonâ fide* without notice that the agent pledging is acting without authority or *malâ fide* against the owner.

4. And be it enacted that any bill of lading India warrant dock warrant warehouse-keeper's certificate warrant or order for the delivery of goods or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by indorsement or by delivery the possessor of such document to transfer or receive goods thereby represented shall be deemed and taken to be a document of title within the meaning of this Act And any agent intrusted as aforesaid and possessed of any such document of title whether derived immediately from the owner of such goods or obtained by reason of such agent's having been intrusted with the possession of the goods or of any other document of title thereto shall be deemed and taken to have been intrusted with the possession of the goods represented by such document of title as aforesaid and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates and such agent shall be deemed to be possessed of such goods or documents whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf And where any loan or advance shall be *bonâ fide* made to any agent intrusted with and in possession of any such goods or documents of title as aforesaid on the faith of any contract or agreement in writing to consign deposit transfer or deliver such goods or documents of title as aforesaid and such goods or documents of title shall actually be received by the person making such loan or advance without notice that such agent was not authorized to make such pledge or security every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto and any contract or agreement whether made direct with such agent as aforesaid or with any clerk or other person on his behalf shall be deemed a contract or agreement with such agent and any payment made whether by money or bills of exchange or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act and an agent in possession as aforesaid of such goods or documents shall be taken for the purposes of this Act to have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

Meaning of the term "Document of Title."

And when agent intrusted.

And when in possession.

What to be deemed a contract or agreement and advance.

Possession *primâ facie* evidence of intrusting.

5. Provided always and be it enacted that nothing herein contained shall lessen vary alter or affect the civil responsibility of an agent for any breach of duty or contract or non-fulfilment of his orders or authority in respect of any such contract agreement lien or pledge as aforesaid.

Agent's civil responsibility not to be diminished.

6. Provided always and be it enacted that if any agent intrusted as aforesaid shall contrary to or without the authority of his principal in that behalf, for his own benefit and in violation of good faith make any consignment deposit transfer or delivery of any goods or documents of title so intrusted to him as aforesaid as and by way of a pledge lien or security or shall contrary to or without such authority for his own benefit and in violation of good faith accept any advance on the faith of any contract or agreement to consign deposit transfer or deliver such goods or documents of title as aforesaid every such agent shall be deemed guilty of a misdemeanor and being convicted thereof shall be sentenced to such punishment by hard labour on the roads or other public works for any term not exceeding five years or to suffer such other punishment by imprisonment not exceeding three years or by fine or by both as the Court shall award And every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment deposit transfer or delivery or in accepting or procuring such advance as aforesaid shall be deemed guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any such of the punishments hereinbefore mentioned as the Court shall award Provided nevertheless that no such agent shall be liable to any prosecution for consigning depositing transferring or delivering any such goods or documents of title in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment deposit transfer or delivery was justly due and owing to such agent from his principal together with the amount of any bills of exchange drawn by or on account of such principal and accepted by such agent Provided also that the conviction of any such agent so convicted as aforesaid shall not be received in evidence in any action at law or suit in equity against him And no agent intrusted as aforesaid shall be liable to be convicted by any evidence whatsoever in respect of any act done by him if he shall at any time previously to his being indicted for such offence have disclosed such act on oath in consequence of any compulsory process of any Court of law or equity in any action suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Insolvency.

Agent making consignments contrary to instruction of principal guilty of misdemeanor.

7. Provided also and be it enacted that nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods or documents of title pledged as aforesaid at any time before such goods shall have been sold upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien may exist and upon payment or satisfaction to such agent if by him required of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or documents or any of them by way of lien as against such owner or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged or who shall have any such lien thereon as aforesaid any balance or sum of money remaining in his hands as the produce of the sale of such goods after deducting the amount of the lien of such person under such contract or agreement as aforesaid Provided always that in case of the insolvency of any such agent the owner of the goods which shall have been so redeemed by such owner as aforesaid shall in respect

Right of owner to redeem

or to recover balance of proceeds.

In case of insolvency owner to prove for amount paid to redeem or for value of goods if unredeemed.

respect of the sum paid by him on account of such agent for such redemption be held to have paid such sum for the use of such agent before his insolvency or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge and shall if he shall think fit be entitled in either of such cases to prove for or set off the sum so paid or the value of such goods as the case may be.

Not to affect any contract made before passing of this Act.

8. Provided also and be it enacted that nothing hereby enacted shall be construed to give validity to or in anywise to affect any contract agreement lien pledge or other act matter or thing made or done before the passing of this Act.

[*Price, 6d.*]

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