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 6 Geo. 4 c. 94.

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
- 5" 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
- 10 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
- 15 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 notwithstand-
- 20 ing 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
- 25 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

and necessary that reasonable and safe facilities should be afforded

thereto and that the same protection and validity should be extended to bona 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 5 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 bona fide made on the security thereof And whereas much litigation has arisen on the construction of the said recited Act 10 and the same does not extend to protect exchanges of securities boná 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 15 with the possession and consent of the Legislative Council and Legislative Assembly of of goods or documents of title though 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 20 such goods and documents so far as to give validity to any contract or agreement by way of pledge lien or security bond 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 25 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. 30

known to be agents protected.

Bona fide advances

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 35 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 bond 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 40

as valid and effectual to all intents and purposes and to the same extent as if the consideration for the same had been a bona fide present advance of money Provided always that the lien acquired under But no lien beyond the value of the such last mentioned contract or agreement upon the goods or docu-goods given up. 5 ments 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.

3. Provided always and be it enacted that this Act and every But the statute to 10 matter and thing herein contained shall be deemed and construed to protect only transactions bona fide without notice that give validity to such contracts and agreements only and to protect the agent pledging only such loans advances and exchanges as shall be made bona fide authority or mala and without notice that the agent making such contracts or agree-owner. ments as aforesaid has not authority to make the same or is acting

- 15 malá 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
- 20 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 25 other intent or purpose such contract or agreement as aforesaid shall

be binding on the owner and all other persons interested in such goods.

4. And be it enacted that any bill of lading India warrant dock Meaning of the term "Document of Title." warrant warehouse-keeper's certificate warrant or order for the delivery of goods or any other document used in the ordinary course 30 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 when agent

35 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 40 document of title as aforesaid and all contracts pledging or giving a

lien

And when in possession.

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 5 for him or on his behalf And where any loan or advance shall be bond 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 10 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 15 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 20 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 25 can be shewn in evidence.

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 30 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 docu-35 ments 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 40 agent

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 5 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 10 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 15 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 20 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 25 in any action suit or proceeding which shall have been boná fide instituted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Bankrupt.

7. Provided also and be it enacted that nothing herein contained Right of owner to shall prevent such owner as aforesaid from having the right to redeem

30 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

35 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 or to recover balance of proceeds. 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

40 money remaining in his hands as the produce of the sale of such goods after

owner to prove for amount paid to redeem or for value of goods if un-redeemed.

after deducting the amount of the lien of such person under such Incase of bankruptcy 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 5 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 10 of such goods as the case may be.

Interpretation of

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 15 also the plural and vice versa 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 20 before the passing of this Act.

Sydney: Thomas Richards, Government Printer.—1865.

[Price, 6d.]

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 6 Geo. 4 c. 94. 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 5" 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 10 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 15 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 notwithstand-20 ing 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 25 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 bona fide advances upon goods and merchandise as by the said recited Act is given to sales and that owners intrusting agents with the 5 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 bond fide made on the security thereof And whereas 10 the said recited Act does not extend to protect exchanges of securities bona fide made and so much uncertainty exists in respect thereof that it 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 and content of till the and content to after and amend the same and to extend the provisions to persons intrusted with the possession enacted by the Queen's Most Excellent Majesty by and content and amend the same and to extend the provisions to persons intrusted with the possession of goods or docuenacted by the Queen's Most Excellent Majesty by and with the advice 15 ments of title though and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the

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 20 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 bond 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 25 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 30

Bona fide deposits in exchange protected.

or agreement is made is only an agent.

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 35 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 bond 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 40 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 bona fide present advance of money Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or docu-45 ments deposited in exchange shall not exceed the value at the time of the goods and merchandise which or the documents of title to which

But no lien beyond goods given up.

But the statute to be construed to protect only trans-actions 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 50 give validity to such contracts and agreements only and to protect only such loans advances and exchanges as shall be made bond fide and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same or is acting malá fide in respect thereof against the owner of such goods and 55 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

or the negotiable security which shall be delivered up and exchanged.

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 bond 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.

4. And be it enacted that any bill of lading India warrant dock Meaning of the term warrant warehouse-keeper's certificate warrant or order for the "Document of Title."

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 when agent and possessed of any such document of title whether derived imme-intrusted. diately 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 And when in custody or shall be held by any other person subject to his control or possession. for him or on his behalf And where any loan or advance shall be bond 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 Contract or agree-

40 as aforesaid or with any clerk or other person on his behalf shall be ment and advance. 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 Possession evidence 45 goods or documents shall be taken for the purposes of this Act to of intrusting. have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

5. Provided always and be it enacted that nothing herein Agent's civil contained shall lessen vary alter or affect the civil responsibility of an responsibility not to be diminished.

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.

6. Provided always and be it enacted that if any agent intrusted Agent making as aforesaid shall contrary to or without the authority of his principal consignments contrary to instruction that behalf for his own benefit and in violation of good faith make of principal guilty of misdemeanor. ments 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 5 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 10 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 15 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 20 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 25 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 bond fide insti-tuted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Insolvency. 30 7. Provided also and be it enacted that nothing herein contained

Right of owner to

of proceeds.

Not to affect any

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 35 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 or to recover balance prevent the said owner from recovering of and from such person with 40 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 In case of insolvency contract or agreement as aforesaid Provided always that in case of 45 owner to prove for amount paid to redeem or for value of goods if unredeemed.

The first of the first of 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 50 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.

shall prevent such owner as aforesaid from having the right to redeem

8. Provided also and be it enacted that nothing herein con- 55 contract before passing of this Act. tained 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.

No.

An Act 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 6 Geo. 4 c. 94. VV 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 5" 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 10 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 15 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 notwithstand-20 ing 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 25 authorized to sell the same or to receive the said purchase money And whereas advances on the security of goods and merchandise have

c 39-

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 bona fide advances upon goods and merchandise as by the said 5 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 10 any advances bond fide made on the security thereof And whereas the said recited Act does not extend to protect exchanges of securities

bona 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 15 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

1. That from and after the passing of this Act any agent who Bona fide advances
20 shall thereafter be intrusted with the possession of goods or of the with the possession documents of title to goods shall be deemed and taken to be owner of of goods or documents of title to goods shall be deemed and taken to be owner of of goods or documents goods and documents so far as to give validity to any contract known to be agents or agreement by way of pledge lien or security bond fide made by any protected. person with such agent so intrusted as aforesaid as well for any

25 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 30 or lien may have had notice that the person with whom such contract

or agreement is made is only an agent.

2. And be it enacted that where any such contract or agree-Bona fide deposits in ment for pledge lien or security shall be made in consideration of the exchange protected. delivery or transfer to such agent of any other goods or merchandise 35 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 agree-

ment if bond fide on the part of the person with whom the same may 40 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 bond fide present Provided always that the lien acquired under But no lien beyond advance of money

45 such last mentioned contract or agreement upon the goods or docu- the value of the ments deposited in exchange shall not exceed the value at the time of goods given up. the goods and merchandise which or the documents of title to which or the negotiable security which shall be delivered up and exchanged.

3. Provided always and be it enacted that this Act and every But the statute to 50 matter and thing herein contained shall be deemed and construed to be construed to protect only transgive validity to such contracts and agreements only and to protect actions bona fide only such loans advances and exchanges as shall be made bona fide without notice that only without notice that the agent making such contracts or agree- is acting without ments as aforesaid has not authority to make the same or is acting authority or mala 55 mala fide in respect thereof against the owner of such goods and owner.

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 bond 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.

4. And be it enacted that any bill of lading India warrant dock Meaning of the term warrant warehouse-keeper's certificate warrant or order for the "Document of Title." 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 when agent and possessed of any such document of title whether derived imme-intrusted. diately 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 And when in custody or shall be held by any other person subject to his control or possession. for him or on his behalf And where any loan or advance shall be bond 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 Contract or agree-

40 as aforesaid or with any clerk or other person on his behalf shall be ment and advance. 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 Possession evidence

45 goods or documents shall be taken for the purposes of this Act to of intrusting. have been intrusted therewith by the owner thereof unless the contrary

can be shewn in evidence. 5. Provided always and be it enacted that nothing herein Agent's civil contained shall lessen vary alter or affect the civil responsibility of an to be diminished. 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. 6. Provided always and be it enacted that if any agent intrusted Agent making as aforesaid shall contrary to or without the authority of his principal trary to instruction 55 in that behalf for his own benefit and in violation of good faith make of principal guilty of misdemeanor. 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 5 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 10 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 deposit-15 ing 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

20 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 25 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 bona fide instituted by any party aggrieved or if he shall have disclosed the same in 30 any examination or deposition before any Commissioner of Insolvency.

7. Provided also and be it enacted that nothing herein contained Right of owner to shall prevent such owner as aforesaid from having the right to redeem 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 35 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 40 prevent the said owner from recovering of and from such person with or to recover balance

whom any such goods or documents may have been pledged or who of proceeds. 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

45 contract or agreement as aforesaid Provided always that in case of In case of insolvency the insolvency of any such agent the owner of the goods which owner paid to shall have been so redeemed by such owner as aforesaid shall in redeem or for respect of the sum paid by him on account of such agent for such value of goods if redemption be held to have paid such sum for the use of such 50 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.

8. Provided also and be it enacted that nothing herein con-Not to affect any tained shall be construed to give validity to or in anywise to affect contract before passing of this Act. any contract agreement lien pledge or other act matter or thing made or done before the passing of this Act.

Sydney: Thomas Michards, Government Printer.-1865.

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.]

HEREAS by an Act of the Imperial Parliament passed in the 6 Geo. 4 c. 94. 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 5" 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 10 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 15 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 notwithstand-20 ing 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 25 authorized to sell the same or to receive the said purchase money And whereas advances on the security of goods and merchandise have c 2-

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 bond fide advances upon goods and merchandise as by the said recited Act is given to sales and that owners intrusting agents with the 5 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 bond fide made on the security thereof And whereas 10 the said recited Act does not extend to protect exchanges of securities bond 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 15 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 20 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 bond 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 25 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 30 or agreement is made is only an agent.

Bana 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 35 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 bona 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 40 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 bona fide present advance of money Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or docu-45 ments 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 50 give validity to such contracts and agreements only and to protect only such loans advances and exchanges as shall be made bond fide and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same or is acting mald fide in respect thereof against the owner of such goods and 55 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 bond 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.

4. And be it enacted that any bill of lading India warrant dock Meaning of the term warrant warehouse-keeper's certificate warrant or order for the "Document of Title."

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 when agent and possessed of any such document of title whether derived imme-intrusted. diately 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 And when in custody or shall be held by any other person subject to his control or possession. for him or on his behalf And where any loan or advance shall be bond 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 Contract or agree-

40 as aforesaid or with any clerk or other person on his behalf shall be ment and advance. 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 Possession evidence

45 goods or documents shall be taken for the purposes of this Act to of intrusting. have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

5. Provided always and be it enacted that nothing herein Agent's civil contained shall lessen vary alter or affect the civil responsibility of an to be diminished.

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.

6. Provided always and be it enacted that if any agent intrusted Agent making consignments conas aforesaid shall contrary to or without the authority of his principal trary to instruction 55 in that behalf for his own benefit and in violation of good faith make of principal guilty of misdemeanor. 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 5 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 10 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 15 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 20 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 25 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 bona fide instituted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Insolvency. 30

Right of owner to

of proceeds

value of goods if unredeemed.

Not to affect any contract before passing of this Act.

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 35 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 or to recover balance prevent the said owner from recovering of and from such person with 40 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 In case of insolvency contract or agreement as aforesaid Provided always that in case of 45 owner to prove for amount paid to 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 50 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.

7. Provided also and be it enacted that nothing herein contained

8. Provided also and be it enacted that nothing herein con- 55 tained 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.

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.

HEREAS 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 4 Geo. IV c. 83. "Merchants and others who may hereafter enter into contracts or 5 " 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 6 Geo. IV c. 94. " the better protection of the property of Merchants and others who may 10" 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 15 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 20 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 c 2of 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 5 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 10 and necessary that reasonable and safe facilities should be afforded thereto and that the same protection and validity should be extended to bona 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 15 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 bond fide made on the security thereof And whereas the said recited Act does not extend to protect exchanges of securities 20 bona 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 25 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 docuknown 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 or goods or documents of title though passing of this Act any agent who shall thereafter be intrusted with 30 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 bond fide made by any person with such agent so intrusted as aforesaid as well for any original loan advance or payment made upon 35 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 40 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 45 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 bond 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 50 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 bona fide present advance of money Provided always that the lien acquired under such last mentioned contract or agreement upon the goods or docu-55 ments 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 value of the goods given up.

3. Provided always and be it enacted that this Act and every be construed to matter and thing herein contained shall be deemed and construed to protect only transgive validity to such contracts and agreements only and to protect actions bona fide without notice that only such loans advances and exchanges as shall be made boná fide the agent pledging 5 and without notice that the agent making such contracts or agree- acting without ments as aforesaid has not authority to make the same or is acting fide against the malá fide in respect thereof against the owner of such goods and owner. merchandise and nothing herein contained shall be construed to

extend to or protect any lien or pledge for or in respect of any ante-10 cedent 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 bona fide loans advances and exchanges as aforesaid (though 15 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.

4. And be it enacted that any bill of lading India warrant dock Meaning of the term "Document of Title." 20 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 25 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 when agent and possessed of any such document of title whether derived immediately from the owner of such goods or obtained by reason of such 30 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 35 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 And when in custody or shall be held by any other person subject to his control or possession. for him or on his behalf And where any loan or advance shall be bond

40 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 45 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

50 person making such loan or advance till the period subsequent thereto and any contract or agreement whether made direct with such agent What to be deemed as aforesaid or with any clerk or other person on his behalf shall be ment and advance. deemed a contract or agreement with such agent and any payment made whether by money or bills of exchange or other negotiable

55 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 Possession prima goods or documents shall be taken for the purposes of this Act to intrusting. have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

Agent's civil responsibility not to be diminished.

Agent making consignments con-trary to instruction of principal guilty of misdemeanor.

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.

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 shalf 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 bond 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

of proceeds.

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

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 or to recover balance 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 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 5 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.

the sum so paid or the value of such goods as the case may be.

8. Provided also and be it enacted that nothing hereby enacted Not to affect any shall be construed to give validity to or in anywise to affect any passing of this Act.

10 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, 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.

WHEREAS an Act of the Imperial Parliament was passed in the 4 Geo. IV c. 83. 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

5 "agreements in relation to goods wares or merchandises intrusted to "Factors or Agents" And whereas by another Act of the Imperial Par- 6 Geo. IV c. 94. liament 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
10 "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

15 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

20 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 5 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

10 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 bond fide advances upon goods and merchandise as by the said recited Act is given to sales and that owners intrusting agents with the

15 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 bond fide made on the security thereof And whereas

20 the said recited Act does not extend to protect exchanges of securities bona 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 25 and consent of the Legislative Council and Legislative Assembly of

New South Wales in Parliament assembled and by the authority of the

same as follows:-

1. That the said two Acts of the Imperial Parliament extended Bona fide advances to and are in force in this Colony And that from and after the to persons intrusted with the possession 30 passing of this Act any agent who shall thereafter be intrusted with of goods or docuthe possession of goods or of the documents of title to goods shall be known to be agents deemed and taken to be owner of such goods and documents so far as protected. to give validity to any contract or agreement by way of pledge lien or security bond fide made by any person with such agent so intrusted as 35 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 claim-40 ing such pledge or lien may have had notice that the person with

whom such contract or agreement is made is only an agent.

2. And be it enacted that where any such contract or agree-Bona fide deposits in ment for pledge lien or security shall be made in consideration of the exchange protected. delivery or transfer to such agent of any other goods or merchandise

45 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 bond fide on the part of the person with whom the same may

50 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 bona fide present advance of money Provided always that the lien acquired under But no lien beyond 55 such last mentioned contract or agreement upon the goods or docu-the value of the

ments deposited in exchange shall not exceed the value at the time goods given up. of the goods and merchandise which or the documents of title to which or the negotiable security which shall be delivered up and exchanged.

3. Provided always and be it enacted that this Act and every But the statute to matter and thing herein contained shall be deemed and construed to be construed to protect only transgive validity to such contracts and agreements only and to protect actions bona fide only such loans advances and exchanges as shall be made bona fide the agent pieleding 5 and without notice that the agent making such contracts or agree-is acting without ments as aforesaid has not authority to make the same or is acting authority or mala mala fide in respect thereof against the owner of such goods and owner. merchandise and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any ante-10 cedent 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 bond fide loans advances and exchanges as aforesaid (though 15 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.

20 4. And be it enacted that any bill of lading India warrant dock Meaning of the term warrant warehouse-keeper's certificate warrant or order for the "Document of Title." 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

25 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 when agent and possessed of any such document of title whether derived imme-intrusted. diately from the owner of such goods or obtained by reason of such

30 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

35 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 And when in custody or shall be held by any other person subject to his control or possession. for him or on his behalf And where any loan or advance shall be bond

40 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

45 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

50 person making such loan or advance till the period subsequent thereto and any contract or agreement whether made direct with such agent what to be deemed as aforesaid or with any clerk or other person on his behalf shall be a contract or agreement and any payment made whether by money or bills of exchange or other negotiable

55 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 Possession prima goods or documents shall be taken for the purposes of this Act to facie evidence of intrusting. have been intrusted therewith by the owner thereof unless the contrary can be shewn in evidence.

5. Provided always and be it enacted that nothing herein Agent's civil contained shall lessen vary alter or affect the civil responsibility of an responsibility not to be diminished. 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

5 pledge as aforesaid.

6. Provided always and be it enacted that if any agent intrusted Agent making as aforesaid shall contrary to or without the authority of his principal consignments contrary to instruction in that behalf, for his own benefit and in violation of good faith make of principal guilty any consignment deposit transfer or delivery of any goods or docu-

10 ments 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

15 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

20 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 herein-

25 before 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

30 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

35 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

40 in any action suit or proceeding which shall have been bona fide instituted by any party aggrieved or if he shall have disclosed the same in any examination or deposition before any Commissioner of Insolvency.

7. Provided also and be it enacted that nothing herein contained Right of owner to shall prevent such owner as aforesaid from having the right to redeem redeem

45 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

50 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 or to recover balance whom any such goods or documents may have been pledged or who of proceeds. shall have any such lien thereon as aforesaid any balance or sum of

55 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 In case of insolvency the insolvency of any such agent the owner of the goods which amount paid to shall have been so redeemed by such owner as aforesaid shall in redeem or for value of goods if

respect 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 related of the model or related at the time of the related shall if he 5 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.

8. Provided also and be it enacted that nothing hereby enacted Not to affect any shall be construed to give validity to or in anywise to affect any contract made before 10 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, 6d.]

