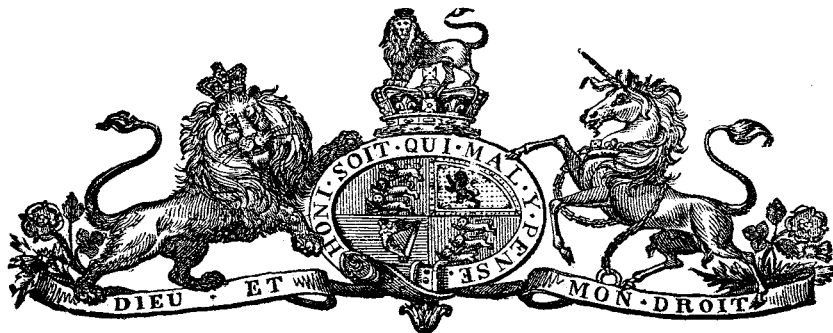


T A S M A N I A.



1868.

ANNO TRICESIMO-SECUNDO

VICTORIÆ REGINÆ,

No. 13.

AN ACT to amend the Law relating to Advances
made to Agents intrusted with Goods.

[17 September, 1868.]

WHEREAS it is expedient to amend the Law relating to Goods and Merchandise intrusted to Factors and Agents: Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 Any Agent who is hereafter 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. *Bonâ fide* advances to persons intrusted with Goods or Documents of Title, though known to be Agents, protected.

2 Where any such contract or agreement for pledge, lien, or security is 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 *Bonâ fide* deposits in exchange protected;

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but no lien
beyond the value
of the Goods.

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 is delivered up and exchanged.

The Act to be
construed to
protect only *bonâ
fide* transactions.

3 Provided 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 are 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 is given, nor to authorise 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.

Meaning of the
term "Document
of Title:"

and when Agent
intrusted;

and when in
possession.

4 Any bill of lading, 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 authorising or purporting to authorise, 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 are in his actual custody, or are held by any other person subject to his control or for him or on his behalf; and where any loan or advance is *bonâ fide* made to any Agent intrusted with and in possession of any such Goods or Document 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 are actually received by the person making such loan or advance, without notice that such Agent was not authorised 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

The Factors Act, 1868.

or Documents of Title within the meaning of this Act, though such Goods or Documents of Title are not actually received by the person making such loan or advance until 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 shown in evidence.

What to be deemed a "contract or agreement," and "advance."

Possession *prima facie* evidence of intrusting.

5 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 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 are 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 has 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 are 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 are not 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.

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.

7 In construing this Act the word "person" shall be taken to designate a body corporate or company as well as an individual.

Interpretation of Act.

8 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.

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

9 This Act may be cited as "The Factors Act, 1868."

Short Title.

