



ANNO DECIMO ET UNDECIMO

VICTORIÆ REGINÆ.

C A P. X.

An Act for the better protection of Merchants and others who may hereafter receive Assignments and enter into Contracts and Agreements in relation to Goods and Merchandize entrusted to Agents.

[28th July, 1847.]

WHEREAS it is expedient to afford better protection to Merchants and others who may hereafter enter into Contracts or Agreements in relation to goods, wares and merchandize entrusted to Factors and Agents ; and whereas advances on the security of goods and merchandize have become an usual and ordinary course of business, and it is advisable and necessary that reasonable and safe facilities should be afforded thereto : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of the same*, and it is hereby enacted by the authority of the same, That from and after the passing of this Act, it shall and may be lawful for any person to contract with any agent who shall thereafter be entrusted with the possession of any goods or merchandize or to whom the same may be consigned, for the purchase of any such goods or merchandize, and to receive the same of and pay for the same to such agent, and such contract and payment shall be binding upon and good against the owner of such goods and merchandize notwithstanding such person shall have notice that the person making and entering into such contract or on whose behalf such contract is made or entered into is only an Agent.

Preamble.

Contracts for the sale of goods made with agents entrusted with the possession thereof to be valid, although the purchaser may know the seller to be only an agent.

II. And be it enacted, That any such agent who shall be entrusted with the possession of goods and merchandize or of the documents of title to goods and merchandize shall be deemed and taken to be owner of such goods and merchandize and documents for the purposes of such sale or contract of sale as in the first clause mentioned, and also so as to entitle the consignee of such goods and merchandize to a lien thereon in respect of any money or negotiable security advanced or given by such consignee to and for the use of such agent, or in respect of any money or negotiable security received by him to the use of such consignee in the like manner to all intents and purposes, as if such person was the true owner of such goods and merchandize, and so far as to give validity to any contract or agreement by way of pledge (*gage*) lien or security *bonâ fide* made by any person with such agent so entrusted as aforesaid, as well for

Agents to be deemed the owner of goods entrusted to them, for the purpose mentioned in the section one, and so as to entitle a consignee thereof to a lien for monies, &c., advanced to the agent : and also so as to make valid

any

contracts of
pledge.

Contracts of
pledge.
Notice of
ownership not
to affect such
contracts.

Case where
the pledge or
lien shall be in
consideration
of the delivery
of other goods,
&c., on which
the party de-
livering them
hath a lien,
provided for.

Proviso as
to amount of
lien in such
case.

Act not to
extend to cases
when the
party advan-
cing, &c., has
notice that the
agent has
no power to
pledge, or is
acting *malâ fide*.

Nor to antec-
edent debts of
the agent, or to
justify his act-
ing against ex-
press instruc-
tions of the
owner.

But the owner
to be bound
only to a cer-
tain extent.

What shall
be deemed do-
cuments of
title.

Agent posses-
sed of such
document to
be deemed in
possession of
the goods to
which it re-
lates.

any original loan, advance or payment made upon the security of such goods and merchandize 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 merchandize, 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.

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

IV. Provided always, and be it enacted, That this Act and every matter and thing herein contained shall be deemed and construed to give validity to such contracts and agreements only as in this Act mentioned and to protect only such loans, advances and exchanges as shall be made *bonâ fide* and without notice that the agent making such contracts and agreements as aforesaid has no authority to make the same or is acting *malâ fide* in respect thereof against the owner of such goods and merchandize; and nothing herein contained shall be construed to extend to or protect any lien (*gage*) or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien (*gage*) or pledge shall be given, nor to authorize any agent entrusted 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 shall the owner and all other persons interested in such goods and merchandize be bound.

V. And be it enacted, That any bill of lading, warehouse-keeper's or wharfinger's receipt or order for delivery of goods, or any bill of inspection of pot or pearl ashes, 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 endorsement 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 entrusted as aforesaid and possessed of any such document of title, whether derived immediately from the owner of such goods and merchandize or obtained by reason of such agent's having been entrusted with the possession of the goods and merchandize or of any other document of title thereto, shall be deemed and taken to have been entrusted with the possession of the goods and merchandize represented by such document of title as aforesaid; and all contracts pledging

pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges (*gages*) of and lien upon the goods and merchandize to which the same relates, and such agent shall be deemed to be possessor of such goods and merchandize or documents of title whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf; and when any loan or advance shall be *bonâ fide* made to any agent entrusted with and in possession of any such goods and merchandize or documents of title as aforesaid on the faith of any contract or agreement in writing to consign, deposit, transfer or deliver such goods and merchandize or documents of title as aforesaid, and such goods and merchandize or documents of title shall actually be received by the person making such loan or advance, without notice that such agent was not authorized to make such pledge or security, every such loan or advance shall be deemed and taken to be a loan or advance upon the security of such goods and merchandize or documents of title, within the meaning of this Act, though such goods and merchandize 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 payments 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 and merchandize or documents shall be taken for the purposes of this Act to have been entrusted therewith by the owner thereof, unless the contrary can be shewn in evidence.

VI. 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 (*gage*) as aforesaid.

VII. Provided always, and be it enacted, That if any Agent entrusted 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 and merchandize or documents of title so entrusted to him as aforesaid, as and by way of a pledge, (*gage*) lien and 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 and merchandize or documents of title as aforesaid, every such agent shall be deemed guilty of a misdemeanor, and being convicted thereof shall be sentenced to suffer such punishment by fine or imprisonment in the Common Gaol for any term not exceeding two years, or by both as the Court having jurisdiction in such cases shall award; and every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment, deposit, transfer or delivery, or in accepting or procuring such advance as aforesaid, shall be deemed guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of such Court to any of the punishments which such 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 and merchandize 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

Pledging of such documents to be a pledging of the goods.

Also contracts to deliver, &c., such goods or documents, if the same be afterwards received without notice of non-authority of Agent.

Contracts with the Clerk and with the Agent.

Payments in bills of exchange, &c., Possession of Agent to be deemed with consent of owner, unless the contrary be shewn.

Act not to impair the responsibility of the Agent to his principal.

Agent pledging goods, &c., for his own benefit, in bad faith and contrary to instructions, to be guilty of a misdemeanor. Punishment for such offence.

The like of any Clerk aiding or abetting in such offence.

Proviso: Agent not liable to prosecution for pledging goods to an amount not exceeding that due him by the owner.

Proviso:
Conviction not
to be evidence
against Agent
in any civil
proceedings.
Agent not
liable to be
convicted, af-
ter having dis-
closed the act
on oath in cer-
tain civil pro-
ceedings.

Act not to
impair the
rights of the
owner to re-
deem the
goods, &c.,
pledged.

Or to prevent
his recovering
any balance
from the party
to whom they
were pledged.

Proviso as
to the case
of the Bank-
ruptcy of the
Agent.

Interpretation
clause.

Act not to ex-
tend to things
done before
the passing
thereof.
Nor to affect
any right not
inconsistent
with this Act.

deposit, transfer or delivery, was justly due and owing to such agent from his principal, together with the amount of any bills of exchange drawn by or on account of such principal, and accepted by such agent: Provided also, that the conviction of any such agent so convicted as aforesaid, shall not be received in evidence in any action at law or suit in equity against him; and no agent entrusted 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, Equity or Admiralty in any action, suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any Commissioner of Bankrupts.

VIII. Provided always, and be it enacted, That nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods and merchandize or documents of title pledged as aforesaid, at any time before such goods and merchandize 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, merchandize 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 and merchandize 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 and merchandize after deducting the amount of the lien of such person under such contract or agreement as aforesaid: Provided always, that in case of the bankruptcy of any such agent, the owner of the goods and merchandize which shall have been so redeemed by such owner as aforesaid shall, in respect of the sum paid by him on account of such Agent for such redemption, be held to have paid such sum for the use of such agent before his bankruptcy, or in case the goods and merchandize 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 and merchandize, as the case may be.

IX. And be it enacted, That in construing this Act, the word "person" shall be taken to designate a body corporate or company as well as an individual; and that words in the singular number shall, when necessary to give effect to the intention of the said Act, import also the plural, and *vice versâ*; and words used in the masculine gender shall, when required, be taken to apply to a female as well as a male; and that the words "goods and merchandize" shall be taken to include all personal property of whatever nature or kind soever, and the word "shipped" shall be taken to mean the carriage of goods, whether by land or by water.

X. Provided always, and be it enacted, That nothing herein contained shall be construed to give validity to, or in any wise to affect any contract, agreement, lien, pledge, (*gage*) or other act, matter or thing made or done before the passing of this Act; Provided also, that nothing in this Act contained shall be held to destroy or diminish any other right recourse or remedy not contrary or repugnant to this Act which might be enforced according to the Laws of Upper or Lower Canada.