



Factors Act 1892

Reprinted as in force on 23 September 1994

Reprint No. 1*

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

* Minor differences in presentation between this reprint and another reprint with the same number are due to the conversion to new styles. The content has not changed.

Information about this reprint

This Act is reprinted as at 23 September 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- update citations and references (pt 4, div 2)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- correct spelling and use different spelling consistent with current legislative drafting practice (s 26(2))
- use standard punctuation consistent with current legislative drafting practice (s 27)
- reorder definitions and other provisions consistent with current legislative drafting practice (ss 30 and 30A)
- use aspects of format and printing style consistent with current legislative drafting practice (s 35)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43).

This page is specific to this reprint. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
 - **table of comparative legislation**
 - **table of renumbered provisions.**

Spelling

The spelling of certain words or phrases may be inconsistent with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’).



Queensland

Factors Act 1892

Contents

	Page
1 Short title	3
Preliminary	
2 Definitions	3
Dispositions by mercantile agents	
3 Powers of mercantile agent with respect to disposition of goods ..	4
4 Effect of pledges of documents of title	5
5 Pledge for antecedent debt	5
6 Rights acquired by exchange of goods or documents	5
7 Agreements through clerks etc.	5
8 Provisions as to consignors and consignees	6
Dispositions by sellers and buyers of goods	
9 Disposition by seller remaining in possession	6
10 Disposition by buyer obtaining possession	6
11 Effect of transfer of documents on vendor's lien or right of stoppage in transitu	7
Supplemental	
12 Mode of transferring documents	7
13 Saving for rights of true owner	7
14 Saving of common law powers of agent	8
Endnotes	
1 Index to endnotes	9
2 Date to which amendments incorporated	9
3 Key	10
4 Table of reprints	10
5 List of legislation	10
6 List of annotations	11

Contents

7	Table of renumbered provisions	11
8	Table of comparative legislation	11

Factors Act 1892

[as amended by all amendments that commenced on or before 23 September 1994]

An Act to amend the law relating to factors

1 Short title

This Act may be cited as the *Factors Act 1892*.

Preliminary

2 Definitions

(1) In this Act—

document of title includes a bill of lading, dock warrant, warehouse keeper's certificate, warrant or order for the delivery of goods, and 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 endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

goods includes wares and merchandise.

mercantile agent means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

pledge includes any contract pledging, or giving a lien or security on, goods, whether in consideration of an original

[s 3]

advance or of any further or continuing advance or of any pecuniary liability.

- (2) For the purposes of this Act a person is deemed to be in possession of goods or of the documents of title to goods, when the goods or documents are in the person's actual custody or are held by any other person subject to the person's control or for the person or on the person's behalf.

Dispositions by mercantile agents

3 Powers of mercantile agent with respect to disposition of goods

- (1) When a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by the agent when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if the agent were expressly authorised by the owner of the goods to make the same: Provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.
- (2) When a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition, which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent: Provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.
- (3) When a mercantile agent has obtained possession of any documents of title to goods by reason of being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, the agent's possession of the first mentioned

documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

- (4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

4 Effect of pledges of documents of title

A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

5 Pledge for antecedent debt

When a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

6 Rights acquired by exchange of goods or documents

The consideration necessary for the validity of a sale, pledge, or other disposition, of goods, in pursuance of this Act, may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but when goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

7 Agreements through clerks etc.

For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on the agent's behalf shall be deemed to be an agreement with the agent.

8 Provisions as to consignors and consignees

- (1) When the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.
- (2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition, by a mercantile agent.

Dispositions by sellers and buyers of goods

9 Disposition by seller remaining in possession

When a person, having sold goods, continues, or is, in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for that person, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

10 Disposition by buyer obtaining possession

When a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods, or the documents of title to the goods, the delivery or transfer, by that person or by a mercantile agent acting for that person, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale,

pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

11 Effect of transfer of documents on vendor's lien or right of stoppage in transitu

When a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage in *transitu* as the transfer of a bill of lading has for defeating the right of stoppage in *transitu*.

Supplemental

12 Mode of transferring documents

For the purposes of this Act, the transfer of a document may be by endorsement, or, if the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

13 Saving for rights of true owner

- (1) Nothing in this Act shall authorise an agent to exceed or depart from his or her authority as between himself or herself and his or her principal, or exempt the agent from any liability, civil or criminal, for so doing.
- (2) Nothing in this Act shall prevent the owner of goods from recovering the goods from an agent or an agent's trustee in

[s 14]

bankruptcy at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by the agent required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in the person's hands as the produce of the sale of the goods after deducting the amount of the person's lien.

- (3) Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against the agent.

14 Saving of common law powers of agent

The provisions of this Act shall be construed in enlargement and not in derogation of the powers exercisable by an agent independently of this Act.

Endnotes

1 Index to endnotes

	Page
2 Date to which amendments incorporated	9
3 Key	10
4 Table of reprints	10
5 List of legislation	10
6 List of annotations	11
7 Table of renumbered provisions	11
8 Table of comparative legislation	11

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 23 September 1994. Future amendments of the Factors Act 1892 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1908 8 Edw 7 No. 18	23 December 1908	23 September 1994

5 List of legislation

Factors Act 1892 56 Vic No. 8

date of assent 23 August 1892

commenced on date of assent

amending legislation—

Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1

date of assent 23 December 1908

commenced on date of assent

6 List of annotations

Arrangement of Act

s 15 om 1908 8 Edw 7 No. 18 s 2 sch 1

7 Table of renumbered provisions

under the Reprints Act 1992 s 43

Previous	Renumbered as
2, 1st sentence	2(1)
2, 2nd sentence	2(2)

8 Table of comparative legislation

s 2	52 & 53 Vic c 45 s 1
s 3	52 & 53 Vic c 45 s 2
s 4	52 & 53 Vic c 45 s 3
s 5	52 & 53 Vic c 45 s 4
s 6	52 & 53 Vic c 45 s 5
s 7	52 & 53 Vic c 45 s 6
s 8	52 & 53 Vic c 45 s 7
s 9	52 & 53 Vic c 45 s 8
s 10	52 & 53 Vic c 45 s 9
s 11	52 & 53 Vic c 45 s 10
s 12	52 & 53 Vic c 45 s 11
s 13	52 & 53 Vic c 45 s 12
s 14	52 & 53 Vic c 45 s 13

© State of Queensland 2009