



Factors Act 1892

Current as at 23 December 1908—revised version

Reprint note

Powers under the *Reprints Act 1992* have been used in this reprint to bring the legislation into line with current drafting practice.

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Queensland

Factors Act 1892

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Factors Act 1892

An Act to amend the law relating to factors

Part 1 Preliminary

1 Short title

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

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 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.

Part 2 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

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*.

Part 4 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 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.