

1914

c 137 Factors Act

Ontario

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CHAPTER 137.

An Act respecting Contracts in relation to Goods in the Possession of Agents and others.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.
Imp. Act, 52
and 53 V. c.
45, s. 17.

1. This Act may be cited as *The Factors Act*. 10 Edw. VII. c. 66, s. 1.

Interpreta-
tion. Idem,
s. 1.
"Document
of title."
Rev. Stat.
c. 133.

2.—(1) In this Act,

(a) "Document of title" shall include any bill of lading and warehouse receipt, as defined by *The Mercantile Law Amendment Act*, any 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 authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented;

"Goods."

(b) "Goods" shall include wares and merchandise;

"Mercantile
agent."

(c) "Mercantile agent" shall mean a mercantile agent having, in the customary course of his 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."

(d) "Pledge" shall include 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.

Possession.

(2) A person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf. 10 Edw. VII. c. 66, s. 2.

DISPOSITIONS BY MERCANTILE AGENTS.

Powers of
agent as to
disposition of
goods.
Imp. Act, s. 2

3.—(1) Where 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 him, 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 he were expressly authorized 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 thereof notice that the person making the disposition has not authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of 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 acts in good faith and has not at the time thereof notice that the consent has been determined. Revocation of consent.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his 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, his possession of the first mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner. Derivative documents.

(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary. Presumption.
10 Edw. VII. c. 66, s. 3.

4. A pledge by a mercantile agent of the documents of title to goods shall be deemed to be a pledge of the goods. Effect of pledge of documents of title.

5. Where a mercantile agent pledges goods as security for a debt due from or liability incurred by 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. Idem, s. 3. Pledge for antecedent debt. Idem, s. 4.
10 Edw. VII. c. 66, s. 5.

6. The consideration necessary for the validity of a sale, pledge or other disposition of goods by a mercantile agent, 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 where 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 or of other valuable consideration, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, document, security or other valuable consideration when so delivered or transferred in exchange. What consideration necessary.
Rights acquired by exchange of goods or documents. Idem, s. 5.
10 Edw. VII. c. 66, s. 6.

7. For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of Agreements through clerks, etc. Idem, s. 6.

sale or pledge on his behalf shall be deemed to be an agreement with the agent. 10 Edw. VII. c. 66, s. 7.

Rights of consignee making advances in good faith.

8.—(1) Where the owner of the 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 in good faith 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.

Sale, etc., by mercantile agent.
Idem, s. 7.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent. 10 Edw. VII. c. 66, s. 8.

DISPOSITION BY SELLERS AND BUYERS OF GOODS.

Rights of person claiming in good faith under seller who has remained in possession.
Idem, s. 8.

9. Where 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 him, 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 authorized by the owner of the goods to make the same. 10 Edw. VII. c. 66, s. 9.

Claiming under buyer who has retained possession.
Idem, s. 9.

10.—(1) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, 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 him, 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.

Exception as to contracts under The Conditional Sales Act.
Rev. Stat. c. 136.

(2) This section shall not apply to goods the possession of which is obtained under a contract coming within the meaning of *The Conditional Sales Act* where the seller has complied with the provisions of that Act. 10 Edw. VII. c. 66, s. 10.

Effect of sub-sale or pledge by buyer.
Imp. Act, 56 and 57 V. c. 71, s. 47.

11. Subject to the provisions of this Act the unpaid seller's right of lien or retention or stoppage in transitu shall not be affected by any sale or other disposition of the goods which the buyer may have made unless the seller has assented

thereto; but where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes the same in good faith and for valuable consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transitu shall be defeated; and if such last mentioned transfer was by way of pledge or other disposition for value the unpaid seller's right of lien or retention or stoppage in transitu can only be exercised subject to the rights of the transferee. 10 Edw. VII. c. 66, s. 11.

SUPPLEMENTAL.

12. For the purposes of this Act the transfer of a document of title may be by endorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery. 10 Edw. VII. c. 66, s. 12.

Mode of transferring documents. Imp. Act, 52 and 53 V., c. 45, s. 11.

13.—(1) Nothing in this Act shall authorize an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability for so doing.

Liability of agent. Idem, s. 12.

(2) Nothing in this Act shall prevent the owner of goods from recovering them from his agent 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 him 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 his hands as the produce of the sale of the goods after deducting the amount of his lien.

Saving of rights of owner to recover possession. Or to recover balance of money due.

(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. 10 Edw. VII. c. 66, s. 13.

Or the price from buyer.

14. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act. 10 Edw. VII. c. 66, s. 14.

Saving for common law powers of agents. Idem, s. 13.