



ANNO VICESIMO QUARTO ET VICESIMO QUINTO

# VICTORIÆ REGINÆ.

A.D. 1861.

*See Paget 189: 307*

## No. 3.

*An Act to amend the Laws affecting Trade and Commerce.*

[Assented to, 30th August, 1861.]

**W**HEREAS it is expedient to amend the Laws of the Province of South Australia relating to trade and commerce—Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:—

1. This Act may be cited as "The Mercantile Law Amendment Act, 1861." Short title of Act.

2. No promise to be made by any person (after this Act shall take effect) to answer for the debt, default, or miscarriage of another person, being in writing, and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit, or other proceeding, to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

Consideration for guarantee need not appear by writing.

3. Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt, or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the

A surety, who discharges the liability, is entitled to assignment of all securities held by a creditor.

*330 575  
- 290 254  
- 390 174  
- 300 104*

*400:  
P 95, 212*

*see s. 3: see s. 100 7ed. 488... name  
6ed 576: Ketchell v Lawrence 307 174  
P 1 ch' 04, 192 201*

*Admitted by  
see No 100 of 1878  
which has been referred to  
by s. 312 of '84, sec 96  
N.B. Sec. 4 of  
by Act, 1982 of  
C. 97, is not  
in this Act  
see 630 of '95, s. 2 (2)*

*see Statute of 1861  
S. 206*

name of the creditor in any action or other proceeding at law or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained, by the person who shall have so paid such debt, or performed such duty, and such payment or performance so made by such surety, shall not be pleadable in bar of any such action or other proceeding by him: Provided that no co-surety, co-contractor, or co-debtor, shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by means aforesaid, more than the just proportion to which, as between those parties themselves, either of such last-mentioned persons shall be justly liable.

Acceptance of a bill inland or foreign to be in writing on it.

4. No acceptance of any bill of exchange, whether inland or foreign, made after the thirty-first day of December, one thousand eight hundred and sixty-one, shall be sufficient to bind or charge any person, unless the same be in writing on such bill; or, if there be more than one part of such bill, on one of the said parts, and signed by the acceptor, or some person duly authorized by him.

What are to be deemed inland bills.

5. Every bill of exchange, or promissory note, drawn or made in any part of the Province of South Australia, or its dependencies, and made payable in, or drawn upon any person resident in any part of the said Province, or its dependencies, shall be deemed to be an inland bill.

Bona fide advances to persons entrusted with the possession of goods or documents of title, though known to be agents, protected.

6. Any agent who shall hereafter be entrusted with the possession of goods, or of the documents of title to goods, shall be deemed and taken to be the owner of such goods and documents, so far as to give validity to any contract or agreement, by way of pledge, lien, or security, bona fide made by any person with such agent so entrusted 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 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.

Bona fide deposits in exchange protected.

7. Where any such contract or agreement for pledge, 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 bona 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 bona fide present advance of money: Provided that the lien acquired under such

But no lien beyond the value of the goods given up.

Ref'd No. 312  
184 sec. 96

agents  
6300/95  
S. 60(1)  
5866/c. 39 s. 1  
warranted at 7

Bona fide  
5866/c. 39 s. 1  
3.2 sec 96  
outlying 22819

112, 104 7

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 negociable security which shall be delivered up and exchanged.

8. 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 shall be made *bona fide*, and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same, or is acting *mala 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 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 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 *bona fide* loans, advances, and exchanges, as aforesaid (though made with notice of such agent not being the owner, but without any notice of the agents 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.

This Act to be construed to protect only transactions *bona fide* without notice that the agent pledging is acting without authority, or *mala fide* against the owner, 5 and 6 Vict. c. 39, sec. 3.

No 313  
1/18/5  
S. 3.  
9. Any bill of lading, dock warrant, warehouse-keeper's certificate, 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 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 or obtained by reason of such agents having been entrusted with the possession of the goods, or of any other document of title thereto, shall be deemed and taken to have been entrusted 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 documents, 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 where any loan or advance shall be *bona fide* made to any agent entrusted with and in possession of any such goods or documents 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 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

Meaning of the term "document of title."  
566 V. c. 39, s. 10  
6300/195 S. 60  
Sec 2 (2)  
523 V. c. 45, s. 1.

And when agent entrusted.

goods are inserted

And when in possession.

every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act, though such goods 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 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 entrusted therewith by the owner thereof, unless the contrary can be shown in evidence.

"Contract or agreement," and "advance."

Possession evidence of entrusting.

*5864  
S. 39  
S. VII  
See Memorandum  
Transactions of  
1889 (S. 223 v. 105)  
S. 12 (2)*

Right of owner to redeem

10. 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 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 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 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, after deducting the amount of the lien of such person under such contract or agreement as aforesaid.

Or to recover balance of proceeds.

*S. 11 is in conflict  
with previous S.  
VII*

In case of insolvency, owner to prove for amount paid to redeem, or for value of goods if unredeemed.

11. In case of the insolvency of any such agent, the owner of the goods 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 insolvency, or in case the goods shall not be so redeemed, the owner shall be deemed a creditor 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.

*In conflict  
"of such agent are  
inserted at"*

Commencement of Act.

12. This Act shall take effect from the first day of January, 1862.

In the name and on behalf of the Queen I hereby assent to this Act.

RICHARD GRAVES MACDONNELL,

Governor.

Government House, Adelaide,  
30th August, 1861.