

1880, No. 12.

AN ACT to consolidate certain Laws affecting Trade and Commerce.

MERCANTILE LAW.

[17th August, 1880.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

1. The Short Title of this Act is “The Mercantile Law Act, 1880.”

Short Title.

ACCEPTANCE OF BILLS OF EXCHANGE.

2. No acceptance of any bill of exchange, whether inland or foreign, 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.

Acceptance to be in writing, and signed by the acceptor.

3. An acceptance of a bill of exchange is not and shall not be deemed to be insufficient under any Act or law by reason only that such acceptance consists merely of the signature of the drawee on such bill.

Bill validly accepted if signed by drawee.

ACKNOWLEDGMENTS BY AGENTS.

4. In reference to the provisions of the Act of the Imperial Parliament of the ninth year of the reign of King George the Fourth, chapter fourteen, sections one and eight, an acknowledgment or promise made or contained by or in writing signed by an agent of the party chargeable thereby duly authorized to make such acknowledgment or promise shall have the same effect as if such writing had been signed by such party himself.

Provisions of 9 Geo. IV., c. 14, ss. 1 and 8, extended to acknowledgments by agents.

ADVANCES TO AGENTS.

Interpretation.

5. In the construction of the sections of this Act from five to twenty inclusive, if not inconsistent with the context,—

“ Document of title ” means and includes 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 for authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented :

“ Goods ” includes wares and merchandise of every kind.

Boná fide advances to persons intrusted with goods or documents of title protected.

6. Any agent who shall hereafter be intrusted with the possession of goods or of the documents of title to goods shall be deemed 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, *boná fide* made by any person with such agent, 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 :

Such contracts to be binding.

And such contract or agreement shall be binding upon and good 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.

Boná 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 document of title or negotiable security upon which the person delivering up the same had at the time a valid and available lien and security in respect of a previous advance by virtue of some contract or agreement made with such agent, such contract and agreement, if *boná 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 meaning of this Act, and shall be as valid as if the consideration for the same had been a *boná fide* present advance of money :

Proviso as to lien beyond the value of the goods given up.

Provided 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, or of the documents of title, or of the negotiable security which shall be delivered up and exchanged.

Protection only of transactions made *boná fide*.

8. This Act shall give validity to such contracts and agreements only, and protect only such loans, advances, and exchanges, as shall be made *boná fide* and without notice that the agent making such contracts or agreements has not authority to make the same or is acting *malá fide* in respect thereof against the owner of such goods.

Certain transactions not protected.

9. Nothing herein shall extend to—

- (1.) Any lien or pledge in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given,
- (2.) Or to authorize any agent intrusted as aforesaid in deviating from any express orders or authority received from the owner :

But for the purpose of protecting all such *boná fide* loans, advances, and exchanges, though made with notice of such agent not being the owner (but without any notice of the agent’s acting without authority), and for no other purpose, such contract or agreement shall be binding on the owner and all other persons interested in such goods.

10. Any agent intrusted as aforesaid, and possessed of any document of title, whether derived immediately from the owner of such goods or obtained by reason of such agent's having been intrusted with the possession of the goods, or of any other document of title thereto, shall be deemed to have been intrusted with the possession of the goods represented by such document of title.

When agent deemed to be intrusted.

11. All contracts pledging or giving a lien upon such document of title shall be deemed 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 goods or 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.

When agent deemed to be in possession.

12. Where any loan or advance shall be *bonâ fide* made to any agent intrusted with and in possession of any such goods or documents of title on the faith of any contract or agreement in writing to consign, deposit, transfer, or deliver such goods or documents of title, 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;

Protection of advances made without notice that agent is acting without authority.

Every such loan or advance shall be deemed 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.

13. Any contract or agreement, whether made direct with such agent 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 to be an advance within the meaning of this Act.

What to be deemed a "contract or agreement" and "advance."

An agent in possession of goods or documents of title shall be taken for the purposes of this Act to have been intrusted therewith by the owner thereof, unless the contrary can be shown in evidence.

Possession *primâ facie* evidence of intrusting.

14. Nothing herein contained shall 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 as aforesaid.

Agents' civil responsibility not to be diminished.

15. If any agent intrusted as aforesaid shall do any of the acts following,—

Agent making consignments contrary to instruction of principal guilty of misdemeanour.

(1.) Contrary to or without the authority of his principal, for his own benefit and in violation of good faith, make any consignment, deposit, transfer, or delivery of any goods or documents of title so intrusted to him as and by way of a pledge, lien, or security;

(2.) 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 or documents of title as aforesaid,—

he shall be deemed guilty of a misdemeanour, and, being convicted thereof, shall be sentenced to penal servitude for any term not exceeding ten years, or to suffer such other punishment, by fine or imprisonment, or by both, as the Court shall award.

16. 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 misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.

Abettors therein liable to same punishments.

17. No such agent shall be liable to any prosecution for consigning, depositing, transferring, or delivering any such goods or documents of title in

Exception as to consignments within limits of sums justly due.

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, 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.

Admissibility of evidence.

18. The conviction of any such agent shall not be received in evidence in any action against him.

Agent not to be liable in certain cases.

No agent intrusted as aforesaid shall be liable to be convicted by any evidence whatever 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 in any action or proceeding which shall have been *bond fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any Court, Judge, or authority having jurisdiction in bankruptcy.

Right of owner to redeem.

19. Nothing herein contained shall prevent—

(1.) Such owner 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 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 recover balance of proceeds.

(2.) Or prevent the said owner from recovering 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.

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

20. In case of the bankruptcy of any such agent, the owner of the goods which shall have been so redeemed by such owner 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 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, as the case may be.

BILLS OF LADING.

Rights of suit and liabilities in respect of goods under bills of lading to vest in consignees and indorsees.

21. Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading, to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Right of stoppage *in transitu*, or claims for freight, not affected.

22. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods by reason or in consequence of such consignment or indorsement.

Bill of lading in hands of consignee, &c., conclusive

23. Every bill of lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall

be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board.

evidence as against master, &c.

24. The master or other person so signing any bill of lading may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims.

When master may be exonerated from liability.

CARRIERS.

25. Every common carrier for hire by land, or by sea between any ports within the colony, shall be liable for the loss of or for injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such carrier or his servants, notwithstanding any notice, condition, declaration, or contract given, made, or entered into by such carrier contrary thereto, or in anywise limiting such liability, in the same manner and to the same extent as if no such notice, condition, declaration, or contract had been given, made, or entered into.

Carriers to be liable for neglect or default in the carriage of goods, notwithstanding notice to the contrary.

26. Nothing herein contained shall be construed to prevent a carrier from making such conditions with respect to receiving, forwarding, and delivering any of the said animals, articles, goods, or things as shall be adjudged by the Court or Judge before whom any question relating thereto shall be tried to be just and reasonable.

Exception of conditions for carrying adjudged by a Court or Judge to be reasonable.

27. No special contract between a carrier and any other party respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage.

Special contracts not binding unless signed.

28. No greater damages shall be recovered for the loss of or injury to any of such animals beyond the sums hereinafter mentioned, that is to say,—

- (1.) For any horse, fifty pounds ;
- (2.) Neat cattle, per head, fifteen pounds ;
- (3.) Sheep or pigs, per head, two pounds,—

Carriers not to be liable beyond a limited amount in certain cases, unless the value declared and extra payment made.

unless the person sending or delivering the same to such carrier shall at the time of delivery have declared them to be respectively of higher value than as above-mentioned, in which case it shall be lawful for such carrier to receive, by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge.

The proof of the value of such animals, articles, goods, and things, and the amount of injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury.

Proof of the value to be on the person claiming compensation.

DELIVERY OF GOODS ; AND LIEN FOR FREIGHT.

29. In the construction of the sections of this Act from twenty-nine to forty, both inclusive, if not inconsistent with the context,—

Interpretation.

“Report” means the report required by the Customs laws to be made by the master of any importing ship : “Report.”

"Entry."	"Entry" means the entry required by the Customs laws to be made for the landing or discharge of goods from an importing ship :
"Goods."	"Goods" includes every description of wares and merchandise :
"Wharf."	"Wharf" includes all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed :
"Warehouse."	"Warehouse" includes all warehouses, buildings, and premises in which goods when landed from ships may be lawfully placed :
"Wharf-owner."	"Wharf-owner" means the occupier of any wharf as hereinbefore defined :
"Warehouse-owner."	"Warehouse-owner" means the occupier of any warehouse as hereinbefore defined :
"Shipowner."	"Shipowner" includes the master of the ship and every other person authorized to act as agent for the owner or entitled to receive the freight, demurrage, or other charges payable in respect of such ship :
"Owner of goods."	"Owner of goods" includes every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien to such lien.

Power to shipowner to enter and land goods in default of entry and landing by owner of goods.

30. Where the owner of any goods imported in any ship from foreign parts into New Zealand fails to make entry thereof, or, having made entry thereof, to land the same or take delivery thereof, and to proceed therewith with all convenient speed by the times severally hereinafter mentioned, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following, that is to say :—

- (1.) If a time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the time so expressed.
- (2.) If no time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a Sunday or holiday, after the report of the ship.
- (3.) If any wharf or warehouse is named in the charter-party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such wharf or in such warehouse.
- (4.) In other cases the shipowner in landing goods by virtue of this enactment shall place them on or in some wharf or warehouse, on or in which goods of a like nature are usually placed ; such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the Commissioner of Customs for the landing of dutiable goods.
- (5.) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or take delivery of the same he shall be allowed so to do, and his entry shall in such case be preferred to any entry which may have been made by the shipowner.
- (6.) If any goods are for the purpose of convenience in assorting the same landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery thereof, and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing, and

Shall, if demanded, be delivered to the owner thereof within twenty-four hours after assortment; and the expense of and consequent on such landing and assortment shall be borne by the shipowner.

(7.) If at any time before the goods are landed or unshipped the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other than that at which the ship is discharging, and

Has offered and been ready to take delivery thereof, and the shipowner has failed to make such delivery, and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then

The shipowner shall before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods or of such wharf or warehouse as last aforesaid twenty-four hours' notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.

31. If at any time when any goods are landed from any ship and placed in the custody of any person as a wharf or warehouse owner, the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned in such notice, the goods so landed shall in the hands of the wharf or warehouse owner continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof.

If when goods are landed the shipowner gives notice for that purpose the lien for freight is to continue.

The wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as hereinafter mentioned, and shall if he fail so to do make good to the shipowner any loss thereby occasioned to him.

Wharf or warehouse owner to retain goods till lien discharged.

32. Upon the production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy thereof or of a release of freight from the shipowner, the said lien shall be discharged.

Lien to be discharged on proof of payment.

33. The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed as aforesaid by the shipowner, and thereupon the lien shall be discharged, but without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

Lien to be discharged on deposit with warehouse-owner.

34. If such deposit is made with the wharf or warehouse owner, and the person making the same does not within fifteen days after making it give to the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or that he does not admit any sum to be so payable, the wharf or warehouse owner may at the expiration of such fifteen days pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect thereof.

Warehouse-owner may at the end of fifteen days, if no notice is given, pay deposit to shipowner.

35. If such deposit is made with the wharf or warehouse owner, and the person making the same does within fifteen days after making it give to the wharf or warehouse owner notice as aforesaid,—

Course to be taken if notice to retain is given.

(1.) The wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited the sum admitted by such notice to be payable, and shall retain the balance, or, if no sum is admitted to be payable, the whole of the sum deposited for thirty days from the date of the said notice.

(2.) At the expiration of such thirty days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum, or otherwise for the settlement of any disputes which may have arisen between them con

cerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect thereof.

After ninety days warehouse-owner may sell goods by public auction.

36. If the lien is not discharged and no deposit is made as hereinbefore mentioned, the wharf or warehouse owner may, and if required by the shipowner shall, at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as may be fixed by Lloyd's Agent or any surveyor to be appointed by such wharf or warehouse owner, sell by public auction either for home use or exportation the said goods, or so much thereof as may be necessary, to satisfy the charges hereinafter mentioned.

Notices of sale to be given.

37. Before making such sale, the wharf or warehouse owner shall give notice thereof by advertisement in one newspaper circulating in the neighbourhood, a copy whereof shall be kept posted up in some conspicuous part of the said wharf or warehouse.

If the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the wharf or warehouse owner, or is otherwise known to him, such wharf or warehouse owner shall give notice of the sale to the owner of the goods by letter sent by the post.

Title not invalidated by omission to give notice.

But the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send notice as hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

Moneys arising from sale, how to be applied.

38. In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the moneys received from the sale in the following order:—

- (1.) If the goods are sold for home use, in payment of any Customs or excise duties owing in respect thereof;
- (2.) In payment of the expenses of the sale;
- (3.) In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods;
- (4.) In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods;
- (5.) But in case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement; and
- (6.) The surplus, if any, shall be paid to the owner of the goods.

Warehouse-owner's rent and expenses.

39. Whenever goods are placed in the custody of a wharf or warehouse owner under the authority of this Act, the said wharf or warehouse owner shall be entitled to rent in respect of the same, and shall also have power from time to time at the expense of the owner of the goods to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of such goods, and shall have a lien thereon for the said rent and expenses.

Warehouse-owner's protection.

40. Nothing in this Act shall compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if this Act had not passed, nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Act.

GUARANTEES.

41. No special promise to be made by any person 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.

42. No promise to answer for the debt, default, or miscarriage of another made to a firm consisting of two or more persons, or to a single person trading under the name of a firm;

Guarantee to or for a firm to cease upon a change in the firm, except in special cases.

And no promise to answer for the debt, default, or miscarriage of a firm consisting of two or more persons, or of a single person trading under the name of a firm,—

Shall be binding on the person making such promise in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties that such promise shall continue to be binding, notwithstanding such change, shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise.

INTEREST ON MONEY.

43. The laws of England relating to usury existing on or previously to the fourteenth day of January, one thousand eight hundred and forty, shall be deemed not to have extended to or been in force in New Zealand at any time.

English usury laws not in force in New Zealand.

44. There shall be no limit to the amount of interest which any person may lawfully contract to pay.

Any interest may be contracted to be paid.

45. In all cases where interest for the loan of money or upon any other contract may be lawfully recovered or allowed in any action, suit, or other proceeding, but where the rate of such interest has not been previously agreed upon by or between the parties, the party entitled to interest shall not be allowed to recover or receive above the rate of eight pounds for the interest of one hundred pounds for a year, and so after that rate for a greater or lesser sum than one hundred pounds or for a longer or shorter time than a year.

If no contract, 8 per cent. may be allowed.

LIMITATION OF ACTIONS.

46. All actions of account or for not accounting, and suits for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued within six years after the cause of such actions has arisen.

Limitation of actions for "merchants' accounts."

47. No claim in respect of a matter which arose more than six years before the commencement of such action shall be enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action.

Limitation not barred by claims subsequently arising.

48. No person who shall be entitled to any action with respect to which the period of limitation within which the same shall be brought is fixed by the following Acts,—

Absence beyond seas or imprisonment of a creditor not to be a disability.

- (1.) The twenty-first year of the reign of King James the First, chapter sixteen, section three;
- (2.) The fourth year of the reign of Queen Anne, chapter sixteen, section seventeen;

(3.) The fifty-third year of the reign of King George the Third, chapter one hundred and twenty-seven, section five;

(4.) The third and fourth years of the reign of King William the Fourth, chapter twenty-seven, sections forty, forty-one, and forty-two, and chapter forty-two, section three,—

shall be entitled to any time within which to commence and sue such action beyond the period so fixed by reason only of such person being beyond the seas at the time such cause of action accrued, or, in the cases in which by virtue of any of such enactments imprisonment is now a disability, by reason of such person being imprisoned at the time such cause of action accrued.

Period of limitation to run as to joint debtors in the colony, though some are beyond seas.

49. Where such cause of action with respect to which the period of limitation is fixed by the enactments aforesaid, or any of them, lies against two or more joint debtors,

The person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas.

Judgment recovered against joint debtors in the colony to be no bar to proceeding against others beyond seas after their return.

50. Such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action against the joint debtor or joint debtors who was or were beyond seas at the time the cause of action accrued after his or their return from beyond seas, by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not beyond seas at the time aforesaid.

Part payment by one contractor, &c., not to prevent bar in favour of another contractor, &c.

51. In reference to the provisions of the Acts of the twenty-first year of the reign of King James the First, chapter sixteen, section three, and of the Act of the third and fourth years of the reign of King William the Fourth, chapter forty-two, section three,

When there shall be two or more co-contractors or co-debtors, whether bound or liable jointly only or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor or administrator, shall lose the benefit of the said enactments or any of them so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money by any other or others of such co-contractors or co-debtors, executors or administrators.

MARINE RE-ASSURANCE.

Re-assurances of sea risks may lawfully be made.

52. Re-assurance may be made upon any ship or vessel, or upon any goods, merchandise, or other property on board of any ship or vessel, or upon the freight of any ship or vessel, or upon any other interest in or relating to any ship or vessel which may lawfully be insured.

PARTNERSHIP.

Advance of money at interest varying with profits not to constitute the lender a partner.

53. The advance of money by way of loan to a person engaged, or about to engage, in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits, arising from carrying on such trade or undertaking, shall not of itself constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such.

The remuneration of agents and others by share of profits not alone to make them partners.

54. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or

undertaking, shall of itself render such servant or agent responsible as a partner therein, or give him the rights of a partner.

55. No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall by reason only of such receipt be deemed to be a partner of or to be subject to any liabilities incurred by such trader.

Certain annuitants not to be deemed partners.

56. No person receiving, by way of annuity or otherwise, a portion of the profits of any business in consideration of the sale by him of the goodwill of such business shall by reason only of such receipt be deemed to be a partner of or be subject to the liabilities of the person carrying on such business.

Vendor of goodwill for share of profits not therefore to be deemed a partner.

57. In the event of any such trader being adjudged a bankrupt, or taking the benefit of any Act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal or of the profits or interest payable in respect of such loan.

In case of bankruptcy or insolvency lender not to rank with other creditors.

58. No such vendor of a goodwill shall be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

Vendor of goodwill not entitled in like case.

SPECIAL PARTNERSHIPS.

59. Special partnerships may be formed for the transaction of agricultural, mining, mercantile, mechanical, manufacturing, or other business, by any number of persons, upon the terms and subject to the conditions and liabilities hereinafter prescribed :

Special partnerships may be formed, except for banking and insurance.

But nothing herein shall authorize any such partnership for the purpose either of banking or insurance.

60. Every such partnership may consist of general partners, who shall be jointly and severally responsible as general partners are now by law, and of persons, to be called special partners, who shall contribute to the common stock specific sums in money as capital, beyond which they shall not be responsible for any debt of the partnership except in cases hereinafter provided for.

General and special partners, and their liabilities.

61. All the persons forming any such partnership shall, before commencing business, sign a certificate containing,—

Certificates to be signed by the partners, specifying names, capital, &c.

- (1.) The style of the firm under which the partnership is to be conducted ;
- (2.) The names and places of residence of all the partners, distinguishing the general from the special partners ;
- (3.) The amount of capital which each special partner contributes, and also (if any) the amount contributed by the general partners to the common stock ;
- (4.) The general nature of the business to be transacted ;
- (5.) The principal or only place at which it is to be transacted ;
- (6.) And the time when such partnership is to commence, and when it is to terminate.

62. Such style or firm shall contain the names of general partners only, or the name of one such partner, with (in either case) the addition of the words "and Company," and the general partners only shall transact the business of the partnership.

Style of partnership.

63. If in carrying on such business, or in any contract connected therewith, the name of any special partner shall be used with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership, every such special partner shall be deemed to be a general partner with

When a special partner shall be deemed a general partner.

respect to the contract or matter in which his name has been so used, or as to which he shall have so contracted.

Certificates to be acknowledged and registered.

64. No such partnership shall be deemed formed until such certificate as aforesaid shall have been acknowledged by each partner before some Justice of the Peace, and registered in the office of the Supreme Court in a book to be kept for that purpose by the Registrar of such Court, open to public inspection.

Place of registration.

Every such certificate shall be so registered at the Supreme Court office at or nearest to the principal or only place at which the business of the partnership is to be transacted.

If false statement in certificate, all partners to be liable as general partners.

65. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable for all the engagements thereof as general partners :

But no clerical error or matter not of substance shall be deemed false within the meaning of this section unless some person may have been prejudiced thereby, in which case the special partners shall be liable to the person so prejudiced.

Copy of certificate to be published.

66. A copy of such certificate shall be published once at least in the *Gazette* and twice in some newspaper published at the intended principal place of business of the partnership, or at the nearest place to such place of business where a newspaper is published ; and in case such publication be not so made the partnership shall be deemed general.

Duration of partnerships prescribed.

67. No partnership under this Act shall be entered into for a longer period than seven years, but such partnership may be renewed at the end of that period, or at the termination of any shorter period for which a partnership may be formed.

Certificate to be signed on renewal.

68. Upon every renewal or continuation beyond the time originally agreed upon for the duration of a special partnership, a certificate thereof shall be signed, acknowledged, registered, and published in like manner as the original certificate ;

And every partnership which shall be renewed or continued otherwise than in conformity with the provisions of this section shall be deemed general.

Capital stock not to be withdrawn, &c.

69. During the continuance of any special partnership, no part of the certified capital thereof shall be withdrawn, nor shall any division of interest or profit be made so as to reduce such capital below the aggregate amount stated in the certificate.

Special partners liable to refund capital withdrawn in certain cases.

70. If any part of such capital shall be so withdrawn, or any such division be made, so that at any time during the continuance or at the termination of the partnership the assets shall not be sufficient to pay the partnership debts, the special partners shall be severally liable to refund every sum by them respectively received in diminution of such capital or by way of such interest or profit :

How such sums may be recovered.

And all such sums may be recovered as money had and received by them respectively to the use of the general partners, and may, in the case of any judgment having been obtained against the general partners, be recovered by the plaintiff against the special partners, or either of them, by process of execution to be issued under such judgment by leave of the Supreme Court.

Suits to be by and against general partners.

71. All suits respecting the business of any special partnership shall be prosecuted by and against the general partners only, except in the cases in which it is provided by this Act that special partners shall or may be deemed general partners, in which cases every special partner who shall become liable as a general partner may be joined or not in the suit as a defendant, at the discretion of the party suing.

Dissolution, how effected.

72. No dissolution of a special partnership shall take place, except by operation of law, before the time specified in the certificate, unless a notice of

such dissolution shall be signed, acknowledged, registered, and published in like manner as the original certificate.

73. In all cases not hereinbefore otherwise provided for, all the members of a special partnership shall be subject to the liabilities and entitled to the rights of general partners. Cases not specially provided for.

74. The general partners shall be liable to account to each other and to the special partners for their management of the partnership concerns as other partners are by law. Accounting.

75. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage, and shall also be liable to an indictment for a misdemeanour, punishable by fine or imprisonment, or both, at the discretion of the Court by which he shall be tried. Frauds by partners.

76. If the general partners shall not at all times cause regular books of account to be kept, or shall not have the same open at all reasonable times to the inspection of the special partners, such special partners shall be entitled to have the partnership dissolved, and the accounts thereof taken by the Supreme Court. Books of account to be kept, and to be open to inspection.

77. If the books of any special partnership shall, with the knowledge or privity of the special partners or any of them, be kept incorrectly, or contain any false or deceptive entries, whereby the ascertainment of the matters mentioned in the sixty-ninth and seventieth sections of this Act shall or may be affected, the certified capital of such special partners, or such one or more of them having such knowledge or privity, shall as against creditors be deemed to have been withdrawn, and they or he shall be liable accordingly under the provisions of the said seventieth section. As to liability of special partners if books be not kept or be incorrectly kept.

SPECIFIC DELIVERY OF GOODS.

78. In all actions and suits in any Court for breach of contract to deliver specific goods for a price in money, on the application of the plaintiff and by leave of the Judge before whom the cause is tried, the jury shall, if they find the plaintiff entitled to recover, find by their verdict,— Specific delivery of goods sold.

- (1.) What are the goods in respect of the non-delivery of which the plaintiff is entitled to recover and which remain undelivered ;
- (2.) What is the sum the plaintiff would have been liable to pay for the delivery thereof ;
- (3.) What damages the plaintiff would have sustained if the goods should be delivered under execution, as hereinafter mentioned ; and
- (4.) What damages if not so delivered.

Thereupon, if judgment shall be given for the plaintiff, the Court or any Judge thereof, at their or his discretion, on the application of the plaintiff, shall have power to order execution to issue for the delivery of the said goods on payment of such sum as shall have been found to be payable by the plaintiff as aforesaid, without giving the defendant the option of retaining the said goods upon paying the damages assessed.

79. Such writ of execution may be for the delivery of such goods ; and if such goods so ordered to be delivered, or any part thereof, cannot be found, and unless the Court or such Judge as aforesaid shall otherwise order, the Sheriff or other officer of such Court shall distrain the defendant by all his lands and chattels in the said Sheriff's district, or within the jurisdiction of such Court, till the defendant deliver such goods, or, at the option of the plaintiff, cause to be made of the defendant's goods the assessed value or damages or a due proportion thereof : Form and effect of writ of execution.

Provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages, costs, and interest in such action or suit.

Interpretation of "jury."

80. The expression "the jury," where used in the foregoing provisions, shall include cases where the functions of the jury are exercised by a Court; and in any such case the Court shall have all the functions by this Act given to a jury.

SURETIES.

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

81. Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay or satisfy such debt or perform such duty, shall be entitled to have assigned to him, or 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.

Rights of surety in such case.

82. Every 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 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 or satisfied such debt or performed such duty;

And such payment, satisfaction, or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him.

Rights of co-sureties, &c., as between themselves.

83. No co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable.

TITLE TO GOODS BEFORE SEIZURE UNDER EXECUTION.

Persons acquiring title to goods before they have been seized or attached under writ against the seller protected. Proviso.

84. No writ of *feri facias* or other writ of execution, and no writ of attachment against the goods of a debtor, shall prejudice the title to such goods acquired by any person *bond fide* and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ:

Provided such person had not, at the time when he acquired such title, notice that such writ or any other writ by virtue of which the goods of such owner might be seized or attached had been delivered to and remained unexecuted in the hands of the Sheriff.

UNPAID VENDORS OF WAREHOUSED GOODS.

Interpretation.

85. In the sections of this Act from eighty-five to ninety-seven inclusive, if not inconsistent with the context,—

"Bonded warehouse" means a building approved and appointed by the Commissioner of Customs for the warehousing of goods without payment of duty upon the first entry thereof:

"Goods" includes wares and merchandise of every description:

"Free warehouse" means a building licensed by the Commissioner of Customs to be used exclusively for the storage of any goods not liable to the payment of Customs duties, or whereon such duties shall have been paid previously to storage:

"Warehouseman" means the person for whose immediate benefit and under whose control the storage of goods in a bonded or free warehouse is carried on:

- “Warehouse-keeper” means the person having the management of any bonded or free warehouse, whether the warehouseman himself, or a person employed by him :
- “Warehouse-keeper’s book” means the book wherein the warehouse-keeper enters a list of all goods received in and delivered out of the warehouse managed by him :
- “Sale” means any absolute disposition of goods, whether for payment to be made in cash or upon credit :
- “Vendee” means the person purchasing upon any such sale :
- “Pledge” means any deposit and delivery of warrants or certificates with intent that the holder thereof shall be at liberty to dispose of the goods to which such warrants or certificates relate in the event of the terms of the deposit not being fulfilled by the persons making the same :
- “Pledgee” means the person in whose favour the deposit of the warrants or certificates shall be made :
- “Sub-vendee” means any person purchasing from or under the person to whom the original bonder or storer of goods in a bonded or free warehouse shall have sold the same and delivered the warrants or certificates relating thereto :
- “Warrants” or “certificates” means any receipt or undertaking, printed or written or partly printed and partly written, issued by or on behalf of the warehouseman, and signed by him or on his behalf, acknowledging the receipt in a specified warehouse of goods to be held on behalf of a person named and described, giving the particulars of the goods stored, the marks or brands (if any) thereon, the terms upon which the goods are stored, and containing an undertaking on the part of the warehouseman to deliver the same to the indorsee, holder, or bearer of the warrant or certificate :

86. In all cases wherein warrants or certificates for goods liable to the payment of Customs duties shall be issued, importing a receipt of such goods by or on behalf of any bonded warehouseman and an undertaking to deliver the same to the holder of the warrants or certificates upon presentation and demand, and upon payment of the duties, rents, and charges lawfully demandable, and such warrants or certificates shall be delivered over upon a sale of the goods by the person to whom the said warrants or certificates shall be issued by or on behalf of the warehouseman,

Unpaid vendor's lien determined on delivery of bond warrants to *bond fide* holder for value.

The rights legal and equitable of such person, as an unpaid vendor, to stop the actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end when such warrants or certificates shall be delivered over *bond fide* and for value, either upon a sale or pledge of the said goods by any person purchasing from the original bonder thereof.

87. Upon a sale or pledge of goods stored in any bonded warehouse, the possession of warrants or certificates importing a receipt and undertaking to deliver as aforesaid shall be deemed *primâ facie* evidence of the ownership of the holder of the said warrants or certificates in the goods and merchandise affected thereby.

Possession of warrants *primâ facie* evidence of ownership.

88. Any holder of a warrant or certificate importing the obligations aforesaid shall be entitled, on request and upon compliance with the terms of the contract implied by such warrants or certificates between the warehouseman and the original bonder of the goods, to have delivery thereof, or to have his name entered upon the books of the warehouse-keeper as the owner of the said goods,

Holder of warrant entitled to delivery.

Registered holder of warrant deemed to be owner.

89. Save in the event of fraud being proved in the procurement of the entry of the name of the holder of the certificates or warrants in the warehouse-keeper's books, the person whose name shall be so entered shall be conclusively deemed the then owner in possession of the said goods, subject to the provisions hereinafter contained.

The registered transferee of warrant to lose his right of lien if warrant afterwards delivered over *bond fide* and for value.

90. In the event of any transfer being entered in the books of the warehouse-keeper, and the then owner of bonded goods shall deliver over the warrants or certificates relating to or affecting the same to any other person on a sale or pledge of the said goods or merchandise; and such warrants or certificates shall be afterwards delivered over *bond fide* and for value to any sub-vendee or pledgee by the person receiving the same from the owner, whose name shall be entered as aforesaid,

The rights legal and equitable of the said owner as an unpaid vendor to stop the actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end as from the time of the *bond fide* delivery of the warrants or certificates to the first sub-vendee or pledgee for value.

Warrants of free goods put on the same footing as bond warrants.

91. Where goods are stored in any free warehouse, and warrants or certificates, importing on behalf of the warehouseman a receipt of the goods and an undertaking to deliver the same upon presentation and demand and upon payment of the rents and charges lawfully demandable, shall be delivered to and accepted by the person originally warehousing such goods,

The respective rights and liabilities of the warehouseman and warehouse-keeper, and of the persons to whom the said warrants or certificates were originally issued, or are afterwards delivered or redelivered upon a resale or pledge *bond fide* and for value of the goods, or in whose name the ownership may be transferred in the books of the warehouse-keeper, or who may afterwards acquire possession *bond fide* and for value of the said warrants or certificates,

Shall be the same in all respects as is hereinbefore provided with regard to goods liable to the payment of Customs duties and stored in a bonded warehouse.

Provisions same in respect of bonded and free warehouses.

92. The provisions herein relative to the rights of, or incident to the ownership of, goods stored in a bonded warehouse shall be as applicable to the ownership of goods stored in a free warehouse as if such provisions had been respectively repeated and expressly applied thereto.

Vendor's lien not prejudiced save as against *bond fide* sub-vendee or pledgee for value.

93. Nothing herein shall in any way prejudice the rights of an unpaid vendor of goods to stop delivery thereof until payment of the price payable to him whenever such rights may be lawfully exercised without detriment or injury to any sub-vendee or pledgee *bond fide* and for value, or to the rights of any trustee in bankruptcy claiming under the purchaser from the unpaid vendor.

Goods not to be transferred in books of warehouseman except on production of warrant.

94. No entry shall be made in the books of any warehouseman or the keeper of any bonded or free warehouse transferring the ownership or possession of any goods, unless the person applying for such entry to be made shall produce and deliver up the warrants or certificates originally issued:

Whereupon the warehouseman or the keeper of his warehouse may cancel the said warrants or certificates and issue others in lieu thereof, and such new warrants or certificates may in like manner be cancelled, and others issued in substitution thereof.

Special contracts restraining negotiability of warrants permitted.

95. Notwithstanding anything herein, the person originally storing goods and merchandise in any bonded or free warehouse, and the warehouseman thereof, may enter into a special contract restraining the negotiability of the warrants or certificates issued in respect of the said goods, or providing some special method of transfer of the property in and possession of such goods.

96. In every such case the terms of such special contract shall be incorporated in and made to appear upon the face of the said warrants or certificates, so that the holder thereof may have his attention expressly directed thereto.

Terms of contract to appear on face of warrant.

97. No transfer of the ownership or possession of the goods stored in any bonded or free warehouse shall in any way prejudicially affect the lien or rights of the warehouseman in respect of any rent or charges previously incurred or become payable on account of the goods the ownership or possession whereof may be so transferred as aforesaid.

Warehouseman's lien not prejudiced by sale or transfer of goods.

98. The Acts and part of an Act mentioned in the Schedule hereto are hereby repealed :

Repeal of Acts.

But such repeal shall not affect the validity or invalidity, effect or consequences, of anything already done or suffered, or any existing contract, agreement or instrument, or any right or title already acquired or accrued, or any remedy or proceeding in respect of anything herein mentioned.

Saving.

SCHEDULE.

ACTS REPEALED.

- 1860, No. 8.—The Mercantile Law Amendment Act, 1860.
 1878, No. 4.—The Mercantile Law Further Amendment Act, 1878.
 1861, No. 3.—The Advances to Agents Act, 1861.
 1856, No. 6.—So much of “The English Acts Act, 1856,” as extends to the colony the Act of the Imperial Parliament 18 and 19 Vict., cap. 111.
 1866, No. 49.—The Carriers Act, 1866.
 1869, No. 35.—The Delivery of Goods and Lien for Freight Act, 1869.
 1868, No. 3.—The Interest on Money Act, 1868.
 1866, No. 2.—The Partnership Law Amendment Act, 1866.
 1858, No. 13.—The Special Partnerships Act, 1858.
 1869, No. 4.—The Restriction on Marine Re-assurance Removal Act, 1869.
 1876, No. 25.—The Warehoused Goods Act, 1876.

Schedule.

Acts repealed.
 Sec. 98.