

# Mercantile Law Act 1908

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## Contents

	Page
Title	3
1 Short Title, etc	3
<b>Part 1</b>	
<b>Mercantile agents</b>	
2 Interpretation	4
<i>Dispositions by mercantile agents</i>	
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	6
6 Rights acquired by exchange of goods or documents	6
7 Agreements through clerks, etc	6
8 Provisions as to consignors and consignees	6
9 Effect of transfer of document of title to goods on vendor's lien, and right of stoppage <i>in transitu</i>	7
<i>Miscellaneous</i>	
10 Mode of transferring documents	7
11 Saving of rights of true owner	7
12 Saving for common law powers of mercantile agent	8
<b>Part 2</b>	
<b>Bills of lading</b>	
13 Interpretation	8
13A Application of this Part	10
13B Rights under shipping documents	11
13C Liabilities under shipping documents	13
14 Right of stoppage <i>in transitu</i> , or claims for freight, not affected	14

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### Note

This Act is administered in the Ministry of Commerce

15	Bill of lading in hands of consignee, etc, conclusive evidence as against master, etc	14
16	When master may be exonerated from liability	14

**Part 3  
Carriers**

**Part 4  
Delivery of goods, and lien for freight**

21	Interpretation	15
22	Power to shipowner to enter and land goods in default of entry and landing by owner of goods	16
23	Continuation of lien for freight if shipowner gives notice	17
24	Lien to be discharged on deposit with warehouse owner	18
25	Right of warehouse owner, if no notice is given, to pay deposit to shipowner	18
26	Course to be taken if notice to retain is given	18
27	After 90 days warehouse owner may sell goods by public auction	19
28	Notices of sale to be given	19
29	Money arising from sale, how to be applied	20
30	Warehouse owner's rent and expenses	20
31	Warehouse owner's protection	21

**Part 5  
Unpaid vendors of warehoused goods**

32	Interpretation	21
33	Unpaid vendor's lien determined on delivery of bond warrants to bona fide holder for value	22
34	Possession of warrants prima facie evidence of ownership	23
35	Holder of warrant entitled to delivery	23
36	Registered holder of warrant deemed to be owner	23
37	Lien of registered transferee of warrant determined on delivery of warrant bona fide and for value	23
38	Warrants of free goods put on the same footing as bond warrants	24
39	Provisions same in respect of bonded and free warehouses	24
40	Vendor's lien not prejudiced save as against bona fide subpurchaser or pledgee for value, etc	24
41	Goods not to be transferred in books of warehouseman except on production of warrant	25
42	Special contracts restraining negotiability of warrants	25
43	Warehouseman's lien not prejudiced by sale or transfer of goods	25

	<b>Part 6</b>	
	<b>Book purchasers protection</b>	
44	Validity of agreements for purchase of books	26
	<b>Schedule</b>	27
	<b>Enactments consolidated</b>	

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**An Act to consolidate certain enactments of the General Assembly relating to trade and commerce**

**1 Short Title, etc**

- (1) The Short Title of this Act is the Mercantile Law Act 1908.
- (2) This Act is a consolidation of the enactments mentioned in the Schedule hereto.
- (3) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.
- (4) In order to remove any doubt as to the applicability of the provisions of Parts 2, 3, and 4 of this Act to and in respect of navigable lakes and inland navigable waters of New Zealand, it is hereby declared that those provisions extend and apply to all parts of New Zealand so far as the same are applicable.
- (5) This Act is divided into Parts, as follows:
  - PART 1—Mercantile Agents. (Sections 2 to 12.)
  - PART 2—Bills of Lading. (Sections 13 to 16.)
  - PART 3—Carriers. (Sections 17 to 20.)
  - PART 4—Delivery of Goods and Lien for Freight. (Sections 21 to 31.)
  - PART 5—Unpaid Vendors of Warehoused Goods. (Sections 32 to 43.)
  - PART 6—Book Purchasers Protection. (Section 44.)

## Part 1

### Mercantile agents

#### 2 Interpretation

- (1) In this Part of this Act, if not inconsistent with the context,—

**Document of title** includes any bill of lading, dock warrant, warehouse keeper's certificate, and 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 an 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** 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) 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.

Compare: 1890 No 11 s 3; Factors Act 1889, s 1 (UK)

#### *Dispositions by mercantile agents*

#### 3 Powers of mercantile agent with respect to disposition of goods

- (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 Part of this Act, be as valid as if he 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 no authority to make the same.

- (1A) Where a mercantile agent is, with the consent of the owner, in possession of goods, or documents of title to the goods, that are subject to a perfected security interest under the Personal Property Securities Act 1999, the person taking under any disposition of the goods is deemed to have notice that the person making the disposition has no authority to make it, unless it is proved that the authority did exist.
- (2) Where 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) 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 Part of this Act, be deemed to be with the consent of the owner.
- (4) For the purposes of this Part of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

Compare: 1890 No 11 s 4; Factors Act 1889, s 2 (UK)

Subsection (1A) was inserted, as from 1 April 1990, by section 67 Motor Vehicle Securities Act 1989 (1989 No 14).

Subsection (1A) was substituted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). *See also* Part 12 of that Act for transitional provisions.

#### **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.

Compare: 1890 No 11 s 5; Factors Act 1889, s 3 (UK)

**5 Pledge for antecedent debt**

Where 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.

Compare: 1890 No 11 s 6; Factors Act 1889, s 4 (UK)

**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 Part 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, 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.

Compare: 1890 No 11 s 7; Factors Act 1889, s 5 (UK)

**7 Agreements through clerks, etc**

For the purposes of this Part 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 his behalf shall be deemed to be an agreement with the agent.

Compare: 1890 No 11 s 8; Factors Act 1889, s 6 (UK)

**8 Provisions as to consignors and consignees**

- (1) Where 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.

Compare: 1890 No 11 s 9; Factors Act 1889, s 7 (UK)

**9 Effect of transfer of document of title to goods on vendor's lien, and right of stoppage *in transitu***

Where 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*:

Provided that this section shall be construed subject to section 48 of the Sale of Goods Act 1908.

Compare: 1890 No 11 s 12; Factors Act 1889, s 10 (UK)

*Miscellaneous*

**10 Mode of transferring documents**

For the purposes of this Part of this Act the transfer of a document 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.

Compare: 1890 No 11 s 13; Factors Act 1889, s 11 (UK)

**11 Saving of rights of true owner**

Nothing in this Part of this Act shall—

- (a) Authorise a mercantile agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing; or
- (b) Prevent the owner of goods from recovering the goods from a mercantile agent or his trustee in bankruptcy at any time before the sale or pledge thereof; or
- (c) Prevent the owner of goods pledged by a mercantile 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 mercantile agent, if by him required, any money in respect of which such 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; or

- (d) Prevent the owner of goods sold by a mercantile 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 such agent.

Compare: 1890 No 11 s 14; Factors Act 1889, s 12 (UK)

## 12 Saving for common law powers of mercantile agent

The provisions of this Part of this Act shall be construed in amplification and not in derogation of the powers exercisable by a mercantile agent independently of this Part of this Act.

Compare: 1890 No 11 s 15; Factors Act 1889, s 13 (UK)

## Part 2 Bills of lading

### 13 Interpretation

- (1) In this Part of this Act, unless the context otherwise requires,—  
**Bill of lading**, **sea waybill**, and **ship's delivery order** shall be construed in accordance with section 13A of this Act

**The contract of carriage** means,—

- (a) In relation to a bill of lading or sea waybill, the contract contained in or evidenced by that bill or waybill; and  
(b) In relation to a ship's delivery order, the contract under or for the purposes of which the undertaking contained in the order is given:

**Holder**, in relation to a bill of lading, shall be construed in accordance with subsection (2) of this section

**Information technology** includes any computer or other technology by means of which information or other matter may



be recorded or communicated without being reduced to documentary form

**Network** has the same meaning as in section 5 of the Telecommunications Act 2001.

Network: this definition was substituted, as from 20 December 2001, by section 158 Telecommunications Act 2001 (2001 No 103).

- (2) References in this Part of this Act to the holder of a bill of lading are references to any of the following persons:
- (a) A person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates:
  - (b) A person with possession of the bill as a result of the completion (by delivery of the bill) of any endorsement of the bill or, in the case of a bearer bill, as a result of any other transfer of the bill:
  - (c) A person with possession of the bill as a result of any transaction by virtue of which that person would have become a holder under paragraph (a) or paragraph (b) of this subsection had not the transaction been effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods to which the bill relates;—
- and a person shall be regarded for the purposes of this Act as having become the lawful holder of the bill of lading whenever that person has become the holder of the bill in good faith.
- (3) References in this Part of this Act to a person's being identified in a document include references to that person being identified by a description which allows for the identity of that person to be varied, in accordance with the terms of the document, after its issue; and the reference in section 13A(3)(b) of this Part of this Act to a document identifying a person shall be construed accordingly.
- (4) Without prejudice to section 13B(2) of this Act, nothing in this Part of this Act shall preclude its operation in relation to a case where the goods to which a document relates—
- (a) Cease to exist after the issue of the document; or
  - (b) Cannot be identified (whether because they are mixed with other goods or for any other reason);—

and references in this Part of this Act to the goods to which a document relates shall be construed accordingly.

- (5) The Governor-General may, by Order in Council, make regulations for the application of this Part of this Act to cases where a network or other information technology is used for effecting transactions corresponding to—
  - (a) The issue, endorsement, delivery or other transfer of a document to which this Part of this Act applies; or
  - (b) The doing of anything else in relation to such a document.
- (6) Regulations made under subsection (5) of this section may—
  - (a) Make such modifications of the provisions of this Part of this Act as are appropriate in connection with the application of this Part of this Act to any case mentioned in that subsection; and
  - (b) Contain supplemental, incidental, consequential, and transitional provisions.
- (7) The provisions of this Part of this Act shall have effect without prejudice to the application, in relation to any case, of section 209 of the Maritime Transport Act 1994.

Compare: 1880 No 12 s 21

Section 13 was substituted, and sections 13A to 13C were inserted, as from 1 February 1995, by section 2 Mercantile Law Amendment Act 1994 (1994 No 106). *See* clause 2 Mercantile Law Amendment Act Commencement Order 1994 (SR 1994/270).

### **13A Application of this Part**

- (1) This Part of this Act applies to the following documents:
  - (a) Any bill of lading;
  - (b) Any sea waybill;
  - (c) Any ship's delivery order.
- (2) References in this Act to a bill of lading—
  - (a) Do not include references to a document which is incapable of transfer either by endorsement or, as a bearer bill, by delivery without endorsement; but
  - (b) Subject to paragraph (a) of this subsection, include references to a received for shipment bill of lading.
- (3) References in this Act to a sea waybill are references to any document that is not a bill of lading but—

- (a) Is such a receipt for goods as contains or evidences a contract for the carriage of goods by sea; and
  - (b) Identifies the person to whom delivery of the goods is to be made by the carrier in accordance with that contract.
- (4) References in this Part of this Act to a ship's delivery order are references to any document that is neither a bill of lading nor a sea waybill, but contains an undertaking that—
  - (a) Is given under or for the purposes of a contract for the carriage by sea of the goods to which the document relates, or of goods which include those goods; and
  - (b) Is an undertaking by the carrier to a person identified in the document to deliver the goods to which the document relates to that person.

Section 13 was substituted, and sections 13A to 13C were inserted, as from 1 February 1995, by section 2 Mercantile Law Amendment Act 1994 (1994 No 106). *See* clause 2 Mercantile Law Amendment Act Commencement Order 1994 (SR 1994/270).

### **13B Rights under shipping documents**

- (1) Subject to this section, a person who becomes—
  - (a) The lawful holder of a bill of lading; or
  - (b) The person who (without being an original party to the contract of carriage) is the person to whom delivery of the goods to which a sea waybill relates is to be made by the carrier in accordance with that contract; or
  - (c) The person to whom delivery of the goods to which a ship's delivery order relates is to be made in accordance with the undertaking contained in the order,—shall (by virtue of becoming the holder of the bill or, as the case may be, the person to whom delivery is to be made) have transferred to and vested in him or her all rights of suit under the contract of carriage as if that person had been a party to that contract.
- (2) Where a person becomes the lawful holder of a bill of lading when possession of the bill no longer gives a right (as against the carrier) to possession of the goods to which the bill relates, that person shall not have any rights transferred to him or her by virtue of subsection (1) of this section unless that person becomes the holder of the bill—

- (a) By virtue of a transaction effected in pursuance of any contractual or other arrangements made before the time when such a right to possession ceased to attach to possession of the bill; or
  - (b) As a result of the rejection to that person by another person of goods or documents delivered to the other person in pursuance of any such arrangements.
- (3) The rights vested in any person by virtue of the operation of subsection (1) of this section in relation to a ship's delivery order—
  - (a) Shall be so vested subject to the terms of the order; and
  - (b) Where the goods to which the order relates form a part only of the goods to which the contract of carriage relates, shall be confined to rights in respect of the goods to which the order relates.
- (4) Where, in the case of any document to which this Part of this Act applies,—
  - (a) A person with any interest or right in or in relation to goods to which the document relates sustains loss or damage in consequence of a breach of the contract of carriage; but
  - (b) Subsection (1) of this section operates in relation to that document so that rights of suit in respect of that breach are vested in another person,—

the other person shall be entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent as they could have been exercised if they had been vested in the person for whose benefit they are exercised.
- (5) Where rights are transferred by virtue of the operation of subsection (1) of this section in relation to any document, the transfer for which that subsection provides shall extinguish any entitlement to those rights that derives,—
  - (a) Where that document is a bill of lading, from a person's having been an original party to the contract of carriage; or
  - (b) In the case of any document to which this Act applies from the previous operation of that subsection in relation to that document;—

but the operation of that subsection shall be without prejudice to any rights which derive from a person's having been an original party to the contract contained in, or evidenced by, a sea waybill and, in relation to a ship's delivery order, shall be without prejudice to any rights deriving otherwise than from the previous operation of that subsection in relation to that order.

Section 13 was substituted, and sections 13A to 13C were inserted, as from 1 February 1995, by section 2 Mercantile Law Amendment Act 1994 (1994 No 106). *See* clause 2 Mercantile Law Amendment Act Commencement Order 1994 (SR 1994/270).

### **13C Liabilities under shipping documents**

- (1) Where section 13B(1) of this Act operates in relation to any document to which this Part of this Act applies and the person in whom rights are vested by virtue of that subsection—
  - (a) Takes or demands delivery from the carrier of any of the goods to which the document relates; or
  - (b) Makes a claim under the contract of carriage against the carrier in respect of any of those goods; or
  - (c) Is a person who, at a time before those rights were vested in him or her, took or demanded delivery from the carrier of any of those goods,—that person shall (by virtue of taking or demanding delivery or making the claim or, in a case to which paragraph (c) of this subsection applies, of having the rights vested in him or her) become subject to the same liabilities under that contract as if that person had been a party to that contract.
- (2) Where the goods to which a ship's delivery order relates form a part only of the goods to which the contract of carriage relates, the liabilities to which any person is subject by virtue of the operation of this subsection in relation to that order shall exclude liabilities in respect of any goods to which the order does not relate.
- (3) This section, so far as it imposes liabilities under any contract on any person, shall be without prejudice to the liabilities under the contract of any person as an original party to the contract.

Compare: 1908 No 117 s 13

Section 13 was substituted, and sections 13A to 13C were inserted, as from 1 February 1995, by section 2 Mercantile Law Amendment Act 1994 (1994 No 106). See clause 2 Mercantile Law Amendment Act Commencement Order 1994 (SR 1994/270).

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

Nothing herein 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 endorsee by reason or in consequence of his being such consignee or endorsee or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Compare: 1880 No 12 s 22

**15 Bill of lading in hands of consignee, etc, conclusive evidence as against master, etc**

Every bill of lading in the hands of the shipper or of a consignee or endorsee 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 has had actual notice at the time of receiving the same that the goods were not in fact laden on board.

Compare: 1880 No 12 s 23

Section 15 was amended by section 2 Mercantile Law Amendment Act 1922 (1922 No 25) by inserting the words “of the shipper or”. See also section 3 of that Act.

**16 When master may be exonerated from liability**

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.

Compare: 1880 No 12 s 24

### Part 3 Carriers

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Sections 17-20 were repealed by section 11 Carriers Act 1948.

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Sections 17-20 were repealed by section 11 Carriers Act 1948.

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Sections 17-20 were repealed by section 11 Carriers Act 1948.

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Sections 17-20 were repealed by section 11 Carriers Act 1948.

### Part 4 Delivery of goods, and lien for freight

#### 21 Interpretation

In this Part of this Act, if not inconsistent with the context,—

**Entry** means the entry required by the Customs laws to be made for the landing or discharge of goods from an importing ship

**Goods** includes every description of wares and merchandise

**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

**Report** means the report required by the Customs laws to be made by the master of any importing ship

**Shipowner** includes the master of the ship and every other person authorised to act as agent for the owner or entitled to receive the freight, demurrage, or other charges payable in respect of such ship

**Warehouse** includes all warehouses, buildings, and premises in which goods when landed from ships may be lawfully placed

**Warehouse owner** means the occupier of any warehouse as hereinbefore defined

**Wharf** includes all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed

**Wharf owner** means the occupier of any wharf as hereinbefore defined.

Compare: 1880 No 12 s 29

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

Where the owner of goods imported 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:

- (a) If a time for the delivery of the goods is expressed in the charterparty, bill of lading, or agreement, then at any time after the time so expressed:
- (b) If no time for the delivery of the goods is expressed in the charterparty, bill of lading, or agreement, then at any time after the expiration of 72 hours, exclusive of a Sunday or holiday, after the report of the ship:
- (c) If any wharf or warehouse is named in the charterparty, 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:
- (d) 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 Minister of Customs for the landing of dutiable goods:
- (e) 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 made by the shipowner:



- (f) 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 24 hours after assortment, and the expense of and consequent on such landing and assortment shall be borne by the shipowner:
- (g) 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 24 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.

Compare: 1880 No 12 s 30

**23 Continuation of lien for freight if shipowner gives notice**

- (1) 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.
- (2) The wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as hereinafter mentioned,

and if he fails so to do shall make good to the shipowner any loss thereby occasioned to him.

- (3) On 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.

Compare: 1880 No 12 ss 31, 32

**24 Lien to be discharged on deposit with warehouse owner**

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.

Compare: 1880 No 12 s 33

**25 Right of warehouse owner, if no notice is given, to pay deposit to shipowner**

If such deposit is made with the wharf or warehouse owner, and the person making the same does not within 15 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 15 days pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect thereof.

Compare: 1880 No 12 s 34

**26 Course to be taken if notice to retain is given**

If such deposit is made with the wharf or warehouse owner, and the person making the same does within 15 days after making it give to the wharf or warehouse owner notice as aforesaid,—

- (a) 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 30 days from the date of the said notice:

- (b) At the expiration of such 30 days, unless legal or arbitral 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 between them concerning 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.

Compare: 1880 No 12 s 35

Paragraph (b) was amended, as from 1 July 1997, by section 17 Arbitration Act 1996 (1996 No 99) by inserting after the word “legal” the words “or arbitral”.

## **27 After 90 days warehouse owner may sell goods by public auction**

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 expiry of 90 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.

Compare: 1880 No 12 s 36

## **28 Notices of sale to be given**

- (1) 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.
- (2) If the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents in 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 post.

- (3) But the title of a bona fide purchaser of such goods shall not be invalidated by reason of the omission to send notice as herebefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

Compare: 1880 No 12 s 37

## **29 Money arising from sale, how to be applied**

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

- (a) If the goods are sold for home use, in payment of any Customs or excise duties owing in respect thereof;
- (b) In payment of the expenses of the sale;
- (c) 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;
- (d) In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods;
- (e) But in the 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
- (f) The surplus, if any, shall be paid to the owner of the goods.

Compare: 1880 No 12 s 38

## **30 Warehouse owner's rent and expenses**

Where goods are placed in the custody of a wharf or warehouse owner under the authority of this Part of this Act, the said 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.

Compare: 1880 No 12 s 39

**31 Warehouse owner's protection**

Nothing in this Part of 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 Part of this Act had not passed, nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Part of this Act.

Compare: 1880 No 12 s 40

**Part 5**

**Unpaid vendors of warehoused goods**

**32 Interpretation**

In this Part of this Act, if not inconsistent with the context,—

**Bonded warehouse** means a building approved and appointed by the Minister of Customs for the warehousing of goods without payment of duty on the first entry thereof

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

**Goods** includes wares and merchandise of every description

**Pledge** means any deposit and delivery of warrants or certificates with intent that the holder thereof may 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 is made

**Sale** means any absolute disposition of goods, whether for payment to be made in cash or upon credit

**Subpurchaser** means any person purchasing from or under the person to whom the original bonder or storer of goods in a bonded or free warehouse sold the same and delivered the warrants or certificates relating thereto

**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

**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

**Warrants or certificates** means any receipt or undertaking 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 endorsee, holder, or bearer of the warrant or certificate.

Compare: 1880 No 12 s 85

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

In all cases where warrants or certificates for goods liable to the payment of Customs duties are 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 on presentation and demand, and on payment of the duties, rents, and charges lawfully demandable, and such warrants or certificates are delivered over on a sale of the goods by the person to whom the said warrants or certificates are issued by or on behalf of the warehouseman, 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 are delivered over bona fide and for value, on either a sale or pledge of the said goods by any person purchasing from the original bonder thereof.

Compare: 1880 No 12 s 86

**34 Possession of warrants prima facie evidence of ownership**

On 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 prima facie evidence of the ownership of the holder of the said warrants or certificates in the goods and merchandise affected thereby.

Compare: 1880 No 12 s 87

**35 Holder of warrant entitled to delivery**

Any holder of a warrant or certificate importing the obligations aforesaid shall be entitled, on request and on 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.

Compare: 1880 No 12 s 88

**36 Registered holder of warrant deemed to be owner**

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 is so entered shall be conclusively deemed the then owner in possession of the said goods, subject to the provisions hereinafter contained.

Compare: 1880 No 12 s 89

**37 Lien of registered transferee of warrant determined on delivery of warrant bona fide and for value**

In the event of any transfer being entered in the books of the warehouse keeper, and the then owner of bonded goods delivers over the warrants or certificates relating to or affecting the same to any other person on a sale or pledge of the said goods, and such warrants or certificates are afterwards delivered over bona fide and for value to any subpurchaser or pledgee by the person receiving the same from the owner whose name is 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 bona fide delivery of the warrants or certificates to the first subpurchaser or pledgee for value.

Compare: 1880 No 12 s 90

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

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 on presentation and demand and on payment of the rents and charges lawfully demandable, are 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 bona 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 afterwards acquires possession bona 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.

Compare: 1880 No 12 s 91

**39 Provisions same in respect of bonded and free warehouses**

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.

Compare: 1880 No 12 s 92

**40 Vendor's lien not prejudiced save as against bona fide subpurchaser or pledgee for value, etc**

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 subpurchaser or pledgee bona fide and for value, or to the rights of any trustee in bankruptcy claiming under the purchaser from the unpaid vendor.

Compare: 1880 No 12 s 93

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

- (1) No entry shall be made in the books of any warehouseman or 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 produces and delivers up the warrants or certificates originally issued.
- (2) Thereupon 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.

Compare: 1880 No 12 s 94

**42 Special contracts restraining negotiability of warrants**

- (1) Notwithstanding anything herein, the person originally storing goods 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.
- (2) 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.

Compare: 1880 No 12 ss 95, 96

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

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 ac-

count of the goods the ownership or possession whereof may be so transferred as aforesaid.

Compare: 1880 No 12 s 97

## Part 6

### Book purchasers protection

#### 44 Validity of agreements for purchase of books

- (1) Every agreement for the purchase of any book or part of a book, or of engravings, lithographs, or pictures, or of any other like matter, whether illustrated or not (herein termed **printed matter**), shall be absolutely void in every case where such printed matter is not to be delivered to the purchaser at the date of such agreement in a completed form, and so as to embrace the whole of the volumes or numbers of the printed matter, unless the purchaser of such printed matter first signs an agreement on a form in which, in red capital letters not less than great primer, the following words and figures are printed—namely, “The total liability of the purchaser under this agreement is [*Inserting the amount in similar printed letters and also in printed figures of like size*]”, and unless such form is printed or written in black, wholly or partly, across and subsequent to the printing of such red letters and figures.
- (2) The vendor of such printed matter, or his agent, shall at the time of the signing of the agreement aforesaid also hand over to the purchaser a duplicate of the agreement, having printed on it in addition the words “Duplicate to be kept by purchaser”, and the name and address in full of the vendor; and the vendor shall not be entitled to recover under such agreement unless he produces an acknowledgment by the purchaser that he has received such duplicate of the agreement as aforesaid.
- (3) In any action in any Court on any contract for the purchase of such printed matter the Court may determine the value of the said printed matter, proof of which shall be on the vendor.

Compare: 1891 No 21 ss 2, 3, 4

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**Schedule**

Section 1(2)

**Enactments consolidated**

- 1880, No 12—The Mercantile Law Act 1880: Except sections 4, 41, 43, 45 to 51, 59 to 77, and 81 to 83.
- 1889, No 11—The Mercantile Law Act Amendment Act 1889.
- 1890, No 11—The Mercantile Agents Act 1890: Except sections 10 and 11
- 1891, No 21—The Book Purchasers Protection Act 1891.