

ANNO SEXTO

GEORGII IV. REGIS.

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CAP. XCIV.

An Act to alter and amend an Act for the better Protection of the Property of Merchants and others, who may hereafter enter into Contracts or Agreements in relation to Goods, Wares, or Merchandize intrusted to Factors or Agents.

[5th *July* 1825.]

WHEREAS an Act passed in the Fourth Year of the Reign of His present Majesty, intituled *An Act for the better Protection of the Property of Merchants and others, who may hereafter enter into Contracts or Agreements in relation to Goods, Wares, or Merchandize intrusted to Factors or Agents:* And whereas it is expedient to alter and amend the said Act, and to make further Provisions in relation to such Contracts or Agreements, as herein-after provided: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, any Person or Persons intrusted, for the Purpose of Consignment or of Sale, with any Goods, Wares, or Merchandize, and who shall have shipped such Goods, Wares, or Merchandize in his, her, or their own Name or Names, and any Person or Persons in whose Name or Names any Goods, Wares, or Merchandize shall be shipped by any other Person or Persons, shall be deemed and taken to be the true Owner

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Factors or Agents having Goods or Merchandize in their Possession, shall be deemed to be the true Owners, so as to give Vali-

dity to Contracts with Persons dealing bonâ fide upon the Faith of such Property.

Owner or Owners thereof, so far as to entitle the Consignee or Consignees of such Goods, Wares, and Merchandize to a Lien thereon, in respect of any Money or negotiable Security or Securities advanced or given by such Consignee or Consignees to or for the Use of the Person or Persons in whose Name or Names such Goods, Wares, or Merchandize shall be shipped, or in respect of any Money or negotiable Security or Securities received by him, her, or them, to the Use of such Consignee or Consignees, in the like Manner to all Intents and Purposes as if such Person or Persons was or were the true Owner or Owners of such Goods, Wares, and Merchandize; provided such Consignee or Consignees shall not have Notice by the Bill of Lading for the Delivery of such Goods, Wares, or Merchandize, or otherwise, at or before the Time of any Advance of such Money or negotiable Security, or of such Receipt of Money or negotiable Security in respect of which such Lien is claimed, that such Person or Persons so shipping in his, her, or their own Name or Names, or in whose Name or Names any Goods, Wares, or Merchandize shall be shipped by any Person or Persons, is or are not the actual and *bonâ fide* Owner or Owners, Proprietor or Proprietors of such Goods, Wares, and Merchandize so shipped as aforesaid, any Law, Usage, or Custom to the contrary thereof in anywise notwithstanding: Provided also, that the Person or Persons in whose Name or Names any such Goods, Wares, or Merchandize are so shipped as aforesaid, shall be taken, for the Purposes of this Act, to have been intrusted therewith for the Purpose of Consignment or of Sale, unless the contrary thereof shall be made to appear by Bill of Discovery or otherwise, or be made to appear, or be shown in Evidence by any Person disputing such Fact.

Persons in possession of Bills of Lading, &c. to be the Owner so far as to make valid Contracts.

II. And be it further enacted, That from and after the First Day of *October* One thousand eight hundred and twenty-six, any Person or Persons intrusted with and in possession of any Bill of Lading, *India* Warrant, Dock Warrant, Warehouse Keeper's Certificate, Wharfinger's Certificate, Warrant or Order for Delivery of Goods, shall be deemed and taken to be the true Owner or Owners of the Goods, Wares, and Merchandize described and mentioned in the said several Documents herein-before stated respectively, or either of them, so far as to give Validity to any Contract or Agreement thereafter to be made or entered into by such Person or Persons so intrusted and in possession as aforesaid, with any Person or Persons, Body or Bodies Politic or Corporate, for the Sale or Disposition of the said Goods, Wares, and Merchandize, or any Part thereof, or for the Deposit or Pledge thereof, or any Part thereof, as a Security for any Money or negotiable Instrument or Instruments advanced or given by such Person or Persons, Body or Bodies Politic or Corporate, upon the Faith of such several Documents or either of them; provided such Person or Persons, Body or Bodies Politic or Corporate, shall not have Notice by such Documents or either of them, or otherwise, that such Person or Persons so intrusted as aforesaid is or are not the actual and *bonâ fide* Owner or Owners, Proprietor or Proprietors of such Goods, Wares, or Merchandize so sold or deposited or pledged as aforesaid; any Law, Usage, or Custom to the contrary thereof in anywise notwithstanding.

No Person to acquire a Security upon Goods in the Hands of an Agent for an antecedent Debt, beyond the Amount of the Agent's Interest in the Goods.

III. Provided always, and be it further enacted, That in case any Person or Persons, Body or Bodies Politic or Corporate, shall, after the passing of this Act, accept and take any such Goods, Wares, or Merchandize in Deposit or Pledge from any such Person or Persons so in possession and intrusted as aforesaid, without Notice as aforesaid, as a Security for any Debt or Demand due and owing from such Person or Persons so intrusted and in Possession as aforesaid, to such Person or Persons, Body or Bodies Politic or Corporate, before the Time of such Deposit or Pledge, then and in that Case such Person or Persons, Body or Bodies Politic or Corporate, so accepting or taking such Goods, Wares, or Merchandize in Deposit or Pledge, shall acquire no further or other Right, Title, or Interest in or upon or to the said Goods, Wares, or Merchandize, or any such Document as aforesaid, than was possessed, or could or might have been enforced by the said Person or Persons so possessed and intrusted as aforesaid, at the Time of such Deposit or Pledge as a Security as last aforesaid; but such Person or Persons, Body or Bodies Politic or Corporate, so accepting or taking such Goods, Wares, or Merchandize in Deposit or Pledge, shall and may acquire, possess, and enforce such Right, Title, or Interest as was possessed and might have been enforced by such Person or Persons so possessed and intrusted as aforesaid; any Rule of Law, Usage, or Custom to the contrary notwithstanding.

Persons may contract with known Agents in the ordinary Course of Business, or out of that Course if within the Agent's Authority.

IV. And be it further enacted, That from and after the First Day of *October* One thousand eight hundred and twenty-six, it shall be lawful to and for any Person or Persons, Body or Bodies Politic or Corporate, to contract with any Agent or Agents, intrusted with any Goods, Wares, or Merchandize, or to whom the same may be consigned, for the Purchase of any such Goods, Wares, and Merchandize, and to receive the same of and pay for the same to such Agent or Agents; and such Contract and Payment shall be binding upon and good against the Owner of such Goods, Wares, and Merchandize, notwithstanding such Person or Persons, Body or Bodies Politic or Corporate, shall have Notice that the Person or Persons making and entering into such Contract, or on whose Behalf such Contract is made or entered into, is an Agent or Agents; provided such Contract and Payment be made in the usual and ordinary Course of Business, and that such Person or Persons, Body or Bodies Politic or Corporate, shall not, when such Contract is entered into or Payment made, have Notice that such Agent or Agents is or are not authorized to sell the said Goods, Wares, and Merchandize, or to receive the said Purchase Money.

Persons may accept and take Goods, &c. in Pledge from known Agents; but in that Case shall acquire no further Interest than was possessed by such

V. And be it further enacted, That from and after the passing of this Act, it shall be lawful to and for any Person or Persons, Body or Bodies Politic or Corporate, to accept and take any such Goods, Wares, or Merchandize, or any such Document as aforesaid, in Deposit or Pledge from any such Factor or Factors, Agent or Agents, notwithstanding such Person or Persons, Body or Bodies Politic or Corporate, shall have such Notice as aforesaid, that the Person or Persons making such Deposit or Pledge is or are a Factor or Factors, Agent or Agents; but then and in that

Agent at the Time of such Pledge.

Case such Person or Persons, Body or Bodies Politic or Corporate, shall acquire no further or other Right, Title, or Interest in or upon or to the said Goods, Wares, or Merchandize, or any such Document as aforesaid, for the Delivery thereof, than was possessed or could or might have been enforced by the said Factor or Factors, Agent or Agents, at the Time of such Deposit or Pledge as a Security as last aforesaid; but such Person or Persons, Body or Bodies Politic or Corporate, shall and may acquire, possess, and enforce such Right, Title, or Interest as was possessed and might have been enforced by such Factor or Factors, Agent or Agents, at the Time of such Deposit or Pledge as aforesaid; any Rule or Law, Usage or Custom to the contrary notwithstanding.

Right of the true Owner to follow his Goods while in the Hands of his Agent or of his Assignee, in case of Bankruptcy, or to recover them from a Third Person, upon paying his Advances secured upon them.

VI. Provided always, and be it enacted, That nothing herein contained shall be deemed, construed, or taken to deprive or prevent the true Owner or Owners, or Proprietor or Proprietors, of such Goods, Wares, or Merchandize, from demanding and recovering the same from his, her, or their Factor or Factors, Agent or Agents, before the same shall have been so sold, deposited, or pledged, or from the Assignee or Assignees of such Factor or Factors, Agent or Agents, in the Event of his, her, or their Bankruptcy; nor to prevent such Owner or Owners, Proprietor or Proprietors, from demanding or recovering of and from any Person or Persons, Body or Bodies Politic or Corporate, the Price or Sum agreed to be paid for the Purchase of such Goods, Wares, or Merchandize, subject to any Right of Set-off on the Part of such Person or Persons, Body or Bodies Politic or Corporate, against such Factor or Factors, Agent or Agents; not to prevent such Owner or Owners, Proprietor or Proprietors, from demanding or recovering of and from such Person or Persons, Body or Bodies Politic or Corporate, such Goods, Wares, or Merchandize so deposited or pledged, upon Repayment of the Money, or on Restoration of the negotiable Instrument or Instruments so advanced or given on the Security of such Goods, Wares, or Merchandize as aforesaid, by such Person or Persons, Body or Bodies Politic or Corporate, to such Factor or Factors, Agent or Agents; and upon Payment of such further Sum of Money, or on Restoration of such other negotiable Instrument or Instruments (if any) as may have been advanced or given by such Factor or Factors, Agent or Agents, to such Owner or Owners, Proprietor or Proprietors, or on Payment of a Sum of Money equal to the Amount of such Instrument or Instruments; nor to prevent the said Owner or Owners, Proprietor or Proprietors, from recovering of and from such Person or Persons, Body or Bodies Politic or Corporate, any Balance or Sum of Money remaining in his, her, or their Hands, as the Produce of the Sale of such Goods, Wares, or Merchandize, after deducting thereout the Amount of the Money or negotiable Instrument or Instruments so advanced or given upon the Security thereof as aforesaid: Provided always, that in case of the Bankruptcy of any such Factor or Agent, the Owner or Owners, Proprietor or Proprietors of the Goods, Wares, and Merchandize so pledged and redeemed as aforesaid, shall be held to have discharged *pro tanto* the Debt due by him, her, or them to the Estate of such Bankrupt.

In case of Bankruptcy of Factor, the Owner of Goods so pledged and redeemed shall be held to have discharged pro tanto the Debt due from him to Bankrupt.

VII. And

Agents fraudulently pledging the Goods of their Principals deemed guilty of a Misdemeanor;

VII. And whereas it is expedient to prevent the improper Deposit or Pledge of Goods, Wares, or Merchandize, or the Documents relating to such Goods, Wares, or Merchandize, intrusted or consigned as aforesaid to Factors or Agents; be it therefore enacted, That if any such Factor or Agent, at any Time from and after the said First Day of *October* One thousand eight hundred and twenty-six, shall deposit or pledge any Goods, Wares, or Merchandize, intrusted or consigned as aforesaid to his or her Care or Management, or any of the said several Documents so possessed or intrusted as aforesaid, with any Person or Persons, Body or Bodies Politic or Corporate, as a Security for any Money or negotiable Instrument or Instruments borrowed or received by such Factor or Agent, and shall apply or dispose thereof to his or her own Use, in violation of good Faith, and with Intent to defraud the Owner or Owners of any such Goods, Wares, or Merchandize, every Person so offending, in any Part of the United Kingdom, shall be deemed and taken to be guilty of a Misdemeanor, and being convicted thereof according to Law, shall be sentenced to Transportation for any Term not exceeding Fourteen Years, or to receive such other Punishment as may by Law be inflicted on Persons guilty of a Misdemeanor, and as the Court before whom such Offender may be tried and convicted shall adjudge.

may be transported not exceeding Fourteen Years, &c.

Not to extend to Cases in which the Agent has not made the Goods a Security for any Sum beyond the Extent of his own Lien.

VIII. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed to extend to subject any Person or Persons to Prosecution, for having deposited or pledged any Goods, Wares, or Merchandize so intrusted or consigned to him, her, or them, provided the same shall not be made a Security for or subject to the Payment of any greater Sum or Sums of Money than at the Time of such Deposit or Pledge was justly due and owing to such Person or Persons from his, her, or their Principal or Principals; Provided nevertheless, that the Acceptance of Bills of Exchange by such Person or Persons drawn by or on account of such Principal or Principals, shall not be considered as constituting any Part of such Debt so due and owing from such Principal or Principals within the true Intent and Meaning of this Act, so as to excuse the Consequence of such a Deposit or Pledge, unless such Bills shall be paid when the same shall respectively become due.

Acceptances of Bills by an Agent not to create a Lien so as to excuse the Pledge, unless the Bills are paid when due.

Act not to extend to Partners not being privy to the Offence.

IX. Provided also, and be it further enacted, That the Penalty by this Act annexed to the Commission of any Offence intended to be guarded against by this Act, shall not extend or be construed to extend to any Partner or Partners or other Person or Persons of or belonging to any Partnership, Society, or Firm, except only such Partner or Partners, Person or Persons, as shall be accessary or privy to the Commission of such Offence; any thing herein contained to the contrary in anywise notwithstanding.

Act not to lessen any Remedy at Law or Equity which the Party aggrieved have

X. Provided also, and be it further enacted, That nothing in this Act contained, nor any Proceeding, Conviction, or Judgment to be had or taken thereupon, shall hinder, prevent, lessen, or impeach any Remedy at Law or in Equity, which any Party or Parties aggrieved by any Offence against this Act might or would have had or

may be entitled to adopt,

have been entitled to against any such Offender if this Act had not been made, nor any Proceeding, Conviction, or Judgment had been had or taken thereupon; but nevertheless, the Conviction of any Offender against this Act shall not be received in Evidence in any Action at Law or Suit in Equity against such Offender: And further, that no Person shall be liable to be convicted by any Evidence whatever as an Offender against this Act, in respect of any Act, Matter, or Thing done by him, if he shall at any Time previously to his being indicted for such Offence have disclosed any such Matter or Thing on Oath under or in consequence of any compulsory Process of any Court of Law or Equity, in any Action, Suit, or Proceeding, in or to which he shall have been a Party, and which shall have been *bonâ fide* instituted by the Party aggrieved by the Act, Matter, or Thing which shall have been committed by such Offender aforesaid.

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