

FACTORS ORDINANCE, 1927.⁽¹⁾

No. 4 of 1927.

An Ordinance Relating to Factors.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Factors Ordinance*, Citation. 1927.⁽¹⁾

2. Sections Eight to Twenty inclusive of the *Mercantile Ordinance*, 1912-1924, are repealed.

PRELIMINARY.

3. In this Ordinance—

The expression “Mercantile Agent” means a mercantile agent having in the customary course of his business as such agent authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods;

The term “Goods” includes wares and merchandise;

The expression “Document of Title” includes a bill of lading dock warrant warehouse-keeper’s certificate warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by endorsement or by delivery the possessor of the document to transfer or receive goods thereby represented;

The term “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.

Definitions.

Q. 56 Vic. No. 8,
s. 2.

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
9.6.1927	7.11.1927	9.6.1927 (<i>Ordinances etc. of Papua</i> , 1927, p. 31)

COMMERCIAL LAW—

For the purposes of this Ordinance a person is deemed to be in possession of goods or of the documents of title to goods when 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.

DISPOSITIONS BY MERCANTILE AGENTS.

Powers of mercantile agent with respect to disposition of goods.
Q. 56 Vic. No. 8,
s. 3.

4.—(1.) When 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 Ordinance be as valid as if he were expressly authorized by the owner of the goods to make the same: Provided that the person taking under the disposition acts in good faith and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

(2.) When 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.) When 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 Ordinance be deemed to be with the consent of the owner.

(4.) For the purposes of this Ordinance the consent of the owner shall be presumed in the absence of evidence to the contrary.

Effect of pledges of documents of title.

Q. *Ib.* s. 4.

5. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

Pledge for antecedent debt.
Q. *Ib.* s. 5.

6. When 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.

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7. The consideration necessary for the validity of a sale pledge or other disposition of goods in pursuance of this Ordinance 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 when 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.

Rights acquired by exchange of goods or documents.
Q. 56 Vic. No. 8, s. 6.

8. For the purposes of this Ordinance an agreement made with a mercantile agent through a clerk or other person authorized 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.

Agreements through clerks, etc.
Q. *Ib.* s. 7.

9.—(1.) When 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.

Provisions as to consignors and consignees.
Q. *Ib.* s. 8.

(2.) Nothing in this section shall limit or affect the validity of any sale pledge or disposition by a mercantile agent.

DISPOSITIONS BY SELLERS AND BUYERS OF GOODS.

10. When a person having sold goods continues or is in possession of the goods or of the documents of title to the goods the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale pledge or other disposition thereof or under any agreement for sale pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Disposition by seller remaining in possession.
Q. *Ib.* s. 9.

11. When a person having bought or agreed to buy goods obtains with the consent of the seller possession of the goods or the documents of title to the goods the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale pledge or other dis-

Disposition by buyer obtaining possession.
Q. *Ib.* s. 10.

COMMERCIAL LAW—

position thereof or under any agreement for sale pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Effect of transfer of documents on vendor's lien or right of stoppage *in transitu*.

Q. 56 Vic. No. 8, s. 11.

12. When 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*.

SUPPLEMENTAL.

Mode of transferring documents.

Q. *Ib.* s. 12.

13. For the purposes of this Ordinance the transfer of a document may be by endorsement or if the document is by custom or by its express terms transferable by delivery or makes the goods deliverable to the bearer then by delivery.

Saving for rights of true owner.

Q. *Ib.* s. 13.

14.—(1.) Nothing in this Ordinance shall authorize an 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.

(2.) Nothing in this Ordinance shall prevent the owner of goods from recovering the goods from an agent or his trustee in bankruptcy at any time before the sale or pledge thereof or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof on satisfying the claim for which the goods were pledged and paying to the agent if by him required any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto or any of them by way of lien as against the owner or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

(3.) Nothing in this Ordinance shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same or any part of that price subject to any right of set-off on the part of the buyer against the agent.

Saving of common law powers of agent.

Q. *Ib.* s. 14.

15. The provisions of this Ordinance shall be construed in enlargement and not in derogation of the powers exercisable by an agent independently of this Ordinance.