

No. 1898.

A BILL

To provide for the deposit by every mercantile agent of the proceeds of goods sold, or of goods or the documents of title to goods pledged or otherwise disposed of by him in a trust account in a bank; to provide for the appropriation of such proceeds; and for purposes consequent on or incidental to the above objects.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. Where a mercantile agent acting in the ordinary course of business of a mercantile agent sells goods, or pledges, or makes any other disposition of goods or documents of title to goods he shall, within _____ days after receipt by him of the same, deposit the proceeds of any such sale, pledge, or other disposition to the credit of a general or separate trust account in some bank carrying on business in New South Wales.

Payment by mercantile agents of proceeds of sale, pledge, or charge of goods to trust account.

2. Such agent may apply the proceeds of any such sale, pledge, or other disposition then being at credit of any such account—

Application of proceeds.

(a) in and towards payment of the expenses, commission, and other charges of and incidental to the sale, pledge, or other disposition; and

(b) in and towards payment of any moneys owing to him by the person (in this Act called "the principal") on whose behalf the sale, pledge, or other disposition was made or given.

And subject to any payments authorised by this section he shall pay such proceeds to the principal or as he may direct and not otherwise.

3. The proceeds of any such sale, pledge, or other disposition while in a trust account shall not be liable to be attached or taken in execution under the order or process of any Court, except at the suit of the principal for the recovery of such proceeds or any part thereof, or at the suit of any other person for the recovery of any expenses, commission, or other charges of or incidental to the sale, pledge, or other disposition.

Proceeds not to be taken in execution or vest in assignee or bankruptcy of agent.

If such agent becomes bankrupt the proceeds of any such sale, pledge, or other disposition at credit of the trust account shall not vest in the official assignee or any trustee, but on application of any person interested therein all such proceeds (less such costs, charges, and expenses in respect of the application and of the carrying out of the distribution ordered as the judge may allow out of such proceeds) shall be distributed by the judge in bankruptcy among the principals, and the persons to whom money is due in respect of any expenses, commission, or other charges of and incidental to the sale, pledge, or other disposition in proportion to the several amounts payable to them out of such proceeds; and in respect of the moneys so distributed, the principals and the said persons shall rank in the bankruptcy as secured creditors.

4. Any such agent who wilfully contravenes or wilfully neglects to comply with any provision of this Act shall be liable to a penalty not exceeding *one hundred* pounds, to be recovered in an action of debt by the Attorney-General on behalf of Her Majesty in any Court of competent jurisdiction.

Penalty.

5. Any such agent who fraudulently converts to his own use the proceeds of any goods sold, pledged, or otherwise disposed of by him, or of any documents of title to goods pledged or otherwise disposed of by him, or any part of such proceeds, or fraudulently omits to pay such proceeds or any part thereof as hereinbefore in this Act directed shall be guilty of larceny and may be convicted thereof upon an indictment for larceny.

Punishment for fraudulently converting proceeds of sale, pledge, or charge.

6. In this Act—

Definition.

“Bank” means a company or corporation carrying on the business of banking only.

“Document of title” includes any bill of lading, dock 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 delivery, the possessor of the document to transfer or receive goods thereby represented.

“Goods” includes wares and merchandise.

“Mercantile agent” means a mercantile agent having in the customary course of his business as such agent authority to sell goods or to raise money on the security of goods or documents of title to goods.

“Pledge” includes any contract pledging or giving a lien or security on goods or on the document of title to goods whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.

“Proceeds” includes any negotiable instrument received in respect of the sale, pledge, or other disposition of goods or the documents of title to goods, and any such instrument shall be deemed to be deposited to the credit or to be at credit of a trust account if the instrument is deposited or lies at the bank for collection or discount and for payment of the amount realised to the credit of the trust account.

7. This Act may be cited as the “Mercantile Agents Act, 1898.”

Short title.