

## [HOUSE OF LORDS.]

H. L. (Sc.) INGLIS . . . . . APPELLANT ;  
 1898  
 July 11. ROBERTSON AND BAXTER . . . . . RESPONDENTS.

*Factor—Pledge—Documents of Title—Foreign Arrestment—Conflict of Laws—  
 Goods in Scotland—Factors Acts, 1889, 1890 (52 & 53 Vict. c. 45, ss. 3, 9 ;  
 53 & 54 Vict. c. 40, s. 1).*

Where goods are lodged in warehouses in Scotland a pledgee of the goods must, to make effective all real rights which depend on the constructive delivery of the goods, give notice of the pledge to the warehouse-keeper.

The Factors Act, 1889, extended to Scotland by the Factors (Scotland) Act, 1890, enacts—s. 3: “A pledge of the documents of title to goods shall be deemed to be a pledge of the goods”; and s. 1: “For the purposes of this Act” (sub-s. 5) “The expression ‘pledge’ shall include 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.” Sect. 9 prescribes that the effect of delivery or transfer of the documents of title of the goods under any pledge, &c., by a person who having bought the goods obtains with the consent of the seller possession of the goods or documents of title, 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.

Goods were stored by G., a domiciled Englishman, in a bonded warehouse in Glasgow, transferred into the name of G. as owner; and the warehouse-keeper issued to G. delivery orders shewing that the goods were held to G.’s order “or assigns by indorsement hereon.” G. obtained a loan from I., an English merchant, and delivered to him in England a letter of hypothecation bearing that he deposited a part of the goods with him in security, with power of sale, and G. indorsed and handed to I. the delivery warrants. I. did not intimate or give notice of the right he had acquired to the warehouse-keeper. R. & B., claiming as personal creditors of G., arrested the goods in the hands of the warehouse-keeper in order to found jurisdiction against G. in Scotland; and then raised an action against him in the Scottish Court, upon dependence of which they again arrested the goods, claiming through the arrestment a preferable right thereto:—

*Held*, affirming the decision of the majority of the whole Scottish judges, that the case was governed by the law of Scotland, and that the right of the pledgee, I., in the goods was defeated by the arrestment executed by R. & B., I. not having intimated his pledge to the warehouse-keeper:

*Held*, also, that s. 3 of the Factors Act, 1889, was merely intended to

define the full effect of the pledge of the documents of title made by a mercantile agent, and that it had no application to the case of the pledge of the documents of title by one in the position of G., who was not a mercantile agent within the meaning of the Act; nor was G. a pledgor within s. 9 of the same Act.

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APPEAL from a decision of the majority of the whole judges of the Court of Session, Scotland. (1) The facts were given as follows by Lord Watson:—

“Walter C. Goldsmith, a wine merchant in London, purchased, in December, 1893, from the respondents Robertson and Baxter, who are wine and spirit merchants in Glasgow, a quantity equal to 600 hogsheads of blended Scotch whisky deliverable during the year 1894. The whisky was stored in a bonded warehouse at Glasgow. From the productions made by the appellant in this process it appears that Goldsmith after his purchase had the whisky transferred to his name in the books of the Clyde Bonding Company, and obtained from them delivery orders in these or similar terms: ‘Warrant for ten hogsheads, whisky transferred in our books, and held to the order of Walter C. Goldsmith or assigns by indorsement hereon.’

“In December, 1894, Goldsmith obtained a loan of 3000*l.* from the appellant, an English merchant, to whom he delivered a letter purporting to hypothecate 180 hogsheads and 101 quarter casks of Scotch whisky as per schedule annexed, in security for the loan, with interest at 7*l.* per cent. per annum, and containing a power of sale. The whisky thus hypothecated was part of the quantity which had been purchased from the respondents by Goldsmith, and was still lying in his name in the bonded warehouse at Glasgow. Along with the letter Goldsmith indorsed and handed to the appellant the warrants which he held for delivery of the whisky. The appellant did not intimate the right and interest which he had thus acquired in the whisky to the keepers of the bonded warehouse.

“Goldsmith having failed to make payment to the respondents, Robertson and Baxter, of the sum of 1000*l.* 10*s.* 6*d.*, being the balance of price then remaining due to them, they, on

H. L. (Sc.) February 11, 1895, arrested the whisky in the hands of the Clyde Bonding Company in order to found jurisdiction against their debtor, and then raised an action against him before the Court of Session, upon the dependence of which they again arrested the whisky on February 18, 1895.

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“ Under an arrangement made between the respondents and Alfred Cotton Harper, chartered accountant in London, as trustee administering the estate and affairs of Walter C. Goldsmith, the whisky was sold in April, 1895, upon consignment of the sum of 1000*l.* in the British Linen Company's Bank, Edinburgh, as a surrogatum for the goods sold, subject to the arrestments and claims of all parties who had an interest in the whisky. The present action of multiple-poining was thereafter brought by the holders of the consigned fund, and two competing claims were lodged, which have been keenly contested and have led to this appeal. The respondents claim the fund in medio, not as having a right of retention or other interest as unpaid sellers of the goods, but as personal creditors of Goldsmith, in whose name as owner the goods were at the dates of their arrestments held in Scotland by the actual custodiers, the Clyde Bonding Company. The appellant, on the other hand, claims an interest in the fund in medio preferable to that of the respondents, upon the ground that, prior to the date of their arrestments, he had become pledgee and indorsee of the delivery orders which constituted the documents of title to the goods within the meaning of the Factors Act, 1889. He maintains that the legal effect of such a pledge, both according to the law of England, and according to the law of Scotland as altered by the provisions of the Factors (Scotland) Act, 1890 (1), was to vest the property of the goods in him.”

(1) By s. 1, sub-s. 1, of the Factors Act, 1889: “The expression ‘mercantile agent’ shall mean 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:

“(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:

“(3.) The expression ‘goods’ shall include wares and merchandise:

“(4.) The expression ‘document of title’ shall include any bill of lading,

The agreement of deposit or hypothecation by Goldsmith to the appellant was as follows: "London, December 18th, 1894.

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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 authorizing or purporting to authorize either by indorsement or by delivery the possessor of the document to transfer or receive goods thereby represented."

"(5.) The expression 'pledge' shall include 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."

Sects. 2 to 7 of the Act come under the heading, "Dispositions by Mercantile Agents."

Sect. 2 is as follows: "(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 Act, 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."

Sect. 3 provides: "A pledge of the documents of title to goods shall be deemed to be a pledge of the goods."

Sects. 8 to 10 come under the words "Dispositions by Sellers and Buyers of Goods."

Sect. 8: "Where 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."

Sect. 9: "Where 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 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 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."

Sect. 10: "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."

H. L. (Sc.) —In consideration of your advancing to me the sum of 3000*l.*, I hereby deposit with you (having full power and authority to do so) the wines and spirits specified in the schedule hereto, as a security for the payment of the said sum of 3000*l.*, with interest thereon until the date of payment at the rate of 7*l.* per centum per annum, with full power for you to sell the same without further consent from me, either by public or private sale, at your option, in the event of my not paying the said amount and interest when demanded; and after reimbursing yourself out of the proceeds, all charges, commissions, and expenses of every description attending such sale or sales, and consequent upon my making default in payment of the said principal and interest, you are to apply the remainder of such proceeds in payment of the principal and interest for the time being owing on this security; and in case of deficiency I will make up and pay to you such deficiency on demand: And I agree to pay all charges of every description in connection with the said wines and spirits and the deposit thereof until redeemed by me."

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Then follows a schedule giving certain quantities of whiskies. The form of the delivery order was as follows:—

"I.—Delivery order granted by THE CLYDE BONDING COMPANY in favour of WALTER C. GOLDSMITH.

Office, 56, Hope Street,  
 Glasgow, 17th December, 1894.

Warrant for ten hhds. whisky transferred in our books and held to the order of Walter C. Goldsmith or assigns by endorsement hereon.

Rent commences 3/6/95.

$\frac{94}{359}$  \$31/40 Ten hhds. whisky.  
 F O

p. CLYDE BONDING CO.  
 3d. Stp.  
 JNO. W. MATHIESON.

*Endorsed on Back—*

WALTER C. GOLDSMITH.  
 R. W. INGLIS.

Transfer to my name.

pro J. W. BASHFORD.  
 W. J. PENWARDEN."

Certain conditions were printed on the back of the delivery order which it is unnecessary to give. H. L. (Sc.)

The appellant in his condescendence (art. 1), after giving an account of the loan, continued as follows: "The transaction in question was entered into between the claimant and the said W. C. Goldsmith in England, both parties being domiciled in that country. The said agreement was executed in England, and the warrants indorsed and delivered in England. By the law of England, the said agreement, indorsement, and delivery effected a transfer of the ownership of the whiskies to this claimant, or otherwise pledged the said goods to this claimant, so as to give him a right to said goods preferable to any arrestments subsequently used by creditors of the said W. C. Goldsmith, or otherwise transferred to this claimant a right in security preferable to any right or claim founded on the arrestments used by the said Robertson and Baxter. The fund in medio consists of the proceeds of said whisky." And the respondents answered thereto: "Admitted that the claimant Inglis advanced to Goldsmith the sum of 3000*l.* on loan, and that both he and Goldsmith were domiciled in England, and this loan transaction was entered into in that country. . . . Explained that the claimants Robertson and Baxter, who claim the fund in priority to this claimant, are domiciled in Scotland, and that they claim in respect of arrestments duly used by them against the said whisky according to the law of Scotland. Explained that the claimant Inglis did not get delivery, and was never in possession of the whisky referred to in the said agreement. These spirits remained in the possession of Goldsmith, and lay in his name in the custody at the Clyde Bonding Company in their stores in Glasgow, until sold on or about the month of June, 1895, by arrangement. . . . Explained further that the 'warrants' (or delivery orders) referred to in the agreement founded on were as follows: [gives as above] and that although these 'warrants' for the spirits in question were indorsed by Goldsmith and handed to the claimant Inglis when the loan was made, the claimant Inglis gave no intimation thereof to the Clyde Bonding Company, and did not claim or receive delivery or possession of said goods under said warrants,

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 1898 him as stated in the agreement founded on. . . . Explained  
 INGLIS that a 'warrant' is only an authority to the holder to claim  
 v. and receive possession of the goods mentioned therein. The  
 ROBERTSON. claimant Inglis neither claimed nor received possession of these  
 — goods, and failed duly to complete his title thereto."

The condescendence further set out the facts of W. C. Goldsmith's assignment for the benefit of his creditors in February, 1895, and the fact of the respondents' arrestment in Scotland.

The Lord Ordinary (Lord Kyllachy) on March 20, 1896, sustained the claim of the respondents. The appellant reclaimed to the Inner House, and the Second Division ordered minutes of debate or arguments to be printed and laid before the whole Court. On March 18, 1897, the Second Division, in conformity with the opinions of the whole judges (except Lord Young, who dissented), found in favour of the respondents, and the Lord Ordinary's interlocutor was affirmed.

March 15, 17. *Pyke, Q.C., and Morten* (with them *Wootten*), for the appellant. The appellant claims, first, under s. 3, and, secondly, under s. 9 of the Factors Act, 1889, extended in the next year to Scotland. By s. 3 a pledge of the documents of title is a pledge of the goods, and the delivery order or warrant which Goldsmith indorsed and delivered over to the appellant came within the definition of documents of title. Goldsmith was within this section. Then as to s. 9, Goldsmith was in the position of a person who having bought or agreed to buy goods obtained with the consent of the seller (which consent here must be inferred from the facts) possession of the goods. And he must be taken to have delivered or transferred in the terms of the section the documents of title to the goods under a pledge, or an agreement to pledge the goods, or under a pledge of the documents of title, and this under s. 3 operated as an effectual and complete pledge of the goods. The word "pledge" by s. 3 is to bear its natural meaning; and if it is confined and limited to "pledges" by "mercantile agents," mercantile agents will have a greater power given to them than is given to principals: see as to the effect of the heading to a

section: *Union Steamship Company of New Zealand v. Melbourne Harbour Trust Commissioners*. (1) Sect. 3 did not effect any revolutionary change in the law of Scotland, for these documents have been looked upon as the goods themselves. It simply has the effect of rendering intimation to the warehouse-keeper unnecessary. It must be admitted that, apart from the Factors Acts of 1889, 1890, the appellant could not make good his title in Scotland as against the respondents' arrestment.

[They also commented on 4 Geo. 4, c. 83; 6 Geo. 4, c. 94; 5 & 6 Vict. c. 39, s. 4; 40 & 41 Vict. c. 39; the Sale of Goods Act, 1893, s. 25; Benjamin on Sales, 4th ed. p. 603; *Farina v. Home* (2); *Vickers v. Hertz* (3); *Glyn, Mills, Currie & Co. v. East and West India Dock Co.* (4)]

[LORD HERSCHELL mentioned *Sewell v. Burdick*. (5)]

*Upjohn, Q.C.*, *Younger* (of the Scottish Bar), and *D. D. Robertson*, appeared for the respondents, but were not called upon.

The House took time for consideration.

EARL OF HALSBURY L.C. In this case the question to be determined is whether a certain parcel of whisky—or rather the sum of 1000*l.* 10*s.* 6*d.*, representing its value—belongs to the respondents in this appeal; and it cannot be doubted that, unless the Factors Act, 1890 (53 & 54 Vict. c. 40) (extending the English Factors Act, 1889 (52 & 53 Vict. c. 45) to Scotland), is in the way of the respondents who arrested the whisky in the hands of the Clyde Bonding Company, the creditors (that is to say the respondents, who have so arrested the whisky) are entitled to the sum in question.

The section in respect of which the question arises is the 3rd section, which enacts that “a pledge of the documents of title to goods shall be deemed to be a pledge of the goods.” It can hardly be denied that if that section is applicable to this case the pledging of the documents of title would be for all purposes

(1) (1884) 9 App. Cas. 365, 368. (3) (1871) 2 Sco. & D. 113.

(2) (1846) 16 M. & W. 119. (4) (1882) 7 App. Cas. 591.

(5) (1884) 10 App. Cas. 74.

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 1898 as if the goods themselves had been physically handed over to  
 INGLIS the pledgee. But the only point in this case seems to me to  
 v. depend upon whether that section is applicable to the facts in  
 ROBERTSON. this case; and that in turn depends upon whether the person  
 Earl of Halsbury pledging comes within that part of the statute which the  
 L.C. Legislature has separated from the other parts of the statute  
 as applicable to "Dispositions by Mercantile Agents."

The Act, which is a consolidation Act and also an amending Act, is separated into parts. Sect. 1 is "Preliminary," and the definition of a mercantile agent is: "A mercantile agent shall mean 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."

From the 2nd section to the 7th inclusive the Legislature has enacted what shall be the law in respect of "Dispositions by Mercantile Agents." From the 8th to the 10th, "Dispositions by Sellers and Buyers of Goods," and the 11th to the 17th are described as "Supplementary."

I cannot doubt that each of the sections included in this separate portion of the statute must be read as only applicable to the cases of persons indicated by that separate part of the statute; and, if so, it seems to me that the case is free from doubt, since under the circumstances of this case there was no disposition by a mercantile agent.

This seems to me to dispose of the case, though indeed it was suggested that under the 9th section (which comes within the part of the statute applicable to sellers and buyers of goods) it might be contended here that these goods were obtained with the consent of the seller and under the conditions prescribed by that section. But it appears to me the facts raise no such question.

I have referred to the English Act exclusively in what I have said simply because the Act has been extended in its operation to Scotland, subject to certain provisions not relevant to any question raised in this case. If the general law of Scotland be different from that of England in respect of pledges, though I

do not say it is, that Act certainly did not purport to alter, nor did it in fact alter, in any other respect than that specially enacted, the law of Scotland as it stood at the passing of the Act.

I am, therefore, of opinion that this appeal should be dismissed with costs; and I move your Lordships accordingly.

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LORD WATSON, having stated the facts as above given, continued:—

I do not find it necessary to consider, for the purposes of this appeal, whether, or in what circumstances, according to the law of England, a valid pledge of documents of title to goods stored in a bonded warehouse will enable the pledgee to defeat the right of a creditor of the person who in the warehouse books is entered as the owner of the goods. The present question does not arise between two Englishmen, nor does it arise in relation to mercantile transactions which can reasonably be characterised as English. The situs of the goods was in Scotland. The Scottish creditors who claim their proceeds did not make any English contract; and in order to attach them they made use of the execution which the law of Scotland permits for converting their personal claim against the owner into a real charge upon the goods themselves. It would, in my opinion, be contrary to the elementary principles of international law, and, so far as I know, without authority, to hold that the right of a Scottish creditor when so perfected can be defeated by a transaction between his debtor and the citizen of a foreign country which would be according to the law of that country, but is not according to the law of Scotland, sufficient to create a real right in the goods.

I can see no reason to doubt that, by Scottish law as well as English, the indorsement and handing over of delivery orders in security of a loan, along with a letter professing to hypothecate the goods themselves, is sufficient in law, and according to mercantile practice, to constitute a pledge of the documents of title, whatever may be the value and effect of the right so constituted. In my opinion, the right so created, whether in England or in Scotland, will give the pledgee a right to retain

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the ipsa corpora of the documents of title until his advance is repaid. The crucial question in this case is whether the right goes farther, and vests in the pledgee of the documents, not a jus ad rem merely, but a real interest in the goods to which these documents relate. That is a question which I have no hesitation in holding must, in the circumstances of this case, be solved by reference to the law of Scotland. The whisky was in Scotland, and was there held in actual possession by a custodier for Goldsmith as the true owner. That state of the title could not, so far as Scotland was concerned, be altered or overcome by a foreign transaction of pledge which had not, according to the rules of Scottish law, the effect of vesting the property of the whisky, or, in other words, a jus in re, in the pledgee.

I have been surprised by the suggestion, which appears to have found favour with one of the learned judges in the Court below, that the recent decision of this House in *North Western Bank v. Poynter, Son & Macdonalds* (1) is an authority for holding that this appeal ought to be decided according to English law. The circumstances of that case appear to me to stand in marked contrast to the facts of this appeal. There a Liverpool firm owned and held the bills of lading of a cargo destined to the port of Glasgow. The firm obtained an advance from a Liverpool bank, to whom they, as a security, duly indorsed the bill of lading, which carried the property of the goods according to Scottish as well as English law. The bank sent the bill of lading, without indorsing it, to the pledgors in Liverpool in order that they might act as the agents of the bank in selling the cargo, and receiving and accounting for the price. Upon that footing the pledgors sold the cargo, and a Scottish creditor, to whom they owed a personal debt, arrested the price in the hands of the purchaser in Scotland, and claimed a preferable right to it, upon the ground that by the law of Scotland the pledgees had lost their right of property in the cargo, which had reverted to the pledgors in consequence of their having returned the bill of lading to them for a temporary and special purpose. I thought

(1) [1895] A. C. 56.

at the time, and I remain of opinion with my noble and learned friend Lord Herschell, that, in these circumstances, the relative rights of the pledgor and the pledgee depended upon the law of England, the country in which the pledge of the bill of lading was made, and in which the facts which were said to have destroyed the right of the pledgees occurred. I am not prepared to hold that, whenever the cargo of a ship is destined to a port in one country, the dealings of the owner of the cargo with the bill of lading which represents and carries the property of the goods must in every other country be governed by the law of the locus where the ship is to unload.

It was not disputed by the appellant's counsel, and it is hardly necessary to repeat, that by the common law of Scotland the indorsation and hypothecation of delivery orders, although it may give the pledgee a right to retain the documents, does not give him any real right in the goods which they represent. He can only attain to that right by presenting the delivery orders to the custodier by whom they were granted, and obtaining delivery of the goods from him, or by making such intimation of his right to the custodier as will make it the legal duty of the latter to hold the goods for him. His right, which in so far as it relates to the goods is in the nature of a *jus ad rem*, will be defeated if, before he has either obtained delivery or given such intimation, the goods are validly attached in the hands of the custodier by a creditor of the person for whom the custodier holds them.

It was argued, however, that the common law of Scotland has been materially altered by the provisions of the Factors Act, 1889, their effect being that a pledge of the documents of title is by itself sufficient to carry a real right to the goods; and that the pledgee of the documents, from the moment when his right is completed by indorsation and delivery, is in the same position as if he had been pledgee of the goods and had obtained possession of them. The statute of 1889 is an English Act, which consolidates and repeals the previous Factors Acts from 4 Geo. 4, c. 83, to 40 & 41 Vict. c. 39. But, by the Factors (Scotland) Act, 1890, the whole provisions of the English statute of 1889 are extended to Scotland, and must therefore be

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H. L. (Sc.) construed as if they had originally been made applicable to that country.

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Two clauses of the Act of 1889 were founded on by the appellant. The first of these is s. 3, which enacts that "a pledge of the documents of title to goods shall be deemed to be a pledge of the goods." So far as it applies, the language of that clause is unambiguous. It provides that to that extent a pledge of the documents of title shall, although in point of fact it is not so, be nevertheless regarded in law as equivalent to a pledge of the goods. If the enactment had been embodied in a statute which contemplated an alteration of the general law with regard to contracts of pledge in Scotland, I should have had little difficulty in holding that its effect would have been to make a pledge of the documents of title in all cases equivalent to a completed pledge of the goods themselves. But I am unable to come to the conclusion that the clause was meant to be, or is, of general application. It is one of a group of clauses which are collected under the statutory heading, "Dispositions by Mercantile Agents"; and an examination of the context of these clauses shews conclusively, in my opinion, that the enactments of s. 3 were merely intended to define the full effect of a pledge of the documents of title made by a mercantile agent under and by virtue of one or other of the sub-sections of the preceding clause (s. 2). Accordingly, s. 3 has, in my apprehension, no application to the case of a pledge of documents of title by one who was in the position of Goldsmith, or by any other person who is not a mercantile agent within the meaning of the Act of 1889.

The other clause founded upon by the appellant was s. 9, one of a group of clauses which occur under the statutory heading "Dispositions by Sellers or Buyers of Goods." The main if not the sole object of these clauses appears to be this—to protect the purchaser or pledgee of documents of title deriving right from one who is lawfully in possession of them against a claim of retention for unpaid price, or a right of stoppage in transitu, by the original seller, in cases where the purchaser or pledgee has had no notice of such claim or right. Goldsmith, from whom the appellant derived his right as pledgee to the

documents of title representing the whisky in question, was not a pledgor within the meaning of s. 9, who must be a person who has obtained the documents of title either from his seller, or with consent of his seller. Goldsmith did not obtain the documents of title which he pledged to the appellant from the respondents, who were his sellers, or with their consent. He got the documents in his own right and in his own name, as owner of the whisky, directly from the warehousemen after the goods had been transferred to his name in the warehouse books.

I am therefore of opinion that the interlocutor appealed from ought to be affirmed with costs.

LORD HERSCHELL. [His Lordship stated the facts, and continued :—]

It was admitted on behalf of the appellant that, apart from the provisions of the Factors Act, 1889, which were extended to Scotland by an Act of the year 1890, the claim of the respondents as arresting creditors must prevail. The question turns, then, on the construction of certain provisions of the Act of 1889. The section mainly relied on is the third, which is in these terms: "A pledge of the documents of title to goods shall be deemed to be a pledge of the goods."

I think that in the present case there was a pledge of documents of title to goods. They were indorsed and handed to the appellant as security for an advance, and he was clearly entitled to hold them until the advance had been repaid. This appears to me to have constituted a pledge of the documents, and I fail to see how it was any the less a pledge because the agreement of December 18 was at the same time executed by Goldsmith. But it is not necessary in the view I take to express an opinion upon the point so much discussed in the judgments in the Court of Session, whether the effect of the enactment is to put the pledgee of the documents of title in the same position as if he had received possession of the goods to which the documents relate. I think the enactment has no application to the present case, inasmuch as the pledge was not a disposition by a mercantile agent, and, in my opinion, it is to such dispositions only that the section applies. It is true

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H. L. (Sc.) that it is general in its terms, but it is one of a group of sections headed "Dispositions by Mercantile Agents." The Act is divided into parts. The first, headed "Preliminary," consists of a definition clause. The last part, headed "Supplemental," contains provisions as to the mode of transfer "for the purposes of this Act," and certain savings. The other two parts are headed respectively "Dispositions by Mercantile Agents," and "Dispositions by Buyers and Sellers of Goods." These headings are not, in my opinion, mere marginal notes, but the sections in the group to which they belong must be read in connection with them and interpreted by the light of them. It appears to me that the Legislature has clearly indicated the intention that the provisions of s. 3 should not be treated as an enactment relating to all pledges of documents of title, but only to those effected by mercantile agents.

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The only other section relied on by the appellant is the 9th. I think this section also is inapplicable to the case before your Lordships. I am not satisfied, as at present advised, that the section applies in any case where no right to the goods or the documents of title remains in the seller who has parted with possession of them. But I do not decide this point. The possession of the documents of title which were pledged was obtained from the warehouse keeper by the appellant by virtue of his ownership of the goods. They had already been transferred into his name by the warehouse keeper, and were held for him before the warrants were delivered. I think, in these circumstances, it cannot properly be said he obtained possession of them "with the consent of the seller."

For these reasons, I think the judgment appealed from should be affirmed and the appeal dismissed with costs.

LORD MACNAGHTEN and LORD MORRIS concurred.

*Appeal dismissed with costs.*

*Lords' Journals, July 11, 1898.*

Agents for appellant: *Irvine & Borrowman, for Beveridge, Sutherland & Smith, S.S.C., Leith.*

Agent for respondents: *F. W. Reynolds, for Morton, Smart & Macdonald, W.S., Edinburgh.*