

WESTERN AUSTRALIA.

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## BILLS OF SALE.

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### No. 45 of 1899.

[As amended by Acts 64 Vict. No. 28 (1900), assented to 5th December, 1900; 1 and 2 Edw. VII. No. 14 (1902), assented to 19th February, 1902; No. 17 of 1905, assented to 23rd December, 1905; No. 13 of 1906, assented to 28th November, 1906; No. 24 of 1909, assented to 29th October, 1909; No. 40 of 1912, assented to 5th November, 1912; No. 24 of 1914, assented to 22nd September, 1914; No. 41 of 1925, assented to 31st December, 1925; No. 8 of 1927, assented to 20th October, 1927; No. 42 of 1932, assented to 30th December, 1932; No. 52 of 1940 assented to 30th December, 1940; No. 9 of 1956, assented to 11th October, 1956; No. 40 of 1957, assented to 22nd November, 1957<sup>1</sup>; No. 52 of 1957, assented to 9th December, 1957; and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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### AN ACT to consolidate and amend the Law relating to Bills of Sale, Liens, and Bailments.

[Assented to 16th December, 1899.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

#### PART I.—PRELIMINARY.

Heading amended by No. 13 of 1906, s. 1A, as amended by No. 40 of 1957, s. 21, Schedule item 2.

1. This Act may be cited as the *Bills of Sale Act, 1899-1957*.

Short title. Amended by No. 52 of 1957, s. 1 (3).

2. This Act shall come into force on the 1st day of March, 1900.

Date of coming into operation.

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<sup>1</sup> Proclaimed to come into operation on 1st July, 1958, see *Gazette* No. 36 of 16th May, 1958.

Arrange-  
ment.

S. 2A  
added by  
No. 13 of  
1906, s. 1A,  
as amended  
by No. 40 of  
1957, s. 21,  
Schedule  
item 2.

2A. This Act is arranged as follows:—

PART I.—PRELIMINARY.

PART II.—REGISTRATION.

PART III.—RENEWAL OF REGISTRATION.

PART IV.—BILLS OF SALE BY WAY OF  
SECURITY.

PART V.—SEARCHES AND OFFICE COPIES.

PART VI.—ENTRY OF SATISFACTION.

PART VII.—EFFECT OF REGISTRATION.

PART VIII.—GENERAL.

PART IX.—BILLS OF SALE OF STOCK.

PART X.—BILL OF SALE OVER CROPS.

PART XI.—BILL OF SALE OVER WOOL.

PART XII.—MISCELLANEOUS.

PART XIII.—DEBENTURES.

SCHEDULES.

Application  
of Act.

3. This Act shall apply to every bill of sale and debenture executed on or after the 1st March, 1900, whereby power is given or conferred, either with or without notice, and either immediately or at any future time, to seize or take possession of any chattels comprised in or made subject to such bill of sale or debenture.

Repeal.

4. (1) The Acts mentioned in the First Schedule are repealed to the extent to which the same are thereby expressed to be repealed.

(2) No such repeal shall affect any bill of sale made, given, or executed before the commencement of this Act, nor the registration thereof, or the rights or liabilities of any person in connection therewith, except with respect to renewal of registration or as hereinafter mentioned.

5. In this Act, and for the purposes thereof, if not inconsistent with the context—

Inter-  
pretation.  
Amended by  
No. 24 of  
1914, s. 2.  
No. 9 of 1956,  
s. 2.  
No. 40 of  
1957, s. 3.  
“Apparent  
possession.”

“Apparent possession”—Chattels shall be deemed to be in the apparent possession of the grantor of a bill of sale so long as they remain or are in or upon any lands, tenements, hereditaments, or building occupied or used by him, or are used or employed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

“Bill of Sale” includes any document or agreement whatsoever, whether by deed or by parol, and whether by way of sale, security, gift, or bailment;

“Bill of  
Sale.”

- (1) Transferring, or intended to transfer, or to be a record or evidence of the transfer of the property in or right to the possession of chattels; or
- (2) By which a right, authority, or license to the possession of or to seize any chattels, or to any charge or security thereon shall be conferred or reserved:

“Bill of Sale” shall not include assignments for the benefit of the creditors of the grantor, made pursuant to any statutory provision; transfers, assignments or mortgages duly registered under the provisions of the Merchant Shipping Act, 1894, of the United Kingdom as amended from time to time (or under any Act passed in substitution for that Act) of any ship or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; debentures issued by any company or other corporate body, and registered under the provisions hereinafter contained; ante-

Amended by  
No. 40 of  
1957, s. 3 (b).

nuptial settlements; bills of sale of goods in any foreign parts or at sea; bills of lading, warehousekeeper's certificate, customs warrants, or other warrants or orders for the delivery of goods or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or delivery, the possessor of such document to transfer or receive the goods thereby represented.

"Bill of sale by way of security."

"Bill of Sale by way of security" means a bill of sale to secure the payment of money or the performance of some obligation.

"Chattels."

"Chattels" includes any personal property capable of complete transfer by delivery, including fixtures and growing crops when separately assigned, charged, or bailed, and also book debts, but shall not include choses in action other than book debts.

No fixtures shall be deemed separately assigned, charged or bailed, and no growing crops shall be deemed separately assigned, or charged by reason only that they are assigned, charged, or bailed, or assigned or charged respectively by separate words, or that power is given to sever them from the premises to which they are affixed or on which they grow, without otherwise taking possession of or dealing with such premises, if by the same instrument any freehold or leasehold interest in the premises to which such fixtures are affixed, or on which such crops grow, is also conveyed, transferred, bailed, or mortgaged to the same person or persons.

The Machinery used in or attached to any factory or workshop as hereinafter defined, shall be chattels within the meaning of this Act; but

- (1) The fixed motive-powers, such as the water-wheels and steam and other engines, and the steam-

boilers, donkey-engines, and other fixed appurtenances of the said motive powers; and

- (2) The fixed-power machinery, such as the shafts, wheels, drums, and their fixed appurtenances which transmit the action of the motive-powers to the other machinery, fixed and loose; and
- (3) The pipes for steam, gas, and water, in the factory or workshop,

shall not be chattels within the meaning of this Act.

“Contemporaneous advance” means an advance of money by the grantee to or at the request of the grantor or the sale of goods or property upon credit, or the drawing, accepting, indorsing, making, or giving of any bill of exchange, promissory note, or the execution of any guarantee, bond, or other similar undertaking by the grantee to, for, or on behalf of the grantor on the security of any bill of sale, and contemporaneously with the granting, thereof. Any unpaid purchase money shall be deemed a contemporaneous advance if the bill of sale be executed within twenty-one days after the sale in respect of which such purchase money is owing.

“Advance.”  
Amended by  
No. 24 of  
1914, s. 2.

“Crops” means European flax, hemp, wheat, maize, barley, oats, and grass, whether for hay or for grain, and all tobacco, cereal and root crops and fruit.

Amended by  
No. 9 of  
1956, s. 2.

“Debenture” means a document containing a floating charge over any of the chattels of a company or other corporate body.

Added by  
No. 40 of  
1957, s. 3

“Factory or workshop” means any premises on which any manual labour is exercised by way of trade or for purposes of gain, in or incidental to the following purposes, or any of them, that is to say: The making of any article, or part of an article, or the altering,

“Factory.”

repairing, ornamenting, or finishing of any article, or part of any article; or the adapting for sale any article, or part of any article.

- "Grantee." "Grantee" includes the bailor and lessor of any bill of sale by way of bailment or lease.
- "Grantor." "Grantor" includes the bailee and lessee of any bill of sale by way of bailment or lease.
- Added by No. 40 of 1957, s. 3. "Hire Purchase Agreement" means an agreement for the hire of chattels containing, in favour of the hirer (being the person to whom the chattels are let), a right or option to purchase the chattels or any of them.
- "Prescribed." "Prescribed" means prescribed by rules made under this Act.
- "Registrar." Amended by No. 24 of 1914, s. 2. No. 40 of 1957, s. 3. "Registrar" means any person who may be appointed by the Governor a registrar for the purposes of this Act.
- "Stock." "Stock" includes any sheep, cattle, horses, mules, asses, camels, pigs, and poultry.

Heading amended by No. 13 of 1906, s. 1A as amended by No. 40 of 1957, s. 21, Schedule item 2.

Bill of sale to contain names and addresses of parties. Amended by No. 24 of 1914, s. 3, as amended by No. 40 of 1957, s. 21, Schedule item 21.

Paragraph (1) amended by No. 40 of 1957, s. 4.

## PART II—REGISTRATION.

### 6. Every bill of sale shall contain:—

- (1) The names of the grantor and grantee, their residences or places of business, and their occupations; provided that it shall be sufficient to state the names by which the parties are usually known, and, in case of a corporation, to state the corporate name, with the principal place of business or registered office of the corporation in the State, or, if it has no place of business or registered office in the State, then its principal place of business or registered office in the country or State in which it is incorporated.

- (2) The true consideration, and what portion, if any, is for an antecedent debt; provided that the consideration shall be sufficiently stated, notwithstanding that the costs relative to such bill of sale shall have been deducted from or added to the amount of the expressed consideration; True consideration.
- (3) The place where the chattels therein referred to, other than after acquired property, are usually situated or kept at the time of the granting of such bill of sale; Where chattels situated. Amended by No. 40 of 1957, s. 4.
- (4) The sums, if any, thereby secured, and the true rate or maximum rate of interest, if any, payable, and in case of a security for a running account, open guarantee, or proposed further advances, the maximum amount of the balance or advances to be covered. The amount secured or rent payable.

Provided that it shall be sufficient for the purpose of this section if the bill of sale states that the rate of interest shall be the current bank rate for the time being. No. 24 of 1914, s. 3, as amended by No. 40 of 1957, s. 21, Schedule item 21.

7. The following classes of property may be assigned by bill of sale, either absolutely or by way of security, and shall be deemed to have been assigned at law as well as in equity, that is to say:— Future crops and progeny of stock may be included in bill of sale.

- (1) Crops (separately assigned) sown or growing or about to be sown or grown at the time of the execution of the bill of sale, but without prejudice to the rights of a prior *bona fide* purchaser or mortgagee by deposit or otherwise of the land on which any such crops shall grow. No. 17 of 1905, s. 3. Amended by No. 24 of 1914, s. 5.
- (2) The progeny coming into existence during the operation of any bill of sale of or which comprises any stock.

And the possession of such mortgaged crops or progeny by the grantor or any person claiming through him shall, to all intents and purposes, be deemed the possession of the grantee.

Legal interest in future and after acquired chattels to be deemed to pass to grantee of bill of sale. 55 Vict., No. 7, s. 5. Added by No. 17 of 1905, as amended by No. 40 of 1957, s. 21, Schedule Item 1.

7A. Where, by a bill of sale executed before or after the passing of the Bills of Sale Amendment Act, 1905, the grantor thereof shall purport or covenant to grant or assign to the grantee any chattels within the meaning of this Act not in existence at the time of the making of such bill of sale, or which the grantor may thereafter acquire, the property and legal interest in such future or after-acquired chattels shall, immediately upon the coming into existence of such chattels, or on their being acquired by the grantor, be deemed to pass at law to the grantee of the bill of sale, subject, nevertheless, to the provisions thereof.

This section shall take effect as if it had been a provision of the Bills of Sale Act, 1899, from the commencement thereof.

Execution and registration of Bill of Sale. New Section 8 substituted by No. 41 of 1925, s. 2, as amended by No. 40 of 1957, ss. 5, 21 and Schedule Item 28.

8. (1) Every bill of sale shall be executed in duplicate, and shall be attested by at least one witness not being any party thereto; and the witness to the grantor's signature shall sign a declaration at the end of such bill of sale and duplicate in the form or to the effect as set out in the Fourteenth Schedule to this Act; and any person who subscribes such declaration which in any material particular is to his knowledge false shall be guilty of a misdemeanour, and shall be punishable as if he were guilty of an offence under section one hundred and seventy of the Criminal Code.

(2) It shall not be necessary for the attesting witness or witnesses to make any such declaration before a Justice of the Peace or other person authorised to take and receive declarations, but a simple signature of the attesting witness or witnesses shall be sufficient.

(3) Every bill of sale shall be registered, and for the purpose of such registration shall be lodged with the Registrar in duplicate, and such registration shall be effected by the Registrar endorsing upon each duplicate a certificate of such registration, stating the day and hour of the production thereof for registration and the actual date of registration,



and a reference to the Register Book in which the same is recorded, and such certificate shall be authenticated by the seal and signature of the Registrar.

(4) One duplicate (hereinafter called the original) shall be filed in the Registry, and the other (called the duplicate) shall be handed to the person entitled thereto, or his solicitor or agent; and the production of the original or of the duplicate with such certificate endorsed thereon shall be *prima facie* evidence of the due registration of such bill of sale.

(5) Whenever there shall be any difference or variation between the contents of any original bill of sale and the duplicate, the original shall prevail.

9. Any affidavit required by this Act may be sworn before a Commissioner to administer oaths in the Supreme Court of Western Australia, or any Justice of the Peace of the Colony or any district of the Colony, or any Notary Public.

Who may swear affidavits.

10. The periods within which a bill of sale shall be presented for registration shall be such as may be prescribed from time to time, but until rules are made hereunder and subject thereto, such periods shall be:—

Periods for registration. Amended by No. 40 of 1957, s. 6.

(1) Ten days from the day of execution, if executed at a place not more than thirty miles distant from the city of Perth;

Within 30 miles of Perth: 10 days.

(2) fourteen days from the day of execution, if executed at or within fifty miles of the municipality of Albany, Southern Cross, Coolgardie, Kalgoorlie, Menzies, Geraldton, or Cue, or if executed at a place outside such limits, and being more than thirty miles distant from the said city, but not more than two hundred miles from the said city.

200 miles: 14 days.

500 miles:  
30 days.

- (3) thirty days if executed at a place outside the limits aforesaid, and more than two hundred miles but less than five hundred miles from the said city;

Over  
500 miles:  
60 days.

- (4) sixty days from the day on which it was executed, if executed at a place outside the limits aforesaid, and five hundred miles or more from the said city;

In East  
Kimberley  
or outside  
of the  
Colony:  
21 days  
after post.

- (5) if executed within the magisterial district of East Kimberley within the Colony, or at any place out of Western Australia, then within twenty-one days after the time at which the bill of sale would, in the ordinary course of post, arrive in the said city, if posted immediately after the execution thereof:

Provided that the day on which the instrument is executed shall not be included in the said periods: And provided further, that when the time for presenting a bill of sale expires on a day on which the Registrar's office is closed, the presentation shall be valid if made on the next following day on which such office is open.

Registrar  
shall file and  
register and  
keep  
"Register  
Book."  
Amended by  
No. 41 of  
1925, s. 3.  
No. 40 of  
1957, s. 9.

11. (1) The Registrar shall cause every bill of sale presented for registration under the provisions of this Act to be numbered, and shall keep a "Register Book" in which shall be inserted the date when such bill of sale is registered, and the particulars, according to the form given in the Second Schedule to this Act.

Subsection  
(2) amended  
by No. 40 of  
1957, s. 9.

(2) The Registrar shall also keep indexes of the names of grantors of bills of sale with references to the entries in the register book of the bill of sale given by each such grantor, separate indexes being kept in respect of debentures, hire purchase agreements and other bills of sale respectively.

Subsection  
(3) amended  
by No. 40 of  
1957, s. 9.

(3) Each such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the

same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

(4) Where a bill of sale has been made or given by any person under or in the execution of any process of Court, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the grantee thereof, shall be inserted in the book to be kept as aforesaid.

Mode of registration where document given in execution of any process.

12. [*Repealed by Section 12 of No. 24 of 1914.*] Fees on registration.

13. A Judge of the Supreme Court on being satisfied that the omission to present for registration a bill of sale, or an affidavit of renewal thereof within the time required by or prescribed under this Act, or that any omission or misstatement in a bill of sale, or in any affidavit of any matter hereby required to be stated, was unavoidable, accidental, or due to inadvertence, may at any time order such omission or misstatement to be rectified, by extending the time for such registration, or by the filing of a supplementary affidavit, or by directing such matter to be stated and directing the rectification of the register, affidavit, or bill of sale or copy accordingly, and on such terms and conditions as he thinks fit.

Judge may extend time or amend error.

PART III.—RENEWAL OF REGISTRATION.

14. (1) The registration of a bill of sale, executed after the commencement of this Act, shall, during the subsistence thereof, be renewed, in manner hereinafter mentioned, once in every period of three years commencing from the day of the registration and such renewal shall not be effected more than sixty days prior to the expiration of any three-year period calculated from the day of registration.

Heading amended by No 13 of 1906, s. 1A, as amended by No. 40 of 1957, s. 21, Schedule item 2.

Time for renewal. Amended by No. 40 of 1957, s. 10.

(2) [Subsection (2) repealed by No. 40 of 1957, s. 10.]

If not renewed, document void.  
Amended by No. 40 of 1957, s. 11.

15. If not so renewed such registration shall cease to be of any effect at the expiration of any period of three years during which a renewal has not been made as hereby required.

Mode of renewal.

16. The registration of a bill of sale shall be renewed by filing in the office of the Registrar an affidavit stating the residence and description of the grantor, and, in case of a bill of sale, by way of security the amount due thereon.

Affidavit under section 16 may be made by attorney. No. 13 of 1906, s. 15, as amended by No. 40 of 1957, s. 21, Schedule item 16.

16A. Any affidavit of renewal of a duly registered bill of sale to be filed in pursuance of section sixteen of this Act may be made by any attorney under power of the person or of one of the persons entitled to the money secured by the bill of sale to which such affidavit or renewal relates, or by any person able to depose of his own knowledge as to the amount owing on the security of such bill of sale.

Registration of renewal. Amended by No. 41 of 1925, s. 4 as amended by No. 40 of 1957, s. 21, Schedule item 29.

17. The Registrar shall thereupon number such affidavit as if the same were a bill of sale presented for registration, and re-number the original bill of sale originally registered in the said office, with a similar number, and shall mark on the same the date of renewal of registration, and shall enter particulars in the register book in like manner as on an original registration, and shall also enter the date of renewal of registration in the column provided therefor.

Heading added by No. 13 of 1906, s. 1B, as amended by No. 40 of 1957, s. 21, Schedule item 2.

#### PART IV.—BILLS OF SALE BY WAY OF SECURITY.

Interpretation. No. 13 of 1906, s. 2, as amended by No. 40 of 1957, s. 7 and Schedule item 3.

17A. In this Part the term "bill of sale" means a bill of sale by way of security, and includes all assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for the payment of money or the performance of an obligation but does not include a debenture.

17B. (1) No bill of sale shall be registered under the provisions of this Act unless notice of the intention to register the same is lodged before the registration thereof at the office of the Registrar at the Supreme Court. A fee of two shillings shall be paid on the lodgment of such notice.

Notice of intention to register bill of sale to be given. No. 13 of 1906, s. 3, as amended by No. 24 of 1914, s. 14; No. 40 of 1957, s. 21, Schedule item 4.  
No. 52 of 1957, Schedule item 4.  
Sixth Schedule.  
See V. 1890, No. 1103, s. 134.

(2) If the whole of the chattels comprised in any such bill of sale are at the time of its execution situate within any of the municipal districts mentioned in the Sixth Schedule to this Act, or within twenty miles thereof respectively, such notice shall be lodged seven days at least before the registration of the bill of sale.

Amended by section 14 of No. 24 of 1914; No. 40 of 1957, s. 21, Schedule item 4.

(3) If any of the chattels comprised in such bill of sale are at the time of its execution situated elsewhere, such notice shall be lodged fourteen days at least before the registration of the bill of sale:

Provided that the Governor may from time to time, by notice published in the *Government Gazette*, add to the number of municipal districts set out in the Sixth Schedule to this Act.

Sixth Schedule.  
Amended by No. 40 of 1957, s. 21, Schedule item 4.

17C. Every notice of intention to register a bill of sale shall be in the Form "A" in the Seventh Schedule to this Act, or to the like effect, and shall contain a statement of the particulars in such form mentioned, and shall specify an address to which notices of caveats may be posted, and the Registrar shall cause the date at which such notice is lodged to be marked thereon:

Form of notice. Seventh Schedule. No. 13 of 1906, s. 4, as amended by No. 40 of 1957, s. 21, Schedule item 5.

Provided that if the grantor of a bill of sale is an incorporated company, it shall be sufficient if the notice is in the Form "B" in the Seventh Schedule, and contains a statement of the particulars therein mentioned.

Notice to be indexed and open to inspection. No. 13 of 1906, s. 5, as amended by No. 40 of 1957, s. 21, Schedule item 6. No. 52 of 1957, Schedule item 5.

**17D.** (1) The Registrar shall cause a book to be kept in which the names and addresses of all persons making or giving any bill of sale, in this Part called the grantors, specified in such notices, shall be entered in alphabetical order, with the dates at which such notices are lodged.

(2) Such book shall be open to the inspection of any person, and any person may inspect and take a copy of any notice lodged as hereinbefore mentioned upon payment of the fee of two shillings.

Time within which bill of sale may be filed. No. 13 of 1906, s. 6, as amended by No. 40 of 1957, s. 21, Schedule item 7.

**17E.** Notwithstanding any provision of this Act to the contrary, no bill of sale specified in any such notice shall be registered before the expiration of seven days or fourteen days, as the case may be, from the day of lodging such notice, or after the expiration of thirty days from such a day, unless a fresh notice is given or the time is extended by order of a Judge of the Supreme Court.

Caveat to stay filing. No. 13 of 1906, s. 7, as amended by No. 40 of 1957, s. 21, Schedule item 8.

**17F.** If a caveat is entered as hereinafter provided against the registration of a bill of sale specified in any such notice, such bill of sale shall not be registered until the caveat is removed or withdrawn as hereinafter provided.

Creditor may enter caveat.

**17G.** (1) Any person claiming to be a creditor of the grantor in such notice mentioned may enter a caveat against the registration of the bill of sale specified in the notice, by lodging such caveat with a copy for the grantor, or for each grantor if more than one, with the Registrar and paying a fee of one shilling.

Eighth Schedule.

(2) Every such caveat shall be in the form in the Eighth Schedule to this Act, or to the like effect, and shall contain the particulars therein mentioned, and shall specify a place within the limits of the city of Perth at which notices relating to such caveat may be served; and every notice relating to such caveat, if served at such place, shall be deemed to be duly served.

(3) Such caveat shall be entered—

No. 13 of 1906, s. 8, as amended by No. 40 of 1957, s. 21, Schedule item 9.

- (a) within seven days from the day on which notice was lodged under section seventeen B of this Act, if the bill of sale is within the provisions of subsection two thereof; or
- (b) within fourteen days from the day on which notice was lodged under section seventeen B of this Act, if the bill of sale is within the provisions of subsection three thereof.

**17H.** (1) Upon the receipt of such caveat the Registrar shall cause a copy thereof to be sent by post as a registered letter to the grantor mentioned in the notice, at the address specified in the notice.

Caveat to be notified to mortgagor, who may summon caveator. No. 13 of 1906, s. 9, as amended by No. 40 of 1957, s. 21, Schedule item 10.

(2) The grantor may summon the caveator before a Judge of the Supreme Court in Chambers to show cause why his caveat should not be removed, and upon the return of such summons the Judge shall hear and determine whether the caveator is a creditor of the grantor.

(3) Any person to whom the grantor is indebted on any account whatsoever, at law or in equity, on the balance of account or otherwise, and whether the debt is due or to accrue due, secured or unsecured, shall be deemed to be a creditor within the meaning of this section.

**17J.** If on the hearing of such summons it appears that the caveator is a creditor of the grantor, the Judge may make an order directing that no bill of sale shall be registered in pursuance of the notice mentioned in the caveat until the debt for which he shall be found to be a creditor be satisfied; but if it does not appear that the caveator is a creditor of the grantor, the Judge may order that the caveat be removed, and upon service of the order upon the Registrar, he shall remove the caveat therein mentioned.

Judge may order registration to be stayed or remove caveat. No. 13 of 1906, s. 10, as amended by No. 40 of 1957, s. 21, Schedule item 11.

Caveat may be withdrawn or removal ordered at any time. Ninth Schedule. No. 13 of 1906, s. 11, as amended by No. 40 of 1957, s. 21, Schedule item 12.

**17K.** (1) A caveator may withdraw his caveat at any time by signing an application for the withdrawal thereof in the form in the Ninth Schedule to this Act, or to the like effect.

(2) If after satisfaction of his debt before or after the making of any such order as hereinbefore mentioned, the caveator shall refuse to withdraw his caveat, or to sign an application for the withdrawal thereof, the grantor may summon the caveator before a Judge, as hereinbefore mentioned, to show cause why the caveat should not be removed, and the Judge may order the removal of such caveat.

(3) Upon the service of the order upon the Registrar, he shall remove the caveat therein mentioned.

Costs and compensation. No. 13 of 1906, s. 12, as amended by No. 40 of 1957, s. 21, Schedule item 13.

**17L.** (1) Upon the hearing of any summons under this Part of this Act, the Judge may make such order as to costs as he may think fit.

(2) Any person not a creditor of the grantor entering a caveat without reasonable cause for considering himself to be a creditor, and any caveator refusing, without reasonable cause, to sign an application for withdrawal of his caveat after satisfaction of his debt, shall be liable to pay the grantor such sum by way of compensation as the Judge, upon the hearing of any such summons, may deem just and may order.

Notice of intention not invalidated by misdescription. No. 13 of 1906, s. 13, as amended by No. 40 of 1957, s. 21, Schedule item 14.

**17M.** No notice of intention to file a bill of sale shall be deemed insufficient or invalid by reason only that in such notice there is an omission or incorrect or insufficient description or misdescription in respect of the particulars required to be contained in such notice, if the court, judge, magistrate, or justices before whom the validity of the bill of sale comes into question shall be satisfied that such omission or incorrect or insufficient description or



misdescription was accidental or due to inadvertence, and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage.

17N. Nothing in this Part shall affect the provisions of section ten of this Act whereby bills of sale are required to be presented for registration within the periods therein mentioned:

Time for presentation of bills of sale for registration not affected. No. 13 of 1906, s. 17, as amended by No. 40 of 1957, s. 21, Schedule item 17.

Provided that a notice of intention to register a bill of sale, lodged in accordance with the provisions of this Part, shall be deemed to be a presentation for registration of such bill of sale for all the purposes of this Act.

17P. This Part of this Act shall not apply to any bill of sale of wool or stock, separately or combined, made *bona fide* for valuable consideration, or to any bill of sale granted before or after the commencement of the Bills of Sale Amendment Act, 1906, to any person over crops sown or growing upon or about to be sown in or grown upon the land mentioned in the bill of sale, such bill of sale being granted to secure payment of the purchase money of seed, fertilisers, bags or twine for use by the grantor in putting in, taking off, and harvesting such crops, or to any bill of sale granted before or after the commencement of that Act to the Minister for Agriculture or any officer of the Department of Agriculture.

This Part not to apply to bill of sale of wool or stock. No. 13 of 1906, s. 18, as amended by No. 24 of 1914, s. 15. No. 42 of 1932, s. 2. No. 40 of 1957, s. 21, Schedule items 18 and 26.

17Q. Every notice of intention to register a bill of sale, lodged before or after the commencement of the Bills of Sale Act Amendment Act, 1912, with the Registrar under the provisions of the Bills of Sale Amendment Act, 1906, or of this Part, shall be deemed to comply with the requirements of that Act, or of this Part, as the case may be, if such notice contains a description of the property comprised in the bill of sale, and at the date of the bill of sale on the premises stated in the notice as the place

Validation of notices under Act No. 13 of 1906, or this Part. Added by No. 40 of 1912, s. 2, as amended by No. 40 of 1957, s. 21, Schedule item 20.

where the said property is situated; and the notice, and the bill of sale registered pursuant thereto, shall be valid, notwithstanding that the bill of sale may extend to and comprise after-acquired property or other property that may subsequently, during the continuance of the security, be in, upon, or about the said premises, and notwithstanding that such after-acquired or other property is not mentioned or referred to in the notice.

Provided that this section shall not affect the rights of any person under any judgment or order of any court, judge, or magistrate, given or made before the commencement of the Bills of Sale Act Amendment Act, 1912, whereby any bill of sale was declared or held void.

Form of  
Bill of Sale.  
Tenth  
Schedule.  
No. 24 of  
1914, s. 10,  
as amended  
by No. 40 of  
1957, s. 21,  
Schedule  
item 23.

**17R.** A bill of sale by way of security may be in the form or to the effect in the Tenth Schedule to this Act, but the use of such form shall not be obligatory.

Implied  
Covenants.  
Eleventh  
Schedule.  
Twelfth  
Schedule.  
No. 24 of  
1914, s. 11,  
as amended  
by No. 40 of  
1957, s. 21,  
Schedule  
item 24.

**17S.** The covenants and powers set out in the Eleventh Schedule to this Act shall, unless negatived or modified, be implied in favour of the grantee, and as to paragraph eight of the said Schedule, as an agreement between the parties, in every bill of sale by way of security; and the words "the grantor will insure," in any such bill of sale, shall have the same effect and be construed as if the words set out in the Twelfth Schedule to this Act had been inserted in the bill of sale.

Heading  
amended by  
No. 13 of  
1906, s. 1A,  
as amended  
by No. 40 of  
1957, s. 21,  
Schedule  
item 2.

#### PART V.—SEARCHES AND OFFICE COPIES.

Search may  
be made  
of records.  
Amended by  
No. 41 of  
1925, s. 5;  
No. 52 of  
1957,  
Schedule  
item 1.

**18.** The register book and every bill of sale registered as aforesaid may be inspected by all persons during the office hours of the Supreme Court, upon payment for every search against each person of the fee of two shillings.

19. Any person shall be entitled to have an office copy or extract of any bill of sale, and of any affidavit filed under this Act, upon paying for the same at the rate of one shilling for every folio of seventy-two words contained in such office copy or extract, or if he make such copy or extract himself the Registrar shall, upon satisfying himself that such copy or extract is correctly made, certify to the same upon payment of the fee of ten shillings for each bill of sale or extract thereof.

Amended by No. 41 of 1925, s. 5. Substituted by No. 52 of 1957, Schedule item 2.

20. Every bill of sale registered and affidavit filed under this Act shall, if purporting to have been duly executed or sworn, be *prima facie* presumed to have been duly executed or sworn, and an office copy of any bill of sale and the schedules or inventories or affidavit purporting to be certified to by the Registrar (of whose signature judicial notice shall be taken in all Courts), and every certificate purporting to be signed by the Registrar of the time when the same shall have been registered or renewed shall, in all Courts, and before all arbitrators or other persons, be received as *prima facie* evidence of the contents of the bill of sale and the schedules or inventories thereto, or of the affidavit; of the signatures of the parties thereto who purport to have signed the same; of the signatures of the attesting witnesses thereto; of the fact that the said bill of sale has been duly registered and renewed and the affidavit duly filed, and of the time when the same shall have been registered or filed.

Registration to be *prima facie* evidence of due execution, etc. Amended by No. 41 of 1925, s. 6.

PART VI.—ENTRY OF SATISFACTION.

21. Upon the production to the Registrar of a memorandum of satisfaction either of a bill of sale by way of security, signed by the grantee thereof, or his attorney, or of any other bill of sale, signed by each of the parties thereto or by his attorney, discharging the chattels comprised therein, or any

Heading amended by No. 13 of 1906, s. 1A, as amended by No. 40 of 1957, s. 21, Schedule item 2.

Memo. of satisfaction may be filed. Amended by No. 40 of 1957, s. 12, No. 52 of 1957, Schedule item 3.

specified part thereof, from the moneys secured thereby, or any specified part thereof, or from the performance of the obligation thereby secured, or any specified part thereof, and on production of such bill of sale and payment of the fee of ten shillings the Registrar shall file such memorandum and make an entry thereof in the register book on the page where the bill of sale is registered. The execution of such memorandum shall be verified by the affidavit of the attesting witness thereto.

The Registrar may, in his discretion, dispense with the production of the bill of sale on proof to his satisfaction, by affidavit or otherwise, that the bill of sale has been destroyed, lost, or cannot be produced.

On filing memo. the debt shall be discharged. Amended by No. 40 of 1957, s. 13.

22. From and after the filing of any such memorandum the debt or charge created by the said bill of sale shall be discharged to the extent specified in such memorandum and, in relation to chattels wholly discharged from the debt or charge created by a bill of sale by way of security, the property or legal interest therein of the grantor shall be deemed to be and to have been from and after the filing of the said memorandum as if the bill of sale had not been given by the grantor.

If grantee absent the Registrar may receive money.

23. If the grantee of any bill of sale by way of security shall be absent from the Colony, and there be no known person in the Colony authorised to discharge the same on his behalf, at or after the date appointed for the payment by such bill of sale, the Registrar may receive such moneys in trust for the person entitled thereto, and may sign a memorandum of satisfaction in lieu of such person, and upon the filing of such memorandum the same shall be as effectual as a memorandum signed by the person entitled to such moneys.

Judge may order memorandum of discharge to be entered.

24. Any Judge of the Supreme Court may order a memorandum of satisfaction to be filed in respect of any bill of sale by way of security if it shall appear

to him that the debt (if any) for which such bill of sale is given as security has been satisfied or discharged, or that the obligation for securing the performance of which the bill of sale has been given has been performed, and thereupon such order may be filed by the Registrar and entered in his book in like manner as if the same had been a memorandum within the meaning of section twenty-one hereof.

PART VII.—EFFECT OF REGISTRATION.

Heading amended by No. 13 of 1936, s. 1A, as amended by No. 40 of 1957, s. 21, Schedule item 2.

25. (1) Every bill of sale or debenture not complying with the terms of section six or fifty-one of this Act, as the case may be, or not duly registered or renewed in the manner and time in this Act provided, shall be deemed fraudulent and void as against—

Effect of non-compliance with Act or non-registration. New section inserted by No. 41 of 1925, s. 7.

- (a) the Official Receiver or the trustee or liquidator (under any law relating to bankruptcy, insolvency, or winding up) of the estate of the grantor;
- (b) the assignee or trustee acting under any statutory deed of assignment for the benefit of the creditors of the grantor,

so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at any time within three months before the time of the presentation of the petition in bankruptcy or winding up, or of the passing of an effective resolution for the winding up, or of the execution of such deed of assignment, as the case may be, and after the expiration of the time and extended time (if any) allowed for the registration or renewal of such bill of sale or debenture shall have been in the possession or apparent possession of the grantor.

(2) Such bill of sale or debenture shall also be void as against all sheriffs, bailiffs, and other persons seizing any chattels comprised therein in the execution of the process of any Court authorising the seizure of the chattels of the grantor and as against any person on whose behalf such process shall have been issued so far as regards the property in or right to the possession of any such chattels comprised in such bill of sale or debenture which, at the time of such seizure and after the expiration of the time and extended time aforesaid, shall be in the possession or apparent possession of the grantor.

(3) When, in accordance with this section, any document, whereby chattels are let on hire (with or without right of purchase) or otherwise bailed by the owner, or are acknowledged to have been received on hire or as a bailment from the owner, is or becomes void in respect of any chattels as against any person, then the chattels affected shall, as between the owner and such person, be deemed to be the property of the person to whom they have been so let on hire or bailed as aforesaid, but nothing herein shall affect the respective rights, as between themselves, of the owner and hirer or bailee of any such chattels.

Certain errors in bill of sale not to invalidate it. No. 13 of 1906, s. 14, as amended by No. 40 of 1957, s. 8 and Schedule item 15.

25A. Notwithstanding anything to the contrary contained in this Act, no bill of sale shall be deemed fraudulent, void or invalid by reason only that in the bill of sale, there is an omission or incorrect or insufficient description or misdescription of the residence or place of business and occupation of the grantor or grantee, or any other contravention of the requirements of section six or of sections thirty or thirty-seven of this Act, if the court, judge, or justice before whom the validity of such bill of sale shall come into question shall be satisfied that such omission or incorrect or insufficient description or misdescription or contravention was accidental or due to inadvertence, and was not of such a nature as to be liable to mislead or deceive.

26. Until the expiration of the time, or extended time, for registration of any bill of sale, and so long as such bill of sale continues to be registered hereunder, the chattels comprised in any bill of sale shall not be deemed to be in the possession, order or disposition of the grantor within the meaning of any Act relating to bankruptcy or insolvency for the time being in force.

Application of doctrine of "apparent possession."

27. No bill of sale shall be valid or effectual against any purchaser *bona fide* and for valuable consideration without express notice, unless such bill of sale shall, within the times aforesaid, be duly registered and renewed under the provisions of this Act.

*Bona fide* purchaser not affected by unregistered bill of sale.

28. A bill of sale, whether heretofore or hereafter executed, shall not protect the chattels therein comprised against any distress for any rates or taxes payable by the owner or occupier of any land under any existing or future Act of Parliament.

Chattels liable to distress for rates.

29. [Section 29 repealed by No. 40 of 1957, s. 14.]

29A. (1) In any bill of sale by way of security hereafter executed the following chattels of the grantor to the extent in this subsection mentioned that is to say—

Certain chattels to be excluded from a Bill of Sale by way of security. Added by No. 52 of 1940, s. 2.

beds and bedding to the value of ten pounds; household furniture to the value of ten pounds; implements of trade to the value of fifteen pounds; and all family portraits and photographs,

shall, notwithstanding anything contained in the bill of sale, be deemed to be expressly excluded therefrom and from the operation thereof, and shall not be seized, taken possession of, or sold by or on behalf of the grantee.

(2) Any person who in exercise or purported exercise of any powers or remedies contained in a bill of sale, seizes any chattels which are protected under the preceding subsection shall be guilty of an offence, and shall be liable on summary conviction to a penalty of twenty-five pounds, and the court on any such conviction may order that such chattels be returned forthwith and/or that damages be paid to the grantor by the grantee in respect of the wrongful taking or sale of the chattels, and any such order may direct imprisonment in case of non-compliance and shall be deemed to be an order under the Justices Act, 1902-1936,<sup>1</sup> and shall be enforceable accordingly.

Provided that nothing in this section contained shall apply to any bill of sale granted by any person or company engaged in any business or trade and who or which has in his or its possession goods or chattels of the class or description hereinbefore mentioned and which goods or chattels are held, used, or traded in for the purpose of such business or trade.

#### PART VIII—GENERAL.

Heading amended by No. 13 of 1906, s. 1A, as amended by No. 40 of 1957, s. 21, Schedule item 2.

When instrument made subject to a defeasance not contained therein.

30. If any bill of sale shall be made or given subject to any defeasance, condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration of trust shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on or a copy thereof annexed to the same paper or parchment on which such bill of sale shall be written, otherwise such bill of sale shall be void against the persons and to the extent mentioned in section twenty-five:

Provided that in the case of a document also securing the payment of the moneys payable under a bill of sale or any part of such moneys, it shall not

<sup>1</sup> See now Justices Act, 1902-1957.



be necessary for the purposes of this section to write such document on the same paper or parchment if the date, names of the parties thereto, and the amount secured by such document and short particulars of the property affected be set forth in such bill of sale or some schedule thereto.

This section shall not apply to any bill of exchange or promissory note comprising the amount secured or any part thereof.

31. Every bill of sale given absolutely or by way of security shall be fraudulent and void as against the trustee in bankruptcy or under any statutory assignment, and also as against the liquidator in the winding-up of the estate of the grantor if it has been executed within six months prior to the filing of the petition on which the order of adjudication or winding-up order is made, or to the resolution for voluntary winding-up, or to the execution by the grantor of the assignment for the benefit of creditors except as to any contemporaneous advance and interest thereon, and except, also, as to any money advanced or paid, or the actual price of goods sold or supplied, or the amount of any liability undertaken by the grantee of such bill of sale or his assignee to, for, or on account of the grantor after the granting, but on the security of the said bill of sale, but not exceeding the maximum amount covered thereby. Provided that this section shall not apply to any agreement for the hire, with or without the right of purchase, of chattels.

Bill of sale void in certain cases except for present advances, etc.  
Amended by No. 24 of 1914, s. 6.

31A. Every bill of sale registered before or after the commencement of the Bills of Sale Act Amendment Act, 1914, in which the consideration therein stated is or includes a contemporaneous advance, shall, subject in other respects to the provisions of this Act and of any other Act whereby this Act is amended, be a valid security to the extent of all advances made contemporaneously with and subsequently to the granting of such bill of sale, but not exceeding the maximum amount covered thereby.

Contemporaneous and future advances.  
No. 24 of 1914, s. 4 as amended by No. 40 of 1957, s. 21, Schedule item 22.

Bill of sale void as to execution on existing debts. Amended by No. 40 of 1957, s. 15.

32. Every bill of sale hereafter given absolutely or by way of security shall be fraudulent and void as against all sheriffs, bailiffs, and other persons seizing the chattels, or any part thereof, comprised therein in the execution of any process of any Court under any writ or warrant of execution issued within three months from the registration of the said bill of sale on a judgment or order entered, made, or obtained in respect of a liquidated debt incurred by the grantor before the registration of the said bill of sale, and also against every person on whose behalf such process shall have issued, except as mentioned in section thirty-one of this Act.

Bill of sale takes effect from date.

33. Every bill of sale shall be deemed to be made on and shall only take effect from the day on which it is executed.

Priority of instruments affecting same chattels.

34. In case two or more bills of sale are executed comprising in whole or in part any of the same chattels, priority shall be given to such bill of sale or bills of sale in the order of the date of their presentation for registration respectively as regards the title to or right to the possession of such chattels: Provided that such prior bill of sale shall not be affected if presented for registration within the time or extended time limited by this Act.

Avoidance of duplicate bills of sale. Amended by No. 40 of 1957, s. 16.

35. Where a bill of sale is executed after the execution of a prior unregistered bill of sale, and comprises all or any of the chattels comprised in such prior bill of sale, then if such subsequent bill of sale is given as a security for the same debt or liability as is secured by the prior bill of sale, or for any part of such debt or liability, it shall to such extent and so far as respects the chattels comprised in the prior bill of sale, be void to the extent and as against the persons mentioned in section twenty-five hereof; unless it be proved to the Court having cognisance of the case that the subsequent bill of

sale was *bona fide* given for the purpose of correcting some material error in the prior bill of sale or in the execution or attestation thereof, and not for the purpose of evading this Act.

35A. The fees set out in the Thirteenth Schedule to this Act shall be payable to the Registrar for the registration of every bill of sale, and in respect of the several other matters therein mentioned.

Fees.  
No. 24 of  
1914, s. 12,  
as amended  
by No. 40 of  
1957, s. 21,  
Schedule  
item 25.

36. Notwithstanding any rule of law or equity to the contrary, the grantee of any bill of sale by way of security may at any time after he has demanded payment of the moneys or performance of the conditions secured by such bill of sale—

Grantee may  
bid for and  
purchase  
chattels.

(1) Bid for and purchase the whole or any part or parts of the chattels comprised in such bill of sale at any public auction thereof held under the power of sale contained or implied in such bill of sale;

(2) Appoint in writing and from time to time remove any person as receiver and manager of the chattels comprised in any such bill of sale to obtain and hold possession thereof, and, if thought fit, to carry on any business in connection therewith pending the sale thereof, and such person shall have the same rights, powers, and privileges as if such person were appointed by the Supreme Court.

The remuneration of such receiver and his costs and expenses shall be paid by the grantor, and shall be a first charge upon the chattels comprised in the bill of sale.

36A. Nothing in sections twenty-five, thirty, thirty-one, or thirty-two of this Act shall affect the rights of any person making title to any chattels through or under any grantee of a bill of sale in good

Protection of  
*bona fide*  
purchasers.  
Inserted by  
No. 41 of  
1925, s. 8.

faith and for valuable consideration, by virtue of any sale or other disposition effected whilst the chattels were not in the possession or apparent possession of the grantor.

Heading amended by No. 13 of 1906, s. 1A as amended by No. 40 of 1957, s. 21, Schedule item 2.

Stock to be described, etc.

#### PART IX—BILLS OF SALE OF STOCK.

37. In any bill of sale comprising stock, the stock therein comprised shall be described or referred to therein by some brand or brands or other mark or marks on such stock, or shall be otherwise described or referred to by sex, age, name, colour, or otherwise, so as to be reasonably capable of identification; otherwise the same shall be void to the extent and as against the persons mentioned in section twenty-five hereof so far as regards such or so much of such stock as may not be so described or referred to or be otherwise reasonably capable of identification, and the land or premises on which such stock are shall be described or mentioned in such bill of sale: Provided that in any bill of sale over stock on any station or farm such stock shall be sufficiently identified by reference to the places where the same are usually depasturing.

Bill of sale of stock to include progeny.

38. A bill of sale comprising stock shall, unless the contrary be expressed therein, be deemed to include not only the stock comprised therein as provided by the last preceding section, but also the increase of such stock, and all stock the property of the grantor branded or marked or which shall have been or be branded or marked with the brand or mark specified in the bill of sale which the grantor shall have covenanted by such bill of sale to so brand or mark, and which shall, after the execution of such bill of sale during the continuance of the security, be depasturing, or be at, in, or upon any lands or premises mentioned in such bill of sale.

PART X.—BILL OF SALE OVER CROPS.

Heading amended by No. 13 of 1906, s. 1A, as amended by No. 40 of 1957, s. 21, Schedule item 2.

Bill of sale may be granted over crops.

Amended by No. 24 of 1914, s. 7.

39. A bill of sale, by way of security, may be granted over the crops described or referred to therein then actually sown in or growing upon or about to be sown in or grown upon the lands mentioned in such bill of sale, and shall entitle the grantee thereof to the whole of the crops therein mentioned, not only while growing, but afterwards when cut or separated from the soil, and stacked or stored on the land where grown, or on any other land or premises of the grantor or grantee.

40. No such bill of sale shall give any security over crops which, in the ordinary course of husbandry, cannot be harvested and taken off such land within one year from the date of the execution of such bill of sale.

Not available except against annual crops.

41. No such bill of sale shall prejudicially affect the rights of any landlord or mortgagee of any land whereon the said crops shall be growing or stacked unless and to the extent to which such landlord or mortgagee has consented in writing to such bill of sale: Provided that no such bill of sale, if duly registered, shall be prejudicially affected by any subsequent sale, lease, mortgage, or other encumbrance of or upon the land described or referred to in such bill of sale, or in the schedule thereto.

Saving of rights of landlord and mortgagee.

PART XI.—BILL OF SALE OVER WOOL.

Heading amended by No. 13 of 1906, s. 1A, as amended by No. 40 of 1957, s. 21, Schedule item 2.

Bill of sale over wool.

42. A bill of sale, by way of security, may be granted over the wool of the then next ensuing clip to be shorn from the sheep described or referred to therein and then depasturing upon the lands mentioned therein, and shall entitle the grantee thereof

to the wool of such sheep, not only while growing but afterwards when shorn from the sheep, and stacked or stored on any premises of the grantor or grantee.

Not affected by subsequent dealing.

43. No subsequent sale, bailment, mortgage, or other encumbrance of the sheep mentioned in any such bill of sale shall prejudicially affect such bill of sale or the rights of the grantee thereof to the wool specified or referred to therein.

Form of security. Fourth Schedule.

44. Any such bill of sale may be in the form set forth in the Fourth Schedule hereto.

Bill of sale over mortgaged sheep.

45. It shall be lawful for the grantor of any bill of sale, by way of security over sheep, but only with the consent in writing of the grantee thereof, and to the extent authorised by such consent, to give a valid security as aforesaid on the next ensuing clip of the wool of such sheep.

Heading amended by No. 13 of 1906, s. 1A, as amended by No. 40 of 1957, s. 21, Schedule item 2.

#### PART XII—MISCELLANEOUS.

46. [*Repealed by Section 8 of Act No. 24 of 1914.*]

Covenants to be joint and several.

47. Whenever there is more than one grantor or more than one grantee of any bill of sale, then any covenants, conditions, provisos, powers, and agreements expressed in such bill of sale, and imposing an obligation on such grantors or grantees, or inuring for the benefit of such grantors or grantees, shall be deemed to impose such obligations or confer such benefits, as the case may be, severally as well as jointly unless and in so far as a contrary intention appears.

48. In any bill of sale, unless the contrary be expressed, all covenants, conditions, provisos, powers, and agreements therein expressed shall bind the executors, administrators, and assigns of the person upon whom such covenants, provisos, powers, and agreements shall impose an obligation, and shall operate for the benefit of the executors, administrators, and assigns of the person for whose benefit the same shall inure.

Covenants to bind representatives.

49. [*Repealed by 1 and 2 Edwd. VII., No. 14.*]

50. Rules for the purposes of this Act may be made and altered from time to time by the like person and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court Act, 1880.<sup>1</sup>

Rules.

50A. Nothing in the Bills of Sale Act Amendment Act, 1925, contained shall affect the rights or liabilities of the parties to any bill of sale or debenture which had been executed prior to the coming into operation of that Act.

No retrospective effect.  
No. 41 of 1925, s. 10 as amended by No. 40 of 1957, s. 21, Schedule item 30.

PART XIII—DEBENTURES.

51. Every debenture issued or given by any company or other incorporated body shall be registered under this Act in the following manner:—

Heading amended by No. 13 of 1906, s. 1A, as amended by No. 40 of 1957, s. 21, Schedule item 2.

Registration of debentures.  
Amended by No. 40 of 1957, s. 17.

- (1) The company or body issuing or giving the debenture shall present to and file with the Registrar for registration the original debenture or a copy thereof accompanied in either case by an affidavit verifying the execution of the debenture and, where a

Paragraph (1) substituted by No. 40 of 1957, s. 17.

<sup>1</sup> See now Supreme Court Act, 1935-1957.

copy is filed, also verifying it as a true copy. The affidavit shall be made by a director or the manager or secretary of the company or body. In the case of a series of debentures it shall be sufficient to file a copy of one debenture of each series verified by affidavit as aforesaid. The Registrar shall endorse upon the original debenture or copy presented and filed and also upon any duplicate original or other copy of the debenture which is presented to him, a certificate of registration stating the hour of the presentation for registration and the date of registration, and containing a reference to the Register Book in which the registration is recorded. The certificate shall be authenticated by the seal and signature of the Registrar. The duplicate original or other copy presented shall then be delivered to the person entitled thereto or to his solicitor or agent. The production of a debenture, or of a duplicate or copy of a debenture, purporting to have endorsed thereon the certificate duly authenticated, shall be *prima facie* evidence of the due registration of the debenture. Whenever there is any difference or variation between the contents of a debenture or copy filed with the Registrar under this paragraph and of the original or duplicate or copy of the debenture, the filed document shall prevail.

Paragraph  
(2)  
amended by  
No. 40 of  
1957, s. 17.

- (2) Registration of a debenture, or of a series of debentures, may be renewed by the holder of any debenture, or by any officer of the company or body issuing or giving the same.

The renewal of registration of any one debenture of a series shall be deemed a renewal of all the debentures of such series.

Application  
of prior  
sections.  
Amended by  
No. 40 of  
1957, s. 18.

52. (1) Sections nine to seventeen, both inclusive, eighteen to twenty-five, both inclusive twenty-six, twenty-seven, twenty-eight, thirty-one



thirty-two to thirty-five, both inclusive, thirty-six, forty-seven, forty-eight and fifty of this Act shall apply, *mutatis mutandis*, to every debenture issued as aforesaid.

(2) Such sections shall be read as if "Debenture" were throughout substituted for "Bill of Sale."

(3) The filing of the debenture or copy thereof as aforesaid shall be deemed to be the presentation of the debenture for registration.

Substituted  
by No. 40 of  
1957, s. 18.

53. If more than one debenture is issued or is to be issued in the same series, the affidavit verifying the execution of the debenture shall state such fact and give short particulars of the series, and every debenture of such series shall be deemed registered on compliance with the provisions of section fifty-one as to any one debenture or proposed debenture of such series: Provided that no debenture of any such series shall be protected or be deemed registered unless the same is actually issued and taken up or allotted within six weeks from the compliance with the provisions of section fifty-one, or within such extended time as next hereinafter mentioned. Provided that a Judge of the Supreme Court shall have power to extend the time for issuing, taking up, or allotting any such debenture on such terms and conditions as he may think fit.

When more  
than one  
debenture is  
issued.  
Fifth  
Schedule.  
Amended by  
No. 24 of  
1914, s. 9,  
No. 40 of  
1957, s. 19.

54. Nothing in this Act contained shall apply to any agreement for the hire, with or without a right of purchase, of any household furniture, tools of trade, sewing-machine, piano, musical instruments, bicycle, cash registers, billiard tables and accessories, implements, machines, machinery, engines, vehicles, and appliances used wholly or in part for agricultural or pastoral purposes, typewriter, or gas, electric light, or water meter, or electrical appliances, or apparatus of any nature or kind used wholly or in part for household purposes.

Exceptions.  
Amended by  
62 Vict.,  
No. 28, s. 2,  
No. 24 of  
1914, s. 13,  
No. 41 of  
1925, s. 9,  
and No. 8 of  
1927, s. 2.





*Bills of Sale.*

I (or we), the abovenamed grantor (or grantors), hereby give notice that a bill of sale made by me (or us) on the day of \_\_\_\_\_, 19\_\_\_\_, of the property above described, to the abovenamed grantee (or grantees), to secure the debt or advances above mentioned, has been presented for registration, and will be registered after the expiration of seven (or fourteen) days from the date of lodging this notice, and I (or we) hereby direct that notice of any caveat which may be entered against the registration of such bill of sale may be posted, addressed as follows (*fill in address*):

dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature of grantor (or grantees) or his (or their) solicitor or agent.

Lodged this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

To the Registrar of the Supreme Court.

Form "B."

Amended by No. 24 of 1914, s. 17; No. 41 of 1925, s. 12.

*Notice by Incorporated Company of Intention to Register Bill of Sale.*

| Grantor                    |                              | Property comprised in Bill of Sale |                | Consideration |                         |                 | Grantee or Grantees   |                        |                                |
|----------------------------|------------------------------|------------------------------------|----------------|---------------|-------------------------|-----------------|---|------------------------|--------------------------------|
| Registered Name of Company | Registered Office of Company | Description                        | Where situated | Past Debt.    | Contemporaneous Advance | Future Advances | Name or Names in full, and, where the grantees are a partnership firm, the registered name of such firm | Business or Occupation | Place of Business or Residence |
|                            |                              |                                    |                |               |                         |                 |   |                        |                                |

The abovenamed grantor hereby gives notice that a bill of sale made by the grantor on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, of the property above described, to secure the debt or advances abovementioned, has been presented for registration, and will be registered after the expiration of seven (or fourteen) days from the date of lodging this notice, and notice of any caveat which may be entered against the registration of such bill of sale may be posted, addressed as follows (*fill in address*):

dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature of secretary or other officer of company, or its solicitor or agent.

Lodged this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

To the Registrar of the Supreme Court.

*Bills of Sale.*

EIGHTH SCHEDULE.

Section 17G.

*Caveat.*

To the Registrar of the Supreme Court.

Take notice that I (or we) (*fill in name or names, or, if the caveators are a partnership firm not incorporated, the usual name or style of such firm, and the business, occupation, and place of business or residence of caveator or caveators*), being a creditor (or creditors) of (*fill in name, occupation, and place of business of grantor or grantors as described in his or their notice*) in respect of a debt of £ (state the amount claimed to be due) due to me (or us), for (*and the nature of the debt as "for goods sold and delivered," "on balance of account current," "money lent," "rent," etc.*) hereby forbid the registration of any bill of sale in pursuance of the notice given by the said , lodged on the day of 19 and I (or we) do hereby appoint (*fill in address*) as the place at which notices and proceedings relating to this caveat may be served.

No. 13 of 1906, Third Schedule, as amended by No. 40 of 1957, s. 21, Schedule item 19.

Dated the day of , 19 .

Signature of caveator (or caveators) or his (or their) solicitor or agent.

Lodged the day of , 19 .

Registrar of the Supreme Court.

NINTH SCHEDULE.

*Application to withdraw Caveat.*

To the Registrar of the Supreme Court.

Take notice that I (or we) (*fill in the name or names, or if the caveators are a partnership firm not incorporated, the usual name or style of such firm, and the business, occupation, and place of business or residence of caveator or caveators*) hereby withdraw the caveat lodged by me (or us) on the day of , 19 , against the registration of the bill of sale specified in the notice of (*name of grantor or grantors*) of (*address*) lodged on the day of , 19 .

Section 17K. No. 13 of 1906, Fourth Schedule, as amended by No. 40 of 1957, s. 21, Schedule item 19.

Signature of caveator (or caveators) or his (or their) solicitor or agent.

Section 17R.  
No. 24 of  
1914,  
First  
Schedule  
as amended  
by No. 40 of  
1957, s. 21,  
Schedule  
item 27.

TENTH SCHEDULE.

Bill of Sale by way of Security.

This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between (names in full of grantor, his residence or place of business, and occupation), hereinafter called the grantor, of the one part, and (names in full of grantee, his residence or place of business, and occupation), hereinafter called the grantee, of the other part, witnesseth that in consideration of the sum of \_\_\_\_\_ pounds this day paid by the grantee to the grantor (or as the case may be), the receipt of which the grantor hereby acknowledges, the grantor hereby assigns unto the grantee all and singular the chattels described in the schedule hereto, and which are situated (state the place where the chattels are situated) by way of security for the payment by the grantor to the grantee of the sum of \_\_\_\_\_ pounds and interest thereon at the rate of \_\_\_\_\_ pounds per centum per annum on demand (or at such time or by such instalments as may be agreed upon). And it is agreed that upon payment in full by the grantor to the grantee of all the moneys hereby secured, this bill of sale shall become void, and the grantee will at the request and cost of the grantor sign and cause to be registered a memorandum of satisfaction thereof, and that it shall be lawful for the grantor to retain possession of the said chattels until default is made in the express or implied terms, covenants, conditions, and agreements of this security.

The Schedule.

In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered by the }  
said }  
in the presence of }

Section 17S.  
No. 24 of  
1914,  
Second  
Schedule  
as amended  
by No. 40 of  
1957, s. 21,  
Schedule  
Item 27.  
To pay  
principal  
and interest.

ELEVENTH SCHEDULE.

Covenants to be deemed Implied in Bills of Sale by way of Security.

1. That the grantor will pay to the grantee the principal and interest money secured, or intended to be secured, by such bill of sale, at the time and in manner therein provided for payment thereof.
2. That the grantor will not, without the consent in writing of the grantee, sell or exchange any of the chattels comprised in such bill of sale, or remove any of the said chattels from the premises mentioned therein, and will at all times keep such personal chattels in good order and condition.

Not to  
remove the  
chattels.

3. That the grantor will not suffer the chattels comprised in such bill of sale to be distrained for any rent, rates, or taxes, nor suffer any execution to be levied against his goods or chattels, nor become bankrupt, call a meeting of his creditors, or make any statutory assignment for the benefit of his creditors.

Not to suffer the goods to be taken in execution.

4. That the grantor will produce to the grantee, upon demand, the last receipt for all rent, rates, and taxes in respect of the premises whereon the chattels shall be.

To produce receipts for rent, etc.

5. That the grantee may, by himself or his agents, at all reasonable times, enter upon the grantor's premises whereon the chattels are kept, and view the state and condition thereof, and that the grantor will show forth and produce to the grantee all and singular the chattels comprised in such bill of sale, and permit the grantee to take an inventory thereof.

To enter and view the goods, etc.

6. That, if the grantor shall make default in the payment of the principal or interest money thereby secured at the time provided for payment thereof, or in the observance or performance of any one of the covenants, terms, conditions, or agreements, whether expressed or implied, in such bill of sale, it shall be lawful for the grantee, without any further consent or concurrence on the part of the grantor, to enter into and upon the land, messuage, or tenement whereon the said chattels assigned are, or into or upon any other land, messuage, or tenement on or in which such chattels, or any other chattels comprised and included in such bill of sale respectively, may be, or may reasonably be supposed to be, and for that purpose to open or remove any outer or inner gate, door, fastening, or other obstruction, without liability to any action of trespass or other proceeding for so doing; but with liberty to plead the leave and license thereby given in bar to any such action or proceeding, if any such be brought or instituted, and to seize and take possession of all such chattels, and to remove the same to any other place or places for safety, convenience of sale, or otherwise, or suffer them to remain in the place or places where the same may be found, and to sell and dispose of such chattels and premises, or any of them, either together or in parcels, at such time or times, and place or places, and either by public auction or private contract, or partly by public auction and partly by private contract, to any person or persons, for such price or prices, either for cash or on credit, or partly for cash and partly on credit, and if either partly or wholly on credit, giving such time or times for payment, and taking or foregoing any security or securities for the payment of the unpaid purchase money as the grantee may deem proper or expedient, with power for him to make any such other terms and conditions in regard to such sale or sales as he may think proper, and also to buy in all or any of the said chattels at any such sale or sales by auction, and rescind or vary any contract for sale thereof, and again to resell or offer for

Power of sale in case of default.

resale the same from time to time, without being answerable or accountable for any loss, diminution in price, costs, or expenses to be occasioned by any such bringing in, rescission, variance, or actual or attempted resale.

To execute documents for purpose of carrying out sale.

7. That it shall be lawful for the grantee, upon or after any such sale as aforesaid, to make, enter into, sign, and execute all such contracts, agreements, deeds, instruments, and writings as may be necessary or expedient for the purpose of making and effectuating any such sale, and which shall be as binding and conclusive upon and against the said grantor as if he or they had joined therein, or assented thereto. And also that the receipt or receipts in writing of the grantee for all purchase money or other property which shall be paid or delivered to him under or by virtue of the bill of sale, shall be a good and sufficient discharge or good and sufficient discharges to all purchasers or other persons paying or delivering the same, and that such purchaser or other persons shall not be required to see to the application or be answerable for the misapplication or non-application thereof, or be bound or concerned to inquire into the propriety or expediency of any such sale or resale.

Purchase-money to be applied in satisfaction of security.

8. That the grantee shall, out of the moneys which shall come to his hands by reason of any such sale or sales in the first place, discharge the costs and expenses incurred or sustained in or about such sale or sales, and all other costs, charges, and expenses incurred or occasioned in or about the execution of the powers and authorities contained in the bill of sale, and shall retain the balance of such moneys, or so much thereof as may be necessary, in or towards payment and satisfaction of all moneys due and owing to him upon the security of such bill of sale, and shall pay to the grantor the surplus then remaining.

Section 17S.

## TWELFTH SCHEDULE.

### *Covenant to Insure.*

No. 24 of 1914, Third Schedule as amended by No. 40 of 1957, s. 21, Schedule item 27.

The grantor will forthwith insure and, so long as any money shall remain due from him to the grantee on the security of the bill of sale, keep insured in some public insurance office, to be approved of by the grantee, against loss or damage by fire, in the name of the grantee, the chattels comprised in such bill of sale to the full amount then due thereon, and will hand over to the grantee the policy of such insurance and produce to him the receipts for the annual or other periodical premiums payable on account thereof, and that all moneys payable by virtue of such insurance shall be received by the grantee towards satisfaction of the moneys due on such security, and that if default shall be made by the grantor in effecting or



keeping on foot such insurance it shall be lawful for, but not obligatory upon the grantee (without prejudice to any other remedy) to insure the said chattels in manner aforesaid, and the money paid on account of such insurance shall be a charge on the said chattels.

THIRTEENTH SCHEDULE.

Fees.

Section 35A. No. 24 of 1914, s. 12, as amended by No. 40 of 1957, s. 21. Schedule item 27. Substituted by No. 52 of 1957, Schedule item 6.

On presentation of a bill of sale for registration or for the renewal of registration:—

|  | £  | s. | d. |
|--|----|----|----|
| Where the amount or value of the consideration or the sum secured does not exceed £50  | 10 | 0  | 0  |
| Exceeds £50  | 1  | 0  | 0  |
| <i>(Note.—The above fees include the filing of the affidavit of renewal.)</i>  |    |    |    |
| On lodging notice of intention to register a bill of sale  | 2  | 0  | 0  |
| On withdrawal thereof  | 2  | 0  | 0  |
| On entering a caveat   | 4  | 0  | 0  |
| On withdrawal of a caveat  | 2  | 0  | 0  |
| For every search of the register book and inspection of the documents kept by the Registrar in respect of each name searched | 2  | 0  | 0  |
| On entering satisfaction (including fee for filing the affidavit of execution)   | 10 | 0  | 0  |
| Office copy or extract of any document—  |    |    |    |
| For the certificate  | 10 | 0  | 0  |
| For every folio of 72 words or part thereof, unless the copy is made by the applicant  | 1  | 0  | 0  |

FOURTEENTH SCHEDULE.

Inserted by No. 41 of 1925, s. 11, as amended by No. 40 of 1957, s. 21. Schedule item 31.

I (*here state names in full, residence, and occupation*)

the person whose name appears as the attesting witness to the above Bill of Sale do hereby declare that I was present at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and saw (*grantor*) sign the above instrument, and I thereupon signed my name as attesting witness thereto.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

