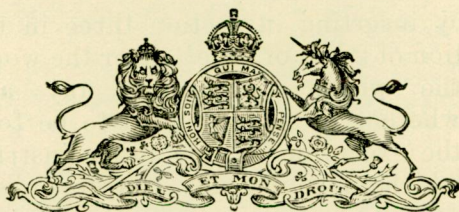


New South Wales.



ANNO TERTIO

GEORGII VI REGIS.

Act No. 27, 1938.

An Act to amend the Bills of Sale Act of 1898 and certain other Acts in certain respects; to repeal the Bills of Sale (Amendment) Act, 1903, and the Bills of Sale (Amendment) Act, 1936; and for purposes connected therewith. [Assented to, 14th December, 1938.]

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

1. (1) This Act may be cited as the "Bills of Sale (Amendment) Act, 1938."

Short title,
citation and
commence-
ment.

(2) The Bills of Sale Act of 1898, as amended by subsequent Acts and by this Act, may be cited as the Bills of Sale Act, 1898-1938.

Bills of Sale (Amendment).

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment
of Act No.
10, 1898.

2. The Bills of Sale Act of 1898, as amended by subsequent Acts, is amended—

Sec. 3.
(Definitions.)

- (a) (i) by inserting in section three in the definition of "Bill of Sale" after the word "debt" the words "and also any agreement, whether or not intended to be followed by the execution of any other instrument, by which in equity any charge or security is conferred over personal chattels to be acquired after the date of the agreement";
- (ii) by omitting from the same definition the words "Assignments for the benefit of the creditors of the person making or giving the same"; and by inserting in lieu thereof the words "Deeds of assignment under Part XI and deeds of arrangement under Part XII of the (Commonwealth) Bankruptcy Act, 1924-1933";
- (iii) by inserting in the same section, after the definition of "Bill of Sale" the following new definition:—

"Farmēr" means a person engaged in farming (including dairy-farming, poultry-farming and bee-farming), agricultural, horticultural or grazing operations in New South Wales.

- (iv) by inserting in the same section in the definition of "Personal chattels" after the word "delivery" the words "(either at the time of the making or giving of a bill of sale of the personal chattels comprised in or made subject to the bill of sale or at any time thereafter)";

(v)

Bills of Sale (Amendment).

(v) by inserting at the end of the same section the following new definitions: —

“Prescribed” means prescribed by this Act or by regulations made under this Act.

“Prescribed fee” means fee prescribed by regulations made under the Conveyancing Act, 1919, as amended by subsequent Acts.

“Trader” means a person engaged or about to engage in the business of selling by retail any goods, wares or merchandise but does not include a farmer (in respect of operations carried on by him as a farmer) or a company or the holder of or an applicant for the transfer of a publican’s license or an Australian wine license under the Liquor Act, 1912 (in respect of the business carried on or intended to be carried on by him as the holder of such a license).

“Trader’s bill of sale” means a bill of sale made or given by way of security by a trader the personal chattels comprised in or made subject to which are or include plant, fixtures, and fittings and/or goods, wares, or merchandise which, at the time of the making or giving of the trader’s bill of sale are owned and used or intended to be used, or which are to be thereafter acquired and when so acquired will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage.

(b)

Bills of Sale (Amendment).

Sec. 4.

(Bills of Sale to be filed or recorded.)

cf. Act 41 & 42 Vict., c. 31, s. 10.

In re Parker, Exp. Turquand, 14 Q.B.D., 646.

- (b) by inserting at the end of section four the following new subsection:—

(3) A transfer or assignment of a bill of sale which has been filed or recorded under this Act shall not be required and shall be deemed never to have been required to be filed or recorded.

New ss.
4A-4C.

- (c) by inserting next after section four the following new sections:—

Accidental misdescription, etc., not to invalidate.

cf. Instruments Act, 1928 (Vict.), s. 29.

4A. No bill of sale shall be deemed invalid by reason only that in any affidavit or description filed or recorded in pursuance of section four of this Act there is an omission or incorrect or insufficient description or misdescription of the time of such bill of sale being made or given or of the residence or occupation of any attesting witness to such bill of sale, if the court judge or justice before which or before whom the validity of such bill of sale comes in question is 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.

Power of court to extend time or supply omissions, etc.

cf. Act No. 37, 1936, s. 190.

- 4B. The Supreme Court, in its equitable jurisdiction, or a judge of the district court for the district within which the person making or giving the bill of sale resides, on being satisfied that—

- (a) the omission to file or record a bill of sale or to renew the registration thereof within the time required by this Act; or
- (b) any omission, or incorrect or insufficient description, or misdescription in any affidavit or description required by this Act in or in connection with the filing or recording of a bill of sale,

was

Bills of Sale (Amendment).

was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors of the person making or giving the bill of sale, or that on other grounds it is just and equitable to grant relief, may, on the application of the grantee or holder of the bill of sale or of any person interested, and on such terms and conditions as seem to the court or judge just and expedient, order that the time for filing or recording the bill of sale or for renewing the registration thereof shall be extended, or, as the case may be, that the omission, incorrect or insufficient description or misdescription shall be rectified.

4c. (1) Where the grantee or holder of a bill of sale proposes, under any power exercisable by him in that behalf, to sell personal chattels comprised in or made subject to the bill of sale he shall give notice to the person who made or gave the bill of sale, of his intention to sell such personal chattels:

Sale by
grantee or
holder of a
bill of sale.

Provided that the grantee or holder of a bill of sale, whether made or given before or after the commencement of the Bills of Sale (Amendment) Act, 1938, or the grantee or holder of a trader's bill of sale made or given after such commencement may, under and in accordance with any power exercisable by him in that behalf, sell any personal chattels comprised in or made subject to the bill of sale, which are perishable goods, without giving any such notice:

Provided further that where—

- (a) in the case of a bill of sale made or given before the commencement of the Bills of Sale (Amendment) Act, 1938, the grantor of the bill of sale was a person engaged or about to engage in the business of selling by retail any goods, wares or merchandise and the personal chattels comprised in or made subject

Bills of Sale (Amendment).

subject to the bill of sale comprise or include goods, wares or merchandise owned and used or intended to be used by the grantor in or in connection with such business; or

- (b) in the case of a bill of sale made or given after such commencement, the bill of sale is a trader's bill of sale;

and the grantee or holder of the bill of sale has, under any power exercisable by him in that behalf, entered into possession of the business of the grantor of the bill of sale, such grantee or holder may, under and in accordance with any power exercisable by him in that behalf, sell, in the ordinary course of such business, any personal chattels comprised in or made subject to the bill of sale without giving any such notice, where the personal chattels are goods, wares or merchandise (other than plant, fittings and fixtures) owned and used or intended to be used by the grantor in or in connection with his business.

(2) Any notice under subsection one of this section shall be in writing and may be given personally or by post addressed to the person who made or gave the bill of sale at the residence or the place of business of such person last known as such to the grantee or holder of the bill of sale.

The following provisions shall apply with respect to any such notice:—

- (a) The notice shall specify the manner in which it is proposed to sell such personal chattels.
- (b) Where any particular manner has been so specified then, subject as hereinafter provided, such personal chattels shall not be sold in any other manner unless a further notice specifying such other manner is given under this subsection.

(c)

Bills of Sale (Amendment).

- (c) Where the proposed manner of sale is by public auction or tender—
- (i) the notice shall be given not less than seven days before the date of the auction or the closing date of tenders, as the case may be, and shall be accompanied by a copy of the prescribed advertisement; and
 - (ii) the grantee or holder of the bill of sale shall publish advertisements of the proposed sale at such times and containing such particulars as may be prescribed and the date of the auction or the date fixed for the closing of tenders, as the case may be, shall be not earlier than ten days after the date of the first publication of the advertisement.

Where the provisions of this paragraph have been complied with and the whole of such personal chattels are not sold at the auction or no tender is received or any tender is received but not accepted such personal chattels or such of them as remain unsold may be thereafter sold in any manner which the grantee or holder may think fit without any further notice under this subsection.

- (d) Where the proposed manner of sale is by private treaty the notice shall be given not less than seven days before the sale, or the first of the separate sales, as the case may be, is made.

Where the notice specifies that the sale will be made by private treaty then (if the power under which the sale is made

Bills of Sale (Amendment).

made so permits) the sale may be made by private treaty in one lot or in several lots, and separate sales may be so made to different persons or at different times without further notice under this subsection.

(3) A grantee or holder of a bill of sale who contravenes or fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding two hundred pounds.

(4) This section shall not apply to and in respect of a bill of sale made or given by a company or by the holder of or an applicant for the transfer of a publican's license or an Australian wine license under the Liquor Act, 1912, whether the same was made or given before or after the commencement of the Bills of Sale (Amendment) Act, 1938, or to and in respect of a bill of sale made before such commencement where, the grantee or holder thereof has, before such commencement, under any power exercisable by him in that behalf, taken possession of the personal chattels comprised in or made subject to the bill of sale but with these exceptions shall apply to and in respect of all trader's bills of sale made or given after such commencement and all other bills of sale made or given either before or after such commencement.

Sec. 5.
(Renewal
of regis-
tration.)

- (d) (i) by omitting from section five the words "twelve months" and by inserting in lieu thereof the words "period of five years";
- (ii) by inserting at the end of the same section the following new subsection:—

(2) In the case of any bill of sale made or given before the commencement of the Bills of Sale (Amendment) Act, 1938, the period of five years referred to in subsection one of this section shall commence to run from the date upon which the bill of sale was registered or from the date upon which the registration

Bills of Sale (Amendment).

registration thereof was last renewed, as the case may be, where, in either such case, such date was not more than twelve months before such commencement.

- (e) by inserting next after section five the following new sections:— New ss.
5A-5L.

5A. (1) In the case of every bill of sale made or given by way of security after the commencement of the Bills of Sale (Amendment) Act, 1938, the person making or giving the bill of sale (in this section referred to as "the grantor") shall furnish a statutory declaration—

Bills of Sale given as security— declaration as to ownership of personal chattels.

(a) stating that the personal chattels comprised in the bill of sale at the time of the making or giving of the bill of sale are the absolute property of the grantor, and that no money is owing to any person in respect of the purchase or upon the security of such personal chattels; or

(b) specifying the property or interest of the grantor in the personal chattels comprised in the bill of sale at the time of the making or giving of the bill of sale and stating that in respect of the purchase or upon the security of such personal chattels money is owing to a specified person.

For the purpose of any such statutory declaration money which is payable under any negotiable instrument given in respect of the purchase of such personal chattels shall be deemed to be money owing in respect of such purchase.

(2) The statutory declaration referred to in subsection one of this section shall, for the purposes of this Act, be taken as part of the bill of sale, and shall be annexed to or indorsed on the same paper on which the bill of sale is written at the time the bill of sale is made or given.

(3)

Bills of Sale (Amendment).

(3) Subject to subsection six of this section a declaration which complies with the requirements of this section, shall, in favour of the grantee or holder of the bill of sale, be conclusive evidence of the facts stated therein unless—

- (a) such grantee or holder had notice, at the time the bill of sale was made or given, that the facts so stated were incorrect; or
- (b) a prior bill of sale comprising or including the same personal chattels or any part thereof is filed or recorded in accordance with the provisions of this Act, and, in any case where such prior bill of sale is made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, there is annexed thereto or endorsed thereon the statutory declaration referred to in subsection one of this section.

Nothing in this subsection shall affect the operation of Part XVII of the Conveyancing Act, 1919-1932.

(4) No bill of sale made or given by way of security after the commencement of the Bills of Sale (Amendment) Act, 1938, shall have any validity as against the person to whom money is owing in respect of the purchase or upon the security of the personal chattels comprised in the bill of sale to the extent of the money so owing if—

- (a) the requirements of subsections one and two of this section are not complied with; or
- (b) the grantee or holder of the bill of sale had notice, at the time the bill of sale was made or given, that the facts stated in the declaration of the grantor were incorrect.

(5)

Bills of Sale (Amendment).

(5) Except to the extent provided in subsection four of this section no bill of sale shall be held to be invalid merely by reason of the fact that the requirements of subsections one and two of this section or of either of such subsections have not been complied with.

(6) This section shall not be construed so as to render valid a bill of sale in any case where the grantor is not the true owner of the personal chattels comprised in such bill of sale.

(7) This section shall not apply to or in respect of a bill of sale given by a farmer in respect of operations carried on by him as a farmer, or by a company or by the holder of or an applicant for the transfer of a publican's license or an Australian wine license under the Liquor Act, 1912 (in respect of the business carried on or intended to be carried on by him as the holder of such a license), or to or in respect of a trader's bill of sale.

5B. (1) In the case of every trader's bill of sale made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, the trader making or giving the trader's bill of sale shall furnish a statutory declaration stating—

Trader's
bill of sale—
declaration
as to facts.

(a) that he is a person engaged or about to engage in the business of selling by retail any goods, wares or merchandise;

(b) that the bill of sale is a trader's bill of sale.

(2) The statutory declaration referred to in subsection one of this section shall for the purposes of this Act, be taken as part of the trader's bill of sale, and shall be annexed to or indorsed on the same paper on which the trader's bill of sale is written at the time such trader's bill of sale is made or given.

(3) A bill of sale made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, shall not be registered as a
trader's

Bills of Sale (Amendment).

trader's bill of sale unless the requirements of subsections one and two of this section are complied with.

(4) If the requirements of subsections one and two of this section are not complied with in relation to any such trader's bill of sale, but such trader's bill of sale is registered in accordance with section four of this Act otherwise than as a trader's bill of sale, it shall have no force or effect with regard to such of the personal chattels comprised therein or made subject thereto as are trade goods but shall have full force and effect with regard to such of the personal chattels comprised therein or made subject thereto as are not trade goods.

In this subsection "trade goods" means plant, fixtures and fittings and/or goods, wares or merchandise which at the time of the making or giving of the trader's bill of sale are owned and used or intended to be used, or which are to be thereafter acquired and, when so acquired, will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage.

5c. (1) No trader's bill of sale (including any schedule or inventory which is thereto annexed or therein referred to) made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, whereby the grantee or holder has power, either with or without notice and either immediately after the making or giving of such trader's bill of sale or at any future time, to seize or take possession of any of the personal chattels comprised in or made subject to such trader's bill of sale, shall be operative or have any validity at law or in equity until the same has been or is filed or recorded in the office of the Registrar-General in accordance with this Act and within the time prescribed by this Act.

(2)

Trader's bills
of sale not
valid until
filed.

cf. Instruments
Act, 1928
(Vict.),
s. 30.

Bills of Sale (Amendment).

(2) No trader's bill of sale made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, shall be so filed or recorded or be operative or save as provided by subsection four of section 5B have any validity at law or in equity—

No trader's bill of sale to be filed unless lodged with Registrar-General within fifteen days after making.

(a) unless the same sets forth—

- (i) the full name and the business or occupation of the grantor and grantee of the trader's bill of sale, and the place of business and residence of the grantor and the place of business or residence of the grantee, and the usual name or style under which the grantor carries on or intends to carry on business;
- (ii) a description of the personal chattels comprised in or made subject to the trader's bill of sale; and a description shall be sufficient for the purposes of this subparagraph if it is a particular description of specified personal chattels mentioned or enumerated in the trader's bill of sale or in a schedule or inventory annexed to or referred to in the trader's bill of sale or a general description of the personal chattels comprised in or made subject to the trader's bill of sale (whether such personal chattels are owned and used or intended to be used by the grantor at the time of the making or giving of the trader's bill of sale in or in connection with the business in which he is engaged or about to engage or are personal chattels to be acquired after the date of the trader's bill of sale over which, in equity,

Bills of Sale (Amendment).

- equity, any charge or security is conferred by the trader's bill of sale) by reference to the nature, type, quality, purpose or mode of user or other distinguishing features sufficient to render such personal chattels reasonably capable of identification, or partly such a particular description and partly such a general description;
- (iii) the situation at the time of the making or giving of the trader's bill of sale of so much of such personal chattels as are then owned and used or intended to be used by the trader in or in connection with the business in which he is engaged or about to engage;
- (iv) the consideration for the trader's bill of sale, specifying the amount of past debt (if any), the advance (if any) made at the time of making or giving the trader's bill of sale, and (if such is the case) that future advances are secured by the trader's bill of sale; and
- (v) an address to which notices of any caveats which may be entered against the filing or recording of such trader's bill of sale may be posted to the grantor; and
- (b) unless such trader's bill of sale has been or is lodged at the office of the Registrar-General within fifteen days after the making or giving of the trader's bill of sale; and upon such lodgment there shall be paid to the Registrar-General the prescribed fee.

Bills of Sale (Amendment).

(3) Where the requirements of subparagraph (ii) or subparagraph (iii) of paragraph (a) of subsection two of this section are complied with in regard to some only of the personal chattels comprised in or made subject to a trader's bill of sale, the trader's bill of sale may, nevertheless, be filed or recorded and shall, if otherwise in order, be operative and have validity with regard to those personal chattels, and also with regard to any other personal chattels (not being trade goods) comprised therein or made subject thereto, but, with regard to any of the personal chattels (being trade goods) comprised therein or made subject thereto in respect of which such requirements are not complied with, shall not be operative or have any validity at law or in equity.

In this subsection "trade goods" means plant, fixtures and fittings and/or goods, wares or merchandise which, at the time of the making or giving of the trader's bill of sale are owned and used or intended to be used, or which are to be thereafter acquired and when so acquired will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage.

(4) Where any trader's bill of sale is rendered wholly inoperative and invalid by this section the moneys secured thereby shall immediately become payable. cf. Act No. 33, 1936, s. 185 (2).

(5) Where a trader's bill of sale is lodged as provided in subsection two of this section but has not been filed or recorded as a trader's bill of sale such bill of sale as regards such of the personal chattels comprised therein or made subject thereto as are not trade goods as defined in subsection three of this section shall nevertheless be deemed to be filed or recorded as a bill of sale other than a trader's bill of sale.

Bills of Sale (Amendment).

Names and dates to be indexed and open to inspection.
cf. Instruments Act, 1928 (Vict.), s. 31.

5D. The Registrar-General shall cause a book to be kept in which the name and address of each person making or giving any trader's bill of sale lodged as required by this Act shall be entered in alphabetical order together with a statement in which shall be specified the certain day, hour and time on which the trader's bill of sale made or given by such person was lodged.

Such book shall be open to the inspection of any person upon payment of the prescribed fee, and any person may inspect and take a copy of any bill of sale so lodged upon payment of the prescribed fee.

Time for filing bill of sale after lodgment.
cf. *Ibid.* s.32.

5E. No trader's bill of sale lodged as required by this Act shall be filed or recorded before the expiration of fourteen days from the date of lodging the same.

Filing or recording of trader's bill of sale.

5F. (1) If no caveat is entered as provided in section 5G of this Act against the filing or recording of a trader's bill of sale lodged as required by this Act, such trader's bill of sale shall be filed or recorded forthwith upon the expiration of fourteen days from the date of lodging the same.

(2) If a caveat is entered as provided in section 5G of this Act against the filing or recording of the trader's bill of sale lodged as required by this Act such trader's bill of sale shall not be filed or recorded until the caveat is removed or withdrawn as provided in section 5I or section 5J of this Act but when such caveat has been so removed or withdrawn the bill of sale shall be filed or recorded forthwith.

(3) Where a trader's bill of sale has been filed or recorded as prescribed by this section it shall, for the purposes of sections four, five and 5c of this Act, be deemed to have been duly registered within the time prescribed by this Act.

Bills of Sale (Amendment).

5G. (1) Any unsecured creditor of the grantor of any trader's bill of sale lodged as required by this Act may, at any time within fourteen days from the date of the lodging of the same, enter a caveat against the filing or recording of such bill of sale, by lodging such caveat with the Registrar-General and paying the prescribed fee.

Creditor may enter caveat.
cf. Instruments Act, 1928 (Vict.), s. 34.

(2) Every such caveat shall be in or to the effect of the prescribed form and shall contain the particulars therein indicated, and shall specify a place within the present limits of the city of Sydney 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.

5H. Upon the receipt of any such caveat the Registrar-General shall cause a copy thereof to be posted to the grantor at the address set forth in such bill of sale as the address to which notices of caveats under this Act may be posted and shall also cause a copy thereof to be posted to the grantee at the place of business or of residence of the grantee set forth in the bill of sale.

Caveat to be notified to grantor and grantee.
cf. *Ibid.* s. 35.

The grantor or the grantee may summon the caveator before a judge of the district court for the metropolitan district 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.

Any person to whom the grantor is indebted at law or in equity, and whose debt arose wholly or in part out of a transaction in or in connection with or in relation to the business in which the grantor is engaged or about to engage or a business in which the grantor was, at the date of the transaction, engaged or about to engage and is unsecured, whether the debt be due or to accrue due, shall be deemed to be a creditor within the meaning of this Act.

Bills of Sale (Amendment).

Judge may order filing to be stayed or removal of caveat.
 cf. Instruments Act, 1928 (Vict.), s. 36.

5i. (1) If on the hearing of such summons it appears that the caveator is an unsecured creditor of the grantor the judge may make an order directing that the trader's bill of sale shall not be filed or recorded until the debt for which he is found to be a creditor is satisfied or the amount of such debt is paid into the Metropolitan District Court to the credit of the caveator.

(2) If on such hearing it does not appear that the caveator is an unsecured creditor of the grantor the judge may order that the caveat be removed, and upon service of such order upon the Registrar-General he shall remove the caveat therein mentioned.

Caveat may be withdrawn or removal ordered at any time.

5j. (1) A caveator may withdraw his caveat at any time by signing an application for the withdrawal thereof in or to the effect of the prescribed form.

(2) A judge of the district court for the metropolitan district may, upon application made ex parte, order that any caveat entered under this Act be removed.

Such order may be made on such terms as the judge may think fit.

Upon the service of such order upon the Registrar-General and upon proof of compliance with the terms (if any) imposed by the judge he shall remove the caveat therein mentioned.

Judge to have jurisdiction to award costs and compensation.
 cf. *Ibid.*, s. 38.

5k. Upon the hearing of any summons under this Act the judge may make such order as to costs as he thinks fit, and any person not an unsecured 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 or the grantee or both of them such sum by way of compensation as the judge upon the hearing of such summons deems just and orders to be paid,

Bills of Sale (Amendment).

5E. Upon the filing or recording of any copy of a bill of sale under this Act the proper officer shall indorse thereon a receipt for the same, in which shall be specified the certain day, hour and time on which the same is filed or recorded; and the Registrar-General or other proper officer in that behalf shall then attach his signature to the said receipt; and every such receipt so indorsed and signed shall be taken and allowed as evidence of the filing or recording of such bill of sale and of the time when such filing or recording took place.

Receipt to be indorsed on copy of bill of sale
cf. Instruments Act, 1928 (Vict.), s. 45.

- (f) (i) by omitting from section six the words "twelve months" and by inserting in lieu thereof the words "period of five years";
- (ii) by inserting at the end of the same section the following new subsection:—

Sec. 6.
(Promise to give bill of sale.)

(2) In the case of any promise to give a bill of sale made or given before the commencement of the Bills of Sale (Amendment) Act, 1938, the period of five years referred to in subsection one of this section shall commence to run from the date upon which the promise to give a bill of sale was registered or from the date upon which the registration thereof was last renewed, as the case may be, where, in either such case, such date was not more than twelve months before such commencement.

- (g) by inserting next after section twelve the following new section:—

New s. 12A.

12A. Whenever, at the time any person makes or gives a bill of sale, such person is married and living with his or her wife or husband, and such bill of sale comprises any household furniture, such bill of sale shall not be enforced by seizure or sale of any such furniture as then is actually in use by the person making or giving the bill of sale or his or her wife or husband, as the case may be, unless at the time of execution it is endorsed

A bill of sale to have no effect as to certain household furniture unless consent of wife or husband of maker or giver indorsed thereon.

Bills of Sale (Amendment).

endorsed in the manner and according to the form contained in Schedule Four to this Act by the wife or husband of the maker or giver of the bill of sale:

Provided that this section shall have no effect after the death of the wife or husband, or if, after the making or giving of the bill, such husband and wife live apart pursuant to a decree, order, or deed of separation, or if a decree for the dissolution or nullity of their marriage has been made.

New s. 13A.

(h) by inserting next after section thirteen the following new section:—

Memorandum of amount due under bill of sale.

13A. (1) A memorandum in or to the effect of the prescribed form signed by the person entitled to give a receipt for the moneys secured by a bill of sale and specifying the amount due thereunder shall, upon registration, be conclusive evidence of the amount so due at the date specified in the memorandum.

(2) The person entitled to give a receipt for the moneys secured by a bill of sale shall, when requested so to do by the grantor of the bill of sale, execute a memorandum under this section.

Such person shall execute such memorandum within a period of one month after a request so to do has been given to him by the grantor and if without reasonable cause such person makes default in so doing he shall be liable to a penalty not exceeding two pounds for each day after the expiration of the said period during which such default continues:

Provided that where such person has, in any one year of the period during which the bill of sale remains in force, complied with a request made under this subsection he shall not be bound to comply with any further request made in respect of the same bill of sale within the same year.

(3)

Bills of Sale (Amendment).

(3) The Registrar-General shall, upon payment of the prescribed fee, register such memorandum by noting the same on the bill of sale or copy filed and shall file the memorandum in his office.

(4) The fact of such registration and such particulars relating to the bill of sale or to the memorandum as may be prescribed shall be noted by the Registrar-General in the book kept by him under this Act.

(5) Attestation in accordance with section one hundred and sixty-eight of the Conveyancing Act, 1919, as amended by subsequent Acts, may be taken as sufficient proof of the execution of any such memorandum.

- (i) by inserting next after section fourteen the following new sections:— New ss.
15 & 16.

15. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Act into effect. Regulations.

(2) The regulations may provide a penalty not exceeding twenty pounds for any breach thereof.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

Bills of Sale (Amendment).

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

(4) Any penalty imposed by the regulations may be recovered in a summary manner before a police or stipendiary magistrate or any two or more justices.

Time for
lodgment,
filing or
recording
of bill
of sale.

16. Where the time prescribed or allowed by this Act for the lodging, filing or recording of any bill of sale (including a trader's bill of sale) would, but for this section, expire on a Saturday, the bill of sale may be lodged, filed or recorded on the first day following, which is not a Sunday or a public or a bank holiday.

New
Schedule
Four.

(j) by inserting next after Schedule Three the following new Schedule:—

Sec. 12A.

SCHEDULE FOUR.

I (here fill in wife's or husband's name), the wife (or husband) of (here fill in name of maker or giver of the bill of sale), consent to this bill of sale being effective as to the household furniture actually in use by my husband (or wife) and me, and which is comprised in this bill of sale.

(Signed) (Usual signature)
(Address)

Repeal
of Act No.
12, 1903.

3. (1) The Bills of Sale (Amendment) Act, 1903, is repealed.

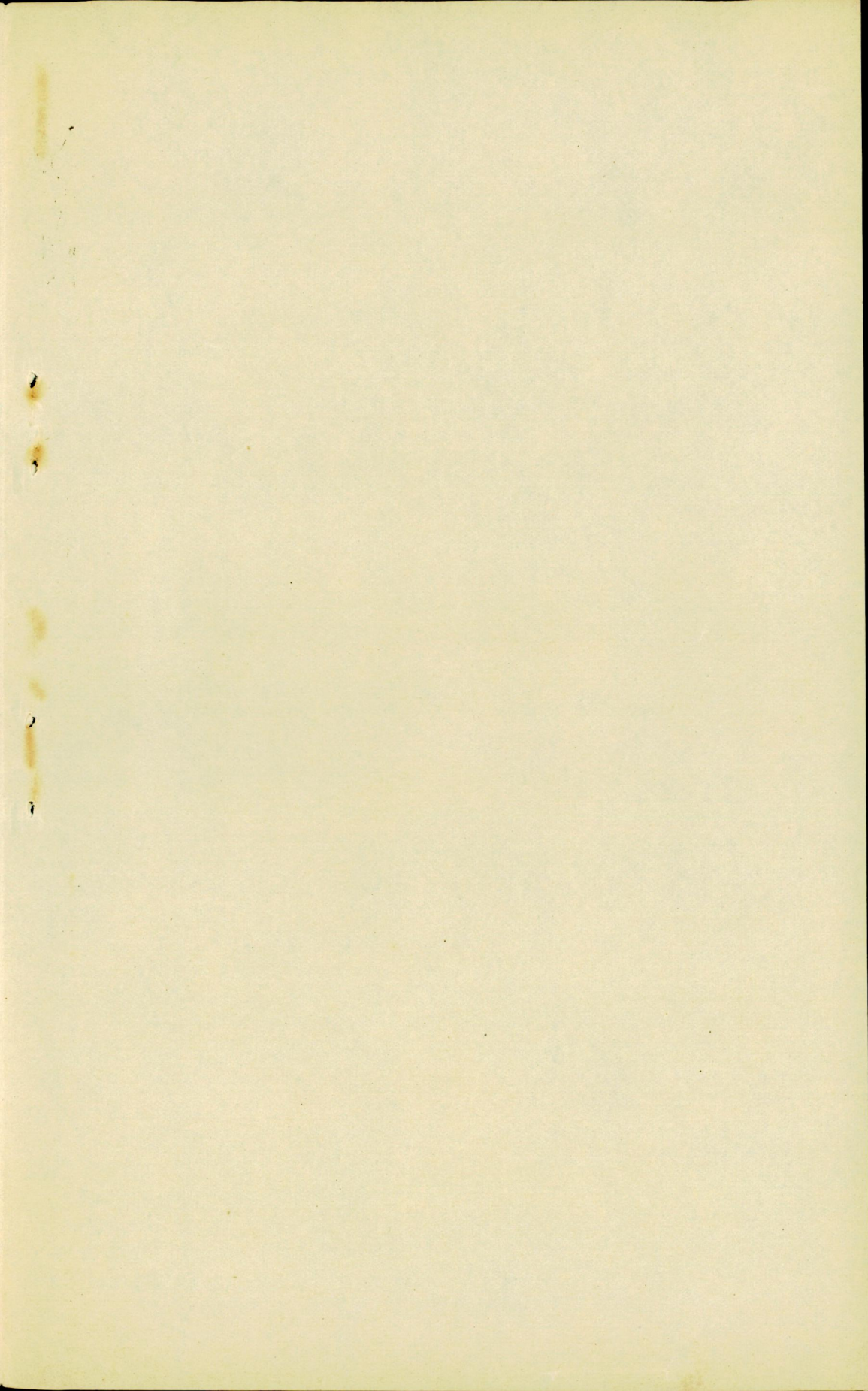
Repeal
of Act No.
62, 1936.

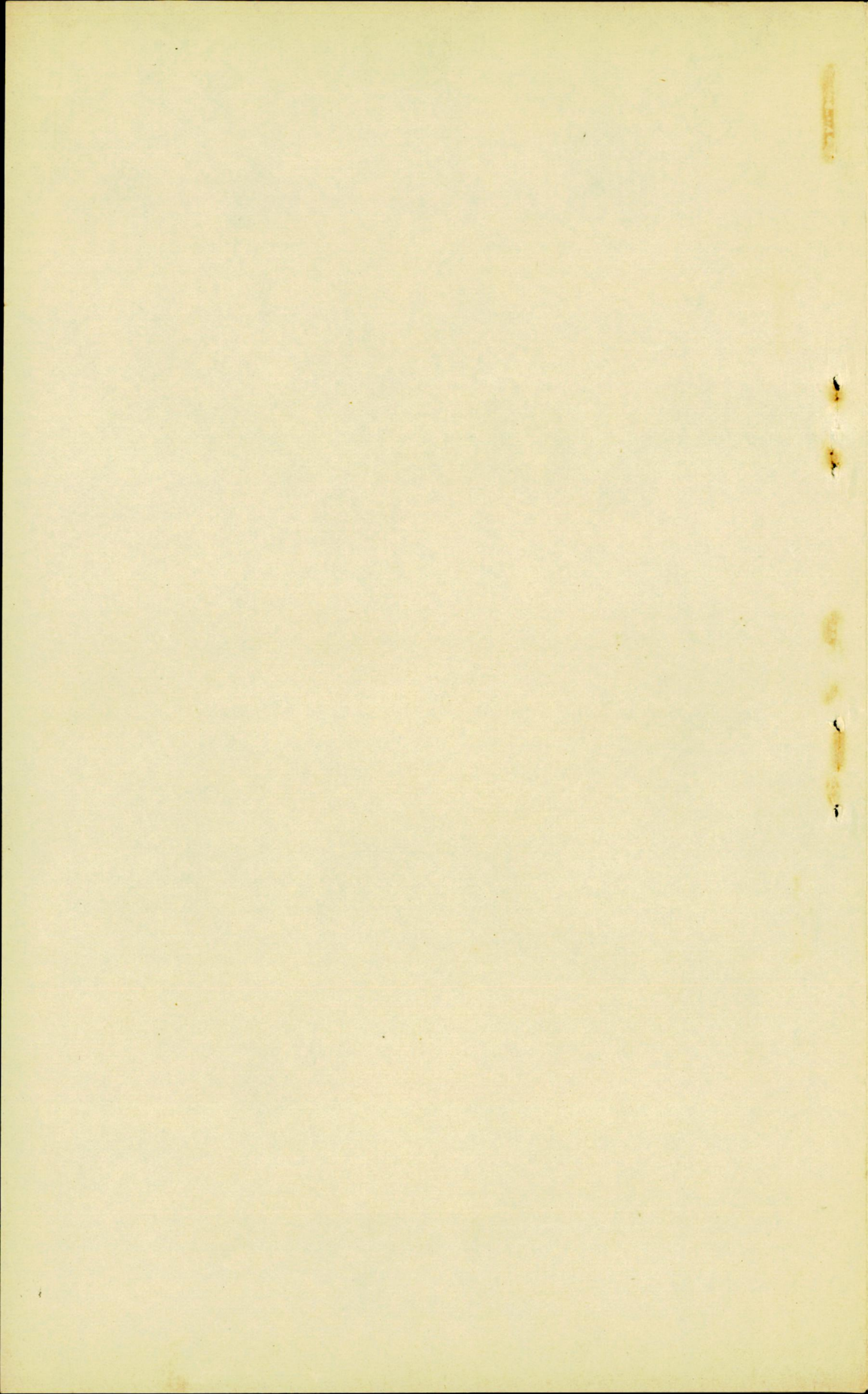
(2) The Bills of Sale (Amendment) Act, 1936, is repealed.

By Authority:

DAVID HAROLD PAISLEY, Government Printer, Sydney, 1938.

[9d.]



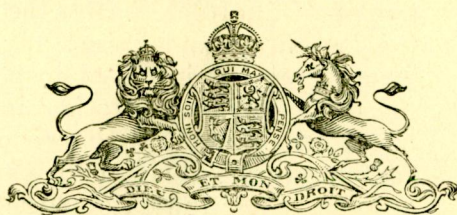


I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

W. R. McCOURT,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 6 December, 1938.*

New South Wales.



ANNO TERTIO

GEORGIUS VI REGIS.

Act No. 27, 1938.

An Act to amend the Bills of Sale Act of 1898 and certain other Acts in certain respects; to repeal the Bills of Sale (Amendment) Act, 1903, and the Bills of Sale (Amendment) Act, 1936; and for purposes connected therewith. [Assented to, 14th December, 1938.]

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

1. (1) This Act may be cited as the "Bills of Sale (Amendment) Act, 1938."

Short title, citation and commencement.

(2) The Bills of Sale Act of 1898, as amended by subsequent Acts and by this Act, may be cited as the Bills of Sale Act, 1898-1938.

(3)

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

W. W. HEDGES,
Chairman of Committees of the Legislative Assembly.

Bills of Sale (Amendment).

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment
of Act No.
10, 1898.

2. The Bills of Sale Act of 1898, as amended by subsequent Acts, is amended—

Sec. 3.
(Defini-
tions.)

(a) (i) by inserting in section three in the definition of "Bill of Sale" after the word "debt" the words "and also any agreement, whether or not intended to be followed by the execution of any other instrument, by which in equity any charge or security is conferred over personal chattels to be acquired after the date of the agreement";

(ii) by omitting from the same definition the words "Assignments for the benefit of the creditors of the person making or giving the same"; and by inserting in lieu thereof the words "Deeds of assignment under Part XI and deeds of arrangement under Part XII of the (Commonwealth) Bankruptcy Act, 1924-1933";

(iii) by inserting in the same section, after the definition of "Bill of Sale" the following new definition:—

"Farmēr" means a person engaged in farming (including dairy-farming, poultry-farming and bee-farming), agricultural, horticultural or grazing operations in New South Wales.

(iv) by inserting in the same section in the definition of "Personal chattels" after the word "delivery" the words "(either at the time of the making or giving of a bill of sale of the personal chattels comprised in or made subject to the bill of sale or at any time thereafter)";

(v)

Bills of Sale (Amendment).

(v) by inserting at the end of the same section the following new definitions: —

“Prescribed” means prescribed by this Act or by regulations made under this Act.

“Prescribed fee” means fee prescribed by regulations made under the Conveyancing Act, 1919, as amended by subsequent Acts.

“Trader” means a person engaged or about to engage in the business of selling by retail any goods, wares or merchandise but does not include a farmer (in respect of operations carried on by him as a farmer) or a company or the holder of or an applicant for the transfer of a publican’s license or an Australian wine license under the Liquor Act, 1912 (in respect of the business carried on or intended to be carried on by him as the holder of such a license).

“Trader’s bill of sale” means a bill of sale made or given by way of security by a trader the personal chattels comprised in or made subject to which are or include plant, fixtures, and fittings and/or goods, wares, or merchandise which, at the time of the making or giving of the trader’s bill of sale are owned and used or intended to be used, or which are to be thereafter acquired and when so acquired will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage.

(b)

Bills of Sale (Amendment).

Sec. 4.
(Bills of
Sale to be
filed or
recorded.)
cf. Act 41 & 42
Vict., c. 31,
s. 10.
In re
Parker, Exp.
Turquand,
14 Q.B.D., 646.

(b) by inserting at the end of section four the following new subsection:—

(3) A transfer or assignment of a bill of sale which has been filed or recorded under this Act shall not be required and shall be deemed never to have been required to be filed or recorded.

New ss.
4A-4C.

(c) by inserting next after section four the following new sections:—

Accidental
misdescription,
etc.,
not to
invalidate.
cf. Instru-
ments
Act, 1928
(Vict.),
s. 29.

4A. No bill of sale shall be deemed invalid by reason only that in any affidavit or description filed or recorded in pursuance of section four of this Act there is an omission or incorrect or insufficient description or misdescription of the time of such bill of sale being made or given or of the residence or occupation of any attesting witness to such bill of sale, if the court judge or justice before which or before whom the validity of such bill of sale comes in question is 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.

Power of
court to
extend time
or supply
omissions,
etc.
cf. Act No.
37, 1936,
s. 190.

4B. The Supreme Court, in its equitable jurisdiction, or a judge of the district court for the district within which the person making or giving the bill of sale resides, on being satisfied that—

- (a) the omission to file or record a bill of sale or to renew the registration thereof within the time required by this Act; or
- (b) any omission, or incorrect or insufficient description, or misdescription in any affidavit or description required by this Act in or in connection with the filing or recording of a bill of sale,

was

Bills of Sale (Amendment).

was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors of the person making or giving the bill of sale, or that on other grounds it is just and equitable to grant relief, may, on the application of the grantee or holder of the bill of sale or of any person interested, and on such terms and conditions as seem to the court or judge just and expedient, order that the time for filing or recording the bill of sale or for renewing the registration thereof shall be extended, or, as the case may be, that the omission, incorrect or insufficient description or misdescription shall be rectified.

4c. (1) Where the grantee or holder of a bill of sale proposes, under any power exercisable by him in that behalf, to sell personal chattels comprised in or made subject to the bill of sale he shall give notice to the person who made or gave the bill of sale, of his intention to sell such personal chattels:

Sale by
grantee or
holder of a
bill of sale.

Provided that the grantee or holder of a bill of sale, whether made or given before or after the commencement of the Bills of Sale (Amendment) Act, 1938, or the grantee or holder of a trader's bill of sale made or given after such commencement may, under and in accordance with any power exercisable by him in that behalf, sell any personal chattels comprised in or made subject to the bill of sale, which are perishable goods, without giving any such notice:

Provided further that where—

- (a) in the case of a bill of sale made or given before the commencement of the Bills of Sale (Amendment) Act, 1938, the grantor of the bill of sale was a person engaged or about to engage in the business of selling by retail any goods, wares or merchandise and the personal chattels comprised in or made subject

Bills of Sale (Amendment).

subject to the bill of sale comprise or include goods, wares or merchandise owned and used or intended to be used by the grantor in or in connection with such business; or

- (b) in the case of a bill of sale made or given after such commencement, the bill of sale is a trader's bill of sale;

and the grantee or holder of the bill of sale has, under any power exercisable by him in that behalf, entered into possession of the business of the grantor of the bill of sale, such grantee or holder may, under and in accordance with any power exercisable by him in that behalf, sell, in the ordinary course of such business, any personal chattels comprised in or made subject to the bill of sale without giving any such notice, where the personal chattels are goods, wares or merchandise (other than plant, fittings and fixtures) owned and used or intended to be used by the grantor in or in connection with his business.

(2) Any notice under subsection one of this section shall be in writing and may be given personally or by post addressed to the person who made or gave the bill of sale at the residence or the place of business of such person last known as such to the grantee or holder of the bill of sale.

The following provisions shall apply with respect to any such notice:—

- (a) The notice shall specify the manner in which it is proposed to sell such personal chattels.
- (b) Where any particular manner has been so specified then, subject as hereinafter provided, such personal chattels shall not be sold in any other manner unless a further notice specifying such other manner is given under this subsection.

(c)

Bills of Sale (Amendment).

(c) Where the proposed manner of sale is by public auction or tender—

- (i) the notice shall be given not less than seven days before the date of the auction or the closing date of tenders, as the case may be, and shall be accompanied by a copy of the prescribed advertisement; and
- (ii) the grantee or holder of the bill of sale shall publish advertisements of the proposed sale at such times and containing such particulars as may be prescribed and the date of the auction or the date fixed for the closing of tenders, as the case may be, shall be not earlier than ten days after the date of the first publication of the advertisement.

Where the provisions of this paragraph have been complied with and the whole of such personal chattels are not sold at the auction or no tender is received or any tender is received but not accepted such personal chattels or such of them as remain unsold may be thereafter sold in any manner which the grantee or holder may think fit without any further notice under this subsection.

(d) Where the proposed manner of sale is by private treaty the notice shall be given not less than seven days before the sale, or the first of the separate sales, as the case may be, is made.

Where the notice specifies that the sale will be made by private treaty then (if the power under which the sale is made

Bills of Sale (Amendment).

made so permits) the sale may be made by private treaty in one lot or in several lots, and separate sales may be so made to different persons or at different times without further notice under this subsection.

(3) A grantee or holder of a bill of sale who contravenes or fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding two hundred pounds.

(4) This section shall not apply to and in respect of a bill of sale made or given by a company or by the holder of or an applicant for the transfer of a publican's license or an Australian wine license under the Liquor Act, 1912, whether the same was made or given before or after the commencement of the Bills of Sale (Amendment) Act, 1938, or to and in respect of a bill of sale made before such commencement where, the grantee or holder thereof has, before such commencement, under any power exercisable by him in that behalf, taken possession of the personal chattels comprised in or made subject to the bill of sale but with these exceptions shall apply to and in respect of all trader's bills of sale made or given after such commencement and all other bills of sale made or given either before or after such commencement.

Sec. 5.
(Renewal
of regis-
tration.)

- (d) (i) by omitting from section five the words "twelve months" and by inserting in lieu thereof the words "period of five years";
- (ii) by inserting at the end of the same section the following new subsection:—

(2) In the case of any bill of sale made or given before the commencement of the Bills of Sale (Amendment) Act, 1938, the period of five years referred to in subsection one of this section shall commence to run from the date upon which the bill of sale was registered or from the date upon which the registration

Bills of Sale (Amendment).

registration thereof was last renewed, as the case may be, where, in either such case, such date was not more than twelve months before such commencement.

- (e) by inserting next after section five the following new sections:— New ss.
5A-5L.

5A. (1) In the case of every bill of sale made or given by way of security after the commencement of the Bills of Sale (Amendment) Act, 1938, the person making or giving the bill of sale (in this section referred to as "the grantor") shall furnish a statutory declaration—

Bills of Sale
given as
security—
declaration as
to ownership of
personal
chattels.

- (a) stating that the personal chattels comprised in the bill of sale at the time of the making or giving of the bill of sale are the absolute property of the grantor, and that no money is owing to any person in respect of the purchase or upon the security of such personal chattels; or
- (b) specifying the property or interest of the grantor in the personal chattels comprised in the bill of sale at the time of the making or giving of the bill of sale and stating that in respect of the purchase or upon the security of such personal chattels money is owing to a specified person.

For the purpose of any such statutory declaration money which is payable under any negotiable instrument given in respect of the purchase of such personal chattels shall be deemed to be money owing in respect of such purchase.

(2) The statutory declaration referred to in subsection one of this section shall, for the purposes of this Act, be taken as part of the bill of sale, and shall be annexed to or indorsed on the same paper on which the bill of sale is written at the time the bill of sale is made or given.

(3)

Bills of Sale (Amendment).

(3) Subject to subsection six of this section a declaration which complies with the requirements of this section, shall, in favour of the grantee or holder of the bill of sale, be conclusive evidence of the facts stated therein unless—

- (a) such grantee or holder had notice, at the time the bill of sale was made or given, that the facts so stated were incorrect; or
- (b) a prior bill of sale comprising or including the same personal chattels or any part thereof is filed or recorded in accordance with the provisions of this Act, and, in any case where such prior bill of sale is made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, there is annexed thereto or endorsed thereon the statutory declaration referred to in subsection one of this section.

Nothing in this subsection shall affect the operation of Part XVII of the Conveyancing Act, 1919-1932.

(4) No bill of sale made or given by way of security after the commencement of the Bills of Sale (Amendment) Act, 1938, shall have any validity as against the person to whom money is owing in respect of the purchase or upon the security of the personal chattels comprised in the bill of sale to the extent of the money so owing if—

- (a) the requirements of subsections one and two of this section are not complied with; or
- (b) the grantee or holder of the bill of sale had notice, at the time the bill of sale was made or given, that the facts stated in the declaration of the grantor were incorrect.

(5)

Bills of Sale (Amendment).

(5) Except to the extent provided in subsection four of this section no bill of sale shall be held to be invalid merely by reason of the fact that the requirements of subsections one and two of this section or of either of such subsections have not been complied with.

(6) This section shall not be construed so as to render valid a bill of sale in any case where the grantor is not the true owner of the personal chattels comprised in such bill of sale.

(7) This section shall not apply to or in respect of a bill of sale given by a farmer in respect of operations carried on by him as a farmer, or by a company or by the holder of or an applicant for the transfer of a publican's license or an Australian wine license under the Liquor Act, 1912 (in respect of the business carried on or intended to be carried on by him as the holder of such a license), or to or in respect of a trader's bill of sale.

5B. (1) In the case of every trader's bill of sale made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, the trader making or giving the trader's bill of sale shall furnish a statutory declaration stating—

Trader's
bill of sale—
declaration
as to facts.

- (a) that he is a person engaged or about to engage in the business of selling by retail any goods, wares or merchandise;
- (b) that the bill of sale is a trader's bill of sale.

(2) The statutory declaration referred to in subsection one of this section shall for the purposes of this Act, be taken as part of the trader's bill of sale, and shall be annexed to or indorsed on the same paper on which the trader's bill of sale is written at the time such trader's bill of sale is made or given.

(3) A bill of sale made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, shall not be registered as a
trader's

Bills of Sale (Amendment).

trader's bill of sale unless the requirements of subsections one and two of this section are complied with.

(4) If the requirements of subsections one and two of this section are not complied with in relation to any such trader's bill of sale, but such trader's bill of sale is registered in accordance with section four of this Act otherwise than as a trader's bill of sale, it shall have no force or effect with regard to such of the personal chattels comprised therein or made subject thereto as are trade goods but shall have full force and effect with regard to such of the personal chattels comprised therein or made subject thereto as are not trade goods.

In this subsection "trade goods" means plant, fixtures and fittings and/or goods, wares or merchandise which at the time of the making or giving of the trader's bill of sale are owned and used or intended to be used, or which are to be thereafter acquired and, when so acquired, will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage.

5c. (1) No trader's bill of sale (including any schedule or inventory which is thereto annexed or therein referred to) made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, whereby the grantee or holder has power, either with or without notice and either immediately after the making or giving of such trader's bill of sale or at any future time, to seize or take possession of any of the personal chattels comprised in or made subject to such trader's bill of sale, shall be operative or have any validity at law or in equity until the same has been or is filed or recorded in the office of the Registrar-General in accordance with this Act and within the time prescribed by this Act.

(2)

Trader's bills
of sale not
valid until
filed.
cf. Instruments
Act, 1928
(Vict.),
s. 30.

Bills of Sale (Amendment).

(2) No trader's bill of sale made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, shall be so filed or recorded or be operative or save as provided by subsection four of section 5B have any validity at law or in equity—

No trader's bill of sale to be filed unless lodged with Registrar-General within fifteen days after making.

(a) unless the same sets forth—

- (i) the full name and the business or occupation of the grantor and grantee of the trader's bill of sale, and the place of business and residence of the grantor and the place of business or residence of the grantee, and the usual name or style under which the grantor carries on or intends to carry on business;
- (ii) a description of the personal chattels comprised in or made subject to the trader's bill of sale; and a description shall be sufficient for the purposes of this subparagraph if it is a particular description of specified personal chattels mentioned or enumerated in the trader's bill of sale or in a schedule or inventory annexed to or referred to in the trader's bill of sale or a general description of the personal chattels comprised in or made subject to the trader's bill of sale (whether such personal chattels are owned and used or intended to be used by the grantor at the time of the making or giving of the trader's bill of sale in or in connection with the business in which he is engaged or about to engage or are personal chattels to be acquired after the date of the trader's bill of sale over which, in equity,

Bills of Sale (Amendment).

- equity, any charge or security is conferred by the trader's bill of sale) by reference to the nature, type, quality, purpose or mode of user or other distinguishing features sufficient to render such personal chattels reasonably capable of identification, or partly such a particular description and partly such a general description;
- (iii) the situation at the time of the making or giving of the trader's bill of sale of so much of such personal chattels as are then owned and used or intended to be used by the trader in or in connection with the business in which he is engaged or about to engage;
- (iv) the consideration for the trader's bill of sale, specifying the amount of past debt (if any), the advance (if any) made at the time of making or giving the trader's bill of sale, and (if such is the case) that future advances are secured by the trader's bill of sale; and
- (v) an address to which notices of any caveats which may be entered against the filing or recording of such trader's bill of sale may be posted to the grantor; and
- (b) unless such trader's bill of sale has been or is lodged at the office of the Registrar-General within fifteen days after the making or giving of the trader's bill of sale; and upon such lodgment there shall be paid to the Registrar-General the prescribed fee.

(3)

Bills of Sale (Amendment).

(3) Where the requirements of subparagraph (ii) or subparagraph (iii) of paragraph (a) of subsection two of this section are complied with in regard to some only of the personal chattels comprised in or made subject to a trader's bill of sale, the trader's bill of sale may, nevertheless, be filed or recorded and shall, if otherwise in order, be operative and have validity with regard to those personal chattels, and also with regard to any other personal chattels (not being trade goods) comprised therein or made subject thereto, but, with regard to any of the personal chattels (being trade goods) comprised therein or made subject thereto in respect of which such requirements are not complied with, shall not be operative or have any validity at law or in equity.

In this subsection "trade goods" means plant, fixtures and fittings and/or goods, wares or merchandise which, at the time of the making or giving of the trader's bill of sale are owned and used or intended to be used, or which are to be thereafter acquired and when so acquired will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage.

(4) Where any trader's bill of sale is rendered wholly inoperative and invalid by this section the moneys secured thereby shall immediately become payable. cf. Act No. 33, 1936, s. 185 (2).

(5) Where a trader's bill of sale is lodged as provided in subsection two of this section but has not been filed or recorded as a trader's bill of sale such bill of sale as regards such of the personal chattels comprised therein or made subject thereto as are not trade goods as defined in subsection three of this section shall nevertheless be deemed to be filed or recorded as a bill of sale other than a trader's bill of sale.

Bills of Sale (Amendment).

Names and dates to be indexed and open to inspection.
cf. Instruments Act, 1928 (Vict.), s. 31.

5d. The Registrar-General shall cause a book to be kept in which the name and address of each person making or giving any trader's bill of sale lodged as required by this Act shall be entered in alphabetical order together with a statement in which shall be specified the certain day, hour and time on which the trader's bill of sale made or given by such person was lodged.

Such book shall be open to the inspection of any person upon payment of the prescribed fee, and any person may inspect and take a copy of any bill of sale so lodged upon payment of the prescribed fee.

Time for filing bill of sale after lodgment.
cf. *Ibid.* s.32.

5e. No trader's bill of sale lodged as required by this Act shall be filed or recorded before the expiration of fourteen days from the date of lodging the same.

Filing or recording of trader's bill of sale.

5f. (1) If no caveat is entered as provided in section 5g of this Act against the filing or recording of a trader's bill of sale lodged as required by this Act, such trader's bill of sale shall be filed or recorded forthwith upon the expiration of fourteen days from the date of lodging the same.

(2) If a caveat is entered as provided in section 5g of this Act against the filing or recording of the trader's bill of sale lodged as required by this Act such trader's bill of sale shall not be filed or recorded until the caveat is removed or withdrawn as provided in section 5i or section 5j of this Act but when such caveat has been so removed or withdrawn the bill of sale shall be filed or recorded forthwith.

(3) Where a trader's bill of sale has been filed or recorded as prescribed by this section it shall, for the purposes of sections four, five and 5c of this Act, be deemed to have been duly registered within the time prescribed by this Act.

5g.

Bills of Sale (Amendment).

5G. (1) Any unsecured creditor of the grantor of any trader's bill of sale lodged as required by this Act may, at any time within fourteen days from the date of the lodging of the same, enter a caveat against the filing or recording of such bill of sale, by lodging such caveat with the Registrar-General and paying the prescribed fee.

Creditor may enter caveat.
cf. Instruments Act, 1928 (Viet.), s. 34.

(2) Every such caveat shall be in or to the effect of the prescribed form and shall contain the particulars therein indicated, and shall specify a place within the present limits of the city of Sydney 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.

5H. Upon the receipt of any such caveat the Registrar-General shall cause a copy thereof to be posted to the grantor at the address set forth in such bill of sale as the address to which notices of caveats under this Act may be posted and shall also cause a copy thereof to be posted to the grantee at the place of business or of residence of the grantee set forth in the bill of sale.

Caveat to be notified to grantor and grantee.
cf. *Ibid.* s. 35.

The grantor or the grantee may summon the caveator before a judge of the district court for the metropolitan district 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.

Any person to whom the grantor is indebted at law or in equity, and whose debt arose wholly or in part out of a transaction in or in connection with or in relation to the business in which the grantor is engaged or about to engage or a business in which the grantor was, at the date of the transaction, engaged or about to engage and is unsecured, whether the debt be due or to accrue due, shall be deemed to be a creditor within the meaning of this Act.

Bills of Sale (Amendment).

Judge may order filing to be stayed or removal of caveat.
cf. Instruments Act, 1928 (Vict.), s. 36.

5l. (1) If on the hearing of such summons it appears that the caveator is an unsecured creditor of the grantor the judge may make an order directing that the trader's bill of sale shall not be filed or recorded until the debt for which he is found to be a creditor is satisfied or the amount of such debt is paid into the Metropolitan District Court to the credit of the caveator.

(2) If on such hearing it does not appear that the caveator is an unsecured creditor of the grantor the judge may order that the caveat be removed, and upon service of such order upon the Registrar-General he shall remove the caveat therein mentioned.

Caveat may be withdrawn or removal ordered at any time.

5j. (1) A caveator may withdraw his caveat at any time by signing an application for the withdrawal thereof in or to the effect of the prescribed form.

(2) A judge of the district court for the metropolitan district may, upon application made ex parte, order that any caveat entered under this Act be removed.

Such order may be made on such terms as the judge may think fit.

Upon the service of such order upon the Registrar-General and upon proof of compliance with the terms (if any) imposed by the judge he shall remove the caveat therein mentioned.

Judge to have jurisdiction to award costs and compensation.
cf. *Ibid.* s. 38.

5k. Upon the hearing of any summons under this Act the judge may make such order as to costs as he thinks fit, and any person not an unsecured 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 or the grantee or both of them such sum by way of compensation as the judge upon the hearing of such summons deems just and orders to be paid.

5l.

Bills of Sale (Amendment).

5L. Upon the filing or recording of any copy of a bill of sale under this Act the proper officer shall indorse thereon a receipt for the same, in which shall be specified the certain day, hour and time on which the same is filed or recorded; and the Registrar-General or other proper officer in that behalf shall then attach his signature to the said receipt; and every such receipt so indorsed and signed shall be taken and allowed as evidence of the filing or recording of such bill of sale and of the time when such filing or recording took place.

Receipt to be indorsed on copy of bill of sale
cf. Instruments Act, 1928 (Vict.), s. 45.

(f) (i) by omitting from section six the words "twelve months" and by inserting in lieu thereof the words "period of five years";

Sec. 6.
(Promise to give bill of sale.)

(ii) by inserting at the end of the same section the following new subsection:—

(2) In the case of any promise to give a bill of sale made or given before the commencement of the Bills of Sale (Amendment) Act, 1938, the period of five years referred to in subsection one of this section shall commence to run from the date upon which the promise to give a bill of sale was registered or from the date upon which the registration thereof was last renewed, as the case may be, where, in either such case, such date was not more than twelve months before such commencement.

(g) by inserting next after section twelve the following new section:—

12A. Whenever, at the time any person makes or gives a bill of sale, such person is married and living with his or her wife or husband, and such bill of sale comprises any household furniture, such bill of sale shall not be enforced by seizure or sale of any such furniture as then is actually in use by the person making or giving the bill of sale or his or her wife or husband, as the case may be, unless at the time of execution it is endorsed

A bill of sale to have no effect as to certain household furniture unless consent of wife or husband of maker or giver endorsed thereon.

Bills of Sale (Amendment).

endorsed in the manner and according to the form contained in Schedule Four to this Act by the wife or husband of the maker or giver of the bill of sale:

Provided that this section shall have no effect after the death of the wife or husband, or if, after the making or giving of the bill, such husband and wife live apart pursuant to a decree, order, or deed of separation, or if a decree for the dissolution or nullity of their marriage has been made.

New s. 13A.

(h) by inserting next after section thirteen the following new section:—

Memoran-
dum of
amount
due under
bill of
sale.

13A. (1) A memorandum in or to the effect of the prescribed form signed by the person entitled to give a receipt for the moneys secured by a bill of sale and specifying the amount due thereunder shall, upon registration, be conclusive evidence of the amount so due at the date specified in the memorandum.

(2) The person entitled to give a receipt for the moneys secured by a bill of sale shall, when requested so to do by the grantor of the bill of sale, execute a memorandum under this section.

Such person shall execute such memorandum within a period of one month after a request so to do has been given to him by the grantor and if without reasonable cause such person makes default in so doing he shall be liable to a penalty not exceeding two pounds for each day after the expiration of the said period during which such default continues:

Provided that where such person has, in any one year of the period during which the bill of sale remains in force, complied with a request made under this subsection he shall not be bound to comply with any further request made in respect of the same bill of sale within the same year.

(3)

Bills of Sale (Amendment).

(3) The Registrar-General shall, upon payment of the prescribed fee, register such memorandum by noting the same on the bill of sale or copy filed and shall file the memorandum in his office.

(4) The fact of such registration and such particulars relating to the bill of sale or to the memorandum as may be prescribed shall be noted by the Registrar-General in the book kept by him under this Act.

(5) Attestation in accordance with section one hundred and sixty-eight of the Conveyancing Act, 1919, as amended by subsequent Acts, may be taken as sufficient proof of the execution of any such memorandum.

(i) by inserting next after section fourteen the following new sections:— New ss.
15 & 16.

15. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Act into effect. Regulations.

(2) The regulations may provide a penalty not exceeding twenty pounds for any breach thereof.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

Bills of Sale (Amendment).

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

(4) Any penalty imposed by the regulations may be recovered in a summary manner before a police or stipendiary magistrate or any two or more justices.

Time for
lodgment,
filing or
recording
of bill
of sale.

16. Where the time prescribed or allowed by this Act for the lodging, filing or recording of any bill of sale (including a trader's bill of sale) would, but for this section, expire on a Saturday, the bill of sale may be lodged, filed or recorded on the first day following, which is not a Sunday or a public or a bank holiday.

New
Schedule
Four.

(j) by inserting next after Schedule Three the following new Schedule:—

Sec. 12A.

SCHEDULE FOUR.

I (here fill in wife's or husband's name), the wife (or husband) of (here fill in name of maker or giver of the bill of sale), consent to this bill of sale being effective as to the household furniture actually in use by my husband (or wife) and me, and which is comprised in this bill of sale.

(Signed) (Usual signature)
(Address)

Repeal
of Act No.
12, 1903.

3. (1) The Bills of Sale (Amendment) Act, 1903, is repealed.

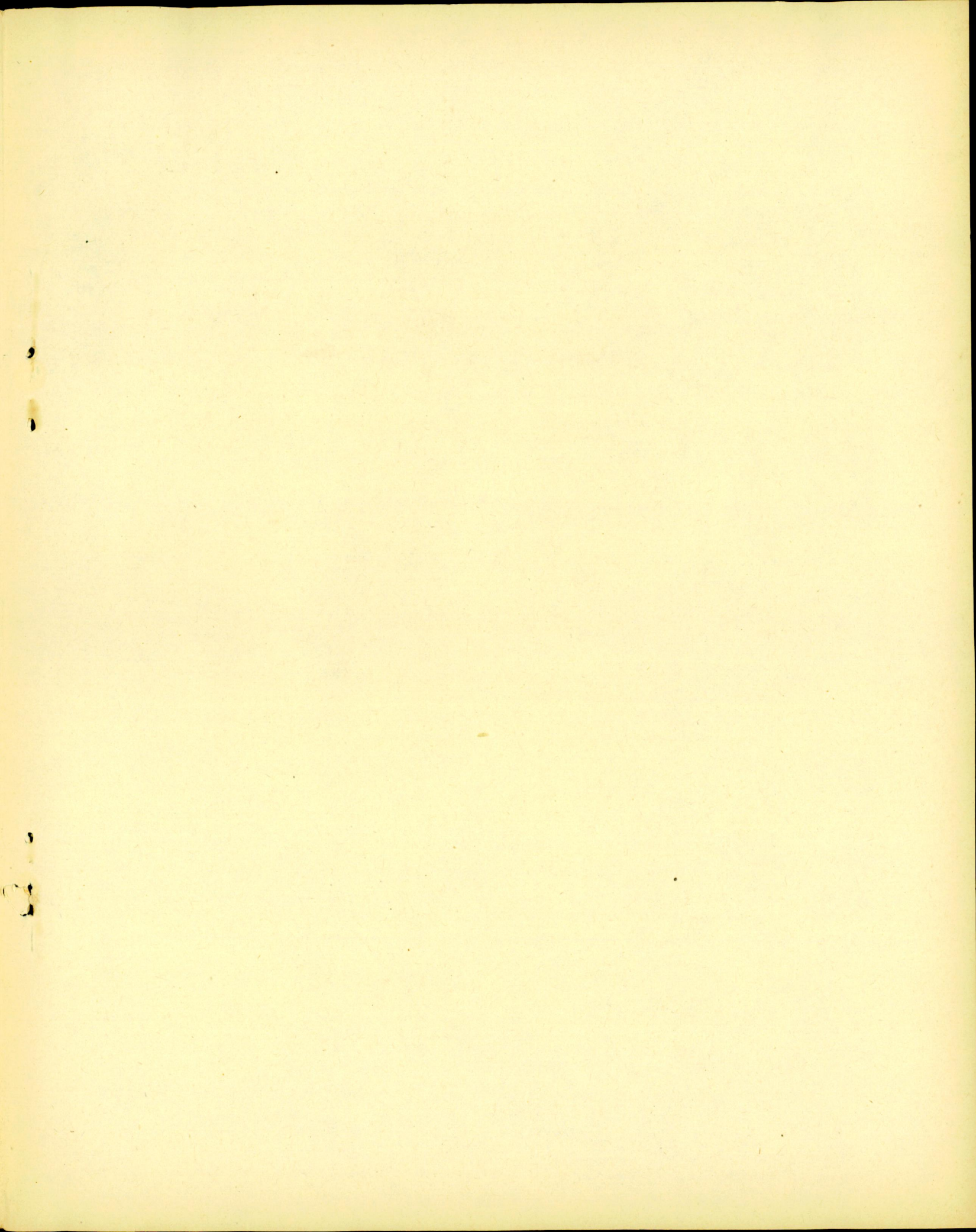
Repeal
of Act No.
62, 1936.

(2) The Bills of Sale (Amendment) Act, 1936, is repealed.

In the name and on behalf of His Majesty I assent to this Act.

WAKEHURST,
Governor.

*Government House,
Sydney, 14th December, 1938.*



BILLS OF SALE (AMENDMENT) BILL.

Schedule of the Amendment referred to in Message of 5th December, 1938.

Page 20, clause 2. *After line 25 insert—*

“Such person shall execute such memorandum within a period of one month after a request so to do has been given to him by the grantor and if without reasonable cause such person makes default in so doing he shall be liable to a penalty not exceeding two pounds for each day after the expiration of the said period during which such default continues.”

THE (REVEREND) ...

...

...

Each person shall execute such ...

...

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.

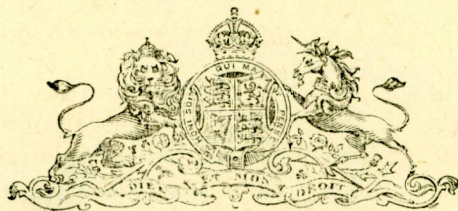
*Legislative Assembly Chamber,
Sydney, 30 November, 1938.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with an Amendment.

C. H. H. CALVERT,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 5th December, 1938.*

New South Wales.



ANNO SECUNDO

GEORGII VI REGIS.

Act No. , 1938.

An Act to amend the Bills of Sale Act of 1898 and certain other Acts in certain respects; to repeal the Bills of Sale (Amendment) Act, 1903, and the Bills of Sale (Amendment) Act, 1936; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "Bills of Sale (Amendment) Act, 1938."

Short title, citation and commencement.

(2) The Bills of Sale Act of 1898, as amended by subsequent Acts and by this Act, may be cited as the 10 Bills of Sale Act, 1898-1938.

78721

24—A

(3)

NOTE.—The words to be inserted are printed in black letter.

Bills of Sale (Amendment).

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Bills of Sale Act of 1898, as amended by subsequent Acts, is amended—

Amendment
of Act No.
10, 1898.

- (a) (i) by inserting in section three in the definition of "Bill of Sale" after the word "debt" the words "and also any agreement, whether or not intended to be followed by the execution of any other instrument, by which in equity any charge or security is conferred over personal chattels to be acquired after the date of the agreement";
- (ii) by omitting from the same definition the words "Assignments for the benefit of the creditors of the person making or giving the same"; and by inserting in lieu thereof the words "Deeds of assignment under Part XI and deeds of arrangement under Part XII of the (Commonwealth) Bankruptcy Act, 1924-1933";
- (iii) by inserting in the same section, after the definition of "Bill of Sale" the following new definition:—
- "Farmer" means a person engaged in farming (including dairy-farming, poultry-farming and bee-farming), agricultural, horticultural or grazing operations in New South Wales.
- (iv) by inserting in the same section in the definition of "Personal chattels" after the word "delivery" the words "(either at the time of the making or giving of a bill of sale of the personal chattels comprised in or made subject to the bill of sale or at any time thereafter)";

Sec. 3.
(Definitions.)

(v)

Bills of Sale (Amendment).

(v) by inserting at the end of the same section the following new definitions: —

5 “Prescribed” means prescribed by this Act or by regulations made under this Act.

“Prescribed fee” means fee prescribed by regulations made under the Conveyancing Act, 1919, as amended by subsequent Acts.

10 “Trader” means a person engaged or about to engage in the business of selling by retail any goods, wares or merchandise but does not include a farmer (in respect of operations carried on by him as a farmer) or a company or the holder of or an applicant for the transfer of a publican’s license or an Australian wine license under the Liquor Act, 1912 (in respect of the business carried on or intended to be carried on by him as the holder of such a license).

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20
25 “Trader’s bill of sale” means a bill of sale made or given by way of security by a trader the personal chattels comprised in or made subject to which are or include plant, fixtures, and fittings and/or goods, wares, or merchandise which, at the time of the making or giving of the trader’s bill of sale are owned and used or intended to be used, or which are to be thereafter acquired and when so acquired will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage.

(b)

Bills of Sale (Amendment).

(b) by inserting at the end of section four the following new subsection:—

Sec. 4.
(Bills of Sale to be filed or recorded.)
cf. Act 41 & 42
Vict., c. 31,
s. 10.
In re
Parker, Exp.
Turquand,
14 Q.B.D., 646.

5

(3) A transfer or assignment of a bill of sale which has been filed or recorded under this Act shall not be required and shall be deemed never to have been required to be filed or recorded.

(c) by inserting next after section four the following new sections:—

New ss.
4A-4C.

10

4A. No bill of sale shall be deemed invalid by reason only that in any affidavit or description filed or recorded in pursuance of section four of this Act there is an omission or incorrect or insufficient description or misdescription of the time of such bill of sale being made or given or of the residence or occupation of any attesting witness to such bill of sale, if the court judge or justice before which or before whom the validity of such bill of sale comes in question is 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.

Accidental misdescription, etc., not to invalidate.
cf. Instruments Act, 1928 (Vict.), s. 29.

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4B. The Supreme Court, in its equitable jurisdiction, or a judge of the district court for the district within which the person making or giving the bill of sale resides, on being satisfied that—

Power of court to extend time or supply omissions, etc.

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(a) the omission to file or record a bill of sale or to renew the registration thereof within the time required by this Act; or

cf. Act No. 37, 1936, s. 190.

35

(b) any omission, or incorrect or insufficient description, or misdescription in any affidavit or description required by this Act in or in connection with the filing or recording of a bill of sale,

was

Bills of Sale (Amendment).

5 was accidental or due to inadvertence or to some
 other sufficient cause, or is not of a nature to
 prejudice the position of creditors of the person
 making or giving the bill of sale, or that on
 10 other grounds it is just and equitable to grant
 relief, may, on the application of the grantee or
 holder of the bill of sale or of any person inter-
 ested, and on such terms and conditions as seem
 to the court or judge just and expedient, order
 that the time for filing or recording the bill of
 sale or for renewing the registration thereof
 shall be extended, or, as the case may be, that
 the omission, incorrect or insufficient description
 or misdescription shall be rectified.

15 4c. (1) Where the grantee or holder of a bill
 of sale proposes, under any power exercisable
 by him in that behalf, to sell personal chattels
 comprised in or made subject to the bill of sale
 he shall give notice to the person who made or
 20 gave the bill of sale, of his intention to sell
 such personal chattels:

Sale by
 grantee or
 holder of a
 bill of sale.

25 Provided that the grantee or holder of a bill
 of sale, whether made or given before or after
 the commencement of the Bills of Sale (Amend-
 ment) Act, 1938, or the grantee or holder of a
 trader's bill of sale made or given after such
 commencement may, under and in accordance
 with any power exercisable by him in that behalf,
 30 sell any personal chattels comprised in or made
 subject to the bill of sale, which are perishable
 goods, without giving any such notice:

Provided further that where—

35 (a) in the case of a bill of sale made or
 given before the commencement of the
 Bills of Sale (Amendment) Act, 1938,
 the grantor of the bill of sale was a
 person engaged or about to engage in
 the business of selling by retail any
 goods, wares or merchandise and the
 40 personal chattels comprised in or made
 subject

Bills of Sale (Amendment).

5 subject to the bill of sale comprise or include goods, wares or merchandise owned and used or intended to be used by the grantor in or in connection with such business; or

(b) in the case of a bill of sale made or given after such commencement, the bill of sale is a trader's bill of sale;

10 and the grantee or holder of the bill of sale has, under any power exercisable by him in that behalf, entered into possession of the business of the grantor of the bill of sale, such grantee or holder may, under and in accordance with any power exercisable by him in that behalf, sell, 15 in the ordinary course of such business, any personal chattels comprised in or made subject to the bill of sale without giving any such notice, where the personal chattels are goods, wares or merchandise (other than plant, fittings and fixtures) owned and used or intended to be used 20 by the grantor in or in connection with his business.

(2) Any notice under subsection one of this section shall be in writing and may be given 25 personally or by post addressed to the person who made or gave the bill of sale at the residence or the place of business of such person last known as such to the grantee or holder of the bill of sale.

30 The following provisions shall apply with respect to any such notice:—

(a) The notice shall specify the manner in which it is proposed to sell such personal chattels.

35 (b) Where any particular manner has been so specified then, subject as hereinafter provided, such personal chattels shall not be sold in any other manner unless a further notice specifying such other manner is given under this subsection.

40 (c)

Bills of Sale (Amendment).

(c) Where the proposed manner of sale is by public auction or tender—

- 5 (i) the notice shall be given not less than seven days before the date of the auction or the closing date of tenders, as the case may be, and shall be accompanied by a copy of the prescribed advertisement; and
- 10 (ii) the grantee or holder of the bill of sale shall publish advertisements of the proposed sale at such times and containing such particulars as may be prescribed and the date of the auction or the date fixed for the closing of tenders, as the case may be, shall be not earlier than ten days after the date of the first publication of the advertisement.

25 Where the provisions of this paragraph have been complied with and the whole of such personal chattels are not sold at the auction or no tender is received or any tender is received but not accepted such personal chattels or such of them as remain unsold may be thereafter sold in any manner which the grantee or holder may think fit without any further notice under this subsection.

30 (d) Where the proposed manner of sale is by private treaty the notice shall be given not less than seven days before the sale, or the first of the separate sales, as the case may be, is made.

35 Where the notice specifies that the sale will be made by private treaty then (if the power under which the sale is made

Bills of Sale (Amendment).

made so permits) the sale may be made by private treaty in one lot or in several lots, and separate sales may be so made to different persons or at different times without further notice under this subsection.

(3) A grantee or holder of a bill of sale who contravenes or fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding two hundred pounds.

(4) This section shall not apply to and in respect of a bill of sale made or given by a company or by the holder of or an applicant for the transfer of a publican's license or an Australian wine license under the Liquor Act, 1912, whether the same was made or given before or after the commencement of the Bills of Sale (Amendment) Act, 1938, or to and in respect of a bill of sale made before such commencement where, the grantee or holder thereof has, before such commencement, under any power exercisable by him in that behalf, taken possession of the personal chattels comprised in or made subject to the bill of sale but with these exceptions shall apply to and in respect of all trader's bills of sale made or given after such commencement and all other bills of sale made or given either before or after such commencement.

- (d) (i) by omitting from section five the words "twelve months" and by inserting in lieu thereof the words "period of five years";
- (ii) by inserting at the end of the same section the following new subsection:—

Sec. 5.
(Renewal
of regis-
tration.)

(2) In the case of any bill of sale made or given before the commencement of the Bills of Sale (Amendment) Act, 1938, the period of five years referred to in subsection one of this section shall commence to run from the date upon which the bill of sale was registered or from the date upon which the registration

Bills of Sale (Amendment).

registration thereof was last renewed, as the case may be, where, in either such case, such date was not more than twelve months before such commencement.

5 (e) by inserting next after section five the following new sections:— New ss.
5A-5L.

10 5A. (1) In the case of every bill of sale made or given by way of security after the commencement of the Bills of Sale (Amendment) Act, 1938, the person making or giving the bill of sale (in this section referred to as "the grantor") shall furnish a statutory declaration— Bills of Sale
given as
security—
declaration as
to ownership of
personal
chattels.

15 (a) stating that the personal chattels comprised in the bill of sale at the time of the making or giving of the bill of sale are the absolute property of the grantor, and that no money is owing to any person in respect of the purchase or upon the security of such personal chattels; or

20 (b) specifying the property or interest of the grantor in the personal chattels comprised in the bill of sale at the time of the making or giving of the bill of sale and stating that in respect of the purchase or upon the security of such personal chattels money is owing to a specified person.

30 For the purpose of any such statutory declaration money which is payable under any negotiable instrument given in respect of the purchase of such personal chattels shall be deemed to be money owing in respect of such purchase.

35 (2) The statutory declaration referred to in subsection one of this section shall, for the purposes of this Act, be taken as part of the bill of sale, and shall be annexed to or indorsed on the same paper on which the bill of sale is written at the time the bill of sale is made or given.

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(3)

Bills of Sale (Amendment).

5 (3) Subject to subsection six of this section a declaration which complies with the requirements of this section, shall, in favour of the grantee or holder of the bill of sale, be conclusive evidence of the facts stated therein unless—

10 (a) such grantee or holder had notice, at the time the bill of sale was made or given, that the facts so stated were incorrect; or

15 (b) a prior bill of sale comprising or including the same personal chattels or any part thereof is filed or recorded in accordance with the provisions of this Act, and, in any case where such prior bill of sale is made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, there is annexed thereto or endorsed thereon the statutory declaration referred to in subsection one of this section.

20 Nothing in this subsection shall affect the operation of Part XVII of the Conveyancing Act, 1919-1932.

25 (4) No bill of sale made or given by way of security after the commencement of the Bills of Sale (Amendment) Act, 1938, shall have any validity as against the person to whom money is owing in respect of the purchase or upon the security of the personal chattels comprised in the bill of sale to the extent of the money so owing if—

30 (a) the requirements of subsections one and two of this section are not complied with; or

35 (b) the grantee or holder of the bill of sale had notice, at the time the bill of sale was made or given, that the facts stated in the declaration of the grantor were incorrect.

40 (5).

Bills of Sale (Amendment).

5 (5) Except to the extent provided in subsection four of this section no bill of sale shall be held to be invalid merely by reason of the fact that the requirements of subsections one and two of this section or of either of such subsections have not been complied with.

10 (6) This section shall not be construed so as to render valid a bill of sale in any case where the grantor is not the true owner of the personal chattels comprised in such bill of sale.

15 (7) This section shall not apply to or in respect of a bill of sale given by a farmer in respect of operations carried on by him as a farmer, or by a company or by the holder of or an applicant for the transfer of a publican's license or an Australian wine license under the Liquor Act, 1912 (in respect of the business carried on or intended to be carried on by him as the holder of such a license), or to or in respect of a trader's bill of sale.

20 5B. (1) In the case of every trader's bill of sale made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, the trader making or giving the trader's bill of sale shall furnish a statutory declaration stating—

Trader's
bill of sale—
declaration
as to facts.

25 (a) that he is a person engaged or about to engage in the business of selling by retail any goods, wares or merchandise;

30 (b) that the bill of sale is a trader's bill of sale.

35 (2) The statutory declaration referred to in subsection one of this section shall for the purposes of this Act, be taken as part of the trader's bill of sale, and shall be annexed to or indorsed on the same paper on which the trader's bill of sale is written at the time such trader's bill of sale is made or given.

(3) A bill of sale made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, shall not be registered as a **trader's**

Bills of Sale (Amendment).

trader's bill of sale unless the requirements of subsections one and two of this section are complied with.

5 (4) If the requirements of subsections one and two of this section are not complied with in relation to any such trader's bill of sale, but such trader's bill of sale is registered in accordance with section four of this Act otherwise than as
10 a trader's bill of sale, it shall have no force or effect with regard to such of the personal chattels comprised therein or made subject thereto as are trade goods but shall have full
15 force and effect with regard to such of the personal chattels comprised therein or made subject thereto as are not trade goods.

20 In this subsection "trade goods" means plant, fixtures and fittings and/or goods, wares or merchandise which at the time of the making or giving of the trader's bill of sale are owned and used or intended to be used, or which are to be
25 thereafter acquired and, when so acquired, will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage.

25 5c. (1) No trader's bill of sale (including any schedule or inventory which is thereto annexed or therein referred to) made or given after the commencement of the Bills of Sale (Amendment)
30 Act, 1938, whereby the grantee or holder has power, either with or without notice and either immediately after the making or giving of such trader's bill of sale or at any future time, to seize or take possession of any of the personal
35 chattels comprised in or made subject to such trader's bill of sale, shall be operative or have any validity at law or in equity until the same has been or is filed or recorded in the office of the Registrar-General in accordance with this Act and within the time prescribed by this Act.

Trader's bills
of sale not
valid until
filed.

cf. Instruments
Act, 1928
(Vict.),
s. 30.

(2)

Bills of Sale (Amendment).

(2) No trader's bill of sale made or given after the commencement of the Bills of Sale (Amendment) Act, 1938, shall be so filed or recorded or be operative or save as provided by subsection four of section 5B have any validity at law or in equity—

No trader's bill of sale to be filed unless lodged with Registrar-General within fifteen days after making.

(a) unless the same sets forth—

(i) the full name and the business or occupation of the grantor and grantee of the trader's bill of sale, and the place of business and residence of the grantor and the place of business or residence of the grantee, and the usual name or style under which the grantor carries on or intends to carry on business;

(ii) a description of the personal chattels comprised in or made subject to the trader's bill of sale; and a description shall be sufficient for the purposes of this subparagraph if it is a particular description of specified personal chattels mentioned or enumerated in the trader's bill of sale or in a schedule or inventory annexed to or referred to in the trader's bill of sale or a general description of the personal chattels comprised in or made subject to the trader's bill of sale (whether such personal chattels are owned and used or intended to be used by the grantor at the time of the making or giving of the trader's bill of sale in or in connection with the business in which he is engaged or about to engage or are personal chattels to be acquired after the date of the trader's bill of sale over which, in equity,

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Bills of Sale (Amendment).

- 5 equity, any charge or security is conferred by the trader's bill of sale) by reference to the nature, type, quality, purpose or mode of user or other distinguishing features sufficient to render such personal chattels reasonably capable of identification, or partly such a particular description and partly such a general description;
- 10
- 15 (iii) the situation at the time of the making or giving of the trader's bill of sale of so much of such personal chattels as are then owned and used or intended to be used by the trader in or in connection with the business in which he is engaged or about to engage;
- 20 (iv) the consideration for the trader's bill of sale, specifying the amount of past debt (if any), the advance (if any) made at the time of making or giving the trader's bill of sale, and (if such is the case) that future advances are secured by the trader's bill of sale; and
- 25 (v) an address to which notices of any caveats which may be entered against the filing or recording of such trader's bill of sale may be posted to the grantor; and
- 30
- 35 (b) unless such trader's bill of sale has been or is lodged at the office of the Registrar-General within fifteen days after the making or giving of the trader's bill of sale; and upon such lodgment there shall be paid to the Registrar-General the prescribed fee.

Bills of Sale (Amendment).

5 (3) Where the requirements of subparagraph (ii) or subparagraph (iii) of paragraph (a) of subsection two of this section are complied with in regard to some only of the personal chattels comprised in or made subject to a trader's bill of sale, the trader's bill of sale may, nevertheless, be filed or recorded and shall, if otherwise in order, be operative and have validity with regard to those 10 personal chattels, and also with regard to any other personal chattels (not being trade goods) comprised therein or made subject thereto, but, with regard to any of the personal chattels (being trade goods) comprised therein or made 15 subject thereto in respect of which such requirements are not complied with, shall not be operative or have any validity at law or in equity.

20 In this subsection "trade goods" means plant, fixtures and fittings and/or goods, wares or merchandise which, at the time of the making or giving of the trader's bill of sale are owned and used or intended to be used, or which are to be 25 thereafter acquired and when so acquired will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage.

30 (4) Where any trader's bill of sale is rendered wholly inoperative and invalid by this section the moneys secured thereby shall immediately become payable. cf. Act No. 33, 1936, s. 185 (2).

35 (5) Where a trader's bill of sale is lodged as provided in subsection two of this section but has not been filed or recorded as a trader's bill of sale such bill of sale as regards such of the personal chattels comprised therein or made subject thereto as are not trade goods as defined in subsection three of this section shall nevertheless be deemed to be filed or recorded as a bill of sale other than a trader's bill of sale.

Bills of Sale (Amendment).

5D. The Registrar-General shall cause a book to be kept in which the name and address of each person making or giving any trader's bill of sale lodged as required by this Act shall be entered in alphabetical order together with a statement in which shall be specified the certain day, hour and time on which the trader's bill of sale made or given by such person was lodged.

Names and dates to be indexed and open to inspection.
cf. Instruments Act, 1928 (Vict.), s. 31.

Such book shall be open to the inspection of any person upon payment of the prescribed fee, and any person may inspect and take a copy of any bill of sale so lodged upon payment of the prescribed fee.

5E. No trader's bill of sale lodged as required by this Act shall be filed or recorded before the expiration of fourteen days from the date of lodging the same.

Time for filing bill of sale after lodgment.
cf. *Ibid.* s.32.

5F. (1) If no caveat is entered as provided in section 5G of this Act against the filing or recording of a trader's bill of sale lodged as required by this Act, such trader's bill of sale shall be filed or recorded forthwith upon the expiration of fourteen days from the date of lodging the same.

Filing or recording of trader's bill of sale.

(2) If a caveat is entered as provided in section 5G of this Act against the filing or recording of the trader's bill of sale lodged as required by this Act such trader's bill of sale shall not be filed or recorded until the caveat is removed or withdrawn as provided in section 5i or section 5j of this Act but when such caveat has been so removed or withdrawn the bill of sale shall be filed or recorded forthwith.

(3) Where a trader's bill of sale has been filed or recorded as prescribed by this section it shall, for the purposes of sections four, five and 5c of this Act, be deemed to have been duly registered within the time prescribed by this Act.

5G.

Bills of Sale (Amendment).

5g. (1) Any unsecured creditor of the grantor of any trader's bill of sale lodged as required by this Act may, at any time within fourteen days from the date of the lodging of the same, enter a caveat against the filing or recording of such bill of sale, by lodging such caveat with the Registrar-General and paying the prescribed fee.

Creditor may enter caveat.
cf. Instruments Act, 1928 (Vict.), s. 34.

(2) Every such caveat shall be in or to the effect of the prescribed form and shall contain the particulars therein indicated, and shall specify a place within the present limits of the city of Sydney 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.

5H. Upon the receipt of any such caveat the Registrar-General shall cause a copy thereof to be posted to the grantor at the address set forth in such bill of sale as the address to which notices of caveats under this Act may be posted and shall also cause a copy thereof to be posted to the grantee at the place of business or of residence of the grantee set forth in the bill of sale.

Caveat to be notified to grantor and grantee.
cf. *Ibid.* s. 35.

The grantor or the grantee may summon the caveator before a judge of the district court for the metropolitan district 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.

Any person to whom the grantor is indebted at law or in equity, and whose debt arose wholly or in part out of a transaction in or in connection with or in relation to the business in which the grantor is engaged or about to engage or a business in which the grantor was, at the date of the transaction, engaged or about to engage and is unsecured, whether the debt be due or to accrue due, shall be deemed to be a creditor within the meaning of this Act.

Bills of Sale (Amendment).

5r. (1) If on the hearing of such summons it appears that the caveator is an unsecured creditor of the grantor the judge may make an order directing that the trader's bill of sale shall not be filed or recorded until the debt for which he is found to be a creditor is satisfied or the amount of such debt is paid into the Metropolitan District Court to the credit of the caveator.

Judge may order filing to be stayed or removal of caveat.
cf. Instruments Act, 1928 (Vict.), s. 36.

(2) If on such hearing it does not appear that the caveator is an unsecured creditor of the grantor the judge may order that the caveat be removed, and upon service of such order upon the Registrar-General he shall remove the caveat therein mentioned.

5j. (1) A caveator may withdraw his caveat at any time by signing an application for the withdrawal thereof in or to the effect of the prescribed form.

Caveat may be withdrawn or removal ordered at any time.

(2) A judge of the district court for the metropolitan district may, upon application made ex parte, order that any caveat entered under this Act be removed.

Such order may be made on such terms as the judge may think fit.

Upon the service of such order upon the Registrar-General and upon proof of compliance with the terms (if any) imposed by the judge he shall remove the caveat therein mentioned.

5k. Upon the hearing of any summons under this Act the judge may make such order as to costs as he thinks fit, and any person not an unsecured 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 or the grantee or both of them such sum by way of compensation as the judge upon the hearing of such summons deems just and orders to be paid.

Judge to have jurisdiction to award costs and compensation.
cf. *Ibid.* s. 38.

5L.

Bills of Sale (Amendment).

5L. Upon the filing or recording of any copy of a bill of sale under this Act the proper officer shall indorse thereon a receipt for the same, in which shall be specified the certain day, hour and time on which the same is filed or recorded; and the Registrar-General or other proper officer in that behalf shall then attach his signature to the said receipt; and every such receipt so indorsed and signed shall be taken and allowed as evidence of the filing or recording of such bill of sale and of the time when such filing or recording took place.

Receipt to be indorsed on copy of bill of sale
cf. Instruments Act, 1928 (Vict.), s. 45.

(f) (i) by omitting from section six the words "twelve months" and by inserting in lieu thereof the words "period of five years";
(ii) by inserting at the end of the same section the following new subsection:—

Sec. 6.
(Promise to give bill of sale.)

(2) In the case of any promise to give a bill of sale made or given before the commencement of the Bills of Sale (Amendment) Act, 1938, the period of five years referred to in subsection one of this section shall commence to run from the date upon which the promise to give a bill of sale was registered or from the date upon which the registration thereof was last renewed, as the case may be, where, in either such case, such date was not more than twelve months before such commencement.

(g) by inserting next after section twelve the following new section:—

New s. 12A.

12A. Whenever, at the time any person makes or gives a bill of sale, such person is married and living with his or her wife or husband, and such bill of sale comprises any household furniture, such bill of sale shall not be enforced by seizure or sale of any such furniture as then is actually in use by the person making or giving the bill of sale or his or her wife or husband, as the case may be, unless at the time of execution it is indorsed

A bill of sale to have no effect as to certain household furniture unless consent of wife or husband of maker or giver indorsed thereon.

Bills of Sale (Amendment).

endorsed in the manner and according to the form contained in Schedule Four to this Act by the wife or husband of the maker or giver of the bill of sale:

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Provided that this section shall have no effect after the death of the wife or husband, or if, after the making or giving of the bill, such husband and wife live apart pursuant to a decree, order, or deed of separation, or if a decree for the dissolution or nullity of their marriage has been made.

(h) by inserting next after section thirteen the following new section:— New s. 13A.

13A. (1) A memorandum in or to the effect of the prescribed form signed by the person entitled to give a receipt for the moneys secured by a bill of sale and specifying the amount due thereunder shall, upon registration, be conclusive evidence of the amount so due at the date specified in the memorandum. Memorandum of amount due under bill of sale.

(2) The person entitled to give a receipt for the moneys secured by a bill of sale shall, when requested so to do by the grantor of the bill of sale, execute a memorandum under this section.

Such person shall execute such memorandum within a period of one month after a request so to do has been given to him by the grantor and if without reasonable cause such person makes default in so doing he shall be liable to a penalty not exceeding two pounds for each day after the expiration of the said period during which such default continues:

Provided that where such person has, in any one year of the period during which the bill of sale remains in force, complied with a request made under this subsection he shall not be bound to comply with any further request made in respect of the same bill of sale within the same year.

(3)

Bills of Sale (Amendment).

5 (3) The Registrar-General shall, upon payment of the prescribed fee, register such memorandum by noting the same on the bill of sale or copy filed and shall file the memorandum in his office.

10 (4) The fact of such registration and such particulars relating to the bill of sale or to the memorandum as may be prescribed shall be noted by the Registrar-General in the book kept by him under this Act.

15 (5) Attestation in accordance with section one hundred and sixty-eight of the Conveyancing Act, 1919, as amended by subsequent Acts, may be taken as sufficient proof of the execution of any such memorandum.

(i) by inserting next after section fourteen the following new sections:— New ss. 15 & 16.

20 15. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Act into effect. Regulations.

25 (2) The regulations may provide a penalty not exceeding twenty pounds for any breach thereof.

(3) The regulations shall—
30 (a) be published in the Gazette;
(b) take effect from the date of such publication or from a later date to be specified in the regulations; and
35 (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

Bills of Sale (Amendment).

5 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

10 (4) Any penalty imposed by the regulations may be recovered in a summary manner before a police or stipendiary magistrate or any two or more justices.

15 16. Where the time prescribed or allowed by this Act for the lodging, filing or recording of any bill of sale (including a trader's bill of sale) would, but for this section, expire on a Saturday, the bill of sale may be lodged, filed or recorded on the first day following, which is not a Sunday or a public or a bank holiday.

(j) by inserting next after Schedule Three the following new Schedule:—

SCHEDULE FOUR.

Time for
lodgment,
filing or
recording
of bill
of sale.

New
Schedule
Four.

Sec. 12A.

20 I (here fill in wife's or husband's name), the wife (or husband) of (here fill in name of maker or giver of the bill of sale), consent to this bill of sale being effective as to the household furniture actually in use by my husband (or wife) and me, and which is comprised in this bill of sale.

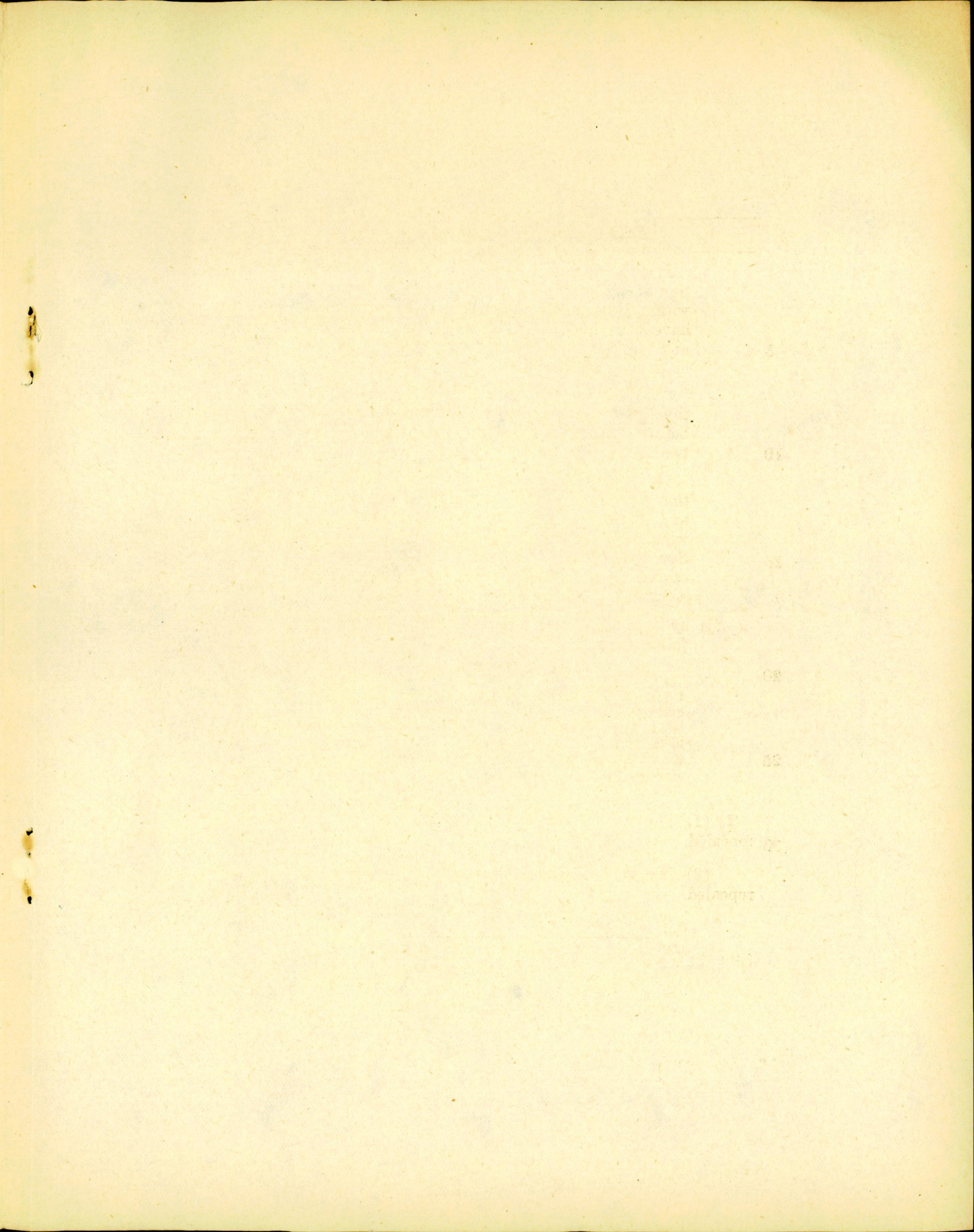
(Signed) (Usual signature)
(Address)

30 3. (1) The Bills of Sale (Amendment) Act, 1903, is repealed.

Repeal
of Act No.
12, 1903.

(2) The Bills of Sale (Amendment) Act, 1936, is repealed.

Repeal
of Act No.
62, 1936.



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