

# Bills of Sale Act 1898 No 10

[1898-10]



New South Wales

## Status Information

### Currency of version

Repealed version for 7 July 2003 to 28 February 2006 (accessed 25 November 2024 at 16:51)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Bills of Sale Act of 1898
- **Repeal**  
The Act was repealed by sec 36 (a) of the [Security Interests in Goods Act 2005 No 69](#) with effect from 1.3.2006.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 March 2006

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# Bills of Sale Act 1898 No 10



New South Wales

An Act to consolidate enactments relating to Bills of Sale.

## 1 Name of Act

This Act may be cited as the *Bills of Sale Act 1898*.

## 2 Repeals

The enactments mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed.

## 3 Definitions

In this Act the following words and expressions shall, if not inconsistent with the subject-matter or context, have the respective meanings hereby assigned to them, that is to say:

**Apparent possession**—Personal chattels shall be deemed to be in the “apparent possession” of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by the person, or as they are used and enjoyed by the person in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

**Bill of sale** shall include bills of sale, assignments, transfers, declaration of trusts without transfer, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt 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, but shall not include the following documents, that is to say: Deeds of assignment under Part XI and deeds of arrangement under Part XII of the (Commonwealth) *Bankruptcy Act 1924–1933*; marriage settlements; transfers or assignments of any ship or vessel, or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts or at sea; bills of lading; India warrants; warehouse-keeper’s certificates, warrants, or orders for the delivery of goods; or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising, or purporting to

authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented.

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

**General Register of Deeds** means the General Register of Deeds maintained under section 184C of the [Conveyancing Act 1919](#).

**Personal chattels** shall mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery (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); and shall not include chattel interests in real estate, nor shares or interests in the stock, funds, or securities of any Government, or in the capital or property of any incorporated or joint stock company, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale.

**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.

**Special goods** means goods of a class specified in an order in force under section 9 of the [Registration of Interests in Goods Act 1986](#).

**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 the person as a farmer) or a company or the holder of or an applicant for the transfer of a hotelier's licence under the [Liquor Act 1982](#) or a licence referred to in Schedule 4 to the [Liquor \(Repeals and Savings\) Act 1982](#) (in respect of the business carried on or intended to be carried on by the company, holder or applicant as the holder of such a licence).

**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 not special goods exclusively and 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 the trader is engaged or about to engage.

### **3A Special goods—registration option**

(1) This section applies to a bill of sale where:

- (a) the personal chattels comprised in or subject to the bill of sale are special goods exclusively,
- (b) the interest in the special goods of the grantee or holder of the bill of sale is a registered interest under the *Registration of Interests in Goods Act 1986*, and
- (c) at the time of registration of the interest under that Act, the bill of sale could have been filed or recorded under this Act before the commencement of the *Bills of Sale (Amendment) Act 1992* or could have been registered in the General Register of Deeds after that commencement.

(2) In relation to a bill of sale to which this section applies, this Act has effect as if:

- (a) the registration under the *Registration of Interests in Goods Act 1986* were at the same time registration in the General Register of Deeds, and
- (b) this Act did not include any provisions relating to the renewal of registration of a bill of sale.

#### **4 Cases in which bill of sale is void without registration**

(1) Within thirty days after the making or giving of every bill of sale of personal chattels made after the passing of this Act, either absolutely or conditionally, whether subject or not to any trusts, and whereby the grantee or holder has power with or without notice, and either immediately or at any future time, to seize and take possession of any property and effects comprised in or made subject to such bill of sale:

- (a)
  - (i) such bill of sale and every schedule or inventory which is thereto annexed or therein referred to, or
  - (ii) a true copy thereof and of every attestation of the execution thereof; together with
- (b) an affidavit of the time of such bill of sale being made or given, and
- (c)
  - (i) a description of the residence and occupation of the person making or giving the same, or
  - (ii) a description of the residence and occupation of the person against whom such process has issued in case the same is made or given by any person under or in the execution of any process, and
- (d) a description of the residence and occupation of every attesting witness to such bill of sale,

shall be registered in the General Register of Deeds.

(2) In default thereof such bill of sale shall as against:

- (a) all assignees or trustees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale, under any assignment for the benefit of the creditors of such person, and
- (b) all sheriff's officers and other persons seizing any property or effects comprised in such bill of sale, in the execution of any process of any court of law or equity authorising the seizure of the goods of the person by whom or of whose goods such bill of sale has been made, and
- (c) every person on whose behalf such process has been issued,

be null and void, to all intents and purposes whatsoever, so far as regards the property in, or right to the possession of, any personal chattels comprised in such bill of sale, which at or after the time of the execution by the debtor of such assignment for the benefit of the debtor's creditors, or of executing such process (as the case may be), and after the expiration of the said period of thirty days are in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process has issued under or in the execution of which such bill of sale has been made or given, as the case may be.

(3) Registration of a transfer or assignment of a bill of sale is not required if the bill of sale is registered in the General Register of Deeds.

#### **4A Accidental misdescription etc not to invalidate**

No bill of sale shall be deemed invalid by reason only that in any affidavit or description registered in the General Register of Deeds in pursuance of section 4 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 Magistrate 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 that person's prejudice or disadvantage.

#### **4B Power of court to extend time or supply omissions etc**

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 register a bill of sale in the General Register of Deeds 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 registration of a bill of sale in the General Register of Deeds,

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 registering the bill of sale in the General Register of Deeds 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 Sale by grantee or holder of a bill of sale**

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

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 the grantee or holder 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 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 the grantee or holder 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 the grantee or holder 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 the grantor's business.

- (2) Any notice under subsection (1) 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) 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 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 4 penalty units.
- (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 hotelier's licence under the *Liquor Act 1982* or a licence referred to in Schedule 4 to the *Liquor (Repeals and Savings) Act 1982*, 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 the grantee or holder 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.

## 5 Renewal of registration

- (1) No bill of sale shall have any validity as against the official assignee or trustee of a bankrupt estate, unless it is duly registered in the General Register of Deeds in accordance with, and within the time prescribed by this Act or any Act amending the same, and unless such registration is renewed by the grantee, or the grantee's assignee, once at least in every period of five years.
- (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 (1) shall commence to run from the date upon which the 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.

### 5A Bills of sale given as security—declaration as to ownership of personal chattels

- (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:
  - (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 (1) 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) Subject to subsection (6) 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 registered in the General Register of Deeds 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 (1).

Nothing in this subsection shall affect the operation of Part 17 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 (1) and (2) 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) Except to the extent provided in subsection (4) no bill of sale shall be held to be invalid merely by reason of the fact that the requirements of subsections (1) and (2) 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 the farmer as a farmer, or by a company or by the holder of or an applicant for the transfer of a hotelier's licence under the *Liquor Act 1982* or a licence referred to in Schedule 4 to the *Liquor (Repeals and Savings) Act 1982* (in respect of the business carried on or intended to be carried on by the company, holder or applicant as the holder of such a licence), or to or in respect of a

trader's bill of sale.

#### **5B Trader's bill of sale—declaration as to facts**

- (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:
  - (a) that the trader 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 (1) 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 bill of sale unless the requirements of subsections (1) and (2) are complied with.
- (4) If the requirements of subsections (1) and (2) are not complied with in relation to any such trader's bill of sale, but such trader's bill of sale is registered in the General Register of Deeds in accordance with section 4 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 the trader is engaged or about to engage.

#### **5C Trader's bill of sale not valid until registered**

- (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 registered in the General Register of Deeds in accordance with this Act and within the time prescribed

by this Act.

- (2) No trader's bill of sale made or given after the commencement of the *Bills of Sale (Amendment) Act 1938* shall be so registered or be operative or save as provided by subsection (4) of section 5B have any validity at law or in equity:
- (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 the grantor 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, 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 the trader 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 registration of such trader's bill of sale may be posted to the grantor, and
- (b) unless within 15 days after it is made or given it is lodged for registration in the General Register of Deeds.
- (3) Where the requirements of subparagraph (ii) or subparagraph (iii) of paragraph (a) of

subsection (2) 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 registered 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 the trader 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.
- (5) Where a trader's bill of sale is lodged as provided in subsection (2) but has not been registered as a trader's bill of sale such bill of sale as regards such as of the personal chattels comprised therein or made subject thereto as are not trade goods as defined in subsection (3) shall nevertheless be deemed to be registered as a bill of sale other than a trader's bill of sale.

#### **5D, 5E (Repealed)**

#### **5F Time of registration of trader's bill of sale**

- (1) If a trader's bill of sale is lodged for registration in the General Register of Deeds on or after the amendment of this section by the *Bills of Sale (Amendment) Act 1992*, it is taken to be registered:
  - (a) at, but not before, the expiration of 14 days after being lodged for registration, unless a caveat against its registration is earlier lodged and not removed or withdrawn, or
  - (b) if any such caveat is lodged and is not removed or withdrawn before the expiration of that period of 14 days—on the removal or withdrawal of the caveat, unless the bill of sale is earlier withdrawn from registration as a trader's bill of sale.
- (2) (Repealed)
- (3) Where a trader's bill of sale has been registered as prescribed by this section it shall, for the purposes of sections 4, 5 and 5C, be deemed to have been duly registered within the time prescribed by this Act.
- (4) If a trader's bill of sale was lodged for filing or recording before, but not more than 14

days before, the amendment of this section by the *Bills of Sale (Amendment) Act 1992*:

(a) sections 5E and 5L continue to apply to the bill of sale as if they had not been repealed by that Act, and

(b) section 5F continues to apply to the bill of sale as if it had not been amended by that Act,

and they so apply as if a reference in those sections, however expressed, to the filing or recording of a trader's bill of sale were a reference to its registration in the General Register of Deeds.

### **5G Creditor may enter caveat**

- (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 registration of such bill of sale, by lodging such caveat with the Registrar-General and paying the prescribed fee.
- (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 Caveat to be notified to grantor and grantee**

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.

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 this 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.

**5I Judge may order registration to be stayed or caveat to be removed**

- (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 registered in the General Register of Deeds until the debt for which the caveator 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 the Registrar-General shall remove the caveat therein mentioned.

**5J Caveat may be withdrawn or removal ordered at any time**

- (1) A caveator may withdraw the caveator's 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 the Registrar-General shall remove the caveat therein mentioned.

**5K Judge to have jurisdiction to award costs and compensation**

Upon the hearing of any summons under this Act the judge may make such order as to costs as the judge thinks fit, and any person not an unsecured creditor of the grantor entering a caveat without reasonable cause for considering himself or herself to be a creditor, and any caveator refusing without reasonable cause to sign an application for withdrawal of the caveator's caveat after satisfaction of the caveator's 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 Time and date of registration**

- (1) An endorsement of a time and date that was made on a bill of sale by the Registrar-General under this section as in force before the commencement of the *Bills of Sale (Amendment) Act 1992* is evidence that the bill of sale was registered at that time on that date.
- (2) An entry made in the index to the General Register of Deeds:
  - (a) of the date of registration of a bill of sale (other than a trader's bill of sale) is evidence that the bill of sale was registered on that date, or



(b) of the date of lodgment for registration of a trader's bill of sale is evidence that the trader's bill of sale was lodged on that date for registration,

unless the date is earlier than the date of commencement of the *Bills of Sale (Amendment) Act 1992*.

## **6 Promise to give a bill of sale**

- (1) No promise to give a bill of sale shall have any validity for any purpose, against the official assignee or trustee of a bankrupt estate, unless it be in writing, stating the amount secured thereby, the names, residences, and occupations of the parties thereto, and signed by the person making the promise, and unless it be registered in the General Register of Deeds in accordance with and within the time prescribed by this Act, or any Act amending the same, with regard to the registration of bills of sale, and unless such registration is renewed by the promisee once at least in every period of five years.
- (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 (1) shall commence to run from the date upon which the promise to give a bill of sale was registered in the General Register of Deeds 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.

## **7 Form of renewal**

- (1) Such renewal of registration shall be effected by registering in the General Register of Deeds an affidavit stating the date of the bill of sale or promise as aforesaid, the date of its registration, and the date of the last renewal of registration, and the names, residences, and occupations of the parties thereto, as stated therein, and that the bill of sale, or promise aforesaid, is still an existing security, and stating what amount is then actually due thereon.
- (2) (Repealed)

## **8 Goods comprised in certain bills of sale not within bankruptcy law relating to reputed ownership**

The goods comprised in a bill of sale, in respect of which the provisions of sections 4, 5, and 7 have been duly complied with, shall be exempt from the provisions of section 52, subsection (3), of the *Bankruptcy Act 1887* or any Act amending or consolidating the same.

## **9 Defeasance or condition of bill of sale to form part of the instrument**

If such bill of sale is made or given, subject to any defeasance or condition or declaration

of trust not contained in the body thereof, such defeasance or condition or declaration of trust shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on the same paper or parchment on which such bill of sale is written before the time when it is registered in the General Register of Deeds, otherwise such bill of sale shall be null and void to all intents and purposes as against the same persons, and as regards the same property and effects, as if such bill of sale, or a copy thereof, had not been registered in the General Register of Deeds according to the provisions of this Act.

**10-12A (Repealed)**

**13 Discharge of bill of sale**

- (1) A bill of sale may be discharged, or partly discharged, by a receipt indorsed on the bill of sale, or copy thereof, held by the grantee or person claiming through the grantee, in the form set out in Part 1 of the Third Schedule, or to the like effect.
- (2) If the Registrar-General is satisfied that a bill of sale, or copy, held by the grantee or person claiming through the grantee, for some good reason cannot be produced, such bill of sale may be discharged or partly discharged by a receipt in the form set out in Part 2 of the Third Schedule.
- (3) The signature to any such receipt shall be witnessed by a solicitor of the Supreme Court or by a Justice of the Peace.
- (4) The Registrar-General, if required so to do, and if satisfied that the receipt for the money is duly acknowledged, shall register any such discharge or part discharge in the General Register of Deeds.
- (5) Attestation in accordance with section 168 of the [Conveyancing Act 1919](#) may be taken as sufficient proof of the execution of any such receipt.
- (6) The fact of such registration and the extent of the discharge so registered shall be noted by the Registrar-General in the General Register of Deeds.
- (7), (8) (Repealed)

**13A Memorandum of amount due under bill of sale**

- (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 in the General Register of Deeds, 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 the person by the grantor and if without reasonable cause such person makes default in so doing the person shall be liable to a penalty not exceeding 0.1 penalty unit 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 the person shall not be bound to comply with any further request made in respect of the same bill of sale within the same year.

- (3) The Registrar-General shall, upon payment of the prescribed fee, register such memorandum in the General Register of Deeds.
- (4) (Repealed)
- (5) Attestation in accordance with section 168 of the *Conveyancing Act 1919*, as amended by subsequent Acts, may be taken as sufficient proof of the execution of any such memorandum.

#### **14 Not to affect any Act relating to lien on wool etc**

Nothing in this Act contained shall be deemed to affect the provisions of the present or any future Act passed to give effect to liens on wool and mortgages on sheep, cattle, and horses.

#### **15 Regulations**

- (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.
- (2) The regulations may provide a penalty not exceeding 0.5 penalty unit for any breach thereof.
- (3) (Repealed)
- (4) Any penalty imposed by the regulations may be recovered in a summary manner before a Local Court.

#### **16 Time for registration of bill of sale**

Where the time prescribed or allowed by this Act for the registration 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 registered on the first day following, which is not a Sunday or a public holiday or a prescribed day.

#### **17 Destruction of documents**

- (1) The Registrar-General may destroy a bill of sale registered in the General Register of

Deeds if the Registrar-General:

(a) captures and retains a copy of the bill of sale in a manner that enables it to be reproduced, or

(b) subsection (2) applies to the bill of sale.

(2) This subsection applies to a bill of sale if:

(a) a period of at least 10 years has elapsed since registration of the bill of sale and there has been no registration of its renewal and no registration of an extension of its term, or

(b) a period of at least 10 years has elapsed since registration of the bill of sale or the only or latest extension of its term, or

(c) a period of at least 10 years has elapsed since registration of a full discharge of the bill of sale.

## 18 Savings and transitional provisions

(1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the *Bills of Sale (Amendment) Act 1992*.

(2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the date of amendment or repeal of the related provision amended or repealed by the *Bills of Sale (Amendment) Act 1992* or from a later date.

(3) To the extent that a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette the provision does not operate:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

## Schedule 1

(Section 2)

Date of Act	Title of Act	Extent of repeal
19 Vic No 2	An Act for preventing Frauds upon Creditors by secret Bills of Sale of personal Chattels.	The whole.
60 Vic No 29	<i>Bankruptcy Acts Amendment Act 1896</i> .	Sections 31, 32, 33, 34.

