

# BILLS OF SALE (AMENDMENT) ACT.

Act No. 62, 1936.

George VI,  
No. 62, 1933.

An Act to amend the Bills of Sale Act of 1898 in certain respects; to repeal the Bills of Sale (Amendment) Act, 1903; and for purposes connected therewith. [Assented to, 23rd December, 1936.]

**B**E 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:—

**Short title.**     **1.** (1) This Act may be cited as the “Bills of Sale (Amendment) Act, 1936.”

**Citation.**         (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, 1898-1936.

**Commence-  
ment.**           (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 “Personal chattels” after the word “delivery” the words “(either at the time of

of the making or giving of a bill of sale of the personal chattels comprised in or made subject to the bill or at any time thereafter)";

(ii) 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 in the business of selling by retail any goods, wares or merchandise but does not include a company or the holder of a publican's license or an Australian wine license granted under the Liquor Act, 1912, or any Act thereby repealed.

"Trader's bill of sale" means a bill of sale made or given by a trader the personal chattels comprised in or made subject to which are plant, fixtures, and fittings and/or goods, wares, or merchandise owned and used or intended to be owned and used by the trader at the time of the making or giving of the bill of sale or at any time thereafter, in or in connection with the business in which he is engaged.

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

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

No. 62, 1936.

New ss.  
4A-4C.

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

No. 62, 1936.

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.

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 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 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.

Sale by grantee or holder of a bill of sale.

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 publish notice as prescribed of the place, date and time of the proposed sale, and, within the time prescribed, serve a copy of such notice

on

on the person making or giving the bill of sale by post addressed to such person at the residence described or set forth in the bill of sale.

The date of sale shall be a date not earlier than fourteen days after the date of the first publication of the notice.

(2) 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 fifty pounds.

(3) This section shall apply to and in respect of bills of sale made or given before or after the commencement of the Bills of Sale (Amendment) Act, 1936.

- (c) by inserting at the end of section five the following new subsection:—

Sec. 5.  
(Renewal  
of registra-  
tion.)

(2) In the case of bills of sale made or given before the commencement of the Bills of Sale (Amendment) Act, 1936, the period of five years shall commence to run from the date upon which the bill of sale was filed or recorded or from the date upon which the registration was last renewed, as the case may be, where in either such case such date was not more than twelve months before such commencement.

- (d) by inserting next after section five the following new sections:—

New ss.  
5A-5M.

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, 1936, 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 are the absolute property of the grantor, and that no money is owing to any person in respect of the purchase by him of such personal chattels; or
- (b) specifying the property or interest of the grantor in the personal chattels and stating

stating that in respect of the purchase or upon the security of such personal chattels a specified amount is owing by him 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) 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 such grantee or holder had notice, at the time the bill of sale was made or given, that the facts so stated were incorrect.

(4) No bill of sale made or given by way of security after the commencement of the Bills of Sale (Amendment) Act, 1936, shall have any validity as against the person to whom money is owing in respect of the purchase 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;

or as against the person specified in the declaration of the grantor as a person to whom a specified amount is owing in respect of the purchase or upon the security of the personal chattels, to the extent of the amount so specified.

(5)

(5) Except as 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 company or by the holder of a publican's license or an Australian wine license granted under the Liquor Act, 1912, or any Act thereby repealed, or 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, 1936, the trader making or giving the trader's bill of sale shall furnish a statutory declaration stating—

Traders' bill of sale—  
declaration as to facts.

- (a) that he is a person engaged in the business of selling by retail any goods, wares or merchandise;
- (b) that the personal chattels comprised in or made subject to the bill of sale are plant, fixtures and fittings and/or goods, wares or merchandise owned and used or intended to be owned and used by him, at the time of the making or giving of the bill of sale or at any time thereafter, in or in connection with the business in which he is engaged.

(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 bill of sale is made or given.

(3) No trader's bill of sale in respect of which the requirements of subsections one and two

No. 62, 1936.

Absolute or conditional trader's bills of sale not valid until filed.  
cf. Instruments Act, 1928 (Vict.), s. 30.

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

two of this section have not been complied with, shall be operative or have any validity either at law or in equity.

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, 1936, either absolutely or conditionally or subject or not subject to any trusts, and whereby the grantee or holder has power, either with or without notice and either immediately after the making or giving of such 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 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) No trader's bill of sale shall be so filed or recorded or be operative or 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 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 business;
- (ii) a general description of the property comprised in or made subject to the bill of sale.
- (iii) the situation of such property;
- (iv) the consideration for the bill of sale, specifying (in the case of a bill of sale made or given by way of security) the amount of past debt (if any), the advance (if any).

- any) made at the time of making or giving the bill of sale, and (if such is the case) that future advances are secured by the bill of sale, and (in the case of a bill of sale not made or given by way of security) the full and true consideration for the bill of sale; and
- (v) an address to which notices of any caveats which may be entered against the filing or recording of such bill of sale may be posted to the grantor; and
- (b) unless such 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 bill of sale; and upon such lodgment there shall be paid to the Registrar-General the prescribed fee.

5d. The Registrar-General shall cause a book to be kept in which the names and additions 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

Filing or recording of trader's bill of sale.

by,



No. 62, 1936.

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.

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

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.

(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.

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

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.

The

The grantor 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.

No. 62, 1936.

Any person to whom the grantor is indebted on any account whatsoever at law or in equity, and whose debt is unsecured whether the debt be due or to accrue due, shall be deemed to be a creditor within the meaning of this Act.

51. (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.

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) If after satisfaction of his debt and whether or not any order has been made under subsection one of section 51 of this Act, the caveator refuses to withdraw his caveat or to sign an application for the withdrawal thereof the grantor may summon the caveator before a judge of the district court for the metropolitan district in chambers to show cause why the caveat should not be removed, and the judge may order the removal of such caveat and upon the service of such order upon the Registrar-General he shall remove the caveat therein mentioned.

cf. *Ibid.* s. 37.

**No. 62, 1936.**

Judge to  
have juris-  
diction to  
award costs  
and com-  
pensation.

cf. Instru-  
ments Act,  
1928 (Vict.),  
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 such a creditor, and any caveator refusing without reasonable cause to sign an application for withdrawal of his caveat after satisfaction of his debt shall be liable to pay the grantor such sum by way of compensation as the judge upon the hearing of such summons deems just and orders to be paid.

Reputed  
ownership  
not to  
invalidate  
bills of sale.

cf. *Ibid.*  
s. 42.

5l. Every trader's bill of sale of personal chattels (together with every schedule or inventory, if any, thereto annexed or therein referred to) made or given after the commencement of the Bills of Sale (Amendment) Act, 1936, which or a copy of which is filed or recorded according to this Act shall be valid, notwithstanding that the person making or giving the same, or (in the case the same is made or given by any person under or in execution of any process) the person against whom such process has issued, has by the consent and permission of the true owner thereof in his possession order or disposition the property and effects comprised in or made subject to such bill of sale, and is reputed owner thereof, or has taken upon himself the sale alteration or disposition of such property and effects as owner.

Receipt to be  
indorsed on  
copy of bill  
of sale.

cf. *Ibid.*  
s. 45.

5m. 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.

(e)

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

No. 62, 1936.

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 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:

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.

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.

- (f) by inserting next after section fourteen the following new section:—

New s. 15.

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

No. 62, 1936.

session, and if not, then within fourteen sitting days after the commencement of the next session.

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.

New  
Schedule  
Four.

(g) 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.** The Bills of Sale (Amendment) Act, 1903, is repealed.

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