

4 ELIZ. II. No. 16, 1955. *Bills of Sale and Other Instruments Act.*

**MERCANTILE LAW.**

- (1) *Bills of Sale and Other Instruments Act of 1955* 4 *Eliz. II. No. 16*
- (2) *Profiteering Prevention Act Amendment Act of 1954* .. .. . 3 *Eliz. II. No. 31*

**An Act to Consolidate and Amend certain Enactments relating to Bills of Sale, Stock Mortgages, Liens upon certain Crops, and Liens on Wool.**

4 ELIZ. II.  
NO. 16.  
THE BILLS  
OF SALE  
AND OTHER  
INSTRUMENTS  
ACT OF  
1955.

[ASSENTED TO 22ND APRIL, 1955.]

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

**PART I.—PRELIMINARY.**

PART I.—  
PRELIMINARY.  
Short title.

1. (1.) This Act may be cited as "*The Bills of Sale and Other Instruments Act of 1955.*"

Commence-  
ment of  
this Act.

(2.) This Act shall come into operation on such date, not being earlier than three months after the passing hereof, as the Governor in Council may fix by Proclamation published in the *Gazette*.

Construction  
of this Act.

2. This Act, including every Proclamation and regulation made hereunder, shall be read and construed so as not to exceed the legislative power of the State to the intent that, where any enactment hereof or provision of any such Proclamation or regulation would but for this section have been construed as being in excess of that power, it shall nevertheless be a valid enactment or provision to the extent to which it is not in excess of that power.

Parts of  
this Act.

3. This Act is divided into Parts, as follows :—

- PART I.—PRELIMINARY (ss. 1-6) ;
- PART II.—REGISTRATIONS (ss. 7-18) ;
- PART III.—CONTENTS AND ATTESTING OF INSTRUMENTS, ETC. (ss. 19-23) ;

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PART IV.—OPTIONAL REGISTRATION OF ASSIGNMENTS OF BOOK DEBTS ; PROVISIONS RELATING TO STOCK MORTGAGES, LIENS UPON CROPS, AND LIENS ON WOOL (SS. 24–36) ;

PART V.—MISCELLANEOUS (SS. 37–47) ;  
SCHEDULES.

Repeal and  
savings.  
First  
Schedule.

4. The Acts specified in the First Schedule to this Act are repealed to the extent in that Schedule indicated :

Provided that, but without limiting the operation of \**“ The Acts Interpretation Act of 1954 ”*—

- (i.) All registers, registrations, instruments, and generally all acts of authority which originated under any of the enactments repealed by this Act and which are subsisting or in force immediately prior to the commencement of this Act shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated ;
- (ii.) The repeal of the enactments aforesaid shall not affect anything done or suffered under any of them ;
- (iii.) All matters and proceedings under any of those repealed enactments commenced or pending upon the commencement of this Act may be continued, completed, and enforced as if such repeal had not been made, and no such matter or proceeding shall abate or be discontinued or prejudicially affected by anything contained in this Act ;
- (iv.) Notwithstanding anything to the contrary hereinbefore contained, the enactments repealed by this Act shall, except where otherwise specially provided by this Act, remain in full force and effect for the purpose of governing and construing instruments executed prior to the commencement of this Act, and such instruments shall be read and construed and have only the effect and consequence given to them under the repealed enactments.

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**5. (1.)** Nothing in this Act shall be deemed to affect any enactment for the time being in force— Saving of Acts.

- (i.) Whereby the provisions of any of the enactments repealed by this Act, or of this Act, or so much thereof as to the extent indicated, are not applied to an instrument executed or registered under that enactment ;
- (ii.) Whereby any instrument registered under or pursuant to any of the enactments repealed by this Act, or this Act, is exempted from registration under that enactment for the time being in force, or whereby such registration is equivalent to registration under that enactment ; or
- (iii.) Whereby any formalities are required to be observed on or about the execution of any instrument within the meaning of this Act ; or
- (iv.) Conferring or securing any rights or claims under or in respect of any instrument within the meaning of this Act.

(2.) Without prejudice to the provisions of subsection one of this section, nothing in this Act shall affect the provisions of \**“The Liens on Crops of Sugar Cane Acts, 1931 to 1951.”*

**6. (1.)** In this Act, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say— Meaning of terms.

“ Bill of Sale ”—Includes—

- (i.) Bills of sale ;
- (ii.) Assignments, and transfers, of chattels ;
- (iii.) Inventories of chattels with receipts thereto attached ;
- (iv.) Receipts for purchase money of chattels ;
- (v.) Any other assurances of chattels ;
- (vi.) Declarations of trust of chattels without transfer ;
- (vii.) Powers of attorney, authorities, or licenses to take possession of chattels as security for any debt ; and

Bill of Sale.  
55 Vic.  
No. 23,  
s. 3 (1).

(viii.) Any agreement, whether intended to be followed by the execution of any other instrument or not, by which any legal or equitable right to any chattels or to any charge or security thereon or thereover is conferred :

The term does not include the following—

- (a) Assignments for the benefit of the creditors of the grantor ;
- (b) Marriage settlements or agreements for marriage settlements ;
- (c) Transfers or assignments of any ship or vessel registered under the Imperial Act, the “ Merchant Shipping Act, 1894 ” (including any Imperial Act amending the same or in substitution therefor), or any share thereof ;
- (d) Transfers of chattels in the ordinary course of business of any trade or calling or by way of absolute assignment where the chattels are not left in the possession, order, or disposition of the grantor ;
- (e) Bills of sale of chattels in foreign parts or at sea ;
- (f) Bills of lading, warehouse-keepers’ certificates, dock warrants, warrants or orders for the delivery of chattels, or any other document used in the ordinary course of business as proof of the possession or control of chattels or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive the chattels thereby represented ;
- (g) Debentures and interest coupons issued by any Government, any Crown Corporation or instrumentality or corporation or instrumentality representing the Crown, or any Local Authority, or any company or other corporate body ;

Book debts.

“ Book debts ”—Any debts due or to become at some future time due to any person on account of or in connection with any

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profession, trade, or business carried on by such person, whether entered in any book or not, and includes future debts of the same nature although not incurred or owing at the time of the assignment or transfer thereof, but does not include any debt owing in respect of any mortgage, lease, debenture, debenture stock, deposit receipt, judgment, bond, fire or life insurance policy, or contract for sale of real property, nor any debt for which a promissory note or acceptance has been given, nor any debt secured or charged upon land :

For the purposes of this Act, book debts shall be deemed to be chattels ;

“ Chattels ”—Furniture, goods, chattels, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures : The term does not include—

Chattels.  
55 Vic.  
No. 23,  
s. 3 (1).

- (i.) Chattel interests in real estate, title-deeds, negotiable instruments, or choses in action ;  
or
- (ii.) Fixtures (except trade machinery) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed ; or
- (iii.) Growing crops when assigned with any interest in the land on which they grow ; or
- (iv.) Shares and interests in the stock, funds, or securities of any Government, any Crown corporation or instrumentality or corporation or instrumentality representing the Crown, or any Local Authority ; or
- (v.) Shares and interests in the capital or property of any company or other corporate body ; or
- (vi.) Debentures and interest coupons issued by any Government, any Crown corporation or instrumentality or corporation or instrumentality representing the Crown, or any Local Authority, or any company or other corporate body ; or

- (vii.) Stock, or wool on the sheep's back ;
- Crop.** 31 Vic. No. 36, s. 37. "Crop"—Includes wheat, maize, sorghum, barley, oats, lucerne, grass whether for hay or for grain, cotton, tobacco, rice, and any other agricultural produce ; also oranges, grapes, whether grown as fruit or for wine or spirit, fruit of any other kind, and any other horticultural produce : The term does not include a crop within the meaning of \**"The Liens on Crops of Sugar Cane Acts, 1931 to 1951"* ;
- Executed.** "Executed"—In relation to any instrument, signed by the grantor or his solicitor or agent and, in appropriate cases, signed by the grantee or the grantor or his solicitor or agent and by the grantee or his solicitor or agent ;
- Factory.** "Factory"—Any workshop or any other premises whatsoever in or on which any manual labour is exercised by way of trade or for purposes of gain in or about the making, altering, repairing, ornamenting, finishing, or adapting of any article or part of any article ;
- Grantee.** "Grantee"—In relation to any instrument, the person to whom the instrument is given, and includes his executors, administrators, and assigns and, where the grantee is a body corporate, the successors in title of that body corporate ;
- Grantor.** "Grantor"—In relation to any instrument, the person giving the instrument, and includes his executors, administrators, and assigns and, where the grantor is a body corporate, the successors in title of that body corporate ;
- Instruments.** 55 Vic. No. 23, s. 3 (1) ; 60 Vic. No. 10, s. 3. "Instruments"—Bills of sale, stock mortgages, liens upon crops, and liens on wool ;
- Registrar.** "Registrar"—Registrar of the Supreme Court at Brisbane, Rockhampton, or Townsville, as the case requires : The term includes a clerk of petty sessions by or with whom or in whose

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office any thing is required by this Act to be done, and also includes a Deputy (if any) or Acting Registrar or acting clerk of petty sessions, and any officer in the office of the Registrar as hereinbefore defined ;

“ Registry ”—In relation to any instrument, the office in which registration or renewal of registration under this Act of that instrument is required by section nine of this Act to be effected ;

Registry.  
55 Vic.  
No. 23,  
s. 3 (1).

“ Stock ”—Includes any sheep, cattle, horses, swine, poultry, and any other animals ;

Stock.  
60 Vic.  
No. 10, s. 3.

“ Trade machinery ”—The machinery used in or attached to any factory, but does not include—

Trade  
machinery.

(i.) Fixed motive powers, including water wheels, steam engines, donkey engines, and gas engines, together with the boilers and other fixed appurtenances of the said motive powers ; and

(ii.) Fixed power on machinery, including shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery fixed and loose ; and

(iii.) Pipes for steam, gas, or water in the factory :  
For the purposes of this Act, trade machinery shall be deemed to be chattels ;

“ Unregistered instrument ”—An instrument the registration under this Act of which at the material time has not been effected or, in an appropriate case, has expired.

Unregistered  
instrument.

(2.) Unless otherwise provided, this Act applies only to bills of sale under which the grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any chattels comprised therein or subject thereto :

Provided that this Act shall not apply to any bill of sale where the grantee shall *bonâ fide* take the chattels comprised therein or subject thereto out of the possession, or apparent possession, of the grantor within twenty-one days of the date of the execution of such bill of sale, and shall keep such possession.

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Fixtures and crops not to be deemed separately assigned when land passes by the same instrument.

(3.) No fixtures or growing crops shall be deemed to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed or in the land on which such crops grow, is also conveyed, mortgaged, or assigned to the same persons or person.

Attornment or agreement giving power of distress.  
55 Vic.  
No. 23,  
s. 3 (3).

(4.) Every attornment or agreement (not being a mining lease) whereby a power of distress is given or agreed to be given by any person to another by way of security for any present, future, or contingent debt or advance and whereby any rent is reserved or made payable as a means of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale within the meaning of this Act so far as regards any chattels which may be seized or taken under such power of distress :

Provided that nothing in this subsection shall prejudice the right, if any, of a landlord to distrain for rent :

Provided also that where a mortgagee of any interest in land, after entering (under the powers contained or implied in the mortgage) into possession of the mortgaged land, or into receipt of the rents and profits thereof, demises the said land or any part thereof to the mortgagor at a fair and reasonable rent, the instrument whereby such demise is effected shall be deemed not to be a bill of sale within the meaning of this Act.

Hire-purchase agreements.  
55 Vic.  
No. 23,  
s. 3 (4).

(5.) Every hire-purchase agreement with respect to any chattels (excepting every hire-purchase agreement where the owner is a person who ordinarily sells, or hires under hire-purchase agreements, chattels of the same class and the agreement is made in the ordinary course of his business) shall be deemed to be a bill of sale within the meaning and for the purposes of this Act.

For the purposes of this subsection the terms "hire-purchase agreement" and "owner" have the meanings assigned to them respectively by \**The Hire-purchase Agreement Acts, 1933 to 1946.*"



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7. (1.) Subject to subsection two of this section, an unregistered instrument, executed after the commencement of this Act, shall not have any effect as to the chattels comprised therein or subject thereto, against any person other than the grantor and grantee.

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REGIS-  
TRATIONS.

Unregis-  
tered  
instrument.  
55 Vic.  
No. 23,  
s. 4.

(2.) (a) Subject to paragraph (b) of this subsection, every instrument when registered under this Act shall be deemed to be given on the day on which it is executed, and shall take force and effect from the time of its execution.

Registered  
instrument,  
when to take  
effect.  
55 Vic.  
No. 23,  
ss. 4, 6.

(b) Every instrument registered under this Act shall in respect of the chattels comprised therein or subject thereto be entitled to priority, as regards the title to or right to the possession of such chattels, according to the time of its registration.

(3.) Subject to section sixteen of this Act, its registration under this Act shall not make valid, effective, operative, or enforceable any instrument (including any subsequent dealing capable of being registered hereunder) which would otherwise as between the parties thereto be invalid, ineffective, inoperative, or unenforceable.

Registration  
not to cure  
invalidity,  
&c.

8. (1.) Save as provided in subsection two of this section all persons shall be deemed to have notice of an instrument (including every subsequent dealing capable of being registered hereunder) and of the contents thereof when and so soon as such instrument or subsequent dealing, as the case may be, has been registered under this Act:

Registration  
of  
instrument  
to be notice.

Provided that if the registration of any such instrument, required by this Act to be renewed, is not renewed under and in accordance with sections twelve or thirteen of this Act or pursuant to an order made under section sixteen of this Act, prior registration shall not be deemed to operate as notice after the lapse of the period within which renewal of that registration is required by this Act.

(2.) Registration under this Act of any instrument shall not in itself constitute actual, constructive, or implied notice of the existence of that instrument or of

its contents to the grantee of any prior registered instrument relating to the same chattels or to any of those chattels.

Place of  
registration.  
55 Vic.  
No. 23,  
s. 5; 60 Vic.  
No. 10,  
s. 6.

9. Registration and renewal of registration under this Act of instruments (including all subsequent dealings capable of being registered hereunder) shall be effected at the office or offices as follows:—

- (i.) If the chattels comprised in or subject to the instrument are described in it as being at a place within the Central District as defined in the First Schedule to \**“The Central and Northern Districts Boundaries Act of 1900,”* the office of the Registrar of the Supreme Court at Rockhampton;
- (ii.) If the chattels comprised in or subject to the instrument are described in it as being at a place within the Northern District as defined in the Second Schedule to \**“The Central and Northern Districts Boundaries Act of 1900,”* the office of the Registrar of the Supreme Court at Townsville;
- (iii.) If the chattels comprised in or subject to the instrument are described in it as being at a place within the remaining part of the State (which may be referred to as the Southern District), the office of the Registrar of the Supreme Court at Brisbane:

Provided that—

- (a) If the chattels comprised in or subject to the instrument are described in it as being at places situated respectively in different such Districts, the registration shall be effected at such and so many of the offices as aforesaid as are relative to each and every one of the Districts within which those places are respectively situate, otherwise the instrument shall be deemed to be unregistered as to so much of the chattels as are at any place within the District in which it is not registered;

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- (b) In the case of an instrument given in consideration of any limited principal sum not exceeding fifty pounds, the office shall be the office of the clerk of petty sessions at a place appointed for holding courts of petty sessions in the petty sessions district within which the place at which the chattels comprised in or subject to the instrument are described in it as being, is situated, or if such chattels are described as being at places situated within different petty sessions districts, the office of the clerk of petty sessions at a place appointed for holding courts of petty sessions in the petty sessions district within which the place of residence as described therein of the grantor is situated. (If the consideration expressed in an instrument does not consist of money or value declared in money, registration thereof shall be effected in the office of the Registrar of the Supreme Court at Rockhampton, Townsville, or Brisbane, or in more than one of those offices, in accordance with the preceding provisions of this section relating to registrations in offices of Supreme Court Registrars.)

Where an instrument has been registered under this Act in one Registry and registration thereof is required by this Act to be made in another Registry, then for the purpose of such registration in that other Registry a sealed copy of the original copy of the instrument issued out of the first Registry and authenticated by the seal of the Registrar may be filed in that other Registry as the original copy of the instrument.

An instrument may be registered in two or more offices.

10. (1.) Every instrument the registration of which is effected under this Act shall be executed in duplicate. Instruments to be executed in duplicate.

(2.) For the purpose of registration under this Act every instrument shall be lodged in duplicate in the Registry and the fees payable in respect of the registration shall at the time of such lodgment be paid to the Registrar. Mode of registration. 55 Vic. No. 23, s. 6.

It shall be unnecessary for the Registrar to require any verification of the execution of the instrument or to make any comparison of the duplicates and no checking fee shall be payable in respect of such a comparison.

Second  
Schedule.

The Registrar shall indorse upon each duplicate, in the form of the Second Schedule to this Act or a form to the like effect and authenticated by the signature of the Registrar and, in the case of a registration in the office of a Registrar of the Supreme Court, by the Office Seal, a certificate of registration stating the consecutive registration number of such instrument and the time and date of the lodgment thereof for registration (which time and date shall be the time and date of registration under this Act of the instrument), and one duplicate (in this Act called "the original copy") shall be filed in the Registry, and the other (in this Act called "the duplicate copy") shall be delivered to the person entitled thereto, and the production of either the original copy or the duplicate copy, with such certificate duly indorsed thereon, shall be *primâ facie* evidence of the due registration of such instrument.

Register.  
31 Vic.  
No. 36,  
s. 30 ;  
55 Vic.  
No. 23,  
s. 12.

(3.) (a) The Registrar shall at the time of registration under this Act of any instrument enter in a book (in this Act called "the register") to be kept for the purposes of this Act in his office, the particulars of the instrument registered, as prescribed for the time being by the regulations in respect of the class of instruments to which that instrument belongs or, until such forms are prescribed, according to the form of the register for instruments of that class originating under the enactments repealed by this Act.

The register may be a bound book or such other kind of register as may be prescribed for the time being by the regulations.

(b) The Registrar shall also keep in his office an alphabetical index of the respective names of the grantors of all registered instruments, together with the respective references to the registrations :

Provided that the Registrar shall keep separate alphabetical indices with respect to each of the following classes of instruments :—bills of sale, stock mortgages, liens upon crops, liens on wool.

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(4.) Where any instrument is made or given by any person under or in the execution of the process of a Court of Law, then the name, residence, and occupation of the person against whom the process issued, and also the name of the grantee thereof, shall be inserted in the register.

Entry in register where instrument made under process.  
55 Vic.  
No. 23,  
s. 6.

(5.) All instruments shall be registered under this Act in the order of time in which the same are lodged in the Registry for that purpose.

Instruments to be registered in the order of lodging.  
55 Vic.  
No. 23,  
s. 6.

(6.) Every instrument may be registered under this Act at any time after its execution.

Time for registration.

11. Whenever there is any difference or variation between the contents of the original copy and of the duplicate copy, the original copy shall prevail.

In case of variance original copy to prevail.

#### *Renewal of Registration of Bills of Sale.*

12. (1.) The registration under this Act of every bill of sale shall, during the subsistence of such instrument, be renewed in manner hereinafter specified within the period of five years commencing on the day of such registration, and thereafter within the period of five years commencing on the day of the last renewal of the registration.

Registration of certain instruments to be renewed every five years.  
55 Vic.  
No. 23,  
ss. 8, 9.

(2.) The registration of every bill of sale registered under the enactments repealed by this Act shall be renewed under this Act within five years of the registration or last renewal of registration thereof under the repealed enactments, and thereafter the registration of such instrument shall be renewed as if the same had been executed after the commencement of this Act.

(3.) Subject to any extension of time pursuant to subsection seven of this section, if a period of five years elapses from the registration or renewed registration under this Act of a bill of sale without a renewal or further renewal of such registration, as the case may be, or, in the case of a bill of sale registered under the enactments repealed by this Act, if the registration of that bill of sale is not renewed under this Act within five years of the registration or last renewal of registration

thereof under the repealed enactments, the instrument shall not have any effect as to the chattels comprised therein or subject thereto, against any person other than the grantor and grantee.

(4.) (a) For the purpose of the renewal of registration under this Act of a bill of sale there shall be filed in the Registry in which the instrument is registered an affidavit in the form of the Third Schedule to this Act, or a form to the like effect, made by the person or one of the persons entitled to the benefit of the instrument or his or their solicitor or agent, and the fees payable in respect of the renewal of registration shall at the time of such filing be paid to the Registrar.

Third  
Schedule.

(b) The affidavit referred to in paragraph (a) of this subsection shall be filed within thirty days of the date of the swearing of it.

(c) A renewal of registration shall not become necessary by reason only of a transfer or assignment of the bill of sale.

(5.) The Registrar shall thereupon indorse upon such affidavit the time and date of the filing thereof (which time and date shall, subject to any order which may be made under section sixteen of this Act, be the time and date of the renewal of registration under this Act of the instrument to which the affidavit relates), and number such affidavit as if the same were an instrument lodged for registration, and authenticate such number and indorsement by his signature and, in the case of a registration in the office of a Registrar of the Supreme Court, by the Office Seal, and shall likewise renumber and indorse the original copy of the instrument filed in the Registry and the duplicate copy, if produced to him, with a similar number and indorsement, and shall enter particulars in the register in the like manner as on an original registration with the addition of the number of the last previous registration, and shall also enter the time and date of renewal of registration at the last previous entry in the register relating to that instrument in the column provided therefor.

The production of either the original copy or the duplicate copy of the instrument, with such duly authenticated number and indorsement thereon, shall be *primâ facie* evidence of the renewal of registration, according to the indorsement, of such instrument.

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(6.) The costs payable in respect of the preparation and renewal of registration of an instrument in this section or in section thirteen of this Act referred to, shall be payable by the grantor, and if the grantee or any other person pays them, he may recover them from the grantor.

(7.) The provisions of section sixteen of this Act shall apply to any extension of time for the renewal of registration of any instrument in this section referred to.

(8.) If an instrument relating to any chattels is registered under this Act between the time when the registration of a prior instrument relating to the same chattels, or to any of those chattels, expired under this section and the time when the registration of the said prior instrument was renewed pursuant to this section, the instrument first mentioned shall, subject to any order which may be made under section sixteen of this Act, be entitled to priority over the said prior instrument.

(9.) An absolute bill of sale shall not require renewal of registration.

*Renewal of Registration of Liens upon Crops.*

13. Where a lien upon crops is granted over any crop which does not come to maturity within one year from the date of execution of that instrument, the registration under this Act of the lien may, during the subsistence of the lien, be renewed for a term not exceeding one year upon the filing in the Registry in which the lien is registered of an affidavit, made by the person or one of the persons entitled to the benefit of the instrument or his or their solicitor or agent, stating that the crop over which the lien is granted is still immature and that the lien is unsatisfied, and setting forth the period for which the renewal of registration of the lien is required.

Renewal of  
registered  
liens upon  
crops.  
34 Vic.  
No. 12, s. 1.

Upon the filing of such an affidavit and on payment of the prescribed fee, the Registrar shall indorse upon such affidavit the time and date of the filing thereof (which time and date shall, subject to any order which may be made under section sixteen of this Act, be the time and date of the renewal of registration under this Act of the instrument to which the affidavit relates), and shall indorse on the original copy of the instrument filed in the Registry and on the duplicate copy, if

produced to him, the fact of the renewal of registration and the time for which the lien upon crops is renewed and authenticate such indorsement by his signature and, in the case of a registration in the office of a Registrar of the Supreme Court, by the Office Seal, and shall enter the time and date of renewal of registration at the entry in the register relating to that instrument as well as the time for which the instrument is renewed.

The production of either the original copy or the duplicate copy of the instrument, with such duly authenticated indorsement thereon, shall be *primâ facie* evidence of the renewal of registration, according to the indorsement, of such instrument.

#### *Transfers of Instruments.*

Transfer or  
assignment  
of registered  
instruments.  
34 Vic.  
No. 12, s. 6.

14. (1.) A transfer or assignment (hereinafter referred to as a "transfer") of any instrument registered under this Act may be, but need not be, registered hereunder.

(2.) For the purpose of registering the transfer of any instrument registered under this Act there shall be lodged in the Registry in which the instrument is registered the document of transfer in duplicate and there shall be produced to the Registrar the duplicate copy of the instrument and the fees payable in respect of the registration of the transfer shall at the time of such lodgment be paid to the Registrar :

Provided that the Registrar may, in his discretion, dispense with the production of the duplicate copy of the instrument on proof by affidavit to his satisfaction that the duplicate copy has been destroyed, cannot be found, or for some other reason cannot be produced and that such non-production is not brought about by the execution of some other transfer of the same instrument.

(3.) If a transfer of an instrument is not registered in consequence of the non-production to the Registrar of the duplicate copy of the instrument and its production not being dispensed with by him, and subsequently, for the purpose of registering some other transfer of that instrument, all the requirements of subsection two of this section are complied with (including the production to the Registrar of the duplicate copy of the instrument) the Registrar shall first register that other transfer.



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(4.) It shall be unnecessary for the Registrar to require any verification of the execution of the document of transfer or to make any comparison of the duplicates and no checking fee shall be payable in respect of such a comparison.

For the purpose of registration, the Registrar shall indorse upon each duplicate a certificate of registration of the document of transfer stating the time and date of the lodgment thereof for registration (which time and date shall, subject to any order which may be made under section sixteen of this Act, be the time and date of registration), and the number of the entry, or, as the case may be, last previous entry of registration of the instrument to which that document of transfer relates, and such certificate shall be authenticated by the signature of the Registrar and, in the case of a registration in the office of a Registrar of the Supreme Court, by the Office Seal, and one duplicate shall be filed in the Registry and the other shall be delivered to the person entitled thereto, and the production of either duplicate with such certificate duly endorsed thereon shall be *primâ facie* evidence of the registration under this Act of such transfer.

The Registrar shall at the time of registration of the transfer enter in the register at the entry or, as the case may be, last previous entry relating to the instrument in question particulars of the parties to that transfer and shall indorse on the original copy of the instrument filed in the Registry and on the duplicate copy, where the production of the duplicate copy has not been dispensed with, the fact of the registration of that transfer and shall deliver the duplicate copy of the instrument to the person entitled thereto.

Whenever there is any difference or variation between the contents of the duplicate document of transfer filed in the office of the Registrar and of the duplicate document of transfer delivered to the person entitled thereto the duplicate filed in the office of the Registrar shall prevail.

#### *Entry of Satisfaction.*

15. (1.) Upon the discharge of any instrument, whether in full or in part, the chattels discharged shall

revest in the grantor.

Entry of  
discharge of  
registered  
instrument.  
55 Vic.  
No. 23, s. 13.

(2.) (a) Upon the lodgment with the Registrar in whose office the instrument in question is registered of a memorandum of satisfaction (in the case of a discharge in part, in duplicate), signed by the person or persons entitled to the benefit of the instrument or his or their duly authorised agent, discharging the chattels or any specified part of the chattels comprised in or subject to the instrument from the moneys secured thereby or any specified part thereof, or from the performance of the obligation thereby secured or any specified part thereof, and, where that memorandum of satisfaction is not indorsed on the duplicate copy of the instrument, on production of such duplicate copy, and on payment of the prescribed fee, the Registrar shall file such memorandum (or, in the case of a discharge in part, one duplicate thereof) in his Registry and make an indorsement thereof upon the original copy of the instrument and an entry thereof in the register in the place where the particulars of the instrument registered are entered or last previously entered, as the case may be.

(b) The Registrar may, in his discretion, dispense with the production of the duplicate copy of the instrument on proof by affidavit to his satisfaction that the duplicate copy has been destroyed, cannot be found, or for some other reason cannot be produced.

(c) The Registrar shall indorse on the duplicate copy of the instrument (unless production of the same is dispensed with) and, in the case of a discharge in part, on the duplicate of the memorandum of satisfaction not filed in his Registry the fact of the filing in his Registry of the memorandum of satisfaction and shall where the memorandum of satisfaction is not indorsed on the duplicate copy of the instrument and that duplicate copy is produced, return that duplicate copy and, in the case of a discharge in part, the duplicate of the memorandum of satisfaction not filed in his Registry, to the person entitled thereto.

(3.) Whenever it is made to appear, with or without application made for the purpose, to a Judge that the chattels comprised in or subject to any instrument, or any specified part thereof, have been discharged from the moneys secured thereby or any specified part thereof, or

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from the performance of the obligation thereby secured or any specified part thereof, the Judge may order that a memorandum of satisfaction to the extent indicated be indorsed on the original copy of the instrument and an entry thereof made in the register in the place where the particulars of the instrument registered are entered or last previously entered, as the case may be, and upon production to him of such order or an office copy thereof the Registrar shall make such indorsement and entry accordingly.

16. Notwithstanding anything to the contrary contained in this Act, a Judge, on being satisfied that any omission, error, misstatement, or failure has occurred in any instrument or has occurred in relation to the registration under this Act of any instrument, or in relation to any renewal of registration, transfer, or discharge, or in relation to the filing, lodgment, or production of any instrument, affidavit, or document under this Act, and that such omission, error, misstatement, or failure should be corrected, or was unavoidable or accidental or due to inadvertence or any other cause, may make such order of correction as he thinks fit (including, but without limiting the generality of the power conferred hereby, an order extending for such period as he thinks fit the time prescribed for the lodgment, filing, or production of any instrument, affidavit, or document under this Act) and may make that order subject to such terms and conditions, if any, as he deems fit to impose; and thereupon such correction shall be made in compliance in every respect with that order by the person or persons ordered to make the same.

Correction  
of errors, &c.  
55 Vic.  
No. 23, s. 17;  
60 Vic.  
No. 10, s. 11.

### *Registry.*

17. (1.) Every person, upon payment of the prescribed fees and during the hours and upon the days appointed for the purpose, shall be entitled to search for any instrument, affidavit, or document under this Act in every Registry and to search every register and shall be entitled to inspect any such instrument, affidavit, or document or any entry in any such register and make extracts therefrom or to have office copies thereof or extracts therefrom prepared in the Registry.

Search, &c.  
55 Vic.  
No. 23, s. 14;  
60 Vic.  
No. 10, s. 8.

A copy of any instrument registered under this Act or of any other document whatsoever filed or lodged in any Registry, purporting to be an office copy thereof, and every extract from any such document certified by the Registrar, and a certificate by the Registrar of the time when any document was registered, filed, produced, or lodged in his office, shall in all courts and before all persons authorised by law or consent of parties to hear and determine any matter or thing be admitted as *primâ facie* evidence of such instrument or other document and of the contents thereof and signatures thereon, or of the matters contained in such certified extract, or, as the case may be, of the fact and time of the registration, filing, production, or lodgment of such document.

(2.) It shall not be necessary to prove, in the absence of evidence in rebuttal thereof, the handwriting or official position of the person appearing as Registrar to have certified any such copy or extract as aforesaid, or to have given any such certificate as aforesaid, or to have made, given, or issued pursuant to any provision of this Act any other certificate or any indorsement or document whatsoever.

(3.) Any instrument, affidavit, or document whatsoever which, for the purposes of lodging, filing, or producing the same in or at any Registry is sent to the Registrar through the post or by medium of the office of the Commissioner of Stamp Duties shall be deemed to be lodged, filed, or produced, as the case may be, in or at the Registry on such date and at such time as the Registrar shall fix. An indorsement of the date and time so fixed shall be made on the instrument, affidavit, or document which shall be deemed to have been lodged, filed, or produced, as the case requires, in or at the Registry on the date and at the time stated in the indorsement.

Transmission  
of copies of  
register  
entries.  
55 Vic.  
No. 23,  
s. 16 ;  
60 Vic.  
No. 10, s. 10.

18. (1.) Whenever an entry is made in a register kept under this Act in the office of a clerk of petty sessions, the clerk of petty sessions shall forthwith transmit a copy thereof, certified under his hand, to the Registrar of the Supreme Court at Rockhampton, or at Townsville, or at Brisbane, according as to whether his office is situated in the Central District or in the Northern District, as defined in the First and Second Schedules

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PART II.—  
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TRATIONS.

respectively to \**“The Central and Northern Districts Boundaries Act of 1900,”* or outside the Central District and the Northern District.

(2.) All certified copies received pursuant to this section by a Registrar of the Supreme Court shall be filed and indexed in his office and the provisions of section seventeen of this Act shall apply, with all necessary adaptations, with respect thereto.

PART III.—CONTENTS AND ATTESTING OF INSTRUMENTS,  
ETC.

PART III.—  
CONTENTS AND  
ATTESTING OF  
INSTRUMENTS,  
ETC.

19. (1.) Every instrument shall contain or state therein or in some schedule thereto or partly therein and partly in some schedule—

Contents of  
instruments.  
55 Vic.  
No. 23, s. 6.

- (i.) The names of the grantor and grantee, their places of residence or places of business, and descriptions :

Provided that it shall be sufficient to state the names by which the grantor or grantee is usually known, and, in the case of a corporation, the corporate name, with the place or one of the places where the business of the corporation is usually carried on ;

- (ii.) A general description of the chattels or types of chattels comprised therein or subject thereto or intended to be comprised therein or subject thereto (but, in the case of instruments other than bills of sale, so as to comply with the requirements in that behalf—

In the case of a stock mortgage, (subject to section twenty-eight of this Act) of section twenty-six of this Act ;

In the case of a lien upon crops, of section thirty-one of this Act ; and

In the case of a lien on wool, of section thirty-four of this Act) ;

- (iii.) A description of the place, by such mode as to be reasonably sufficient of identification, where such chattels are situated or intended to be situated at the time of the execution

of the instrument (but, in the case of instruments other than bills of sale, so as to comply with the requirements in that behalf—

In the case of a stock mortgage, of section twenty-six of this Act ;

In the case of a lien upon crops, of section thirty-one of this Act ; and

In the case of a lien on wool, of section thirty-four of this Act) ; and

(iv.) The consideration for the granting of the instrument.

The provisions of this section shall not prejudice or otherwise affect the provisions of section twenty-one of this Act.

Advances without limit may be made under instruments in certain cases.

(2.) If an instrument is taken as security for the repayment of a specified sum or advances made or agreed to be made by the grantee to the grantor and in any case further advances and no maximum amount of the advances or further advances to be secured by the instrument is stated therein, advances may be made from time to time on the security thereof without limit as to amount and without regard being had to any repayments made by or sums credited to the grantor.

Instrument to be attested and when registered to have effect of a deed.

55 Vic.  
No. 23, s. 6.

20. Sealing shall not be essential to the validity of any instrument, but the execution of each and every instrument, or of a transfer or discharge thereof shall be attested by at least one witness, not being a party thereto.

Every instrument, when registered under this Act, shall have the effect of and be deemed and taken to be a deed duly executed by the parties to the same.

When bills of sale given by way of security of no effect as regards after acquired chattels.

21. Save as is otherwise expressly provided by this Act, an instrument being a bill of sale given by way of security shall not have any effect as regards any chattels which the grantor acquires or becomes entitled to after the time of the execution of the instrument :

Provided that where a bill of sale given by way of security over any chattels is therein expressed to be given as security for a loan to be expended, in whole or in part, in the purchase of those chattels, the grantor shall be deemed to have acquired the said chattels contemporaneously with the execution of the instrument :

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ETC.

Provided further that, unless the contrary intention appears, such an instrument shall have effect as regards chattels which the grantor acquires or becomes entitled to after the time of the execution of the instrument and which—

- (i.) Are acquired in substitution for any of the chattels which, at the time of its execution, are comprised in or subject to the instrument; or
- (ii.) Are brought upon the place where the chattels described in the instrument are therein stated to be situated or intended to be situated or where such lastmentioned chattels at any time after the execution of the instrument are for the time being situated; or
- (iii.) Are acquired for use or intended use in the business described in the instrument wherever the same may at any time be carried on.

**22.** If an instrument is made or given subject to any defeasance, condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration of trust shall be deemed to be part of the instrument, and shall be written on the same paper or parchment on which such instrument is written, otherwise such instrument shall not have any effect so far as regards the property in or right to the possession of any chattels comprised in or subject to such instrument:

Instrument  
subject to  
defeasance,  
&c., of no  
effect in  
certain cases.  
55 Vic.  
No. 23, s. 6.

Provided that in the case of a document also securing the payment of the moneys or any part thereof payable under an instrument, or of a document referred to in such instrument, it shall not be necessary for the purposes of this section to write such document on the same paper or parchment so long as the date, names of the parties thereto, and short particulars of the document affected be set forth in such instrument or some schedule thereto, but nothing contained in this proviso shall be deemed to impose any obligation or requirement in respect to the mode of registering an instrument not otherwise imposed by this Act.

**23.** Nothing in sections twenty-one and twenty-two of this Act shall affect an instrument in respect of any stock, crops, and wool. Saving.

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OPTIONAL  
REGISTRATION  
OF ASSIGN-  
MENTS OF  
BOOK DEBTS ;  
PROVISIONS  
RELATING TO  
STOCK  
MORTGAGES,  
LIENS UPON  
CROPS, AND  
LIENS ON  
WOOL.

Registration  
of  
Assignments  
of book  
debts.

**PART IV.—OPTIONAL REGISTRATION OF ASSIGNMENTS OF BOOK DEBTS ; PROVISIONS RELATING TO STOCK MORTGAGES, LIENS UPON CROPS, AND LIENS ON WOOL.**

*Optional Registration of Assignments of Book Debts.*

**24.** (1.) Notwithstanding any other provision of this Act, an assignment or transfer of book debts due or to become due to any person, whether such assignment or transfer is absolute or conditional, may but need not be registered under this Act as an instrument and such registration shall not confer any priority on such assignment or transfer.

An assignment or transfer of book debts as aforesaid may be by separate instrument or be contained in some other instrument.

(2.) For the purposes of the requirements of this Act relating to the registration, book debts shall be deemed to be chattels situate in the place where the grantor of the instrument resided or carried on business at the date of the execution of the instrument.

*Stock Mortgages.*

Stock  
mortgages.  
31 Vic.  
No. 36, s. 29.

**25.** (1.) Every mortgage of stock made *bona fide* and for valuable consideration and duly registered under this Act shall be valid in law to all intents and purposes, whether the money secured by the said instrument is payable presently or not, and notwithstanding that the mortgaged stock are not delivered to the grantee but remain and continue in every respect, as theretofore, in the possession, order, or disposition of the grantor, and though the grantor afterwards takes the benefit of any law for the time being in force in Queensland for the relief of debtors.

(2.) For the purpose of the application of the provisions, relating to instruments generally, of this Act to a stock mortgage, the stock comprised therein or subject thereto shall be deemed to be chattels.

How stock to  
be described  
in mortgage,  
&c.

**26.** The stock comprised in a stock mortgage shall be described therein or in some schedule thereto by some brand or brands, earmark or earmarks, or other mark or marks upon them, or shall be so described by sex, age, name, colour, or other mode of



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LIENS ON  
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description to be reasonably capable of identification; and the land or premises on which such stock are or are intended to be depastured or kept shall be described in such instrument or in some schedule thereto.

**27.** A stock mortgage duly registered under this Act shall, subject to the express words in the instrument, be deemed to include not only the stock comprised therein wherever the same may at any time be depastured or kept, but also the natural increase of such stock wherever the same may at any time be depastured or kept, and all stock of every kind (whether of the classes described in the instrument or not), the property of the grantor, which at any time after the execution of the instrument and during the continuance of the security are substituted for any of the stock aforesaid wherever the stock in substitution may at any time be depastured or kept, or which at any time after the execution of the instrument and during the continuance of the security are depastured or kept on the land or premises described in the instrument.

Stock to include increase of stock, &c.

The grantee shall have the legal property and right in all stock which by force of this section are deemed to be included in the instrument and in the stock actually described in the instrument or in some schedule thereto.

**28.** Where the stock comprised in a stock mortgage is poultry, swine, or other stock which cannot be properly the subject of distinctive marking—

Special provisions as to poultry, &c.

- (i.) The provisions of section twenty-six of this Act relating to the description therein or in some schedule thereto of the stock comprised in that stock mortgage shall not apply in respect of such stock;
- (ii.) The provisions of section twenty-seven of this Act shall apply.

**29.** The grantor under any stock mortgage comprising sheep shall not, except with the consent in writing of the grantee and then only so far as is authorised by such consent, give to any third person any security on the ensuing clip of the wool of such sheep. Any such security given in contravention of this section shall be void to all intents and purposes.

Security may not be given without consent to third party over wool of mortgaged sheep.

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MENTS OF  
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CROPS, AND  
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Grantor may  
provide for  
grantee to  
have wool  
from  
mortgaged  
sheep.

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**30.** In every stock mortgage comprising sheep there shall be implied (unless such implication is expressly negatived) a covenant by the grantor to deliver to the grantee the wool shorn from such sheep in each year during the continuance of the instrument, and the grantee shall, during the subsistence of the registration under this Act of such instrument, be deemed, notwithstanding the provisions of sections thirty-four and thirty-five of this Act, to possess a registered lien on wool over each clip in the same degree and manner as if a lien in respect of the wool had been actually executed by the grantor and registered under this Act, and such lien shall have the consequences referred to in sections thirty-four, thirty-five, and thirty-six of this Act.

*Liens upon Crops.*

Liens may be  
given upon  
crops.  
31 Vic.  
No. 36, s. 38.

**31.** (1.) An instrument by way of security (in this Act referred to as a "lien upon crops") may be granted over any crops of the grantor, then actually sown or growing or within twelve months after the execution of the instrument to be sown or grown in or upon the lands described in the instrument.

Every such instrument shall state the nature of the crops over which it is granted and describe the lands in or upon which those crops are sown or growing or are to be sown or grown, and shall upon registration under this Act entitle the grantee thereof to the whole of the crops therein mentioned, not only while growing, but afterwards when cut or separated from the soil, and whether stacked or stored on the land where the same were grown or on any other land or premises.

(2.) For the purpose of the application of the provisions, relating to instruments generally, of this Act to a lien upon crops, the crops comprised therein or subject thereto shall be deemed to be chattels.

Savings of  
existing  
mortgages,  
&c.  
31 Vic.  
No. 36, s. 39.

**32.** (1.) Subject to the provisions of subsection two of this section, no lien upon crops shall prejudicially affect the rights of any landlord or mortgagee of any land whereon the crops over which the lien is granted are growing, unless and so far as the landlord or mortgagee has consented in writing to such instrument.

(2.) No lien upon crops being registered under this Act shall be extinguished, suspended, impaired, or otherwise prejudicially affected by any subsequent sale,

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lease, mortgage, or other disposition or encumbrance of or upon the land described in that instrument or in some schedule thereto.

(3.) The grantee of a lien upon crops shall, before selling any crops over which the lien is granted, pay—

- (i.) (In the case where the grantor of the instrument is in respect of the land whereon such crops are sown or growing or were sown or grown a tenant), to the landlord of the land such sum of money as may be due to that landlord for rent for that land at the time of the carrying away for sale of such crops, but not exceeding twelve months' rent; and
- (ii.) (In the case where at the time of the execution of the lien upon crops there is in force a mortgage of the land whereon such crops are sown or growing or are to be sown or grown and the land is in the occupation of the mortgagee), to the mortgagee a sum of money equal to the amount of interest, but not exceeding twelve months' interest, due upon such mortgage at the time of the carrying away for sale of such crops,

and may repay himself the sum or sums so paid out of the proceeds of the sale of such crops before paying over the balance, if any, payable under the instrument to the grantor.

**33.** Subject to the renewal of registration pursuant to section thirteen of this Act of any such lien, the registration under this Act of every lien upon crops shall expire at the expiration of one year from the date of the execution thereof.

Duration of  
 registration  
 of liens upon  
 crops.  
 31 Vic.  
 No. 36, s. 41.

#### *Liens on Wool.*

**34.** (1.) Subject to the provisions of sections twenty-nine and thirty of this Act, an instrument by way of security (in this Act referred to as a "lien on wool") may be granted over the wool of the next ensuing clip to be shorn from the sheep of the grantor described or referred to in such instrument and then depasturing

Security may  
 be given over  
 wool.  
 31 Vic.  
 No. 36, s. 27.

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MENTS OF  
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upon the lands described therein or in some schedule thereto, and upon registration under this Act, shall entitle the grantee thereof to the wool of such sheep, not only while growing, but afterwards when shorn from the sheep, and wherever such wool may be.

(2.) For the purpose of the application of the provisions, relating to instruments generally, of this Act to a lien on wool, the wool the subject of the lien on wool shall be deemed to be chattels.

Wool to con-  
tinue subject  
to lien  
notwith-  
standing  
subsequent  
sale or  
mortgage.  
31 Vic.  
No. 36, s. 28.

**35.** No lien on wool being registered under this Act shall be in any way extinguished, suspended, impaired, or otherwise prejudicially affected by any subsequent sale, bailment, mortgage, or other disposition or encumbrance whatsoever of or affecting the sheep referred to in the lien, but shall be valid and effectual to all intents and purposes whatsoever against any subsequent purchaser, bailee, mortgagee, encumbrancee, or other claimant, or possessor of such sheep, as it is against the grantor.

Grantee may  
take  
possession  
and shear  
sheep  
subject to  
the lien if  
grantor  
neglects to  
do so.  
31 Vic.  
No. 36, s. 28.

**36.** If the grantor or any subsequent purchaser, bailee, mortgagee, or encumbrancee of the sheep whose wool is subject to a lien on wool registered under this Act, or any other subsequent claimant or possessor of such sheep neglects or refuses to shear and deliver the wool of any such sheep in pursuance of the provisions in that behalf contained in the registered lien, it shall be lawful for the grantee to take possession of all or any of such sheep for the purpose of shearing the same, and all expenses attending such shearing and the conveyance of the wool to the place mentioned in that behalf in the registered lien or, if no such place is so mentioned, to the place of abode of the grantee, shall be added to and be deemed to be part of the amount secured by the lien.

PART V.—  
MISCEL-  
LANEOUS.

PART V.—MISCELLANEOUS.

*As to Instruments by Way of Security securing an Account Current.*

Instrument  
by way of  
security  
securing an  
account  
current.

**37.** An instrument by way of security securing an account current and registered under this Act continues in full force and effect notwithstanding that the grantor may from time to time be in credit on such account.

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PART V.—  
MISCEL-  
LANEOUS.

*When Public Curator may sign Memorandum of Satisfaction.*

**38.** Where the grantee of any instrument by way of security is for any reason unable to sign a memorandum of satisfaction or to receive at or after the date appointed for the payment of the moneys secured by such instrument the moneys or any part thereof payable thereunder and which the grantor desires to pay, and there is no other person authorised on the grantee's behalf to sign that memorandum or to receive such moneys, the Public Curator may, under and in accordance with Division 2 of Part V. of \**"The Public Curator Acts, 1915 to 1954,"* sign a memorandum of satisfaction or, as the case may be, receive such moneys in trust for the person entitled thereto and, where necessary, sign such memorandum in lieu of such grantee, and upon the filing thereof in the Registry such memorandum of satisfaction shall be as effectual as a memorandum of satisfaction signed by the grantee.

Public Curator may sign memorandum of satisfaction in certain cases.

The provisions of this section shall not be in derogation of any of the provisions of \**"The Public Curator Acts, 1915 to 1954,"* and the provisions of Division 2 of Part V. of those Acts shall, with all necessary adaptations thereof, extend for the purposes of this section.

*Implied Covenants and Powers.*

**39.** There shall be implied in every instrument the covenants on the part of the grantor set forth in the Fourth Schedule to this Act, and such implied covenants shall have the same effect as if the same were respectively set out at length in the instrument.

Covenants for title.  
Fourth Schedule.

**40.** There shall be implied in every instrument by way of security the covenants, provisoes, agreements, and powers set forth in the Fifth Schedule to this Act, or such of them as are applicable; and such implied covenants, provisoes, agreements, and powers shall, subject to any modification of the same expressed in the instrument, have the same effect as if the same were respectively set out therein at length :

Covenants, &c., implied in instruments by way of security.  
Fifth Schedule.  
5 Geo. VI.  
No. 13.

Provided that any of the provisions of the said Schedule which are inconsistent with any provision of \**“The Hire-purchase Agreement Acts, 1933 to 1946,”* shall to the extent of such inconsistency be void and of no legal effect whatsoever.

Meaning of  
“abbreviated  
terms”.

Sixth  
Schedule.

**41.** The terms defined in section six of this Act shall apply to all instruments and subject as aforesaid such of the terms defined in the Sixth Schedule to this Act as are used in any instrument to which that Schedule applies, or in any of the covenants, provisoes, agreements, and powers implied therein by this Act, shall, unless the contrary is expressed in such instrument or unless manifestly inconsistent with the context, have the meanings given to the same in the said Sixth Schedule, and such meanings shall be implied in such instrument as fully and effectually as if the same were set out therein.

Covenants  
to be  
several as  
well as joint.

**42.** Where there are two or more grantors or two or more grantees of any instrument, then any covenants, conditions, provisoes, agreements, and powers expressed in such instrument, or implied therein by this Act, and imposing an obligation on such grantors or grantees, or enuring for the benefit of such grantors or grantees, shall, except in so far as a contrary intention appears, be deemed to impose such obligation, or confer such benefit, as the case may be, severally as well as jointly.

Covenants  
to bind  
executors.

**43.** Except in so far as a contrary intention appears, all covenants, conditions, provisoes, agreements, and powers expressed in any instrument, or implied therein by this Act, shall bind the executors, administrators, and assigns of the person, or the successor and assigns of a body corporate, upon whom such covenants, conditions, provisoes, agreements, and powers impose an obligation, and shall operate for the benefit of the executors, administrators, and assigns of the person, or the successors and assigns of the body corporate, for whose benefit the same enure.

Covenants,  
&c., may be  
negated or  
varied.

**44.** All or any of the covenants, conditions, provisoes, agreements, and powers set forth in the Fourth, Fifth, and Sixth Schedules to this Act may be negated, altered or otherwise modified, or others may be added to them, by express words in the instrument.

\* 24 G. 5 No. 9 and amending Acts.

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MISCEL-  
LANEOUS.*Sale after Seizure.*

**45.** No chattels, except such as may be of a perishable nature, which shall be seized by the grantee of an instrument, shall be sold until at least fourteen days after such seizure under the instrument.

Chattels not to be sold until at least fourteen days after seizure.

At any time during the period as aforesaid the grantor, upon payment or tender of the amount which would have been then due under the instrument if there had been no default under the instrument, or upon performance or tender of performance of such other condition as may be expressed or implied in the instrument for the breach of which the seizure was made, and upon payment of the expenses of seizure and keeping thereof, may retake and, in appropriate cases subject to further compliance with the instrument, continue to take possession of the chattels and continue in the performance of the covenants, conditions, and agreements of the instrument as if no default had occurred.

*Fees.*

**46.** The fees payable under or for the purposes of this Act in every Registry shall be as prescribed for the time being by the Regulations.

Fees.  
55 Vic.  
No. 23, s. 15;  
60 Vic.  
No. 10, s. 7.

Such fees may or may not differ with respect to the different classes of instruments, affidavits, and documents.

**47.** (1.) The Governor in Council may from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, that may be so prescribed or that may be convenient for the administration of this Act or that may be necessary or desirable to carry out the objects and purposes of this Act, and, where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or desirable to give effect to this Act, providing for and supplying such omission or insufficiency.

Regulations.

(2.) Every Proclamation and regulation made under this Act shall—

- (i.) Be published in the *Gazette* ;
- (ii.) Upon its publication in the *Gazette*, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein ;

- (iii.) Take effect from the date of such publication unless, in the case of any regulation, a later date is specified in that or any other regulation for its commencement when in such event it shall take effect from that later date; and
- (iv.) Be laid before Parliament within fourteen sitting days after such publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.
- (3.) If Parliament passes a resolution of which notice has been given at any time within fourteen sitting days after any such Proclamation or regulation has been laid before Parliament disallowing the same or part thereof, that Proclamation, regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further Proclamation or regulation.

## SCHEDULES.

## FIRST SCHEDULE.

FIRST  
SCHEDULE.  
[Section 4.]

Year and Number of Act.	Short title.	Extent of Repeal.
31 Vic. No. 36 ..	" <i>Mercantile Act of 1867</i> "	Sections twenty-seven to thirty-four (both inclusive); sections thirty-six to forty-one (both inclusive)
34 Vic. No. 12 ..	" <i>The Mercantile Act Amendment Act of 1870</i> "	The whole
55 Vic. No. 23 ..	" <i>The Bills of Sale Act of 1891</i> "	The whole
60 Vic. No. 10 ..	" <i>The Mercantile Amendment Act of 1896</i> "	The whole
60 Vic. No. 11 ..	" <i>The Bills of Sale Act Amendment Act of 1896</i> "	The whole
5 Geo. VI. No. 13	" <i>The Bills of Sale Acts Amendment Act of 1941</i> "	The whole



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SECOND SCHEDULE.

SECOND SCHEDULE.

“ *The Bills of Sale and Other Instruments Act of 1955.*”

[Section 10 (2).]

*Certificate of Registration.*

Registration No.

This instrument was lodged for registration under the Act above mentioned in the office of \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, and is registered under and subject to that Act.

Registrar.

THIRD SCHEDULE.

THIRD SCHEDULE.

“ *The Bills of Sale and Other Instruments Act of 1955.*”

[Section 12 (4) (a).]

*Affidavit for Renewal of Registration of a Bill of Sale.*

To the

In the matter of “ *The Bills of Sale and Other Instruments Act of 1955.*”

I, A.B., \_\_\_\_\_ of \_\_\_\_\_ in Queensland, \_\_\_\_\_ make oath and say as follows :—

1. I am the person or one of the persons entitled to the benefit of the instrument presently registered under the above Act as No. \_\_\_\_\_, and made between [state names of the parties to the instrument, their places of residence or places of business, and descriptions, as appearing therein; also names of the parties to the instrument, their places of residence or places of business, and descriptions at the time of the making of the affidavit].

[If the affidavit is made by a solicitor or agent, state such fact, and also state briefly how deponent has become acquainted with the facts deposed to.]

2. The said instrument was registered on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon.

3. The registration of the said instrument was last renewed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

[This paragraph is inapplicable where registration of the instrument is being renewed for the first time.]

4. The said instrument is still subsisting, and in full force and effect.

A.B.

Sworn at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me—

C.D.

FOURTH  
SCHEDULE.

[Section 39.]

## FOURTH SCHEDULE.

*Covenants Implied in all Instruments.*

That the grantor will pay to the grantee the principal and interest money hereby secured, and any other moneys hereby secured or intended to be secured, after the rate and at the times and in manner herein provided for payment thereof ;

That the grantor will produce to the grantee, upon demand, the last receipts for all rent, rates, charges, assessments, and taxes in respect of the premises wherein the chattels shall be ;

That the grantor has good right and full power to assign to the grantee the chattels purporting to be hereby assigned, and free and clear from encumbrances, charges, and liens, whether at law or in equity, other than such as are herein mentioned ;

That the grantor will, at the cost of the grantee [or, if the instrument is by way of security, at the cost, until sale, of the grantor, and thereafter of the person requiring the same], do and execute all such acts, deeds, matters, and things for the better assigning the chattels hereby assigned, or intended so to be, as by the grantee [or other person beforementioned] may from time to time be reasonably required.

FIFTH  
SCHEDULE.

[Section 40.]

## FIFTH SCHEDULE.

*Covenants Implied in Instruments by way of Security (other than Stock Mortgages, Liens upon Crops, and Liens on Wool.)*

**Covenants to be deemed implied.** The following covenants and powers shall, unless negatived and subject to any modification or addition, be implied in favour of the grantee and as to paragraph (6.) hereof as an agreement between the parties :—

- That he will not remove the goods and chattels.** (1.) That the grantor shall not, without consent in writing of the grantee, sell, exchange, or remove the chattels comprised herein from the premises described herein, and will at all times keep such chattels in good order and condition ;
- That he will not suffer the goods to be taken to execution.** (2.) That the grantor shall not suffer the chattels comprised herein to be distrained for any rent, rates, or taxes, nor suffer any execution to be levied against his goods or chattels, or become bankrupt, or present a bankruptcy petition against himself, or enter into any composition, or scheme of arrangement or deed of assignment without sequestration or deed of arrangement under Parts XI. or XII. of the *Bankruptcy Act* 1924–1950 of the Commonwealth (including any Act or law amending or in substitution thereof) ;
- To enter and view the goods, &c.** (3.) That the grantee may, by himself or his agents, at all reasonable times, enter upon the grantor's premises whereon the chattels are kept, and view the state and condition thereof, and that the grantor will show forth and produce to the grantee all and singular the chattels comprised herein, and permit the grantee to take an inventory thereof ;

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SCHEDULE.

- (4.) That, if the grantor shall make default in the payment of the principal or interest money hereby secured or any other moneys hereby secured or intended to be secured at the time provided for payment thereof, or in the observance or performance of any one of the covenants, terms, conditions, or agreements, whether expressed or implied herein, it shall be lawful for the grantee, without any further consent or concurrence on the part of the grantor, to enter into and upon the land, messuage, or tenement whereon the said chattels assigned are, or into or upon any other land, messuage, or tenement on or in which such chattels, or any other chattels comprised and included herein respectively, may be, or may reasonably be supposed to be, and for that purpose to open or remove any outer or inner gate, door, fastening, or other obstruction, without liability to any action of trespass, or other proceeding for so doing; but with liberty to plead the leave and license hereby given in bar to any such action or proceeding, if any such be brought or instituted, and to seize and take possession of all such chattels, and to remove the same to any other place or places for safety, convenience of sale, or otherwise, or suffer them to remain in the place or places where the same may be found, and to sell and dispose of such chattels, or any of them, either together or in parcels, at such time or times, and place or places, and either by public auction or private contract, or partly by public auction and partly by private contract, to any person or persons, for such price or prices, either for cash or on credit, or partly for cash and partly on credit, and if either wholly or partly on credit, giving such time or times for payment, and taking or foregoing any security or securities for the payment of the unpaid purchase-money as the grantee may deem proper or expedient, with power for him to make any such other terms and conditions in regard to such sale or sales as he may think proper, and also to buy in all or any of the said chattels at any such sale or sales by auction, and rescind or vary any contract for sale thereof, and again to resell or offer for resale the same from time to time, without being answerable or accountable for any loss, diminution in price, costs, or expenses to be occasioned by any such buying in, rescission, variance, or actual or attempted resale;
- (5.) That it shall be lawful for the grantee, upon or after any such sale as aforesaid, to make, enter into, sign, and execute all such contracts, agreements, deeds, instruments, and writings as may be necessary or expedient for the purpose of making and effectuating any such sale, and which shall be as binding and conclusive upon and against the said grantor as if he or they had joined therein, or assented thereto. And also that the receipt or receipts in writing of the grantee for all purchase-money or other property which shall be paid or delivered to him, under or by virtue of this instrument, shall be a good and sufficient discharge or good and sufficient discharges to all purchasers or other persons paying or delivering the same, and that

Power of sale  
in case of  
default.To execute  
deeds for  
purpose of  
carrying out  
sale.

such purchaser or other persons shall not be required to see to the application, or be answerable for the misapplication or non-application thereof, or be bound or concerned to inquire into the propriety or expediency of any such sale or resale ;

Purchase-money to be applied in satisfaction of security.

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

*Covenants Implied in Instruments by way of Security (other than Bills of Sale).*

The covenants and powers hereinbefore implied in Instruments by way of Security (other than Stock Mortgages, Liens upon Crops, and Liens on Wool) shall, unless negatived and subject to any modification or addition, be implied in favour of the grantee and as to paragraph (6) thereof as an agreement between the parties in every Stock Mortgage, Lien upon Crops, and Lien on Wool and to the stock, crops, and wool respectively subject thereto as if the words " stock, crops, or wool " appeared in the said covenants and powers instead of the word " chattels " wherever that word appears therein.

*Powers, Covenants, and Provisions to be Implied in Stock Mortgages.*

1. That, during the continuance of this security, the grantee, his agents or servants, may from time to time, at reasonable times for that purpose, enter into and upon the said lands or premises, or any other lands or premises whereon the stock for the time being subject to this security are depasturing or kept, for the purpose of viewing the state and condition of the same ; and that the grantor will, upon receiving seven days' previous notice in writing delivered to him personally or addressed to him through the ordinary course of post or otherwise at his last-known place of abode in Queensland, give and afford to the grantee, his agents or servants, all reasonable assistance to enable the grantee, his agents or servants, to view the same accordingly.

2. That there are now depasturing or kept upon the said lands and premises all the stock herein respectively mentioned as depasturing or kept thereon. And that the grantor will not, during the continuance of this security, without first obtaining the grantee's consent in writing in each case, further encumber the stock for the time being subject to this security or change the general quality, character, or description of the same, or remove the same from the said lands or premises, or sell the same or any part thereof.

And that the grantor will, during the continuance of this security, at the usual and convenient season for so doing, well and properly brand and earmark, with the grantor's registered brand and earmark

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all stock for the time being subject to this security, so that all such stock shall bear and continue to bear the grantor's registered brand and earmark.

And will not without the leave in writing of the grantee brand, earmark, or mark, or permit to be branded, earmarked, or marked, any stock for the time being subject to this security with any brands, earmarks, or marks other than the grantor's registered brand and earmark.

And will at all times during the continuance of this security take, use, and adopt all due and proper means for keeping and maintaining all stock for the time being subject to this security, free from disease, and in clean and healthy condition: And will, during the continuance of this security, at the usual and convenient season for so doing, tail all lambs for the time subject to this security which are untailed: And will, at all times during the continuance of this security, pay and defray all expenses in and about the good and proper conduct and management of the said lands, stock, and premises, and employ and maintain on the said lands or premises efficient and proper assistance to assist in the said conduct and management: And will at least twice in every year, on demand by the grantee, render and deliver to him a return or account in writing setting forth the number, ages, and sexes of the stock for the time being subject to this security and the places where the same are depasturing or kept.

3. That all stock belonging to the grantor, of which possession has been taken, under the power in that behalf herein contained, shall be subject to the same powers, provisions, declarations and agreements as are herein expressed or implied of and concerning the stock and increase of stock herein expressed to be assigned, and may be dealt with in the same manner in all respect as if the stock of which possession is taken as aforesaid had formed part of the stock hereby assigned: And that the grantor will, at his own cost and charges, do and execute all such deeds, matters, and things as may be necessary, or as the grantee may think proper, for the further, better, and more perfectly assigning and assuring to the grantee the stock and increase of stock, and all and singular other the premises hereby assigned or intended so to be, or the stock for the time being on the said lands or premises, and any stock of which possession has been taken as aforesaid, so that the same may be held by the grantee upon and for the same end, intents, and purposes, and with, under, and subject to the same powers, provisions, agreements and declarations, as are herein expressed or implied of and concerning the stock and premises herein expressed to be assigned: That in case the grantee exercises any power of entry or taking possession vested in him hereunder, then he, or any person or persons appointed by him for the purpose, may continue in possession of the said stock and of the lands or premises whereon the same are depasturing or kept until the sale thereof, and manage, conduct, and carry on the said lands and stock, and employ servants and assistants, and provide all necessary stores in that behalf in all respects as the grantor could do if such power had not been exercised; and the grantee for any such purpose shall be entitled without any interference by the grantor to use all branding, earmarking, marking and other implements and plant on or used in connection with the said lands or premises; and, further, that the costs, charges, and expenses of so doing, from

the time of such entry and taking possession until the sale and delivery of the said stock and premises to any purchaser thereof, shall, together with interest thereon after the rate aforesaid, until payment, be a charge upon the stock for the time being subject to this security.

*Power to be implied in Liens upon Crops.*

If the grantor does not pay to the grantee the moneys hereby secured, including the interest and commission as herein mentioned, at the time herein mentioned for payment of the same or if any such moneys or any part thereof remain unpaid to the grantee at the time when the crops hereby assigned may be harvested, the crops hereby assigned shall be gathered, carried-away, and made marketable either by the grantor or by the grantee at the option of the grantee, but in either case at the expense of the grantor, and shall (if gathered by the grantor) be delivered by the grantor to the grantee or his order at the place of delivery herein mentioned or, if no such place is mentioned herein, at such place as the grantee directs; and the grantee may either sell the same in Queensland, in one or more lots, by public auction or private contract, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he thinks fit, or may cause the same to be sent to any place or places out of Queensland, to be sold by him or his agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the said crop or by any sale or sales thereof, whether in Queensland or elsewhere, or by the act, neglect, or default of any agent, broker, or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that he may be compelled to pay in order to protect his security over the said crops, and all costs, mercantile and other charges, and expenses incurred in and about the harvesting, sale, shipment, and carrying-away of such crops, and the storage and freight thereof, or on any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

*Power to be Implied in Liens on Wool.*

If the grantor does not pay to the grantee the moneys hereby secured, including the interest and commission and other customary and proper charges as herein mentioned, at the time herein mentioned for payment of the same or if such moneys or any part thereof remain unpaid to the grantee at the time when the wool hereby assigned may be shorn, the flock of sheep mentioned in this agreement and the increase thereof, and all other sheep which, if this agreement were a stock mortgage comprising sheep, would be included therein, shall be shorn either by the grantor or by the grantee, at the option of the grantee, but in either case at the expense of the grantor, at the usual and proper season for so doing; and the wool of such sheep shall with all convenient speed be properly sorted and packed in good bales, marked with the proper brand of such wool, and shall be delivered by the grantor to the grantee or his order at the place of delivery herein mentioned or, if no such place is mentioned herein, at such place as the grantee directs; and the grantee may either sell the same in Queensland, in one or more lots, by public auction or private

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contract, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he thinks fit, or may cause the same to be shipped or exported to any place or places out of Queensland, to be sold by him or his agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the said wool or by any sale or sales thereof, whether in Queensland or elsewhere, or by the act, neglect, or default of any agent, broker, or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that he may be compelled to pay in order to protect his security over the said wool, and all costs, mercantile and other charges, and expenses incurred in and about the shearing of the said sheep, and the packing, carrying-away, sale, and shipment of the said wool, or on any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

SIXTH  
SCHEDULE.  
[Section 41.]

## SIXTH SCHEDULE.

*Meanings of Abbreviated Terms.*

The words "that the grantor will insure" in any instrument being a bill of sale shall imply—that the grantor will forthwith insure and, so long as any money shall remain due from him to the grantee on the security of the bill of sale, keep insured in some public insurance office, to be approved of by the grantee, against loss or damage by fire, in the name of the grantee, the chattels comprised in such bill of sale to the full amount then due thereon, and will hand over to the grantee the policy of such insurance and produce to him the receipts for the annual or other periodical premiums payable on account thereof, and that all moneys payable by virtue of such insurance shall be received by the grantee towards satisfaction of the moneys due on such security, and that if default shall be made by the grantor in effecting or keeping on foot such insurance it shall be lawful for, but not obligatory upon the grantee (without prejudice to any other remedy) to insure the said chattels in manner aforesaid, and the money paid on account of such insurance shall be a charge on the said chattels.

Abbreviated  
form of word  
"insure".

In any instrument—

1. The words "upon demand" mean upon demand being made by notice in writing signed by the person entitled to make the demand, or any solicitor, agent, or clerk or servant of such person, served upon the person upon whom the demand is to be made, either personally or by posting the same in a duly registered letter addressed to him at his usual or last-known place of abode in Queensland.

"Upon  
demand".

2. The words "further advances" means such further sum or sums of money as may be advanced or paid by the grantee to the grantor after the execution of this instrument, and include also such sums as may become owing by the grantor to the grantee during the continuance of this security for goods supplied, for bills and notes discounted and paid, and for other loans, credits, and advances that may during the continuance of this security be made by the grantee to or for the accommodation or at the request of the grantor.

"Further  
advances".

“ Will, upon demand, pay the balance due upon the account current between them ”.

3. The words “ will, upon demand, pay the balance due upon the account-current between them ” mean that the grantor will, on demand, pay to the grantee the balance on account-current of the grantor with the grantee for the time being owing for and on account of the moneys advanced on the execution hereof, or intended to be hereby secured, and for further advances, and for interest, commission, and other lawful charges from the day of such demand being made till the actual payment thereof, at the rate mentioned in this instrument without any deduction ; and it is hereby declared and agreed that the said account-current shall be made up with half-yearly rests on the half-yearly days mentioned for that purpose in this instrument, in each year or if no such days are mentioned in this instrument, then on the 31st day of March and the 30th day of September in each year, until the final balance of account is fully paid ; and that this instrument shall be a continuing security for all moneys for the time being owing by the grantor, notwithstanding that the current account between them may have at any time theretofore been in credit by payments, settlement of account, or otherwise ; and also that upon every such half-yearly day interest shall be considered as converted into principal, and the balance shall be chargeable with interest as aforesaid as upon further advances, and also that in making up such account interest at the rate specified in this instrument shall be calculated on the daily debtor balances ; and also that, upon any such demand as aforesaid, all bills of exchange or promissory notes given by the grantor to the grantee and then current may, at the option of the grantee, and shall in case of entry into possession or sale by the grantee, be considered as matured or become due, subject to a rebate of interest upon the amount thereof for the time during which the same have to run, to be calculated at the rate at which interest is payable under this instrument, and that the amount of such bills or promissory notes, subject to such rebate, may be charged to the grantor in such account at the time of making such demand.

“ Will brand, earmark, and mark ”.

4. In a stock mortgage, the words “ will brand, earmark, and mark ” mean that the party liable to brand, earmark, and mark will keep all the stock subject to this security at all times while this instrument remains in force distinctly branded and earmarked with the grantor’s registered brand and earmark specified in this instrument, failing which it shall be lawful for, but not imperative on, the other party hereto to enter upon any lands or premises where any stock subject to this security are, and to take possession of the same, and brand, earmark, and mark the same with the grantor’s registered brand and earmark, with the right to use all branding, earmarking, marking, and other implements and plant requisite therefor, and all costs, charges, and expenses occasioned to him by so doing, shall be recoverable from the party liable to brand, earmark, and mark as if the same had been advanced by way of loan as a further advance on the security of this instrument.

“ Stock subject to this security ”.

5. In a stock mortgage, the words “ stock subject to this security ” mean and include not only the stock described or referred to in this instrument or in any schedules hereto, but also all stock which are by the provisions of “ *The Bills of Sale and Other Instruments Act of 1955,* ” or otherwise, deemed to be comprised and included in this instrument.