

CHATTELS TRANSFER BILL.

EXPLANATORY MEMORANDUM.

SINCE the passing of the Consolidation Act of 1908 the attention of the Government has from time to time been directed to difficulties in the working of the Act, especially in regard to mortgages of stock and wool liens, which are the common security for mercantile advances to farmers. Difficulties have lately arisen with regard to securities for advances to persons engaged in the dairying industry, and machinery supplied on hire-purchase terms in that industry. Some such defects have been dealt with by amending Acts in the years 1919, 1922, and 1923; but others exist, and have been the subject of suggestions to the Government from merchants and others.

In the month of February of the present year the Government issued a circular letter to the leading mercantile houses and stock agents affected and also to the banks, stating the Government's intention to consolidate and amend the law relating to chattel securities, and inviting their suggestions and assistance. The bodies so circularized united in appointing Mr. Skerrett, K.C., and Mr. E. D. Bell, who have each had large legal experience in the matter, to go carefully through the Acts and provisionally draft amendments approved by the special committee appointed by the merchants and bankers to deal with the subject. The Government received, recently, memoranda setting forth the conclusions of the special committee with regard to desired amendments, and from Messrs. Skerrett and Bell the draft of such amendments, and of some new provisions in a form giving effect to the views of the special committee. The amendments have been considered by the Law Officers of the Crown, and have been in part, and with some variations, accepted in the form of the Bill now presented to Parliament.

In this memorandum minor verbal alterations in the drafting of already existing provisions are necessarily omitted from reference to avoid undue length, and the memorandum is confined to noting the provisions of this Act which materially vary from the Act of 1908 and its amendments.

Clause 2: The material alteration is the insertion in the exceptions from "instruments" of compulsory hire-purchase agreements, as defined in clause 59. The definitions have been rearranged, and subsection (2) of section 2 of the Act of 1908 is now clause 3.

Clause 4 is new. It is intended to meet the doubt which has arisen upon the point whether registration is "public notice."

Clauses 4 to 19, relating to registration, contain some variations from the identical provisions of the repealed Acts suggested by Messrs. Skerrett and Bell, but the amendments are technical. Clause 12 is new, making provision for a collected register at the chief town of each provincial district. Subclause (2) of clause 13 is new.

Clauses 20 to 30 are not materially amended. The alteration in the wording of clause 24 is consequent on a recent judgment of an English Court.

Clause 31: Subclause (4) is new, and obviates the contention that subclauses (1) and (2) are general, and would exclude book debts from a floating security.

Clause 32: This is new. To enable valid assignments of moneys to become payable to milk suppliers, and to exclude agreements of that nature from the necessity of registration.

Clause 33: Subclause (2) is new, to meet a contention which has been raised that a security for a current account is defeated if the grantor's account is in credit at any time.

Clause 36: The provision excepting New Zealand flax from the provision limiting the security to one crop is new.

Clause 41: Subclause (2) is new.

Clause 57 is new. Its object is to enable the security of business carried on under the hire-purchase system. The provisions are limited to the class of articles specified in the Seventh Schedule, but provision is made for addition to that Schedule from time to time by Order in Council.

Clause 59 is new, to meet a difficulty created by a recent judgment of Mr. Justice Hosking in which the question was raised whether mortgages by companies (which are excluded by the Act from the definition of "instrument") have the benefit of the provisions relating to after-acquired stock conferred upon mortgagees by registered instruments.

The amendments to the Schedules are technical alterations proposed by the solicitors to the business conference.

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,

12th September, 1924.

Hon. Sir Francis Bell.

CHATELS TRANSFER.

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A BILL INTITULED

Title.

AN ACT to consolidate and amend certain Enactments of the General Assembly relating to Chattel Securities and the Transfer of Chattels.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

Short Title.

1. This Act may be cited as the Chattels Transfer Act, 1924.

Interpretation.

2. In this Act, if not inconsistent with the context,—

1908 No. 21, sec. 2
(1)
1919, No. 24, sec. 3

"Chattels" means any personal property that can be completely transferred by delivery, and includes machinery, stock and the natural increase of stock as hereinafter mentioned, crops, wool, and also book and other debts; but does not include—

(a.) Chattel interests in real estate, title deeds, choses-in-action (not being book or other debts), negotiable instruments; or

(b.) Shares and interests in the stock, funds, or securities of any Government or local authority; or

(c.) Shares and interests in the capital or property of any company or other corporate body; or

(d.) Debentures and interest coupons issued by any Government, or local authority, or company, or other corporate body:

"Crops" means European flax, hemp, hops, wheat, maize, barley, oats, and grass (whether for hay or for grain), and all cereal and root crops, *Phormium tenax*, fruit, and all other crops grown above or below the ground:

"Executed" means signed by the grantor or his attorney, and, in the case of an instrument by way of bailment, means signed by the grantor and grantee or their respective attorneys:

"Factory" or "workshop" means any premises 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 for sale of any article or part of any article:

"Grantee" means the party to an instrument to whom chattels therein referred to, or any interest therein, are thereby granted or assigned, or agreed so to be, and includes his executors, administrators, and assigns; and in the case of a company or corporation, includes the successors and assigns of such company or corporation:

5 "Grantor" means the party to an instrument who thereby grants or assigns, or agrees to grant or assign, chattels therein referred to, or any interest therein, and includes his executors, administrators, and assigns; and in the case of a company or corporation, includes the successors and assigns of such company or corporation:

10 "Instrument" means and includes any bill of sale, mortgage, lien, or any other document that transfers or purports to transfer the property in or right to the possession of chattels, whether permanently or temporarily, whether absolutely or conditionally, and whether by way of sale, security, pledge, gift, settlement, bailment, or lease, and also the following:—

- 15 (a.) Inventories of chattels with receipt thereto attached:
- (b.) Receipts for purchase-money of chattels:
- (c.) Other assurances of chattels:
- (d.) Declarations of trust without transfer:
- 20 (e.) Powers of attorney, authorities, or licenses to take possession of chattels as security for any debt:
- (f.) Any agreement, whether intended to be followed by the execution of any other instrument or not, by which a right in equity to any chattels, or to any charge or security thereon or thereover, is conferred:

25 "Instrument" does not include the following:—

- 30 (a.) Securities over, or bailments or leases of, fixtures (except "trade machinery" as hereinafter defined), when mortgaged or leased in any mortgage or lease of any freehold or leasehold interest in any land or building to which they are affixed, and whether or not such fixtures are separately mortgaged or leased by mention thereof in separate words, and whether or not power is given by such mortgage or lease to sever such fixtures from the land or building to which they are affixed without otherwise taking possession of or dealing with such land or building:
- 35 (b.) Assignments for the benefit of the creditors of the person making the same:
- (c.) Transfers or agreements to transfer instruments by way of security:
- 40 (d.) Transfers or assignments of any ship or vessel or any share thereof:
- (e.) Transfers of chattels in the ordinary course of business of any trade or calling:
- 45 (f.) Debentures and interest coupons issued by any Government or local authority:
- (g.) Bills of sale of chattels in any foreign parts, or at sea:
- 50 (h.) Bills of lading, warehousekeepers' certificates, warrants, or orders for the delivery of chattels, entries in auctioneer's books, or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorizing or purporting to authorize, either by indorsement or delivery, the possessor of such document to transfer or receive the chattels thereby represented:

(i.) Debentures and interest coupons issued by any company or other corporate body, and secured upon the capital stock or chattels of such company or other corporate body :

(j.) Mortgages or charges granted or created by a company incorporated or registered under the Companies Act, 1908, if entered in the register of mortgages of that company and registered with the Registrar of Companies pursuant to the provisions of the said Act in that behalf :

(k.) Customary hire-purchase agreements as defined in this Act :

“Instrument by way of bailment” means an instrument whereby chattels are leased or bailed :

“Instrument by way of security” means an instrument given to secure the payment of money or the performance of some obligation :

“Registrar” means a Registrar of the Supreme Court at the place where any act is required to be done by such Registrar, and includes a Deputy Registrar (if any) at such place :

“Registration” means the filing of an instrument with schedule or inventories, or a true copy thereof, with the affidavit hereinafter mentioned :

“Schedule” includes inventory :

“Stock” includes any sheep, cattle, horses, pigs, poultry, ostriches, and any other living animals :

“Trade machinery” means the machinery used in or attached to any factory or workshop as hereinbefore defined ; but does not include—

(a.) The fixed motive powers, such as the water-wheels, and steam and other engines, and the steam-boilers, donkey-engines, and other fixed appurtenances of the said motive powers ; or

(b.) The fixed-power machinery (such as the shafts, wheels, drums, and their fixed appurtenances) for transmitting the action of the motive powers to the other machinery, fixed and loose ; or

(c.) The pipes for steam, gas, and water.

3. An attornment or agreement (not being a mining lease) whereby a power of distress is given or agreed to be given by one 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 an instrument within the meaning of this Act so far as regards any chattels seized or taken under the power of distress :

Provided that nothing in this subsection shall prejudice the right 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

Attornment or agreement giving power of distress by way of security to be instrument within meaning of Act.

1908, No. 21, sec 2 (2)

whereby such demise is effected shall not be deemed to be an instrument within the meaning of this Act.

REGISTRATION.

4. (1.) All persons shall be deemed to have notice of an instrument and of the contents thereof when and so soon as such instrument has been registered as provided by this Act :

Registration of instrument to be notice.

10 Provided that if registration of such instrument is not renewed, pursuant to the provisions of this Act, prior registration shall not be deemed to operate as notice after the lapse of the period within which renewal is required by this Act.

15 (2.) All persons shall be deemed to have notice of a security granted wholly or partly upon chattels by a company registered under the Companies Act, 1908, and of the contents of such security, so far as it relates to chattels, immediately upon the registration of such security in the manner provided by the said Companies Act, 1908.

20 5. Registration of an instrument shall be effected by filing the same and all schedules indorsed thereon, annexed thereto, or referred to therein, or a true copy of such instrument and the schedules, and an affidavit in the form numbered (1) in the *First* Schedule hereto or to the like effect, in the Supreme Court Office of any Registrar in the provincial district within which the chattels comprised in the instrument are situate at the time of the making or giving thereof :

Mode of registration. 1908, No. 21, sec. 4

25 Provided that all instruments affecting chattels in the Chatham Islands or other islands not included in any provincial district shall be registered in the Supreme Court Office at Wellington :

Provided also that for the purpose of registration the counties of Cheviot and Amuri shall be deemed to be within the Provincial District of Canterbury :

30 Provided further that for the purpose of registration the part of New Zealand included in the Province of Otago as constituted immediately before the passing of the Otago and Southland Union Act, 1870 (except such portions as are described in the *Second* Schedule hereto), and the part of New Zealand included in the Province of Southland as constituted immediately before the passing of the said Act, together with such portion of the said Province of Otago as constituted as aforesaid as is described in the said *Second* Schedule, shall be deemed to be respectively separate provincial districts :

35 Provided further that for the purpose of registration that part of New Zealand which is for the time being included in the Judicial District of Gisborne shall be deemed to be a separate provincial district.

40 6. Where an instrument is made by any person under or in execution of any process of Court, the affidavit to be filed on registration shall state the residence and occupation of the person against whom such process is issued.

Where instrument made under process. Ibid., sec. 5.

45 7. An affidavit required by this Act may be sworn before any solicitor of the Supreme Court, or a Registrar, or any Justice.

Affidavits. Ibid., sec. 6

50 8. (1.) The period within which an instrument may be registered is *thirty* days from the day on which it was executed :

Limitation of time for registration.

Provided that instruments executed out of New Zealand or in the Chatham Islands or other islands not included in any provincial district may be registered at any time within ninety days from the execution thereof :

Ibid., sec. 7

Provided also that when the time for registering an instrument expires on a day whereon the Registrar's office is closed, the registration shall be valid if made on the next following day on which such office is open.

(2.) If there are more grantors than one, the date of execution of the instrument shall be deemed to be the date of the execution by the grantor who first executes the instrument.

(3.) The day on which the instrument is executed shall not be included in the period for registration; but the instrument may be registered on that day.

Register-book and
index to be kept.
1908, No. 21, sec. 8.

9. (1.) The Registrar shall cause every instrument registered in his office under this Act to be numbered, and shall mark on each such instrument, or on the filed copy thereof, the date of registration and the number, and shall at the time of registration enter in a register to be kept for the purpose in his office the particulars of the instrument registered, according to the form numbered (2) in the *First* Schedule hereto.

(2.) The Registrar shall also keep an index of the names of grantors and grantees of instruments and shall refer therein to the entries in the register-book of the instruments given by each such grantor.

(3.) Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors and grantees whose surname begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

Entry where
instrument made
under process.
Ibid., sec. 9

10. Where any instrument is made or given by any person under or in the execution of any process of Court, then the name, residence, and occupation of the person against whom such process issued, and also the name of the grantee thereof, shall be inserted in the book to be kept as aforesaid.

11. There shall be paid to the Registrar upon the registration of every instrument the fee of *five shillings*.

Fee on registration.
Ibid., sec. 10.

12. Where in any provincial district or area deemed for the purpose of registration to be a provincial district there shall exist more than one Supreme Court Office, then and in such case it shall be the duty of every Registrar of each such Supreme Court Office, except in the chief town as hereinafter defined of such provincial district or area, forthwith after the registration of any instrument, to send to the Registrar at such chief town a copy of the particulars relating to such instrument entered in his register-book. Each such Registrar in the said chief towns shall cause to be kept a separate register and index, as required by section *nine* of this Act, relating to the instruments particulars whereof have been so received by him. Such separate registers and indices shall be available for search. The chief towns hereinbefore referred to shall be as follows:—

Separate register to
be kept in chief
town of each
provincial district
of all registrations
within such district.

(a.) In the case of the Provincial District of Auckland (excluding the said Gisborne district), the City of Auckland:

(b.) In the case of the said Gisborne district, the Borough of Gisborne:

(c.) In the case of the Provincial District of Taranaki, the Borough of New Plymouth:

(d.) In the case of the Provincial District of Hawke's Bay, the Borough of Napier:

- (e.) In the case of the Provincial District of Wellington, the City of Wellington :
- (f.) In the case of the Provincial District of Marlborough (excluding the Counties of Cheviot and Amuri), the Borough of Blenheim :
- (g.) In the case of the Provincial District of Nelson, the City of Nelson :
- (h.) In the case of the Provincial District of Westland, the Borough of Hokitika :
- (i.) In the case of the Provincial District of Canterbury and Counties of Cheviot and Amuri, the City of Christchurch :
- (j.) In the case of the Provincial District of Otago (as defined by this Act), the City of Dunedin :
- (k.) In the case of the Provincial District of Southland (as defined by this Act), the Borough of Invercargill.

13. (1.) A Judge of the Supreme Court, on being satisfied that the omission to register an instrument or an affidavit of renewal thereof within the time prescribed by this Act, or according to the form or effect required by this Act, or that the omission or misstatement in the register or in any affidavit of the name, residence, or occupation of any person, or of any other matter, was accidental or due to inadvertence, may order such omission or misstatement to be rectified by extending the time for such registration, or by the filing of a supplementary affidavit, or by the insertion in the register of the true name, residence, or occupation, on such terms and conditions as he thinks fit.

Time for registration may be extended, and mistakes in register corrected. 1908, No. 21, sec. 11

(2.) If an instrument is filed for registration in a Supreme Court Office other than such is required by this Act, a Judge of the Supreme Court, on being satisfied that such filing was accidental or due to inadvertence or mistake, may order that the instrument be transferred to an appropriate office of the Court and be filed therein by the Registrar of such last-mentioned office. Any such order may be made upon such terms and conditions as the Judge thinks fit, and, subject only to such terms and conditions, shall have the effect of validating the registration of the instrument as on and from the date when it was originally filed in the first-mentioned office of the Court.

Renewal of Registration.

14. (1.) The registration of an instrument, whether executed before or after the coming into operation of this Act, shall, during the subsistence of such instrument, be renewed in manner hereinafter mentioned once in every period of five years, commencing from the day of the registration.

Registration to be renewed every five years. Ibid., sec. 12

(2.) If not so renewed, the registration shall cease to be of any effect at the expiration of any period of five years during which a renewal has not been made as hereby required.

(3.) The registration of an instrument shall be renewed by filing in the office of the Registrar where the instrument was originally registered an affidavit in the form numbered (3) in the *First* Schedule hereto or to the like effect.

Mode of renewal.

(4.) The Registrar shall thereupon number such affidavit as if the same were an instrument presented for registration, and re-number the instrument originally registered in the said office, or the filed copy thereof, with a similar number, and mark thereon the date

of renewal of registration, and shall enter particulars of the instrument in the register-book in like manner as on an original registration, and shall also enter the date of renewal of registration in the column provided therefor in the register-book.

Fee on renewal.

(5.) There shall be paid to the Registrar upon the renewal of registration of any instrument the fee of *five shillings*. 5

(6.) The provisions of section *twelve* hereof shall apply also to entries of renewals of registration.

Searches and Office Copies.

Register-book and instruments may be searched and viewed. 1908, No. 21, sec. 13

15. The register-books and indices hereinbefore provided for, and every instrument registered as aforesaid, or the filed copy thereof, may be searched and viewed by all persons during the office hours of the Supreme Court upon payment of a fee of *one shilling* for every search against any one person. 10

Office copies may be had.

Ibid., sec. 14

16. Any person shall be entitled to have an office copy or an extract of or from any instrument with the schedules filed therewith or of or from the copy thereof registered as aforesaid, and an office copy of any affidavit filed under this Act, on paying for the same at the rate of *fourpence* for every folio of seventy-two words contained in such copy or extract; or if he makes such copy or extract himself the Registrar shall, upon satisfying himself that such copy or extract is correctly made, certify the same upon payment of a fee of *two shillings* for each instrument or extract therefrom, and of *one penny* for every folio of seventy-two words after the first ten folios. 20

Instruments and affidavits presumed to have been duly executed or sworn. Ibid., sec. 15

17. (1.) Every instrument registered and affidavit filed under this Act shall, if purporting to be duly executed or sworn, be *prima facie* presumed to have been duly executed or sworn. 25

Office copies to be *prima facie* evidence.

(2.) The filed copy of any instrument, and of the schedules filed therewith, or an office copy of any such filed copy, and an office copy of any affidavit filed under this Act, and every copy or extract certified by the Registrar under the *last preceding* section, and a certificate by the Registrar of the time when any instrument or affidavit was registered or filed, shall in all Courts and before all persons having by law or consent of parties authority to take evidence be received as *prima facie* evidence of such instrument, schedules, or affidavit, and of the signatures of the parties to the instrument and of the attesting witnesses thereto, and of the fact and time of the registration or filing of the instrument or affidavit. 30 35

Official position of Registrar need not be proved.

(3.) It shall not be necessary to prove the handwriting or official position of the person appearing as such Registrar to have certified any such copy or extract as aforesaid, or to have given any such certificate as aforesaid. 40

Effect of Non-registration.

Unregistered instruments to be void in certain cases. Ibid., sec. 16

18. (1.) Every instrument, unless registered in the manner hereinbefore provided, shall, upon the expiration of the time for registration, or, if the time for registration is extended by a Judge of the Supreme Court, then upon the expiration of such extended time, be deemed fraudulent and void as against— 45

(a.) The Assignee in Bankruptcy of the estate of the person whose chattels or any of them are comprised in any such instrument : 50

(b.) The assignee or trustee acting under any assignment for the benefit of the creditors of such person :

(c.) Any sheriff, bailiff, and other person seizing the chattels or any part thereof comprised in any such instrument, in execution of the process of any Court authorizing the seizure of the chattels of the person by whom or concerning whose chattels such instrument was made, and against every person on whose behalf such process was issued,—

so far as regards the property in or right to the possession of any chattels comprised in or affected by the instrument which, at or after the time of such bankruptcy, or of the execution by the grantor of such assignment for the benefit of his creditors, or of the execution of such process (as the case may be), and after the expiration of the period within which the instrument is required to be registered, are in the possession or apparent possession of the person making or giving the instrument, or of any person against whom the process was issued under or in the execution of which the instrument was made or given, as the case may be.

(2.) Until the expiration of the time or extended time for registration of any instrument under this Act, and so long as an instrument continues to be registered hereunder, the chattels comprised in that instrument, if by way of bailment, shall not be deemed to be in the possession, order, or disposition of the grantee, or, if an instrument of any other kind, then of the grantor, within the meaning of the Bankruptcy Act, 1908.

19. Upon the expiration of the time or extended time for registration, no unregistered instrument comprising any chattels whatsoever shall, without express notice, be valid and effectual as against any bona fide purchaser or mortgagee for valuable consideration, or as against any person bona fide selling or dealing with such chattels as auctioneer or dealer or agent in the ordinary course of his business.

Instrument, not registered within time limited, not to affect bona fide purchaser for value without notice. 1922, No. 52, sec. 2

AS TO INSTRUMENTS GENERALLY.

20. Sealing shall not be essential to the validity of any instrument; but every execution of an instrument shall be attested by at least one witness, who shall add to his signature his residence and occupation.

Instrument to be attested. 1908, No. 21, sec. 17

21. Every instrument shall be deemed to be made on the day on which it is executed, and shall take effect from the time of its execution.

Instrument to take effect from execution. Ibid., sec. 18

22. Where two or more instruments are executed comprising in whole or in part any of the same chattels, priority shall be given to such instrument or instruments in the order of the time of their registration respectively as regards the title to or right to the possession of such chattels :

Registration to give priority. Ibid., sec. 19

Provided that where a grantee under a second or subsequent instrument claims priority by virtue of prior registration, he must prove that at the time of the execution of the instrument under which he claims he had no notice of any existing unregistered instrument.

23. Every instrument shall contain, or shall have endorsed thereon or annexed thereto, a schedule of the chattels comprised therein, and, save as is otherwise expressly provided by this Act,

Instrument to have inventory of chattels. Ibid., sec. 20

shall give a good title only to the chattels described in the said schedule, and shall be void to the extent and as against the persons mentioned in section *eighteen* hereof in respect of any chattels not so described.

Instrument void where grantor not owner of chattels. 1908, No. 21, sec. 21

24. Save as is otherwise expressly provided by this Act, an instrument shall be void to the extent and as against the persons mentioned in section *eighteen* hereof in respect of any chattels which the grantor acquires or becomes entitled to after the time of the execution of the instrument. 5

Instrument subject to defeasance, &c., void in certain cases. Ibid., sec. 22

25. (1.) 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 for the purposes of this Act be taken as part of such instrument, and shall be written on the same paper or parchment on which such instrument is written, otherwise such instrument shall be void to the extent and as against the persons mentioned in section *eighteen* hereof so far as regards the property in or right to the possession of any chattels comprised in or affected by such instrument. 10 15

(2.) In the case of a document securing the payment of the moneys or any part thereof payable by virtue of an 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, nature of the security, and amount secured by such document are set forth in the instrument or in some schedule thereto. 20 25

Saving. Ibid., sec. 23

26. Nothing in the *three last preceding* sections shall render an instrument void in respect of any of the following chattels, that is to say:—

(a.) Stock, wool, and crops :

(b.) Fixtures, plant, or trade machinery where the same are used in, attached to, or brought upon any place in substitution for any of the like nature described in, or in the schedule to, such instrument. 30

Saving of Acts prescribing formalities as to execution of instruments or securing rights thereunder. Ibid., sec. 24

27. Nothing in this Act shall be deemed to affect any enactment for the time being in force— 35

(a.) Prescribing any formalities to be observed on or about the execution of instruments within the meaning of this Act ; or

(b.) Conferring or securing any rights or claims under or in respect of any such instrument.

Instruments comprising Stock.

 40

How stock to be described. Ibid., sec. 25

28. Where stock are comprised in any instrument they shall be described or referred to therein or in the schedule thereto by some brand or brands, earmark or earmarks, or other mark or marks upon them, or shall be so described or referred to by sex, age, name, colour, or other mode of description as to be reasonably capable of identification, otherwise the instrument shall be void to the extent and as against the persons mentioned in section *eighteen* hereof, so far as regards such or so much of such stock as are not so described or referred to, or are not 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 or mentioned in such instrument or schedule. 45 50

29. An instrument comprising stock shall, unless the contrary be expressed therein, be deemed to include not only the stock comprised therein as provided by the *last preceding* section, but also the natural increase of such stock, and all stock of every kind (whether of the classes described in the instrument or not) the property of the grantor branded, earmarked, or marked as specified in the instrument, or which the grantor has covenanted or agreed by such instrument to so brand, earmark, or mark, and which after the execution of such instrument are depasturing or are at, in, or upon any lands or premises mentioned in such instrument or in the schedule thereto, or any land and premises used and worked in conjunction with or as part of the first-mentioned land and premises. The grantee shall have the same legal property and right in all stock which by force of this section are deemed to be included in the instrument as he has in the stock described in the instrument or in the schedule thereto.

Stock to include increase of stock, &c.
 1908, No. 21, sec. 26
 1922, No. 52, sec. 3
 1923, No. 17, sec. 3

30. Where the stock comprised in an instrument is poultry or ostriches, or other stock which cannot be properly the subject of distinctive marking,—

Special provision as to poultry, &c.

(a.) The provisions of section *twenty-eight* hereof shall not apply in respect of such stock :

(b.) The provisions of section *twenty-nine* hereof shall apply, but modified by omitting therefrom, after the words “ be deemed to include,” the words “ not only the stock comprised therein as provided by the *last preceding* section, but also” ; and by further omitting, after the words “ the property of the grantor,” the words “ branded, earmarked, or marked as specified in the instrument, or which the grantor has covenanted or agreed by such instrument to so brand, earmark, or mark, and.”

Assignment of Book or other Debts.

31. (1.) Book or other debts shall be deemed to be chattels situate in the place where the grantor of the instrument comprising them longest resided or carried on business during the period of six months next before the execution of the instrument.

Instrument may comprise book debts.
 1908, No. 21, sec. 27

(2.) In every instrument comprising book or other debts each debt shall be deemed to be a separate chattel, and shall be described in the schedule thereto by setting forth the name of the debtor or firm of debtors and the amount of the debt, so far as is reasonably necessary to show by whom the debts are owing, and every such instrument shall be void to the extent and as against the persons mentioned in section *eighteen* of this Act in respect of any debt not so described.

(3.) Nothing in this section shall apply to any debt secured or charged on land.

(4.) Nothing in this section shall apply to any floating security granted by a company registered under the Companies Act, 1908, over the assets of such company, provided that such security is registered in the manner required by that Act.

32. (1.) Nothing in the *last preceding* section shall apply to any deed or agreement in writing purporting to assign to or to authorize the grantee to receive any moneys due at the date thereof or thereafter from time to time to become due to the grantor for or in respect of any milk, cream, or butterfat supplied by such grantor to any butter, cheese, or dried-milk factory.

Assignments of moneys payable by dairy company to suppliers of dairy-produce.

(2.) Such a deed or agreement is not an instrument to which this Act applies.

AS TO INSTRUMENTS BY WAY OF SECURITY.

Form of instrument
by way of security.
1908, No. 21, sec. 28

33. (1.) Every instrument by way of security may be in the form numbered (4) in the *First* Schedule hereto or to the like effect, with such variations or modifications thereof and additions thereto as are expressed in the instrument. 5

(2.) An instrument by way of security securing an account current continues in full force and effect notwithstanding that the grantor may from time to time be in credit on such account. 10

Where successive
securities are given
over same chattels.
Ibid., sec. 30

34. Where an instrument by way of security is executed after the execution of a prior instrument which has never been registered, and comprises all or any of the chattels comprised in such prior instrument, then, if such subsequent instrument is given as a security for the same debt as is secured by the prior instrument, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the chattels comprised in the prior instrument, be void to the extent and as against the persons mentioned in section *eighteen* hereof, unless it is proved to the Court having cognizance of the case that the subsequent instrument was *bona fide* given for the purpose of correcting some material error in the prior instrument, and not for the purpose of evading this Act. 15 20

Securities over Crops.

Security may be
given over crops.
Ibid., sec. 31

35. An instrument by way of security may be granted over the crops described or referred to therein or in the schedule thereto then actually sown or growing, or to be sown or grown in or upon the lands mentioned in the instrument, and shall entitle the grantee thereof to the whole of the crops therein mentioned, not only while growing, but afterwards when cut or separated from the soil, and whether stacked or stored on the land and where the same were grown or on any other land or premises. 25 30

But only over such
as can be harvested
within twelve
months.
Ibid., sec. 32

36. No such instrument shall avail to give security over any crops (other than *Phormium tenax*) that cannot in the ordinary course of husbandry be harvested and taken off such land within one year from the date of the execution of the instrument. 35

Saving of rights of
landlord and
mortgagee.
Ibid., sec. 33

37. No such instrument shall prejudicially affect the rights of any landlord or mortgagee of any land whereon the said crops are growing, unless and so far as the landlord or mortgagee has consented in writing to such instrument: 40

Provided that no such instrument being duly registered shall be extinguished or prejudicially affected by any subsequent sale, lease, mortgage, or other incumbrance of or upon the land described or referred to in the instrument or in any schedule thereto.

Securities over Wool.

Security may be
given over wool.
Ibid., sec. 34

38. An instrument by way of security may be granted over the wool of the next ensuing clip to be shorn from the sheep described or referred to therein, or in the schedule thereto, then depasturing upon the lands mentioned therein or in such schedule, and 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. 50

39. No subsequent sale, bailment, mortgage, or other incumbrance of or affecting the sheep mentioned in any such instrument shall extinguish, suspend, impair, or prejudicially affect that instrument if duly registered or the rights of the grantee thereof to the
 5 wool specified or referred to therein.

Wool securities not affected by sale, &c., of sheep.
 1908, No. 21, sec. 35

40. The grantor of any instrument by way of security over sheep may, with the consent in writing of the grantee thereof, and so far as is authorized by such consent, but not otherwise, give to some third person a valid security on the next ensuing clip of the wool of such
 10 sheep.

Security may be given over wool of mortgaged sheep.
 Ibid., sec. 36

41. (1.) If under any instrument by way of security comprising sheep, whether such instrument has been executed before or after the commencement of this Act, the grantee thereof shall from time to time be entitled to require the grantor to execute and give to such grantee
 15 an instrument by way of security over the wool growing, or to grow, upon the sheep for the time being subject to such instrument, or be entitled to require the grantor to deliver to the grantee the wool shorn from such sheep in each year during the continuance of such instrument, then and in such case the grantee shall, during
 20 the subsistence of the registration of such first-mentioned instrument, be deemed, notwithstanding the provisions of section *thirty-eight* hereof, to possess a lien or security over each clip in the same degree and manner as if an instrument of security in respect of the wool had been actually executed by the grantor and registered under this Act,
 25 and such lien or security shall have the consequences mentioned in section *thirty-nine* hereof.

Further provision as to security given over wool.
 1922, No. 52, sec. 4
 1923, No. 17, sec. 2

(2.) In every instrument by way of security comprising sheep, executed after the commencement of this Act, there shall be implied (unless such implication is expressly negatived), a covenant by the
 30 grantor to deliver to the grantee the wool shorn from such sheep in each year during the continuance of such instrument.

Entry of Satisfaction.

42. (1.) In the case of an instrument by way of security, upon the production to the Registrar of a memorandum of satisfaction in
 35 the form numbered (5) in the *First* Schedule hereto or to the like effect, signed by the grantee thereof or his attorney, discharging the chattels comprised in such instrument or any specified part thereof from the moneys secured thereby or any specified part thereof, or from the performance of the obligation thereby secured or any specified
 40 part thereof, and on production of such instrument and payment of a fee of *five shillings* the Registrar shall file such memorandum and make an entry thereof in the register-book on the page where the instrument is registered.

Memorandum of satisfaction may be filed.
 1908, No. 21, sec. 37

(2.) The execution of such memorandum shall be attested by at
 45 least one witness, who shall add to his signature his residence and occupation, and shall be verified by the affidavit of that witness.

(3.) The Registrar may, in his discretion, dispense with the production of the instrument, on proof by affidavit to his satisfaction that the instrument has been destroyed, cannot be found, or cannot be
 50 produced.

43. From and after the filing of any such memorandum the debt or charge created by the instrument shall be vacated to the extent specified in the memorandum, and the interest of the grantee in the

Effect of filing such memorandum.
 Ibid., sec. 38

chattels expressed to be discharged shall vest in the person for the time being entitled to the equity of redemption therein, but so far only as such interest is expressed by the memorandum to be determined, and subject to any lien or equity affecting the chattels.

Public Trustee may sign memorandum in certain cases.
1908, No. 21, sec. 39

44. Where the grantee of an instrument by way of security is absent from New Zealand, and there is no person in New Zealand authorized to discharge the same on his behalf at or after the date appointed for the payment of the moneys secured by such instrument, the Public Trustee may receive such moneys in trust for the person entitled thereto, and may sign a memorandum of satisfaction in lieu of such person, and upon the filing thereof such memorandum, signed by the Public Trustee, shall be as effectual as a memorandum signed by the person entitled to such moneys. 5 10

Judge may order memorandum to be filed.
Ibid., sec. 40.

45. A Judge of the Supreme Court may, upon application made to him for that purpose, order a memorandum of satisfaction to be filed in respect of any instrument by way of security, if it appears to him that the debt (if any) for which such instrument was given as security has been satisfied or discharged, or that the obligation for securing the performance of which the instrument was given has been performed; and thereupon such order may be filed by the Registrar and entered in his book in like manner as if the same were a memorandum within the meaning of section *forty-two* hereof. 15 20

Sales by Registrar.

Sales by Registrar.
Ibid, sec. 41

46. The provisions of sections seventy-eight to eighty-two of the Property Law Act, 1908, shall apply, with the necessary modifications, to chattels under this Act, and such chattels or any part thereof may be sold along with or separately from land (if any) mortgaged to secure payment of the same moneys as are secured by any instrument. 25

Sale of Grantor's Interest.

Grantor's interest in chattels may be sold in execution of judgment against him.
Ibid., sec. 42

47. (1.) Where legal process issues against the chattels of a judgment debtor for the execution of a judgment of any Court, and the said chattels, or any of them, are comprised in any instrument by way of security, the officer charged with the execution of the process may, in lieu of seizing and selling the chattels so comprised, sell the right, title, and interest of the judgment debtor in the same. 30 35

(2.) The grantee of the instrument, on receiving notice of the purchase of that right, title, and interest, may take possession of the chattels comprised in the instrument.

(3.) A grantee so taking possession shall be deemed to hold the chattels in trust for the purchaser of the said right, title, and interest, subject to payment of all moneys due under the instrument. 40

(4.) If the chattels are afterwards sold under the power of sale expressed or implied in the instrument, and any surplus remains out of the proceeds of the sale after payment of all moneys due under the instrument, the grantee shall on demand pay over that surplus to the purchaser of the said right, title, and interest. 45

(5.) If the grantee makes default herein, the purchaser may bring an action against him to recover the surplus, as money received to the use of the purchaser.

Not to affect interpleader process.
Ibid., sec. 43

48. Nothing in the *last preceding* section shall be deemed to affect the right of an execution creditor to test the validity of any instrument by interpleader process. 50

IMPLIED COVENANTS, ETC.

49. There shall be implied in every instrument the covenants for title on the part of the grantor set forth in the *Third* Schedule hereto, 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.
1908, No. 13, sec. 44

50. There shall be implied in every instrument by way of security the covenants, provisoes, agreements, and powers set out in the *Fourth* Schedule hereto, 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.
Ibid., sec. 45

51. Such of the expressions defined in section *two* hereof or in the *Fifth* Schedule hereto as are used in any instrument, or in any of the covenants, provisoes, agreements, or 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 section *two* or *Fifth* Schedule, and such meanings shall be implied in such instrument as fully and effectually as if the same were set out therein.

Meaning of "abbreviated expressions."
Ibid., sec. 46

52. 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 be several as well as joint.
Ibid., sec. 47

53. 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 successors and assigns of a company or corporation 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 company or corporation for whose benefit the same enure.

Covenants to bind executors.
Ibid., sec. 48

54. All or any of the covenants, provisoes, conditions, agreements, or powers set forth in the *Third*, *Fourth*, and *Fifth* Schedules hereto may be negatived, modified, or altered, or others may be added to them, by express words in the instrument.

Covenants may be negatived or varied.
Ibid., sec. 49

TRANSFERS OF INSTRUMENTS.

55. Every instrument may be transferred by a document in the form in the *Sixth* Schedule hereto or to the like effect, and every transferee, his executors, administrators, and assigns, shall, in respect of the instrument transferred, have the same rights, powers, and remedies, and be subject to the same obligations, as the transferor.

Form of transfer of instrument.
Ibid., sec. 50

56. Transfers of instruments by way of security may be registered at any time after the execution thereof, in like manner as instruments are registered; and, in case two or more transfers of any one such instrument are executed, a registered transfer shall have priority over an unregistered transfer; and, in case two or more transfers of any one such instrument are registered, priority shall be given to such transfers in the order of their time of registration.

Registration of transfers.
Ibid., sec. 51

CUSTOMARY HIRE-PURCHASE AGREEMENTS.

Special provisions
as to customary
hire-purchase
agreements.

57. (1.) A customary hire-purchase agreement is a deed or agreement in writing made between the owner of or a dealer in certain chattels and a conditional purchaser of those chattels where—

- (a.) The owner of or dealer in the chattels is either the manufacturer thereof or a person who is engaged in the trade or business of selling or disposing of chattels of such nature or description : 5
- (b.) The deed or agreement provides expressly or impliedly for delivery of possession to the conditional purchaser, but that the property in the chattels shall not pass to the conditional purchaser, or shall only conditionally so pass, until the completion of the payments to be made by him : 10
- (c.) The chattels the subject of such deed or agreement are such as are described in the *Seventh* Schedule hereto, or of a description hereafter added to that Schedule by Order in Council as hereinafter provided. 15

(2.) A customary hire-purchase agreement may be either an actual contract for sale and purchase or a contract of bailment under which the purchaser has an option of purchase of the chattels defined in the agreement. 20

(3.) A customary hire-purchase agreement is valid and effectual for all purposes without registration thereof. 5

(4.) Chattels the subject of a customary hire-purchase agreement shall not be deemed to be in the order and disposition of the purchaser or bailee thereof within the meaning of any law relating to bankruptcy or insolvency. 25

(5.) The purchaser or bailee of chattels, the subject of a customary hire-purchase agreement, shall not have any right to sell, deal with, or dispose of such chattels otherwise than as may be specially provided in the agreement ; and no sale, dealing, or other disposition purported to be made by such purchaser or bailee shall be effectual to confer title upon any person as against the vendor or bailor named in the customary hire-purchase agreement, or against the assigns of such vendor or bailor. 30

(6.) The Governor-General, if satisfied that a practice has been established of dealing with any specific chattels or class of chattels by the method of hire-purchase or that it is desirable in the public interest that such practice should become established in respect of any specific chattels or class of chattels, may from time to time, by Order in Council, add to the class of chattels defined in the *Seventh* Schedule hereto any other chattels or class of chattels, and thereafter such chattels or class of chattels may be the subject of customary hire-purchase agreements. 35 40

(7.) Any chattels which now or hereafter are the subject of a customary hire-purchase agreement shall, notwithstanding any rule of law to the contrary, remain and be deemed to have remained in all respects chattels, although the same may have been fixed or attached to any land or building, and shall be removable by the vendor or bailor if and when he shall become entitled to possession of the same under the provisions of such customary hire-purchase agreement : 45

Provided that such vendor or bailor shall not be entitled to remove any such chattels fixed to such land or building without first giving to the owner or other person for the time being in possession of the 50

said land one month's previous notice in writing of his intention to so remove them.

PENAL.

58. Every grantor of an instrument by way of security who, by sale or delivery without the consent of the grantee of any chattels comprised in or affected by such instrument, or by any other means, defrauds or attempts to defraud the grantee of the same or any part thereof, and thus or by any other means directly or indirectly defeats, invalidates, or impairs the grantee's security over the same, and every person who wilfully aids and abets any person in defrauding or attempting to defraud the grantee by defeating, invalidating, or impairing such instrument or in attempting to do so, is liable to two years' imprisonment with or without hard labour, and to a fine not exceeding one hundred pounds.

Attempt to defraud grantee. 1908, No. 21, sec. 52

AS TO MORTGAGES AND DEBENTURES OF COMPANIES.

59. Sections twenty-nine, thirty, thirty-three, sections thirty-five to fifty-six, and section fifty-eight hereof, shall apply in all respects to mortgages granted and debentures issued by companies registered under the Companies Act, 1908, in the same manner and to the same effect as if such mortgages or debentures were instruments by way of security.

Certain provisions of this Act to apply to mortgages and debentures of companies.

REPEALS AND SAVINGS.

60. The enactments mentioned in the Eighth Schedule hereto are hereby repealed, and with respect to those enactments the following provisions shall apply:—

Repeals and Savings. 1908, No. 21, sec. 1 (2).

- (a.) All offices, appointments, registers, registrations, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation 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.
(b.) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

(1.) AFFIDAVIT ON REGISTRATION OF INSTRUMENT.

In the Supreme Court of New Zealand, } In the matter of the Chattels Transfer District. } Act, 1924.
I [Full name of deponent], of [Place of residence or business], in New Zealand [Occupation], make oath and say as follows:—

1. The paper writing hereto annexed and marked "A" is a true copy of an instrument under the above-mentioned Act and of every schedule or inventory thereon endorsed or thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by [Full name of grantor].

2. The said instrument was made and given by the said [Full name of grantor] on the day of , 19 .

3. I was present, and saw [Full name of grantor] duly execute the said instrument on the day of , 19 , at [State place where instrument executed].

4. The said [Full name of grantor] resides at [Place of residence], and is [Occupation]. [This may be varied to describe residence at date of instrument.]

5. The name subscribed to the said instrument, as that of the witness attesting the due execution thereof by the said [Name of grantor], is in the proper handwriting of me, this deponent.

6. I am [Occupation], and reside at [Place of residence].

E. F.

Sworn at , the day of , 19 , before me,—

G. H., Solicitor [or Registrar of the Supreme Court, or Justice].

[N.B.—If the grantor is absent from New Zealand and executes the instrument by attorney, it shall be sufficient if the deponent states his belief as to the present address of the grantor. In the case of a company the registered office should be stated instead of the place of residence.]

Where the original instrument is filed, the first paragraph of this affidavit should be struck out, and the second and third paragraphs will require some alterations.

Where the instrument is by way of bailment, the third, fourth, and fifth paragraphs must be made to relate to the execution by, and the residence and occupation of, both grantor and grantee.]

(2.) REGISTER-BOOK.

No.	By whom given (or against whom Process issued).			To whom given.			Nature and Date of Instrument.	Consideration.	Date of Registration.	Date of Renewal.	Satisfaction entered.
	Name.	Residence.	Occupation.	Name.	Residence.	Occupation.					

N.B.—In the case of an instrument by way of security, it shall not be imperative to state the residence and occupation of the grantee.

(3.) AFFIDAVIT ON RENEWAL OF REGISTRATION OF INSTRUMENT.

In the Supreme Court of New Zealand, } In the matter of the Chattels Transfer Act,
District. } 1924.

I [Full name of deponent], of [Place of residence or business], in New Zealand [Occupation], make oath and say as follows:—

1. I am the grantee [or grantor, in the case of an instrument by way of bailment] of the instrument registered under the above Act as No. , and made between [State names of parties to instrument, their residences and occupations, as appearing therein; also names of the parties to the instrument, their residences and occupations at the time of the making of the affidavit].

[If the affidavit is made by an agent, clerk, or servant of the grantee or grantor, 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 .

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.

C. D.

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

G. H., Solicitor [or Registrar of the Supreme Court, or Justice].

(4.) INSTRUMENT BY WAY OF SECURITY.

A. B., of [State residence and occupation], being owner of the chattels mentioned in the schedule hereto [where a schedule is necessary], in consideration of the sum of £ this day lent and advanced to him by C. D., of [State residence and occupation], [Or, if consideration not an advance of money, state any other consideration for which mortgage given], does hereby assign and transfer the same to the said E. F. by way of mortgage, to secure the payment of the said sum of £ on the day of , 19 , with interest thereon in the meantime, and so long as the same or any

part thereof remains unpaid, at the rate of £ per centum per annum, by payments on the day of the months of and in each year. [*Implied covenants, powers, and provisions may be varied or negatived.*]

In witness whereof A. B. has hereunto subscribed his name this day of , 19 .

[*Schedule.*]

A. B.

Signed by the above-named A. B. in the presence of—

E. F.,

[*Residence and occupation.*]

(5.) MEMORANDUM OF SATISFACTION.

I, C. D., hereby consent to a memorandum of satisfaction being written upon the instrument [*or registered copy of the instrument*] given for securing the sum of £ , bearing date the day of , 19 , and made between and , and registered on the day of , 19 , the moneys for which such instrument was given as a security having been satisfied.

Dated this day of , 19 .

C. D., Grantee [*or Assignee.*]

Witness: E. F.

[*Residence and occupation.*]

SECOND SCHEDULE.

THAT portion of the late Province of Otago lying east of the Mataura River: bounded towards the east by a line drawn from Chasland's Mistake to Black Horn Hill; thence by the watershed-line to the Forest Range, and by the watershed of that range and the east boundary of Run No. 162 to Catlin's Cone; thence by the south-west and south boundaries of Run No. 258 to Cairn Peak; thence by the boundary of Run No. 132 and the Kaiwera and Waipahi Streams to the boundary between Runs Nos. 131 and 167A; thence by the south and west boundaries of Run No. 167A; thence by part of the Waikoikoi Stream, and by the north-west boundary of Run No. 167B, to the east branch of the Waikaka, and thence by the east boundary of Run No. 175B; thence by the north boundary of Run No. 175B to the Waikaka River; thence on the east by the Waikaka River to its source near the Black Umbrella; thence by the watershed of the Umbrella Mountains to the head of Timber Gully; thence on the north-east by Timber Gully and Rocky Creek to its source near Rocky Mount; thence by the north-east boundary of Run No. 359 to the Nokomai Stream; thence by a line running through Lorn Peak to Lake Wakatipu; thence by the west shore of Lake Wakatipu to Round Peak; thence by a straight line running due west to Moffatt Peak; thence by a line due west to a point north-west of Barrier Peaks; thence by a line running due south to the ocean at Rowallan Burn.

THIRD SCHEDULE.

COVENANTS IMPLIED IN ALL INSTRUMENTS.

THAT the grantor has good right and full power to assign to the grantee the chattels purporting to be hereby assigned, and that free and clear from incumbrances 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 before mentioned*] may from time to time be reasonably required.

FOURTH SCHEDULE.

COVENANTS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

1. THAT the grantor will pay to the grantee the principal money and interest hereby secured, after the rate and at the times herein mentioned, without any deduction whatever.

2. That the grantor will also pay interest on any further advances that may be secured by this instrument, computed from the time of making the same respectively, at the rate and on the dates mentioned for the payment of interest in this instrument.

3. That the grantor will not, at any time while any moneys remain owing on this security, do or allow any act or deed whereby the chattels hereby assigned shall or may become prejudicially affected, and will at all times while any moneys remain owing on this security duly pay all rents from time to time coming due in respect of any lands or premises on which any of the chattels hereby assigned are for the time being situate.

4. That the grantor will at all times, while any moneys remain owing on this security, keep and maintain all and singular the chattels hereby assigned in the like good order and condition in which they are at the date hereof; and, if any of the same are damaged or destroyed, or cease to exist, will repair such damage, or replace the chattels so destroyed or ceasing to exist, with other chattels of a like nature and value; and further will, if required so to do by the grantee, execute any instrument that may be necessary to give to the grantee security over chattels replacing the chattels which have been destroyed or have ceased to exist.

PROVISOS AND AGREEMENTS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

5. Provided always, and it is hereby declared and agreed, that until the grantor makes default in the payment of any of the moneys hereby secured, or in the observance or performance of any covenant, condition, or agreement herein expressed or implied, and on his part to be observed and performed, or until the grantor becomes bankrupt, or until a judgment of any Court against the grantor has remained unsatisfied for ten days, the grantor may retain possession and use of the chattels hereby assigned:

6. Provided further that the giving by the grantor to the grantee of any bill of exchange or promissory note for the whole or any part of the money hereby secured shall not, until such bill or note is honoured or met, be considered as payment of or on account of the moneys secured by this instrument, or in any way affect or alter the rights or powers of the grantee by virtue of this instrument; and no promissory note or bill of exchange which before, at, or at any time after the execution of this instrument may be given by the grantor to the grantee for the whole or any portion of the moneys hereby secured, or the remedy thereon of the grantee or of the holder thereof, shall merge in the covenants herein expressed or implied.

POWERS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

7. Provided always, and it is hereby declared and agreed, that if default is made by the grantor in payment of any of the principal or interest moneys hereby covenanted to be paid on the day on which the same ought to be paid according to the terms hereof, or in the observance or performance of any of the covenants, conditions, or agreements herein expressed or implied, and on the grantor's part to be observed and performed, or if the grantor becomes bankrupt, or if at any time a judgment of any Court against the grantor remains unsatisfied for ten days, then and in such case the grantee, either personally or by his agent or servants, may immediately thereupon or at any time thereafter, without any further consent by the grantor, and without giving to the grantor any notice, or waiting any time, and notwithstanding any subsequent acceptance of any payment of any money due on this security, enter upon any lands or premises whereon the chattels for the time being subject to this security may be, and take possession thereof, and sell and dispose of the same or any part thereof by private sale or public auction, separately or together, in such lots and generally in such manner in every respect as the grantee deems expedient, with power to allow time for payment of purchase-money, or to buy in the said chattels or any part thereof at such auction, and to rescind or vary the terms of any contract or sale, and to resell without being answerable for any loss or expense occasioned thereby, and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper; and the receipt of the grantee or his agent shall be a sufficient discharge to any purchaser at such sale for any of the purchase-money; and upon any sale purporting to be made in exercise of the powers herein expressed or implied no purchaser shall be bound to inquire as to the propriety or regularity of any such sale, or be affected by notice express or constructive that any such sale is improper or irregular.

And it is hereby declared and agreed that the grantee shall stand possessed of the proceeds of any such sale upon trust, after paying thereout the costs, charges, and expenses of and incidental to such taking possession, sale, and the preparation and registration of this instrument, to apply the same in reduction of the moneys then owing on the security of this instrument, including all moneys herein covenanted to be paid, notwithstanding that the same may not then have become due, or that any promissory notes or bills of exchange may then be current for the same, and to pay the balance to the grantor, his executors, administrators, or assigns.

POWERS, COVENANTS, AND PROVISIONS TO BE IMPLIED IN INSTRUMENTS BY WAY OF SECURITY OVER STOCK.

8. That, during the continuance of this security, the grantee, his agents or servants, may from time to time, and 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, 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 New Zealand, 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.

9. That there are now depasturing upon the said lands and premises all the stock herein respectively mentioned as depasturing thereon. And that the grantor will not, during the continuance of this security, without first obtaining the grantee's consent in writing, 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 from the said lands or premises, or sell the same or any part thereof so as to reduce the value of the stock for the time being subject to this security to less than the market value of the stock originally covered by this security.

And that the grantor will, during the continuance of this security, at the usual and convenient season for so doing, well and properly brand, earmark, and mark, with the brand, earmark, and mark herein specified, all stock for the time being subject to this security, so that all such stock shall bear and continue to bear the brands, earmarks, and marks herein specified.

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 brands, earmarks, and marks herein specified.

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 now depasturing or that may during the continuance of this security be brought upon the said lands or premises or any part thereof, free from disease, and in clean and healthy condition: 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 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.

10. That all stock belonging to the grantor, branded, earmarked, or marked as aforesaid, 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 respects 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, branded, earmarked, or marked as aforesaid, of which possession has been taken as aforesaid, so that the same may be held by the grantee upon and for the same ends, intents, and purposes, and with, under, and subject to the same powers, provisoes, agreements, and declarations, as are herein expressed or implied of and concerning the stock and premises herein expressed to be assigned: And shall and will from time to time, and at all times during the continuance of this security, pay all and singular the license fees, head-moneys, and other outgoings and payments, and perform and observe all rules, regulations, and conditions which by the owner for the time being of the said stock or premises respectively now are or shall become at any time hereafter due, payable, observable, or performable respectively: And that in case the grantor fails or neglects to pay such license fees, head-moneys, and other outgoings and payments as aforesaid, or any of them, or any part thereof, the grantee may make such payments respectively: And that the grantor shall and will from time to time and at all times hereafter, on demand, pay or cause to be paid to the grantee all sums of money paid or advanced by the grantee in or towards such

payment as aforesaid, with interest for the same after the rate of seven pounds per centum per annum from the time or respective times when the same were advanced or paid: And that in the meantime, and until such sums of money have been repaid with interest as aforesaid, the stock for the time being subject to this security shall stand charged and chargeable with the payment of the same in like manner as if the same had been principal moneys secured by this instrument. 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 INSTRUMENTS BY WAY OF SECURITY OVER CROPS.

11. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment of the same, 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 in the instrument, at such place as the grantee directs*]; and the grantee may either sell the same in New Zealand, 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 shipped or exported to any place or places out of New Zealand, to be sold by 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 New Zealand 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 realization thereof, and shall pay over the balance, if any, to the grantor.

POWER TO BE IMPLIED IN INSTRUMENT BY WAY OF SECURITY OVER WOOL.

12. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment of the same, the flock of sheep mentioned in this instrument, and the increase thereof, and all other sheep which, if this instrument were an instrument by way of security over 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 in the instrument, at such place as the grantee directs*]; and the grantee may either sell the same in New Zealand, 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 shipped or exported to any place or places out of New Zealand, to be sold by 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 New Zealand 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 realization thereof, and shall pay over the balance, if any, to the grantor.

FIFTH SCHEDULE.

MEANING OF ABBREVIATED EXPRESSIONS.

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 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 New Zealand.

2. The words "further advances" mean 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.

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 the 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 as defined by the Chattels Transfer Act, 1924, 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 in this instrument, in each year [or, if no such days are mentioned in the 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 to the grantee, 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.

4. The words "will insure" mean that the party liable to insure will insure and at all times while this instrument remains in force will keep insured against loss or damage by fire all chattels comprised herein of a nature or kind capable of being insured against loss or damage by fire, such insurance to be effected in the name of the other party to this instrument and in some public insurance office to be approved of by him, and to be for the full amount herein specified [or, if no amount is specified, then for the full insurable value of the said chattels]; and will, at the request of the other party, hand over to and deposit with him the policy of every such insurance, and produce and deliver to him the receipt or receipts for the annual or other premiums payable on account thereof; and also that all moneys received under any such insurance shall, in the event of loss or damage by fire, be laid out and expended, so far as the same extend, in making good such loss or damage [or, if the instrument is given by way of security, in discharging the moneys hereby secured, if such other party so elects]: Provided that, if default be made in the observance or performance of this covenant, such other party may, without prejudice to and concurrently with the powers granted him by this instrument or otherwise by law, insure such chattels, and may forthwith recover the costs and charges of such insurance from the party liable to insure in like manner as if the same had been advanced by way of loan on the security of this instrument.

5. 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, earmarked, and marked with the brands, earmarks, and marks 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 brands, earmarks, and marks specified in this instrument, 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.

6. The words "stock or chattels subject to this security" mean and include not only the stock or chattels described or referred to in this instrument or in any inventories or schedules hereto, but also all stock and chattels which are by the provisions of this Act or otherwise deemed to be comprised and included in this instrument.

SIXTH SCHEDULE.

TRANSFER OF INSTRUMENT.

I, C. D., of [*State residence and occupation of transferor*], the grantee [*or grantor, in case of an instrument by way of bailment*] of the instrument registered in the office of the Supreme Court at _____ as No. _____, under The Chattels Transfer Act, 1908, do, in consideration of [*State consideration*], hereby transfer to X. Y., of [*State residence and occupation of transferee*], the chattels comprised in the said instrument, and all my right, title, estate, and interest thereunder.

As witness my hand this _____ day of _____, 19____.

C. D.

Signed by the said C. D. in the presence of—

E. F.

[*Residence and occupation.*]

SEVENTH SCHEDULE.

CHATELS WHICH MAY BE THE SUBJECT OF CUSTOMARY HIRE-PURCHASE AGREEMENTS.

Furniture.

Pianos and pianolas.

Gramophones.

Typewriters.

Motor-vehicles of all descriptions.

Sewing-machines.

Cash-registers.

Shearing-machines.

Engines.

Pumps.

Milking-machines, and all other machinery and implements and accessories now or at any time hereafter used in the dairy industry.

Reapers-and-binders, and all other machinery and implements and accessories thereto for use in agriculture.

EIGHTH SCHEDULE.

ENACTMENTS REPEALED.

1908, No. 21.—The Chattels Transfer Act, 1908.

1919, No. 24.—The Chattels Transfer Amendment Act, 1919.

1922, No. 52.—The Chattels Transfer Amendment Act, 1922.

1923, No. 17.—The Chattels Transfer Amendment Act, 1923.