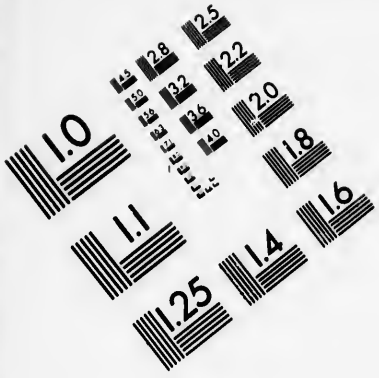

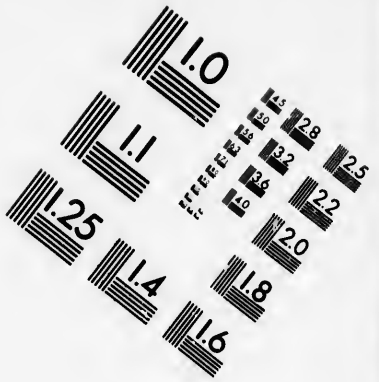

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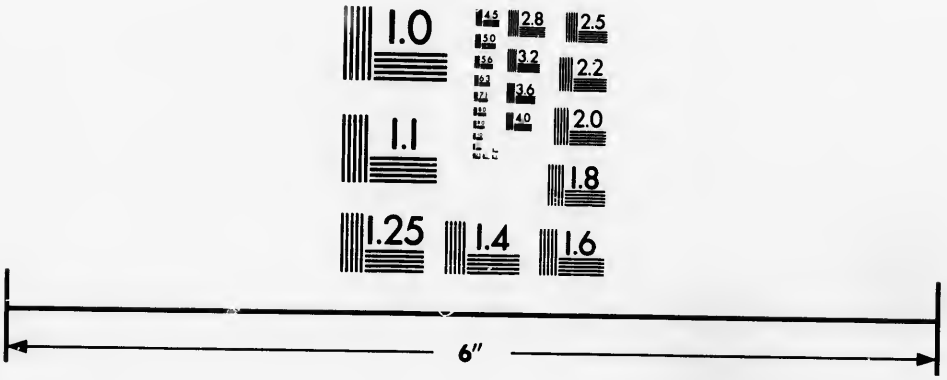

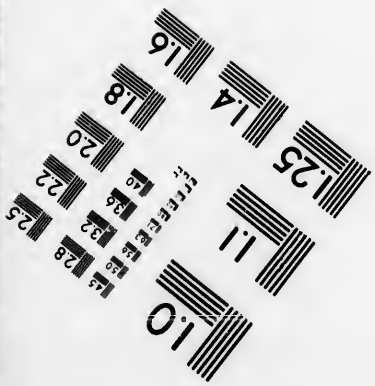

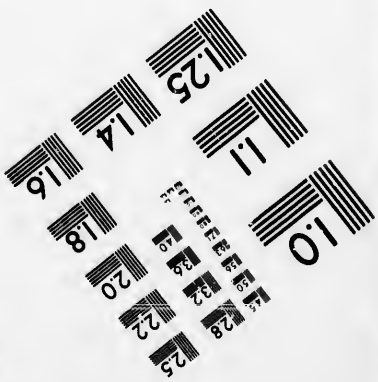

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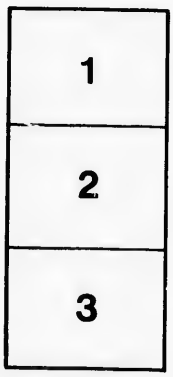

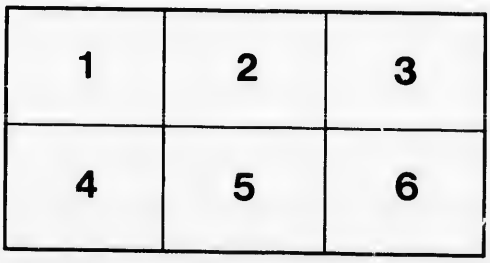

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(51 Victoria, Chap. 19, Ont.)

TO WHICH IS APPENDED

A COMPLETE SET OF

FORMS.

BY

JOHN AUGUSTUS BARRON,

AUTHOR OF

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PREFACE.

THE idea of compiling this little work was suggested to me from a knowledge that in the vast majority of cases, when the transaction was a business one, the vendor of a chattel himself avoided a compliance with the Bills of Sale and Chattel Mortgage Acts by retaining in himself the property in the chattel until payment therefor by the vendee. The result of this practice in many instances has proved most disastrous to innocent persons, and the passage of the Statute, endeavoured to be annotated, must be hailed with delight, for in a measure at all events it will afford some little protection to the public, of whom there are many too apt to assume from the circumstances of a man's possessions that he is financially that which in reality he is not.

In the hope, then, that my efforts may be of some use and of some benefit, not alone to the profession but to the business men and manufacturers, I present to the public my many day's labour in the shape of this work.

Lindsay, Dec. 19th, 1889.

J. A. B.

ERRATA ET ADDENDA.

Omit, after "not" in first line at p. 8.

For "absolue" read "absolute" in 3rd line from bottom of p. 13.

For "*cadit qustio*" at p. 22 read "*cadit quæstio.*"

For "*indicta*" at p. 25 read "*indicia.*"

For "five" in 8th line from bottom at p. 63 read "ten."

TABLE OF CASES CITED.

A

Aldridge v. Johnston, 8.
Atkinson v. Bell, 8.
Atkinson v. Ritchie, 17.
Armstrong v. Ausman, 38.
Albert v. Grosvenor Invest. Co., 55, 57.
Archargelo v. Thompson, 47.
Alexander v. Corvil, 63.

B

Banks v. Robinson, 1, 7, 23, 29.
Bean v. Edge, 4.
Ballard v. Burgett, 4, 25.
Bradshaw v. Warner, 4.
Burton v. Bellhouse, 7.
Bryans v. Nix, 8.
Burdett v. Hunt 10.
Beckman v. Jarvis, 11, 63, 44.
Baldwin v. Benjamin, 12, 26.
Baker v Hodgson, 17.
Browning, *re*, 12.
Blackmore v. Bristol and Exeter Ry. Co., 20.
Biddle v. Bond, 21.
Bank of U. C. v. Killaly, 22.
Brooks v. Lester, 26.
Billiter v. Young, 27.
Broughton v. Broughton, 30.
Beaver v. Lord Oxford, 31.
Barry v. Bennett, 34.
Bailey v. Croft, 35.
Bryan v. White, 38.
Baker v. Denning, 38.
Brown v. Butchers' Bank, 39.
Bell v. Hagerstown Bank, 46.
Bressard v. Levering, 48.
Bank of Columbia v. Lawrence, 48.
Bank of Geneva v. Howlett, 48.
Bank of Manchester v. Slason, 49.
Bingham v. Bettison, 55, 57.
Babcock v. MacFarland, 55.
Bunaclengh v. Poolman, 57.
Bank of Toronto v. Fanning, 61.
Barron on Bills of Sale, etc., 56.
Birch v. Dawson, 63.
B. of M. v. Munro, 65, 67.
Bishop v. Cook, 67.

C

Coe v. Cassidy, 3.
Chamberlin v. Smith, 4.
Crist v. Kleber, 4.
Cole v. Berry, 4.
Clark v. G. W. R., 6.
Crofoot v. Bennett, 8.
Campbell v. Mersey Docks, 8
[illegible] v. Bernard, 14, 15, 17, 20.
[illegible]upton v. Pratt, 21, 23.
[illegible]esman v. Exall, 21.
Carrier v. Knapp 21, 57.
Crawcour v. Salter, 23
Carr v. London and N. W. R. Co., 24.
Clark v. Hart, 24.
Carpenter v. Blot, 26.
Caplin v. Anderson, 31.
Cummings v. Tooley, 32.
Crawcour, *ex parte*, in *re* Robertson, 4.
Clason v. Bailey, 38.
Caton v. Caton, 39.
Chichester v. Cobb, 39.
Chitty on Bills, 41.
Crowley v. Barry, 46, 49.
Crawford v. Branch Bank, 47.
Clarke v. Sharpe, 48.
Cabot Bank v. Russett, 49.
Chouteau v. Webster, 49.
Coles v. Clark, 55.
Churchill v. Hulbert, 56.
Chase v. Ingalls, 57

D

Dominion Bank v. Davidson, 8, 31.
Deyncourt v. Gregory, 9.
Dewar v. Mallory, 9.
Digby v. Atkinson, 17.
Davy v. Chamberlain, 20.
Day v. Bassett, 22.
De Courcey v. Collins, 35.
Dickenson v. Dickenson, 39.
Daniel on Negotiable Instruments, 41.
Dubree v. Eastwood, 46.
Downer v. Remer, 49.
Drury v. Hervey, 56.
Doran v. Willard, 63.

E

Eiland v. Radford, 3.
Ex parte Brown, in *re* Beed, 12.
Edwards v. Carr, 19.
Everett v. Hill, 21.
Ex parte Crawcour, in *re* Robertson, 4, 22.
European and Australian Royal Mail Co., v. Royal Mail Steam Packet Co., 21, 50.
Ex parte Powell, in *re* Matthews, 23.
Ex parte Blaiberg, 28.
Ex parte Fourdrinier, in *re* Artistic Color Printing Co., 28.
Edwards v. English, 31.
Evans v. Mostyn, 43.
Eastern Bank v. Brown, 46, 49.
Early v. Preston, 47.
Exchange v. Boyce, 49.
Everest v. Hale, 50.
Emmott v. Marchant, 66.
Ex parte Kahen, in *re* Hewer, 67.

F

Frazer v. Lazier, 5.
Fitzgerald v. G. T. R. W. Co., 17.
Fairbanks v. Phelps, 23.
Fuentis v. Mantis, 23.
Freeman v. Cooke, 24.
Farmloe v. Bain, 25.
Fitzgerald v. Hunter, 26.
Fuller v. Paige, 31.
Farmer's Loan and Trust Co., v. Hendrickson, 31.
Forlinger v. McDonald, 33.
Fletcher v. Braddyll, 47.
Farmers' Bank v. Gurnell, 48.
Ferguson v. Thomas, 55.
Forman v. Proctor, 57.
Finney v. Grice, 62, 63.
Foster v. Smith, 65, 67.

G

Gunn v. Burgess, 7. 8.
Groat v. Gile, 8.
Godts v. Riley, 31.
Griffin v. McKenzie, 33.
Grether v. Alexander, 34.
George v. Surrey, 38.
Geary v. Physic, 39.
Green v. Shipworth, 39.
Gosbell v. Archer, 40.
Gibson v. Mitchell's Pay Lumber Co , 44.
Graham v. Sangston, 49.
Godard v. Gould, 63.
Gooding v. Riley, 63.
Graham v. Summers, 64, 67.

H

Hall v. Collins' Bay Co., 2.
Harrison v. Lee, 3.
Hervey v. R. I. Locomotive Works, 4.
Hereford v. Davis, 4.
Hodgson v. Warner, 4.
Harris v. Com. Bank, 7.
Haller v. Runder, 9.
Helliwell v Eastwood, 9.
Hall Man Co. v. Hazlett, 9.
Howell v. Listowell Rink and Park Co., 9.
Hayward v. Thacker, 10.
Hughes v. Little, 12.
Harrison v. King, 13.
Higgins v. Burton, 22.
Hordman v. Booth, 22.
Housatonic & La Banks v. Martin, 34.
Herman on Mtges , 4.
Hunt v. Adams, 38.
Harrison v. Elving, 38.
Helshaw v. Langley, 39.
Hurbert v. Moreau, 40.
Hawkins v. Rutt, 46, 47.
Hawkins v. Salter, 47.
Hewitt v. Thompson, 47, 48.
Hall v. Sampson, 55.
Hans v. Johnston, 59.
Holman v. Doran, 64.

I

In *re* Parke, 44.
In *re* Artistic Color Printing Co., *ex parte* Fourdrinier, 28.
In *re* Ross, 65, 67
In *re* Hewer, *ex parte* Kahen, 67.

J

Jones v. Henderson, 7.
Jorden v. Money, 24.
Jones on Chattel Mortgages, 3, 32, 54.
Jeffery v. Walton, 39.
Jones v. Lewis, 48.
Jones on Mtges., 64.

K

Kitching v. Hicks, 12.
Kent v. Buck, 25.
Kohl v. Lynn, 32.
Kessey v. McHenry, 32.
Kellog v. Second, 34.
Keven v. Crawford, 35
Kelner v. Baxter, 40.
Kelley v. Powlett, 62.
Kerr v. Lundley, 65.
Kerr v. Lundey, 67.

L

Logan v. Le Mesurier, 8.
Lancaster v. Eve, 3, 6, 9.
Laugher v. Pointer, 20.
Livingstone v. Massey, 21.
Loes-deman v. Maclim, 23.
Loring v. Loring, 25.
Langdon v. Hulls, 47.
London v. Emmons, 55.
London Co. v. Drake, 56.
Laveque v. Navarine, 57.
La Plante v. G. T. R. Co., 61.
Law v. Pettergill, 65, 67.

M

Milton v. Mosher, 2.
Miller v. Blineberg, 3.
Magee v. Catening, 3.
Mason v. Bickle, 4, 23, 24, 25, 27.
Mason v. Johnson, 4.
May v. The Security L. & S. Co., 7.
McDougall v. Elliot, 8.
McLean v. Pinkerton, 10, 43, 44, 56, 63.
Mitchell v. Dobson, 11, 44.
Mathers v. Lynch, 12.
Mowat v. Clement, 12.
Mason v. Morgan, 13.
Mears v. London & S. W. Ry. Co., 13.
Milton v. Salisbury, 19.
Milligan v. Wedge, 20.
MacCarthy v. Young, 20
McMillen v. Larned, 21.
Mason v. Johnson, 23.
McEwan v. Smith, 25.
McMahon v. Sloan, 26.
McNeill v. Tenth National Bank, 26.
McDowal v. Stewart, 31.
Morrin v. Rourke, 31.
Moffat v. Coulson, 31.
McNight v. Gordon, 32.
March v. Culpepper, 36.
Merchants Bank v. Spicer, 39.
Maclean v. Dunn, 40.
Manton v. Tabois, 43.
Mercer v. Lancaster, 48.
Mann v. Moors, 48.
Morton v. Westcott, 49.
Marr v. Corporation of Vienna, 60.
Miller v. Van Norman, 61.
Marr v. Johnson, 49.
McAuley v. Allen, 55.
McClelland v. Nichols, 56.
McGregor v. McNeill, 56.

N

Nordhiemer v. Robinson, 4, 23, 27.
Nicols v. Bastard, 13.
Newhall v. Kingsbury, 23.
Nat. Bank of Bellefonte v. McManigle, 46.
New Haven Co. v. Mitchell, 47.

O

Ogg v. Shuter, 4, 22.
Ogle v. Atkinson, 21.

P

Paterson v. Maughan, 2.
Pierce v. Scott, 3.
Patridge v. Swazey, 10.
Piekering v Ilfracombe Ry. Co., 12.
Pickard v. Sears, 24.
Pattern v. Moore, 31, 32.
Palmer v. Stephens, 39.
Porter v. Dement, 31.
Parke, in *re*, 41.

Parker v. Gordon, 46.
Pate v. Parmley, 54.
Porter v. Flintoft, 55.
Paton v. Sheppard, 62.
Parker v. Palmer, 65.

Q

Quarman v. Burnett, 20.
Queen v. Vice-Chancellor of Oxford, 61.

R

Regina v. Massey, 2.
Rhodes v Thwaites, 8.
Re Browning, 12.
Regina v. Tweedy, 21.
Robertson v. Strickland, 22.
Richards v. James, 29.
Robinson v. McDonald, 30.
R. S. O. 1887, cap. 125, 1, 2, 7, 22, 33, 35, 37, 41, 43.
Rhymes v. Clarkson, 39.
Rex v. Plumer, 47.
Rand v. Reynolds, 49.
Runyon v. Mountfort, 49.
Ruttan v. Beamish, 55.
Read v. Smith, 56.
Regina v. Justices of Shropshire, 59.
Ross v. Hamilton, 65, 67.
Ross, in *re*, 65.
R. S. O. 1887, cap. 125, p. 1, 2, 7, 22, 33, 35, 37, 41, 43.

S

Stevenson v. Rice, 4, 22, 23, 25, 27.
Sargent v. Giles, 4.
Summer v. Cotley, 4.
Snell v. Heighton, 8.
Stevens Man. Co. v. Barfoot, 9.
Sheffield v. Harrison, 10.
Sutherland v. Nixon, 26.
Sage v. Browning, 31.
Sagre v. Hewes, 31.
Shirbygn v. Albany, 36.
Story on bailments, 7.
Schmidt v. Schmaelter, 38.
Saunderson v. Jackson, 38.
Schneider v. Norris, 39.
Selby v. Selby, 40.
Scott v. Lord Ebury, 46.
Shorman v. Brandt, 41.
Stocken v. Collen, 46.
Skilberk v. Garbett, 47.
Seneca v Bank. Co. Neass, 49.
Stewart v. Eden, 49.
Smith v. Fair, 54, 55, 57.
Samuel v. Colter, 55.
Saint v. Pelley, 56.
Spaulding v. Barnes, 57.
Stadacona Fire & Life Ins. Co. v. Mackenzie, 59.
Smith v. Wagoner, 63.
Shaughnessey v. Lewis, 64.
Stonebreaker v. Kerr, 64.
Stowe v. Meserve, 65.

T

Thompson v Pettitt, 2.
Thorne v. Tilbury, 24.
Trust & Loan Co. v. Ruttan, 24.
Tyler v. Strong, 31.
Tidey v. Craib, 35.
Taylor v. Dobbins, 38.
Tiffany v. Warren, 31.
True v. Collins, 48.
Tompkins v. Batie, 54.
T. & L. Co. v. Cuthbert, 65, 67.
Town v. Griffith, 65, 67.

V

Vaughan v. Newlove, 18.
Vincent v. Coonell, 22.

W

Welch v. Sackett, 3.
Walker v. Hyman, 4, 23, 25, 26, 27.
Walker v. Niles, 12.
White v. Brown, 21.
Wilson v. Anderton, 21.
Weld v. Boston Ice Co., 22.
Wheelton v. Hardisty, 25.
White v. Gordon, 26.
Wright v. Redgrove, 35.
Williamson v. Clement, 35.
Whart. Law Lex, 5.
Warwick v. Noakes, 46.
White v. Norris, 55.
Wheeler v. Montefiori, 55.
Walsh v. Taylor, 56.
Wolfe v. Home, 56.
Whelan v. Couch, 57.
Walcott v. Botfield, 61.

Y

Young v. Higgons, 59.
Young v. O'Rielly, 57.

Z

Zouch v. Dempsey, 59.

*"Better to safeguard commercial morality it would be expedient to make provision for giving publicity by registration to dealings such as this. The effect of the transaction (though it may not be contrary to law) is to protect the credit of a trader who is yet heavily weighted with undisclosed obligations. Grave suspicions must always arise in the minds of creditors whose claims are superceded by some instrument of peculiar character, produced at a period of crisis, by which all the assets of their debtor are secured to a near relative."**

AN ACT RESPECTING CONDITIONAL SALES OF CHATTELS.

51 Victoria, Chapter 19, Ontario.

[*Assented to 23rd March, 1888.*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. (1) From and after the coming into force of this Act (2) receipt notes, hire receipts, and orders (3) for chattels (4) given by (5) bailees (6) of chattels, where the condition (7) of the bailment (8) is such that the possession of the chattel should pass (9) without any ownership therein being acquired (10) by the bailee until the payment of the purchase or consideration money, or some stipulated part thereof, (11) shall only be valid as against (12) subsequent purchasers or mortgagees without notice in good faith (13) for valuable consideration (14) in the case of manufactured goods or chattels, (15) which, at the time (16) possession is given to the bailee, have the name and address of the manufacturer, bailor, or vendor of the same painted, printed, stamped, or engraved thereon or otherwise plainly attached thereto, and no such bailment (17) shall be valid (18) as against such subsequent purchaser or mortgagee as aforesaid, (19) unless it is evidenced in writing, (20) signed (21) by the bailee or his agent. (22)

(1) This statute, as well as the Act relating to Bills of Sale and Chattel Mortgages, (*a*) are both designed to safeguard the public against the mischievous consequences of apparent ownership in property, when the actual ownership is non-existing. There is, however, a plain and simple distinction between the two statutes. Both afford facilities for acquiring information, and both insist upon

* Boyd, C. *Banks* v. *Robinson*, 15 O. R. at p. 624.

(*a*) R. S. O. 1887, cap. 125.

the adoption of a certain course as a means of protection, but the one statute (the present one) is pointed at cases wherein the possession changes and not the ownership, the other statute (*b*) at cases wherein the ownership changes and not the possession.

(2) The time when this Act came into force was the first day of January, 1889, including that day. (*c*) The word "given" is to be observed in this section. In the connection in which the word is used it is equivalent to the term "executed." The latter word consists of three distinct acts, "signing, sealing, and delivery," and the last of these three acts is not complete without "acceptance." Sealing is not necessary in any instrument executed under this Act, (*d*) and for that reason the addition of a seal will not vitiate the instrument. (*e*) Signing and delivery are essential, and both are necessary to create a "giving" in accordance with the Act, hence the statute will apply to receipt notes, hire receipts, and orders for chattels, though signed, but not delivered, before the first day of January, 1889, and likewise to such instruments as, though delivered before, are not accepted until after the first day of January, 1889, for, as has been said, delivery, which is essential, is not a complete delivery without acceptance. The vendor, therefore, of manufactured goods within the operation of this statute, who omits to comply therewith, relying upon the time when the signing was done, being prior to the first day of January, 1889, and disregarding the fact of delivery and acceptance being subsequent thereto, may find his claim to the goods defeated as against a subsequent purchaser or mortgagee without notice in good faith for

(*b*) R. S. O. 1887, cap. 125.

(*c*) See section 9 *post*.

(*d*) See *Paterson* v. *Maughan*, 39 U. C. R. 379: *Hall* v. *Collins Bay Co.*, 12 App. R. 65: *Thompson* v. *Pettitt*, 10 Q. B. 101.

(*e*) *Milton* v. *Mosher*, 7 Met. 244.

valuable consideration, who has acquired an interest in the property after the first day of January and before compliance by the vendor with the statutory requisites. (*f*)

(3) Not any of the transactions denoted by these forms of instruments amount, accurately speaking, to a conditional sale. The marginal reference leads to the supposition that all cases of conditional sales were in the contemplation of the Legislature, yet such cannot have been the real intention of our law-makers, because the transactions aimed at are those only wherein the title or ownership does not pass, but possession does. In some instances of conditional sales both ownership and possession passes. The condition consists in the right of re-purchase within a specified time without continuing or creating any liability on the part of the vendor. (*g*) Thus, for example, where a vendor in a bill of sale extinguishes his debt to the vendee by a bill of sale, but the privilege is accorded to the vendor of repurchasing within a given time, the transaction is a conditional sale; (*h*) and where the privilege of repurchase consists merely of a verbal agreement by the creditor to resell on the debtors fulfilling certain conditions, makes the transaction a conditional sale. (*i*) To no transactions of this nature does the Act apply, nor yet to sales to arrive, known to trade and commerce, which are conditional sales.

Transactions of the character designated by the terms, "receipt notes," "hire receipts," and "order for chattels," are extremely common, and are becoming more and more so with the extension of trade and commerce. The ease

(*f*) *Miller* v. *Blineberg*, 21 Wis. 676: *Welch* v. *Sackett*, 12 Wis. 243.
(*g*) Jones on Ch. Mtges. § 26
(*h*) *Eiland* v. *Radford*, 58 Ala. 37: *Harrison* v. *Lee*, 1 Litt. (Ky.) 191: *Magee* v. *Catching*, 83 Miss. 672.
(*i*) *Coe* v. *Cassidy*, 6 Daly (N.Y.) 242: *Pierce* v. *Scott*, 37 Ark. 308.

and simplicity with which the vendor of a chattel can, in a summary manner, resume possession and thereby extinguish the interest of the vendee, as well as the rights which he had in the chattel, as also the circumstance of secrecy in transactions of the kind, have naturally led to the adoption of this form of conditional sale in preference to any other method, less secret and more risky to the party selling. The agreement (*j*) usually provides for the payment of a rental, or some sum for the use of the article, which may be applied *pro tanto*, on the purchase money if and when finally paid. Often-times the monthly rentals are in reality simply instalments of the purchase money, and the hardship upon the vendee of a forfeiture when several of the instalments have been paid, have, in two instances, led to construing the transaction as one of sale with reservation to the vendor of a secret lien. (*k*) Our courts, however, have always enforced these contracts according to their plain terms, (*l*) not only as between the immediate parties, but as against *bona fide* purchasers, for value without notice. (*m*)

Now, however, such a contract will be void as against such purchaser unless the statute is complied with. Either the name of the manufacturer or vendor must be plainly painted upon the article, or else there must be registra-

(*j*) For Forms see Appendix.

(*k*) *Harvey* v. *R. I. Locomotive Works*, 93 U. S, 664: *Hereford* v. *Davis*, 102 U. S. 235.

(*l*) *Stevenson* v. *Rice*, 24 U. C. C. P. 245: *Nordhiemer* v. *Robinson*, 2 A. R. 305: *Walker* v. *Hyman*, 1 A. R. 345: *Mason* v. *Johnson*, 27 C. P. 208: *Mason* v. *Bickle*, 2 A. R. 291: *ex parte Crawcour, in re Robertson*, L. R. 9, Ch. D. 419: *Ogg* v. *Shuter*, L. R. 10, C. P. 159. See also *Chamberlin* v. *Smith*, 44 Penna. St. 431: *Crist* v. *Kleber*, 79 Id. 290: *Sargent* v. *Giles*, 8 N. H. 325: *Bean* v. *Edge*, 84 N. Y. 510.

(*m*) *Walker* v. *Hyman*, 1 A. R. 345. See also *Ballard* v. *Burgett*, 40 N. Y. 314: *Sumner* v. *Cotley*, 71 Mo. 121, 125: *Bradshaw* v. *Warner*, 54 Ind. 58, 62; *Hodgson* v. *Warner*, 60 Ind. 214: *Cole* v. *Berry*, 42 N. J. L. 308, 313.

tion. (*n*) If both these obligations are omitted then a purchaser or mortgagee is given the protection of the Act.

(4) The term "chattels" apply to manufactured (*o*) goods and chattels of all kinds, except household furniture (*p*) but inasmuch as, for the purposes of this Act, pianos, organs, or other musical instruments are not within the definition of household furniture, (*q*) it follows that chattels of the latter description come under the operation of the Act. (*r*)

Chattels may be moveable or immoveable, and are divided into the two classes, real and personal. (*s*) As chattels real are not contemplated by the statute, (*t*) all reference thereto may be omitted.

Chattels personal have been defined as those things which belong immediately to the person of the owner, and for which, if they are injuriously withheld from him, the owner has no other remedy than by a personal action. (*u*) Therefore, chattels personal are divisible into two classes.

First,—They consist, in part, of things which exist only in contemplation of law; things of which a person has not the possession, or actual enjoyment, but only a right to, or a right to demand by action; as, for instance, a right to recover money due on a contract—a chose in action.

(*n*) See *post* section 6.

(*o*) What are manufactured goods? The meaning of the word "manufacture" is "to form by manufacture or workmanship, by the hand or by machinery, or manual dexterity; to make by art and labor."—*Worcester*. Hence goods so produced are manufactured goods.

(*p*) See section 6 *post*.

(*q*) Section 6 *post*.

(*r*) It does not appear, however, that sewing machines are within the Act, unless it can be said that they are not within the definition of household furniture.

(*s*) Whart. Law Lex.

(*t*) *Frazer* v. *Lazier*, 9 U. C. Q. B. 679.

(*u*) Whart. Law Lex.

(*v*) Whart. Law Lex.: Herman on Mtges. 3

Second,—They consist of moveable things only as belonging immediately to the person, and which can only be delivered over from hand to hand, such (*e.g.*) as books, wares, and merchandise. (*v*)

It may be concluded that the present statute applies only to chattels within the latter definition, with the further fact to be remembered, that the chattel must be a manufactured chattel. Possession, in the language of the statute, can pass from and be given by one to another without manual delivery. As opposed to an actual change of possession, there can be a constructive change of possession, the possession of the chattel passing in the one case as well as in the other, but the use of the word "bailment," (*w*) upon which the entire clause hinges, suggests beyond question an application of the statute only to chattels susceptible of full and complete delivery. (*x*) In fact, to property of which there may be a present possession or title, or in which there is a present vested right or interest, and not to property which may be acquired *in futuro*. (*y*)

There must then be a delivery, and there must also be a change of possession, differing perhaps from the definition of the term "chattel" under the Act respecting mortgages and sales of personal property, (*z*) only in that under the latter statute the "delivery" must be "immediate" and the possession must be "an actual and continued change of possession."

The object of the statute is to safe-guard the public, by affording one an opportunity of knowing whether or not his fellow-man is really the owner of property the possession of which justifies such a belief, and to prevent a

(*w*) From "*bailer*," Fr., to deliverer.
(*x*) See *Clark* v. *G. W. R.*, 8 C. P. 191.
(*y*) Story on Bailments, § 294.
(*z*) R. S. O., 1887, cap. 125.

fictitious commercial standing being enjoyed by one who may be "heavily weighted" with obligation. (*a*) Though this be the laudable object of the statute, parties to a transaction cannot be prejudiced for non-compliance with the Act if the transaction be one to which the statute does not apply; as, for instance, where, from the circumstances of the case, possession in the chattel cannot be passed consistently with the object of the agreement in regard thereto; (*b*) or where a conditional sale is made of a half interest in a threshing machine, or other manufactured property, (*c*) because the vendee in such case does "not acquire" a specific chattel but only a conditional interest in an undivided moiety of an indivisible piece of personal property. (*d*) Bailment, or actual delivery, cannot be made of such an undivided moiety, hence the character of the person acquiring such is not that of a bailee within the Act. Nor would the Act apply to a transfer of manufactured goods, the ownership thereof remaining in the transferor, when the goods are in the hands of a warehouseman, who becomes the agent of, and agrees to hold them for, the transferee, (*e*) and therefore the Act does not apply to a conditional sale of goods in customs, subject to duties, for they are not capable of bailment, at least until the duties had been settled. (*f*) Neither, when this statute is not complied with, can it be invoked, to defeat the claim of a transferor, who retains in himself the ownership of a chattel which, when it passes into the possession of the transferee, does so charged with, or subject to, the title of a third

(*a*) Boyd, C. *Banks* v. *Robinson*, 15 O. R. at p. 624.

(*b*) *Burton* v. *Bellhouse*, 20 U. C. Q. B. 60.

(*c*) *Gunn* v. *Burgess*, 5 O. R. 685.

(*d*) *Gunn* v. *Burgess*, *supra*.

(*e*) *Jones* v. *Henderson*, 3 Man. L. R. 433.

(*f*) *May* v. *The Security L. & S. Company*, 45 U C. R. 106: *Harris* v. *Com. Bank*, 26 U. C. Q. B. 437.

party. (*g*) When it is not, a condition that possession of the chattel shall pass, and possession does not pass, then the Act does not apply, for it is of the essence of a contract of bailment that there be an actual delivery of the chattel to the bailee.

It is plain then that the maxim "*Cujus est dare, ejus est disponere*" is given a much restricted application by the statute, which is intended to apply only to manufactured chattels, susceptible of specific ascertainment, and of being actually and manually transferred and possessed in specie. (*h*) The statute applies only to chattels wherein the right of property can be transferred, and the right of property can only be transferred in a chattel, when the chattel is ascertained and identified at the time of the transfer. (*i*) Thus no right of property passes in a grant of twenty wagons to be taken out of a factory containing a much greater number, but when once the selection or appropriation is made of the particular twenty wagons the property in them passes, and not until then is the statute given an application. Until such time arrives the transaction partakes of the nature of an executory contract not contemplated by the statute. (*j*)

A manufacturer, bailor, or vendor of chattels, under the Act, cannot be defeated in his right to property, within the meaning of the Act, by the bailee or vendee annexing the chattel to realty, so as in all other respects, to make the chattel part of the realty, and if the owner of the soil seeks to retain that which has been so improperly affixed to his

(*g*) *Dominion Bank* v. *Davidson*, 12 A. R. 93.

(*h*) See *Gunn* v. *Burgess*, 5 O. R. 685.

(*i*) *Snell* v. *Heighton*, 1 C. & E. 95.

(*j*) *Crofoot* v. *Bennett* 2 Comstock (N.Y.) 258: *Groat* v. *Gile*, 51 N. Y. 431: *McDougall* v. *Elliott*, 20 U. C. R. 299: *Bryans* v. *Nix*, 4 M. & W. 774: *Godts* v. *Rose*, 17 C. B. 229: *Logan* v. *Le Mesurier*, 6 Moore P. C. 116. *Campbell* v. *Mersey Docks*, 14 C. B. N. S. 412: *Rhodes* v. *Thwaites*, 6 B. & C. 388: *Aldridge* v. Johnston, 7 E. & B. 885: *Atkinson* v. *Bell*, 8 B. & C. 277.

land, by one who had not the legal title to the things so affixed, he must pay for it. (*k*)

In dealing with fixtures, the intention in regard thereto will decide their character, (*l*) and an instrument under this Act, executed in view that the chattels are about to be annexed to the realty, is regarded as sufficient evidence of the intention and agreement of the parties that they retain their character as personal property, which they do. (*m*)

When the intention exists, then a bailee cannot, by annexing the chattel, alter its character, (*n*) but the absolute owner of chattels cannot attach them to the freehold of another, and afterwards be heard to claim that the chattels so annexed are not fixtures. (*o*) Generally speaking, a sale of fixtures is a sale of chattels. (*p*) Even fixtures of a nature that the vendor must have known, in order to be made use of, must necessarily be built into, and become part of the building, none the less retain their character of chattel property in favor of a vendor thereof who retained in himself the right of property in the fixtures. The right to recaption exists so long as the property retains its legal identity. (*q*) A mortgage of the land will cover machinery, when there is an absence of intention to sever the machinery from the freehold, (*r*) even leathern driving belts used in working the machinery being fixtures,

(*k*) *Stevens Man. Co.* v *Barfoot*, 9 O. R. 692.

(*l*) *Lancaster* v. *Eve*, 5 C. B. N. S.: 14 L. R. Ch. D. 379: *Godard* v. *Gould*, 14 Barb. (N.Y.) 662: *Stevens Man. Co.* v. *Barfoot*, 9 O. R. 692.

(*m*) Jones on Ch. Mtges., p. 111.

(*n*) *D'Eyncourt* v. *Gregory*, L. R. 3, Eq. 382.

(*o*) *Stevens* v. *Barfoot*, 13 A. R. 366.

(*p*) *Haller* v. *Runder*, 1 C. M. & R. 266: *Hellawell* v. *Eastwood*, 6 Exch. 812.

(*q*) *Hall Man. Co.* v. *Hazlett*, 11 A. R. 749: *Howell* v. *Listowell Rink and Park Co.*, 13 O. R. 476.

(*r*) *Dewar* v. *Mallory*, 16 Gr. 618.

when so treated, and passing with the realty as the key of a door passes with the sale of a house. (*s*)

(5) To the words "given by" is to be ascribed the same definition as possessed by the term "executed by." Therefore until an instrument under the Act is delivered it has no efficacy whatsoever. It is from delivery—the last act of execution—that the instrument takes effect, and it is from the time of delivery that the period begins to run within which the copy of an instrument under the Act must be filed, (*t*) if the alternative is not observed, of painting, printing, stamping or engraving the name of the manufacturer upon the chattel, delivered to the bailee or vendee.

The date of the instrument is usually evidence of the time when it is given, (*u*) but as there may be a false, or impossible, or no date at all, such evidence is only presumptive, and it is still open to the parties to show that the instrument was given at a time different to that shown by the date. (*v*)

Though the date of the instrument be the correct date, it affords no indication as to the time of the day when the instrument was given. Should a bailor have to depend upon a compliance with the Act as to filing a copy of the instrument in order to sustain his right to a manufactured chattel as against a subsequent purchaser or mortgagee, it might be required of him to establish the time of day when the instrument was given, because when the justice of the cause so requires the courts will consider a fraction of a

(*s*) *Sheffield* v. *Harrison*, 15 Q. B. D. 358.

(*t*) See section 6 *post*.

(*u*) *Hayword* v. *Thacker*, 31 Q. B. 427.

(*v*) See *McLean* v. *Pinkerton*, 7 App. R. 490: *Burdett* v. *Hunt*, 25 Me. 419: *Partridge* v. *Swazey*, 46 Me. 414.

day. (*w*) It is therefore suggested that a bailor or vendor preserve indisputable evidence as to the hour of the day when execution of an instrument takes place.

(6) Literally a bailee is one to whom goods are intrusted for a specific purpose. (*x*) One to whom goods are delivered in trust, upon a contract express or implied, that the trust shall be faithfully executed on his part. As for example: If cloth be delivered to a tailor to make a suit of clothes, he has the cloth upon the implied contract to render it again when made, and that in a workmanly manner. (*y*) The tailor is a bailee. If money or goods be delivered to a common carrier, to convey from place to place, he is under contract to carry them as instructed. (*z*) The carrier is a bailee. (*a*)

(7) The statute defines the condition of the bailment as being simply that the ownership in a chattel shall not be acquired until payment of the purchase money in whole or in part. When such are the conditions in a transfer of a manufactured chattel, then upon such a transaction the statute operates and takes effect, and the requirements of the statute must be complied with, otherwise the interest of the bailor, vendor or manufacturer may be defeated as against a subsequent purchaser or mortgagee in good faith without notice for valuable consideration. But when such are not the conditions in the bailment, and other distinctly different conditions be attached to

(*w*) *Beckman* v. *Jarvis*, 3 U. C. Q. B. 280: but see *Mitchell* v. *Dobson*, 3 L. J. 185, wherein it is decided that in determining the application of a statute, a fraction of a day is not to be considered.

(*x*) Whart. Law Lex.

(*y*) 1 Vern 268, Blackstone 11, 451.

(*z*) 12 Mod. 482.

(*a*) See more fully note (8) *post*, under bailment.

the bailment, the statute then has no application. (*b*) Or, should the statutory conditions referred to be expressed in the instrument, and in addition thereto other conditions be embraced, not within the operation and effect of the statute, then if that part of the instrument which brings it within the Act can be severed from the rest, the instrument, as to the rest, is not invalid for want of compliance with the statute, (*c*) and this is the case whether the illegality be created by statute or by common law. (*d*) But, if severance cannot be made, then the whole is void, if the statute is not observed. And it may be on the principle of rejection and retention, when the contract is severable, that an instrument under the Act, given by two bailees to a bailor, or taken by two bailors from a bailee, may be, in the one case, invalid only, so far as the interest of one bailee is concerned, and in the other valid only so far as the interest of one bailor is concerned. (*e*)

The mind has only to speculate upon the many kinds of conditions which can be attached to the bailment of chattels to discover that the statute is most restricted in its operations. A condition is that which is referred to an uncertain chance, which may or may not happen: it is a restraint annexed to a thing, so that by the non-performance, the party to it shall receive prejudice and loss; and by the performance, commodity or advantage.

Conditions are affirmative, which consist of doing an act; are negative, which consist of not doing an act; are restrictive, for not doing a thing; are compulsory, as

(*b*) *Baldwin* v. *Benjamin*, 16 U. C. Q. B. 52: *Mathers* v. *Lyneh*, 28 U. C. Q. B. 354: *Walker* v. *Niles*, 18 Gr. 212.

(*c*) *Kitching* v. *Hicks*, 6 O R. 739: *Mowat* v. *Clement*, 3 Man. L. R. 585. See *Hughes* v. *Little*, 17 Q. B. D. 204.

(*d*) *Pickering* v. *Ilfracombe Ry. Co.*, 3 L. R. 250: *Re Browning*, 9 ch. 583.

(*e*) *Ex parte Brown, in re Reed*, 9 Ch. D. 389.

that the bailee shall do an act; are single, as, to do one thing only; are copulative, as, to do divers things; are disjunctive, as, to do one of several things; (*f*) and yet the extent of the term is not defined. Ingenuity then, will discover many cases to which the statute has no application; and doubtless many methods of evading its terms.

(8) "Bailment, from the French *bailler*, to deliver, is a delivery of goods in trust, upon a contract expressed or implied that the trust shall be faithfully executed on the part of the bailee. It is a delivery of goods to another person for a particular use; as to a carrier to convey to London, to an innkeeper to secure in his inn, or the like. Here there is no absolute property in either the bailor or the bailee. The person delivering, or him to whom it is delivered for the bailor, hath only the right, and not the immediate possession; the bailee hath the possession, and only a temporary right. But it is a qualified property in them both, and each of them is entitled to an action, in case the goods be damaged or taken away: (*g*) the bailee on account of his immediate possession, (*h*) the bailor because the possession of the bailee is mediately his possession also. (*i*) The vendee in fact has this right of action, even after condition broken, on the ground that being responsible for the goods he is entitled to sue for them. (*j*) In all instances of bailment there is a special qualified property transferred from the bailor to the bailee, together with the possession. It is not an absolue property because of his contract for restitution, the bailor having still left in him the right to a chose in action, grounded

(*f*) Whart. Law Lex.
(*g*) *Nicols* v. *Bastard*, 2 C. M. & R. 659: Tyr & G. 156, 1 Gale 295.
(*h*) *Mason* v. *Morgan*, 24 U. C. Q. B. 328.
(*i*) *Mears* v. *London & S. W. Ry. Co.*, 11 C. B. N. S. 850: 31 L. J. C. P. 220: 6 L. T. N. S. 190.
(*j*) *Harrington* v. *King*, 121 Mass. 269.

upon such contract. And on account of this qualified property of the bailee he may, as well as the bailor, maintain an action against such as injure or take away these chattels. The bailor, the carrier, the innkeeper, the agisting farmer, the pawnbroker, the distrainor, and the general bailee, may all of them vindicate, in their own right, this their general interest, against any stranger or a third person. For, being responsible to the bailor if the goods are lost or damaged by his wilful default or gross negligence, or if he do not deliver up the chattels on lawful demand, it is therefore reasonable that he should have a right of action against all other persons who may have purloined or injured them that he may always be ready to answer the call of the bailor. (*k*)

Blackstone has divided bailments thus :—

(i) *Depositum*, or a naked bailment of goods to be kept for the use of the bailor without recompense.

(ii) *Commodatum*—Where goods or chattels that are useful are lent to the bailee *gratis*, to be used by him.

(iii) *Socatio rei*—Where goods are lent to the bailee to be used by him for hire.

(iv) *Vadium*—Pawn.

(v) *Locatio operis faciendi*—Where goods are delivered to be carried, or something is to be done about them, for a reward, to be paid to the bailee.

(vi) *Mandatum*—A delivery of goods to somebody, who is to carry them, or do something about them *gratis*.

(*k*) Blackstone, vol. 2, 396, 451, 452: Lord Holt, *Coggs* v. *Bernard*, 1 Sm. L. C. 147-184.

Again, bailments may be said to be properly divisible into three kinds :—

(i) Those in which the trust is exclusively for the benefit of the bailor, or of a third person, when the bailee is liable for gross negligence only.

(ii) Those in which the trust is exclusively for the benefit of the bailee, who is then bound to the very strictest diligence, and

(iii) Those in which the trust is for the benefit of both parties, or of both, or one of them, and a third party, when the bailee must exercise an ordinary and average degree of diligence.

The first embraces deposits and mandates; the second, gratuitous loans for use; and the third, pledges or pawns, and hiring and letting to hire. (*l*)

It is unnecessary to consider the subject of bailments as embraced by the first and second definitions above given, as the nature of bailments to which the statute applies makes such a course unnecessary. Indeed, it is somewhat difficult, if the word "bailment" be correctly used in the statute, to bring within even the third of the foregoing definitions, the transactions contemplated by the present Act.

A pledge or pawn is not contemplated by the statute. Such has been defined thus: "When goods or chattles are delivered to another as a pawn to be security for money borrowed of him by the bailor, (*m*) or as security for the performance of an engagement. (*n*)

(*l*) Story's Bailments.
(*m*) Lord Holt, *Coggs* v. *Bernard*, 2 Ld. Raym. 909, 913.
(*n*) 1 Domat B. 3 tit. 1, §1, art. 1.

Hence, though the statute aims at transactions within the general definition of bailment "as a delivery of goods in trust, upon a contract express or implied that the trust shall be faithfully executed on the part of the bailee," it appears as if of the various classes of bailments, except it be that of hiring and letting to hire, none of them exactly fit the circumstances the statute is intended to meet.

The statute insists that the bailment shall be in writing, at least as against subsequent purchasers and mortgagees. The probabilities are then that in most cases the legal liability of both bailor and bailee is to be ascertained from the written contract. The responsibility of either bailor or bailee may be lessened or enlarged either by express or implied contract. When by writing, the writing governs, for an express contract of the parties may vary or supersede the obligations implied by law. (*o*) When not in writing, then common sense and natural justice will help to define what are the legal obligations of the parties.

To produce the legal obligation of the contract of bailment,

(i) The bailment must not be prohibited by law.

(ii) It must be between persons competent to contract.

(iii) There must be a free and voluntary consent between the parties. (*p*)

A conditional sale under the Act of a piano to be used in a house of ill-fame is repugnant to sound morals, and therefore illegal.

The rules of common law, establishing the incapacity of certain parties to contract (except when varied by legisla-

(*o*) Jones on Bailments, §31, 33, 34.
(*p*) Story on Bailments, 378.

tion,) apply to contracts under the statute, thus, infants, lunatics, idiots, and persons of unsound mind are debarred from contracting either as bailor or bailee.

Slight dilligence only is required to be exercised on the part of a bailee in the care, custody and safety of property when the bailment is for the sole benefit of the bailor; when for the sole benefit of the bailee, then great diligence is demanded on his part, and when for the mutual benefit of both bailor and bailee the law expects ordinary diligence alone to be exercised by the bailee. In the first place he is liable only for gross neglect, in the second case for slight neglect, and in the last case for ordinary neglect. (*q*)

From this it may be concluded that, unless the written instrument provides differently, ordinary diligence must be exercised over property within the scope of the present statute, by the bailee, who will only be responsible for ordinary neglect, for it cannot be said that the bailment, within the Act, is not otherwise than for the reciprocal benefit of both parties. The contract between the parties may extend the bailee's liability to inevitable accidents, or to damage or loss, by fire or the act of God or other *vis major*, (*r*) but if not, the bailee then is not liable on account thereof, nor is he liable for loss through robbery by force, though for a loss by a private or a secret theft he may be liable, if a proper degree of diligence has not been used. If the bailee is guilty of any fraud, whereby loss ensues, then of course the bailee is responsible, and, because the law will not let a man contract to be safely dishonest, a bailee cannot protect himself in writing against loss of this nature. Gross negligence (*s*) may be equivalent to fraud, and though a bailee

(*q*) Jones on Bailments, 16, 119: *Coggs* v. *Bernard*, 2 Ld. Raym 919: Story on Bailments, §23.

(*r*) *Atkinson* v. *Ritchie*, 10 East 530: *Barker* v. *Hodgson*, 3 M. & S. 267: *Digby* v. *Atkinson*, 4 Camp. 275.

(*s*) For meaning of term, "gross negligence," see *Fitzgerald* v. *G. T. R. W. Co.*, 4 App. R. 601.

may protect himself against loss through negligence, however gross, should the element of fraud enter into the bailee's conduct the writing cannot shield him.

The ordinary diligence expected to be exercised by a bailee under the Act in the case of a chattel is that "degree of diligence which men in general exert in respect to their own concerns." It may be said to be the common prudence which men of business and heads of families usually exhibit in affairs which are interesting to them. (*t*) Or "it is the care which every person of common prudence and capable of governing a family takes of his own concerns." What is ordinary diligence then depends more on fact than on law, and is governed by an infinite variety of circumstances. The actual state of society, habits of business, usages of life, the degree of danger, the very country or section of country wherein parties are, the nature, quality, bulk or value of the article bailed, are all circumstances which may have to be considered in fixing the degree of diligence incumbent on a bailee to exercise. These considerations arise mainly where the contract under the Act is silent as to the degree of care required to be exercised, but if, as we have seen, the written contract narrows or enlarges the liability of the bailee, the contract has alone to be looked for. If the bailee is required to exercise great diligence, the degree is to be measured by that which a *very* prudent person would take of their own concerns; (*u*) if but slight negligence, then by that which any person of common ordinary prudence would exercise in their own affairs. (*v*)

Diligence is but a relative term for negligence, and as there are degrees in the one so there are in the other.

(*t*) Story on Bailments, §11.

(*u*) *Vaughan* v. *Newlove*, 3 Bing. N. C. 468, 475.

(*v*) *Vaughan* v. *Newlove*, *supra*.

There are in the civil law as in our law, three degrees of negligence:

(i) Gross fault or neglect (*lata culpa*).

(ii) Ordinary fault or neglect (*levis culpa*).

(iii) Slight fault or neglect (*levissima culpa*).

Ordinary negligence exists where ordinary diligence is absent. Slight negligence exists when great diligence is absent, and gross negligence exists when slight diligence is absent.

As in the case of diligence so in the case of negligence. When the bailment is for the sole benefit of the bailor the law requires only slight diligence, so relatively is he responsible for gross neglect, whom, for the benefit of the bailee, the law requires great diligence on his part, and therefore he is responsible for slight neglect. Where for the benefit of both parties, reciprocally, then as the law requires ordinary diligence on the part of the bailee, so is he responsible for ordinary neglect.

The duty devolving upon the bailee of a chattel under the Act is to "put the thing to no other use than that for which it is taken; to use it well; to take care of it; to restore it at the time appointed; to pay the price for it, or the rent for it as the case may be, and in general to observe whatever is prescribed by the contract, or by law, or by custom. (*w*)

Thus it is clear a vendee must not put an article delivered to him to a different use than that intended at the time when he received it from the vendor. (*x*) If he does, and injury to the property is the result, he renders himself

(*w*) 1 Domat B. 1, tit. 4, §2, art. 1.

(*x*) *Edwards* v. *Carr*, 13 Gray 234: *Milton* v. *Salisbury*, 13 Johns 211: Story on Agency, § 452 to 461.

liable to the bailor, and he is similarly liable if the wrongful conduct, default or negligence be that of his children or servants. (*y*)

Where two persons are joint vendees of the property, then both are liable in the event of ordinary negligence, (*z*) but not so when one of them only is the sole bailee. (*a*) So is the bailee liable for the negligent acts of his sub-agent. (*b*) But while the bailee is liable for the negligence of his servants, as for instance where the servant carelessly and improperly exposes the chattel, so that it be stolen, (*c*) yet, if the act complained of has not been done by the servant in the service of, or course of employment by, his master or in obedience to his orders, the bailee is not responsible. (*d*)

There is also an obligation devolving on the bailor. He must deliver the article, and refrain from interfering with the bailee's use of it during the period of bailment, which will be until breach of condition. He must warrant the possession and title to the bailee to an extent necessary for the bailee's use of it, and that the article is free from any fault which would render it unfit for the purposes it was intended to be put to; (*e*) but, if the bailor is a gratuitous bailor, then only for such defects of which he was aware, and owing to which directly the borrower is injured (*f*).

The special qualified property which is transferred from bailor to bailee, together with the possession, enables the

(*y*) Story on Bailments, § 400.
(*z*) *Dacy* v. *Chamberlain*, 4 Esp. 229.
(*a*) Ibid.
(*b*) *Laugher* v. *Pointer*, 5 Barn. & Cress. 547: *Milligan* v. *Wedge*, 12 Adolp. & Ellis 737: *Quarman* v. *Burnett*, 6 M. & W. 499.
(*c*) *Coggs* v. *Bernard*, 2 Ld. Raym 909, 910.
(*d*) Story, §402.
(*e*) Story on Bailments, § 383.
(*f*) *Blackmore* v. *Bristol & Exeter Ry. Co.*, 8 El. & Bl. 1035: 4 Jur. N S. 657: *MacCarthy* v. *Young*, 6 H. & N. 329.

bailee to mortgage not the chattel but his interest in the chattel, such as it is, and upon payment of the price of the goods, if such is the contingency upon which the ownership therein passes to the bailee, the mortgage will become valid (*g*). Indeed, there is nothing to prevent a bailee disputing the title of his bailor, which he may properly do in order to deliver the chattel to the rightful owner ; (*h*) relying upon the right title and authority of the latter. (*i*) But if he so far appropriates the chattel to his own use as to make the act amount to a conversion, opposed to the terms of the bailment, he may render himself guilty of a felony. (*j*) Should he sell the goods by private sale to a *bona fide* purchaser, the bailment is at once determined, and the bailor may maintain an action of trover against the purchaser. (*k*)

In like manner the bailor who delivers property to the bailee under an agreement that the title thereto shall not pass until paid for, may mortgage ; he may also sell either before or after default, subject to the rights of the buyer in possession, and the interest of the seller may be levied upon and sold for the debts of the seller. (*l*) After the bailor has so disposed by way of mortgage of the chattel in question, the bailee is entitled to refuse to deliver it to the bailor, because if he did so, he would expose himself to an action. (*m*)

(*g*) *Crompton* v. *Pratt*, 105 Mass. 255.

(*h*) *White* v. *Brown*, 12 U. C. Q. B. 477 : *Ogle* v. *Atkinson*, 5 Taunt. 759 : *Wilson* v. *Anderton*, 1 B. & Ad. 450 : *Cheesman* v. *Exall*, 6 Ex. 341.

(*i*) *Thorne* v. *Tilbury*, 3 H. & N. 534 : *Biddle* v. *Bond*, 34 L. J. Q. B. 137.

(*j*) *Regina* v. *Massey*, 13 C. P. 484 : *Regina* v. *Tweedy*, 23 Q. B. 120 : *Livingstone* v. *Massey*, 23 Q. B. 156.

(*k*) *Cooper* v. *Willomatt*, 1 C. B. 672 : 9 Jur. 598 : 14 L. J. C. P. 219.

(*l*) *McMillen* v. *Larned*, 41 Mich. 521 : *Everett* v. *Hall*, 67 Me. 497 : Jones on Chattel Mortgages, 104 : *European & Australian Royal Mail Co.* v. *Royal Mail Steam Packet Co.*, 8 Jur. N. S. 136 : 30 L. J. C. P. 247.

(*m*) *European & Australian Royal Mail Co.* v. *Royal Mail Steam Packet Co.*, *supra*.

(9) The statute only applies to such chattels, the possession of which can pass from one to another. (*n*)

(10) There is nothing objectionable in the sale of a chattel upon the terms that the ownership shall not pass until the happening of a certain event, (*o*) which is usually the payment of the price. It is only to sales of this kind that the statute applies. When the ownership in a chattel is changed, but not the possession, then another statute is invoked, (*p*) but to all cases of manufactured goods, including pianos, organs and other musical instruments, but not furniture, then the present statute prevails. It may become necessary to ascertain the intention of the parties regarding a change of ownership, and according, as the intention may or may not be that the ownership changes, so is it decided whether or not the statute has any bearing. The question of property passing being simply one of intention, (*q*) when such intention is clearly established, *cadit quæstio*.

So far as the bailee is concerned, and confining a sale by him of a chattel to his acts alone, he can confer upon third persons no better title than he himself possessed, and as he possesses none, then none can pass from him to a third person. (*s*) But he has an interest which he can sell, and, if the condition is performed, his vendee will have a complete title. (*t*) In fact, the interest of the bailee, can, before default, be sold for the debts of the vendee, and the bailor or vendor, it has been held, cannot maintain trover

(*n*) *Ante* foot notes 4 and 5, p. 5, also foot note 1, p. 1.

(*o*) *Stevenson* v. *Rice*, 24 C. P. 245.

(*p*) R. S. O. 1887, cap. 125.

(*q*) *Bank of U. C.* v. *Killaby*, 21 U. C. R. 1: *Robertson* v. *Strickland*, 28 U. C. R. 221: *Ogg* v. *Shuter*, L. R. 10, C. P. 159.

(*r*) *Weld* v. *Boston Ice Co.*, 12 Allen 377.

(*s*) Benjamin on Sales, 1 Am. Ed. 433: *Higgins* v. *Burton*, 26 L. J. Ex. 342: *Hordman* v. *Booth*, 1 H. & C. 803: *Brett, L. J., ex parte Crawcour, In re Robertson*, L. R. 9, Ch. D. 419.

(*t*) *Day* v. *Bassett*, 102 Mass. 445: *Vincent* v. *Coonell*, 13 Pick, 294; *Currier* v. *Knapp*, 117 Mass. 324.

until breach of the condition, if by the terms of the agreement he is not entitled to take the property until such breach. (*u*) Still the bailee can do nothing more than dispose of an interest, not of the ownership. (*v*) Therefore in all cases wherein it is agreed that the title or ownership of the property shall not pass until the arising of a certain contingency, or the happening of a certain event, then until the happening of the event or the arising of the contingency the bailee or vendee cannot dispose of the chattel so as to defeat the title of the true owner, *nemo dat quod non habet*, (*w*) and the possession of the chattel by the vendee or bailee does not improve his position in any particular, (*x*) and when it is so provided, the ownership will not pass until all the instalments are paid, even though all but one remain unpaid. (*y*) But wherein difficulties often arise is in the application or non-application of the doctrine of estoppel.

If a man by his words or conduct wilfully endeavours to cause another to believe in a certain state of things which the first knows to be false, and if the second believes in such state of things, and acts upon his belief, he who knowingly made the false statement is estopped from averring afterwards that such a state of things did not in fact exist. And if a man either in express terms or by his conduct, makes a representation to another of the existence of a cer-

(*u*) *Fairbanks* v. *Phelps*, 22 Pick. 535 : *Newhall* v. *Kingsbury*, 131 Mass. 445.

(*v*) *Crompton* v. *Pratt*, *supra*.

(*w*) *Banks* v. *Robinson*, 15 O. R. 618 : *Walker* v. *Hyman*, 1 A. R. 345 : Benjamin on Sales, Am. Ed. sec. 6 : *Stevenson* v. *Rice*, 24 C. P. 250 : *Ex parte Powell*, L. R. 1. Ch. D. 501, 505 : *In re Matthews*, L. R. 1, Ch. D. 501 : *Mason* v. *Johnson*, 27 C. P. 208 : *Mason* v. *Bickle*, 2 A. R. 291 : *Nordheimer* v. *Robinson*, 2 A. R. 305 : *Crawcour* v. *Salter*, L. R. 18, Ch. D. 30 : *Ex parte Crawcour*, *In re Robertson*, L. R. 9, Ch. D. 419.

(*x*) *Loesdeman* v. *Maclim*, 2 Starkie 311 : *Fuentis* v. *Mantis*, L. R. 3, C. P. 268 : *Ex parte Crawcour*, *supra*.

(*y*) *Crawcour* v. *Salter*, L. R. 18 Ch. D. 30, *per* Malins, V. C.

tain state of facts which he intends to be acted upon in a certain way, and it be acted upon in that way in the belief of the existence of such a state of facts, to the damage of him who so believes and acts, the first is estopped from denying the existence of such a state of facts. Again, if a man, whatever his real meaning may be, so conducts himself that a reasonable man would take his conduct to mean a certain representation of facts, and that it was a true representation, and that the latter intended to act upon it in a particular way and he with such belief does act in that way to his damage, the first is estopped from denying that the facts were as represented. And finally, if, in the transaction itself which is in dispute, one has led another into the belief of a certain state of facts by conduct of culpable negligence calculated to have that result, and such culpable negligence has been the proximate cause of leading and has led the other to act by mistake upon such belief to his prejudice, the second cannot be heard afterwards, as against the first, to show that the state of facts referred to did not exist." (*z*) A simple belief entertained by one party in a state of facts upon which belief such party acts, does not estop a third party from denying the existence of such facts, even though the conduct of such third party, if innocent of any wilful intent to deceive, gave rise to the belief. (*a*) The fact of possession of a chattel remaining with a bailee after the time of payment has elapsed when it was to be re-taken by the bailor, does not estop the bailor from setting up title thereto as against a purchaser from the bailee. Nor even the production by the bailee of a note given in purchase of the chattel, at least when the note bears no apparent refer-

(*z*) Moss, C.J.A., in *Mason* v. *Bickle*, 2 App. R. 295. See *Carr* v. *London & N. W. R. Co.*, L. R. 10 C. P. 307; *Pickard* v. *Sears*, 6 A. & E. 469; *Freeman* v. *Cooke*, 2 Ex. 654; *Trust & Loan Co.* v. *Ruttan*, 1 S. C. R. 546 at pp. 584-7; *Jordan* v. *Money*, 5 H. L. Cases 185; *Clarke* v. *Hart*, 6 H. L. Cases 656.

(*a*) *Mason* v. *Bickle*, 2 App. R. 251.

ence to the purchase of the chattel. (*b*) And of course the bailor or vendor, by taking a note upon the contract of conditional sale, does not thereby put an end to the contract, (*c*) not even when he discounts the note or renews it, the latter practice being so common as to be cognizant to all commercial men, (*d*) Where again upon the faith of a written undertaking to deliver goods, a third party is induced to buy from him to whom the goods were to be delivered, the original vendor is not estopped from refusing to act on the written undertaking. (*e*)

" A declaration to one man rarely operates as an estoppel in favour of another, for it would generally be unjust to carry the responsibility arising from a statement further than the person to whom it is addressed. (*f*) Declarations may be so general as to indicate an intention to reach and influence the public at large, but even then to operate as an estoppel against the declarant, there is required some evidence which an inference can be drawn that the party injured, knew and was influenced by the declarations. (*g*)

The printing or painting of a man's name upon a chattel does not estop the owner so doing, from afterwards proving ownership of the chattel, but " when the owner, by his own act or consent, has given another, such evidence of the right to sell or otherwise dispose of his goods as, according to the custom of trade or the common understanding of the world, usually accompanied the authority of sale or disposition, then, if the person so intrusted with the possession of the goods, and with the *indicia* of ownership, or of authority to

(*b*) *Mason* v. *Bickle*, *supra*.

(*c*) *Stephenson* v. *Rice*, 24 C. P. 250; *Loring* v. *Loring*, 64 Me. 556: *Kent* v. *Buck*, 45 Vt. 18: but see *Ballard* v. *Burgett*, 40 N. Y. 314.

(*d*) *McEwan* v. *Smith*, 2 H. L. C. 309.

(*e*) *Farmloe* v. *Bain*, L. R. 1 C. P. D. 445.

(*f*) Burton, J.A. *Walker* v. *Hyman*, 1 App. R. 351.

(*g*) *Wheelton* v. *Hardisty*, 8 E. & B. 259.

sell or otherwise dispose of them, in violation of his duty to the owner, sells to an innocent purchaser, the sale will prevail against the right of the owner." * * * A case does not fall within this exception unless the owner confers on the vendor the evidence of ownership or of authority to dispose of the goods, than mere possession. (*h*) And if a man owning property delivers it to a third person and sends him forth to sell it and to receive pay for it, no secret agreement between them can affect the title acquired by a purchaser who buys in good faith without notice of the agreement. (*i*)

Transactions of the kind wherein the ownership does not pass should not be confounded with that class of transactions wherein the vendee has both title and possession, but the contract is voidable at the election of the vendor on the discovery of fraud. In transactions of the latter kind, a sale to a third party before the right to cancel is exercised by the owner of the goods, will defeat the right of the original owner. (*j*)

(11) The words "payment of the purchase or consideration money," contemplate a money consideration, and therefore should the consideration be other than that, or other than that which has a money value, the transaction between vendor and vendee is one not coming within the operation of the act. (*k*) The fact of the purchase or consideration money not being payable to the vendor does not deprive the statute of its application. It is a sufficient

(*h*) Brickell, J. See *McMahon* v. *Sloan*, 12 Penn. 229, 233: *Walker* v. *Hyman*, I App. R. 345: see *McNeill* v. *Tenth National Bank*, 46 N. Y. 325, 330.

(*i*) *Fitzgerald* v. *Hunter*, 19 Hun. 180.

(*j*) *White* v. *Gorden*, 10 C. B. 927.

(*k*) *Baldwin* v. *Benjamin*, 16 U. C. Q. B. 52: see *Sutherland* v. *Nixon*, 21 U. C. Q. B. 631: *Brooks* v. *Lester*, 35 Md. 65: *Carpenter* v. *Blot*, 1 E. D. Smith 491.

legal consideration that the consideration moves from one party to a second party, and the ownership of the chattel is retained in a third party.

It makes no difference that the vendee or bailee give his promissory note to the vendor for the amount of the consideration money, (*l*) unless of course the note is taken in satisfaction of the purchase money, or unpaid part thereof, as the case may be, (*m*) and the mere taking of a note for the purpose of closing an account is not proof that it was taken in satisfaction of the purchase money. (*n*)

There can be no objection to the vendor's discounting the note given for the purchase money. His so doing cannot be urged as a waiver of the owner's right of property, nor, of course, as constituting payment of the consideration money. (*o*) Nor does the fact of providing that the purchase money be paid as rent in weekly or monthly, or longer instalments, in any way prevent the application of the statute. (*p*)

(12) The words "shall only be valid as against" have a meaning and effect which requires to be noticed. Instruments under the Act shall be invalid as against *subsequent purchasers or mortgagees* without notice in good faith, unless the provisions of the Act are complied with. In other words such an instrument shall be "null and void." (*q*)

In a somewhat analogous sense an Imperial Act (*r*) uses the words "fraudulent and void," and the difference between

(*l*) *Stephenson* v. *Rice*, 24 U. C. C. P.: *Walker* v. *Hyman*. 1 App. R. 345.
(*m*) *Nordheimer* v. *Robinson*, 2 App. R. 305.
(*n*) *Nordheimer* v. *Robinson*, 2 App. R. 305.
(*o*) *Mason* v. *Bickle*, 2 App. R. 295.
(*p*) *Nordheimer* v. *Robinson*, 2 App. R. 305.
(*q*) As to the meaning of which words, in this connection, see *Billiter* v. *Young*, 6 Ell. & Bl. 1.
(*r*) 41 & 42 Vic. cap. 31, sec. 8.

these words and those in the present statute, is referred to in *ex parte Blaiberg*. (*s*)

This is the intention of the Act, and is the effect of it, yet by the peculiar wording of the section, the negative inference is, that if an instrument shall only be valid as against the persons mentioned on certain conditions, if only valid as to them, then as to others not mentioned in the Act that the instrument shall be invalid, but of course the inference has not the force of giving a meaning to the section different to that intended.

The meaning of the words "as against" found in this statute when read with the subsequent words "purchasers and mortgagees" etc., is, that the instrument of conditional sale shall be void, in order to give effect to the purchase of the purchaser, or mortgage of the mortgagee, but no further, (*t*) and, so soon as the claims of the persons protected by the statute are satisfied, the vendor or bailor of the chattel becomes entitled *eo instanti*, to any benefits that may remain thereafter. (*u*)

Under the Imperial Act, 17 and 18 Vict., cap. 36, s. 1, it was at one time held in a case wherein the defendant made a bill of sale of his goods to S., which was not registered, and afterwards made a bill of sale which was registered, that although the unregistered bill of sale was not invalid as against the secured bill of sale, yet inasmuch as execution had issued against the defendant, and the statute made null and void the instrument as against execution creditors, the same was displaced *altogether* by reason of

(*s*) L. R. 23 Ch. D. 254.

(*t*) *Ex parte Blaiberg*, L. R. 23 Ch. D. 254.

(*u*) *In re Artistic Colour Printing Co.*: *Ex parte Fourdrinier*, 21 Ch. D. 150: *Ex parte Blaiberg*, *supra*.

the execution, and therefore that S., could not set up his unregistered bill of sale, as against the subsequent instrument which was registered. (*v*)

(13) There are two classes of persons, against each of which an instrument under the Act shall be invalid.

(i) Subsequent purchasers without notice in good faith for valuable consideration.

(ii) Subsequent mortgagees without notice in good faith for valuable consideration. Having regard to the purpose of the Act there can be little doubt that the subsequent purchasers and mortgagees of the chattel are subsequent purchasers or mortgagees from the bailee, not from the bailor.

The reason of the statute declaring void an instrument under the Act, as against these two classes of persons unless its requisities are complied with, will appear obvious, when it is remembered for a moment how easily a fictitious and undeserved financial standing can be secured by the apparent ownership of personal property. The wonder is, not at premature legislation in the interests of a community, but that legislation should be so long delayed. There can be no doubt of the wisdom of the statute. "Better to safe guard commercial morality, it is to make provision for giving publicity by registration to dealings such as this statute contemplates. The effect of such transactions (though they be not contrary to law), is to protect the credit of a trader who is yet heavily weighted with undisclosed obligations. Grave suspicions must always arise in the minds of creditors whose claims are superseded by some instrument of peculiar character, produced at a period of crisis, by which all the assets of their debtor are secured to a near relative. (*w*)

(*v*) *Richards* v. *James*, L. R. 2 Q. B. 285.
(*w*) Boyd, C., in *Banks* v. *Robinson*, 15 O. R. p. 624.

Prior to coming into force of this statute, a transaction aimed at by this legislation would be perfectly good as against the parties designated now to be protected, provided there was an absence of fraud, fraud vitiating all things.

Now one of two things is required.

(i) The name and address of the manufacturer or vendor.

(ii) A registration.

One or other of these requisites must exist, and he who fails in both, must suffer for improperly enabling another to appear to the world as absolutely owning property which in reality belongs to another.

Between the parties themselves, however, that is, between the bailor and bailee, or the manufacturer or vendor and vendee, no injury can result from a noncompliance with the statutory requirements: therefore, so far as they are concerned, and all claiming under them, their administrators or representatives, or as against any other title inferior to that of the immediate parties, except a subsequent purchaser or mortgagee as above indicated, a conditional sale where the possession changes but not the ownership, is valid without compliance with the statute. (*x*)

It is valid without such compliance as against the creditors of the conditional vendee or bailee, for no where does it appear that the creditors of the vendee or bailee are intended to be protected. An execution creditor can have no better or higher right against the goods of his debtor,

(*x*) *Robinson* v. *McDonald*, 2 B. & A. 134: *Broughton* v. *Broughton*, 1 At. K. 625.

than the debtor himself, and, if the debtor had no right, except that of possession, the creditor can acquire no right. (*y*)

As regards the two classes of persons above mentioned, however, the instrument as to them can only be made effectual by painting, printing, or engraving the name of the manufacturer or vendor on the article sold, or by filing the instrument in accordance with the statute. (*z*)

In this section the words "good faith" are inserted, requiring that a purchaser or mortgagee should be such in good faith. Actual knowledge is not inconsistent with good faith, (*a*) but where collusion exists with the vendee or bailee to cheat the manufacturer or vendor, the purchase transaction as to them will be void, even though the statutory formalities have been omitted. (*b*)

It is possible a purchaser or mortgagee, for valuable consideration, though he may have notice of the existence of a conditional sale, may still be a purchaser in good faith; where, for instance, the statute itself has not been complied with. (*c*)

But it is hard to conceive how, possessing actual knowledge of the existence of a *bona fide* transaction, a purchaser or mortgagee can be such in good faith, so as to bring himself within the description of persons protected by the statute. (*d*)

(*y*) Osler, J., *Dominion Bank* v. *Davidson*, 12 App. R. 92: *Beaver* v. *Lord Oxford*, 6 D. M. & G. 507.

(*z*) Section 6, post.

(*a*) *Sage* v. *Browning*, 51 Ill. 217; *McDowal* v. *Stewart*, 83 Ill. 538.

(*b*) *Fuller* v. *Paige*, 26 Ill. 358: *Gooding* v. *Riley*, 50 N. H. 1400: *Pattern* v. *Moore*, 32 N. H. 382.

(*c*) *Edwards* v. *English*, 7 E. & B. 564: *Morrin* v. *Rourke*, 39 U. C. Q. B. 500: *Moffat* v. *Coulson*, 19 U. C. Q. B. 341: *Caplin* v. *Anderson*, 88 Ill. 120: *Porter* v. *Dement*, 35 Ill. 478.

(*d*) *Farmers Loan & Trust Co.* v. *Hendrickson*, 25 Barb. (N.Y.) 484: *Tyler* v. *Strong*, 21 Barb. (N.Y.) 198: *Tiffany* v. *Warren*, 37 Barb. (N.Y.) 571: *Sagre* v. *Hewes*, 32 N. I. Eg. 652.

A subsequent purchaser in good faith within the meaning of the statute, is one who becomes a buyer by mutual assent of the parties express or implied, and not one who has unlawfully converted the chattels: for instance, he is not a purchaser, within the statute, who has acquired the chattel by paying a judgment obtained against himself by the vendee or bailee of the property. (*f*)

A purchaser who has paid nothing is of course not within the protection of the statute, because he cannot be defrauded, and a *bona fide* purchaser can only receive protection to the extent of his payments. (*g*) His purchase money must be actually paid, if it be simply secured it will not be sufficient. (*h*)

A *bona fide* purchaser at a sheriff's or bailiff's sale, is a purchaser intended to be protected by the statute, (*i*) and it has been held that a purchaser without notice cannot be considered a purchaser in bad faith, because he bought at a sale under execution at the instance of a creditor who was not entitled to subject the chattel to satisfy his claim, (*j*) but then such a purchaser cannot be a purchaser within the definition of the Act, because he derives his title through a sale at the instance of a creditor, whose execution could have no force against the chattel, except to sell merely the vendee's interest therein, and nothing more. The purchaser must be a purchaser from the bailee or vendee.

A landlord may become a purchaser in good faith from his tenant, the vendee or bailee of the chattel, within the meaning of the statute, either by taking the goods of his

(*f*) Jones on Chattel Mortgages, § 484.

(*g*) *Kohl* v. *Lynn*, 34 Mich. 360.

(*h*) *Patten* v. *Moore*, 32 N. H. 382: *Cummings* v. *Tooley*, 39 Iowa 195: *Kessey* v. *McHenry*, 54 Iowa 187.

(*i*) *McNight* v. *Gordon*, 13 Rich. (S. C.) Eq. 222.

(*j*) *McNight* v. *Gordon*, *supra*.

tenant as so much payment of his rent, or by purchase in pursuance of arrangement, and if the statute has not been complied with, the rights of the owner of the chattel will be defeated. A landlord would still be such a purchaser within the Act, should he, with the tenant's consent, but without notice purchase the goods in the tenant's possession at a bailiff's sale, instituted by himself by way of distress in order to secure his rent; (*k*) but having once made his distress, the landlord cannot afterwards be permitted to assume the character of a subsequent purchaser under the Act in order to cure defects of an illegal distress. (*l*)

It formerly was the law that any goods upon the demised premises were liable to a distress for rent; but the law now is that a landlord shall not distrain for rent on the goods and chattels the property of any person, except the tenant or person who is liable for the rent, although the same are found on the premises; (*m*) but such alteration in the law does not exempt from distress for rent any goods or chattels sold to the tenant under a contract of purchase such as is aimed at by this statute. The R. S. O. 1887, cap. 143, sec. 28, enacts as follows: —

28.—(1) A landlord shall not distrain for rent on the goods and chattels the property of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply in favour of a person claiming title under or by virtue of an execution against the tenant, or in favour of any person whose title is derived by purchase, gift, transfer, or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise, nor to goods on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition, nor where goods have been exchanged between two tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord; nor shall the restriction apply where

(*k*) *Forlinger* v. *McDonald*, 45 U. C. R. 233.
(*l*) *Griffin* v. *McKenzie*, 46 U. C. R. 93.
(*m*) R. S. O. 1887, cap. 143, sec. 28.

the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant, or by any other relative of his, in case such other relative lives on the premises as a member of the tenant's family.

(2) Nothing in this section contained shall exempt from seizure by distress goods or merchandise in a store or shop managed or controlled by an agent or clerk for the owner of such goods or merchandise when such clerk or agent is also the tenant and in default and the rent is due in respect of the store or shop and premises rented therewith and thereto belonging, when such goods would have been liable to seizure but for this Act.

(3) The word "tenant" in this section shall extend to and include the sub-tenant and the assigns of the tenant and any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrear whether he has or has not attorned to or become the tenant of the landlord.

(4) In case of an assignment for the general benefit of creditors the preferential lien of the landlord for rent is restricted to the arrears of rent due during the period of one year last previous to the execution of such assignment, and from thence so long as the assignee shall retain the premises leased. 50 V. c. 23, s. 2.

If a purchaser buy the interest of the vendee or bailee, and undertakes to pay the purchase money of the chattel, he cannot take advantage of the want of registration, or the absence of name from the chattel. (*n*) Nor can he do so, if the amount due to the vendor or manufacturer form part of the purchase money agreed upon between the purchaser and the vendee; (*o*) but either a purchaser or subsequent mortgagee is at liberty to show that the claim of the manufacturer has been liquidated, or that the chattel itself was in point of fact never subject to the manufacturer's claim. (*p*)

The circumstance that a subsequent mortgagee knew of the existence of the rights of the manufacturer, and in order to protect his own interests prejudiced those of the

(*n*) *Greither* v. *Alexander*, 15 Iowa 470.

(*o*) *Kellog* v. *Secord*, 42 Mich. 318.

(*p*) *Barry* v. *Bennett*, 7 Met. (Mass.) 354: *Housatonic & La Banks* v. *Martin*, 1 Met. (Mass.) 294.

manufacturer or vendor of the chattel, is not a good and sufficient reason for saying that the subsequent mortgage was not made or taken in good faith, and therefore prevented the mortgagee from setting up non-compliance on the part of the vendor with the statutory requirements. (*q*)

A subsequent mortgagee in good faith is not required to comply with the statute requiring registration of chattel mortgages (*r*) in order to maintain priority over an unregistered instrument under this Act. The reason is that this statute so states, namely, that such an instrument shall be void as against subsequent mortgagees. It does not say "valid only as against subsequent mortgagees *who have registered*, but simply as against subsequent mortgagees." (*s*)

A subsequent mortgagee is *pro tanto* a purchaser. He is affected in the same way as a purchaser, and entitled to occupy the same legal position as regards want of notice, the existence of good faith, and any other statutory advantages possessed by a purchaser under the Act.

(14) The consideration moving between the vendor and vendee of a chattel, to be within the Act, must be a money consideration; but the consideration required to move from the persons protected by the Act is a valuable consideration. While money is a valuable consideration, yet a valuable consideration covers more than mere money.

A valuable consideration is money, or any other thing that bears a known value, or marriage, (*t*) or some other benefit to the person making a promise however slight. Or to a third person by the Act of the promisee. (*u*) Or

(*q*) *Tidey* v. *Craib*, 4 O. R. 696.
(*r*) R. S. O. 1887, cap. 125.
(*s*) *De Courcey* v. *Collins*, 21 N. J. Eq. 357.
(*t*) *Keven* v. *Crawford*, L. R. 6 Ch. D. 29: *Wright* v. *Redgrove*, W. N. (1870) 30-32.
(*u*) *Bailey* v. *Croft*, 4 Taunt. 611: *Williamson* v. *Clements*, 1 Taunt. 523.

any loss, trouble, detriment or inconvenience to, or charge or liability upon the promisee, however slight, for the sake or at the instance of the promisor, though without any benefit to the promisor. (*r*) Or the suspension or forbearance of legal proceedings, the prevention of litigation or the settlement of disputes.

(15) See *ante* foot note (4), p. 5.

(16) It must be noticed that the time when the chattel must have the name and address of the manufacturer, bailor or vendor of the same painted, etc., thereon, or otherwise plainly attached thereto, is the time when possession is given to the bailee. Now, the important time to have the name upon the chattel is certainly as much later on, than just at this particular period. If the statute stopped at requiring the name to be painted, printed, stamped or engraved, it might have improved the section; but when the alternative is given of plainly attaching the name, this the manufacturer, etc., may well do, thereby complying with the Act, and within a week, the object of the statute be defeated by the name becoming detached. Once detached one means of notice and, if employed, the only means of notice which need be adopted, is destroyed, and the public by a statutory trap exposed to the very danger the statute is designed to guard against. In answer to the claim of a subsequent purchaser the answer of the manufacturer would be that he complied with the statute, by plainly attaching his name to the chattel, and that he was not at fault if the name became detached. Yet it may be reasonably supposed that by attaching the name to the article is meant as permanent a method as fixing the name upon the article itself, and if anything less than the latter is done it is not sufficient. How much better it would be to omit this method of publication, giving no

(*r*) *Shirbygn* v. *Albany*, Cro. Eliz. 67; *March* v. *Culpepper*, Cro. Car. 71.

alternative, but requiring simple registration. Ten days from the execution of any instrument under the Act is allowed for registration. (*v*) Hence, though the statute insists that when the name is placed on, or attached to the instrument, it must be done at the time when possession is given to the bailee; yet, if it be not so done, no advantage thereof can be taken until the expiration of ten days, within which period the alternative of registration may be complied with.

(17) See preceding note and *ante* note (8) and (9).

(18) See *ante* note (12), (13) and (14).

(19) See *ante* note (12), (13) and (14).

(20) The statute insists that as against purchasers, mortgagees, etc., the transaction be reduced to writing. Should the article sold contain the name of the vendor, as required by the statute, then there remains no legal necessity for registration under section 6, *post*, but none the less the transaction must be reduced to writing; and, though section 6 substitutes an alternative for the present clause, when the present clause is not complied with, yet to perform the alternative this clause must be observed, so far at least as reducing the terms of the bailment to writing.

The word writing includes words printed, painted, engraved, lithographed and otherwise traced or copied. (*w*) No specified or particular form of writing is required, and though the instrument be far from technical in form, yet if, from its entirety, it can be gathered that the possession of the chattel is passed from one to another, while the ownership is to remain in the bailor until paid for by the bailee, the instrument will be a writing within the Act.

(*v*) Section 6, *post*.

(*w*) R. S. O. 1887, cap. 1, sec. 8, sub-sec. 14.

It need not be witnessed, for the statute does not say so, and if witnessed, it need not be attested. (*x*)

It often has been the practice in selling an article for the vendor to take a note therefor, and in the margin of the note to have printed words to the effect "that the title in the property for which this note is given shall not pass until the note be paid." It is questionable if such a writing would be sufficient, because the statute requires the writing to be signed by the vendee, and the signature to the note might be said not to be a signature to this marginal memorandum.

(21) Signing consists in the subscription by one himself of his name in writing, or by his agent. So long as the signature is that of the bailee, it matters not on what portion of the instrument it appears, so long as it can be identified therewith and proved to be appropriated by the party to the recognition of the contract. (*y*) In fact, an instrument under the Act beginning I, A. B., agree, etc., etc., has been held to be a sufficient signing, provided the instrument be in the hand-writing of the person sought to be charged, (*z*) and the word "signed" before the bailee's name raises no presumption that the document is not an original. (*a*) If a man cannot write, he may make his mark. (*b*) In fact it has been intimated that a mark was a good signature, even if the party signing was able to write his name. (*c*) The signature is also good, when the pen is guided by an

(*x*) *Armstrong* v. *Ausman*, 11 U. C. Q. B. 498: see *Bryan* v. *White*, 2 Robertson 517, wherein it appears that the word "attestation" means "being present and seeing the execution."

(*y*) *Hunt* v. *Adams*, 5 Mass. 359: *Chason* v. *Bailey*, 14 Johns 484: *Schmidt* v. *Schmaelter*, 45 Mo. 502.

(*z*) *Taylor* v. *Dobbins*, 1 Strange 399: *Saunderson* v. *Jackson*, 2 Bos. and P. 238: Chitty, Jr., on Bills 10.

(*a*) *Becker* v. *Woods*, 16, C. P. 29.

(*b*) *George* v. *Surrey*, 1 M. & M. 516: E. C. L. R. vol. 22.

(*c*) *Baker* v. *Denning*, 8 Ad. & E. 94: see *Harrison* v. *Elving*, 3 Q. B. 117.

amanuensis, the person intending to sign merely touching the top of the penholder. (*d*)

It is desirable that the signature, and of course the instrument, be written in ink, simply as a matter of permanence and security, but, if in pencil, it is none the less legal on that account. "There is no authority for saying that, when the law requires a contract to be in writing, that the writing must be in ink. There is not any great danger that our decision will induce individuals to adopt the mode of writing by pencil in preference to that in general use. The imperfection of this mode of writing, its liability to obliteration, and the impossibility of proving it when so obliterated, will prevent its being generally adopted." (*e*) If the name be printed, it is sufficient, but in such case the name cannot prove itself. Adoption by the party as his signature is necessary to be proved. (*f*)

Any hieroglyphic, though perhaps not a flourish, will be sufficient, provided such be adopted by the signer as his signature, but while the full name need not be written, at least the surname should appear. The initials, however, have been held to be sufficient; (*g*) though there is some doubt as to this, (*h*) unless the initials are intended as a signature by the party who writes them (*i*). The objection to a mark, initials, or anything short of the written name, is not to its sufficiency as a signature, but to the difficulty

(*d*) *Helshaw* v. *Langley*, 11 L. J. Ch. 17.

(*e*) Abbott, C.J., *Geary* v. *Physic*, 5 B. & C. 234, E. C. L. R. vol. 11: 7 Dow. & R., 653 S. C.: *Jeffery* v. *Walton*, 1 Stark 267, E. C. L. R. vol. 2: *Rhymes* v. *Clarkson*, 1 Phil. 22: *Green* v. *Shipworth*, 1 Phil. 53: *Dickenson* v. *Dickenson*, 2 Phil 173.

(*f*) *Schneider* v. *Norris*, 2 M. & S. 286: *Brown* v. *Butchers Bank*, 6 Hill, 443.

(*g*) *Merchants Bank* v. *Spicer*, 6 Wend. 443: *Palmer* v. *Stephens*, 1 Denio, 471.

(*h*) Benjamin on Sales, 4th Am. ed. 280.

(*i*) See remarks of Lord Westbury in *Caton* v. *Caton*, L. R. 2 H. L. 127, 143: *Chichester* v. *Cobb*, 14 L. T. (N.S.) 433: Leyden's Vendor and P. 144, ed. 1862.

occasioned when seeking to establish the writing as the signature of the party sought to be charged. Whatever is written or marked must be with the intention of denoting a signature. (*j*) Therefore a description of a person is not a signature, as, *e.g.*, where one subscribes a letter to a relative with the relationship of the writer as your affectionate mother without more. (*k*)

(22) The Act gives no information as to how the agent is to be appointed. The appointment therefore may be a a verbal one, or it may be by subsequent ratification, as well as by antecedent delegation of authority, (*l*) but when it is by subsequent ratification, the principal must be in existence at the time of the making of the contract, because when no principal is in existence at the date of the contract, there can be no contract so far as he is concerned, and in such a case the agent is personally liable. (*m*)

The authority to the agent may be an express authority. If it is authority to execute a document under seal, then the authority must be under seal. An instrument under this Act is not required to be under seal, hence there need not be any seal to the agent's authority. In fact it need not be even in writing, and if it be in writing no particular form of writing is necessary.

There may be an implied authority. If a principal stands by and concurs expressly or tacitly in the act of the agent he is bound by it. Implied authority, then, can arise in many ways. It can arise in the course of business or from employment, or from repeated recognitions by the principal of the agent's authority.

(*j*) *Hubert* v. *Moreau*, 2 C. & P. 12 Moore C. P. 216,

(*k*) *Selby* v. *Selby*, 3 Mer. 2.

(*l*) *Maclean* v. *Dunn*, 4 Bing. 722: *Gosbell* v. *Archer*, 2 Ad. & E. 500.

(*m*) *Kelner* v. *Baxter*, L. R. 2 C. P. 174: *Scott* v. *Lord Ebury*, L. R. 2 C. P. 255.

Almost any one may be an agent. Even one who is himself unable to make a contract, can act as agent, but probably not one who actually lacks capacity, or who has not the mental power or discretion to consent. (*n*) "As this agency is a mere ministerial office, infants, *a feme covert*, persons attainted, outlawed, excommunicated, aliens and others, though incapable of contracting on their own account, so as to bind themselves, may be agents for these purposes. (*o*)

The bailee or vendee under the Act cannot be the agent of the bailor or vendor. (*p*)

2. (1) Every manufacturer, bailor or vendor shall (2) on application (3) by any proposed purchaser or other interested person (4) within five days (5) furnish full information (6) respecting the amount or balance due or unpaid on any such manufactured goods or chattels, and the terms of payment of such amount or balance, and in case of refusal or neglect (7) to furnish the information asked for, (8) such manufacturer, bailor or vendor shall be liable to a fine not exceeding $50 on conviction before a stipendiary or police magistrate or two justices of the peace. Any person convicted under this Act shall have the right to appeal to the County Judge against such conviction. (*9*)

(1) The Act extends not alone to the manufacturer of the chattel, but also to any other person not the manufacturer, who may be bailor or vendor thereof.

(2) The word "shall" has to be construed as imperative as distinguished from the word "may," which is construed as permissive. (*a*)

(3) The statute does not point out how this application is to be made. There is a course settled by statute, to be pursued when the application is made by letter, (*b*) but there is none so fixed, when the application is a verbal one,

(*n*) Daniel on Negotiable Instruments, 229.
(*o*) Chitty on Bills, 13th Am. ed. [28] 36.
(*p*) *Shorman* v. *Brandt*, Ex. Ch. L. R. 6 Q. B. 920.
(*a*) R. S. O. 1887, cap. 1, sec. 8, sub-sec. 2.
(*b*) Section 3, *post*.

and there is nothing to prevent the application being by word of mouth. A verbal application is, however, a highly objectionable course to adopt, not because there is any provision against such being done, but because such a practice opens the door to much uncertainty of fact, and possible miscarriage of justice, in the event of an action being taken on an alleged refusal of a verbal application.

When made by letter the following is suggested as a form.

To of

Sir,

I (*name in full*) am a proposed purchaser of (*or*) interested in the following manufactured chattel, namely: (*here describe the same*) now in the possession of (*give the name and description in full of the person in whose possession the chattel is*).

I request full information respecting the amount due, or the balance due or unpaid to you, if anything, on said manufactured chattel, and the terms of payment of such amount or balance.

My name is (*here give name in full*) and my post office address to which a reply may be sent is (*here give name of post office*).

Dated at this day of A.D. 188 .

(*Signature of applicant*)

(4) It is not everyone who is entitled to the information required to be given by the manufacturer, bailor, or vendor. Only a proposed purchaser or other interested person in the chattel can compel the manufacturer, bailor, or vendor to furnish the information.

A proposed mortgagee is a proposed purchaser *pro tanto*, therefore he comes within the statute; but it is more difficult perhaps to determine the extent of the meaning to be given to the words, "or other interested person." Do these words mean a future as well as a present interest? Their use is in the present tense, while the reference to a purchaser is in the future, and a legislative distinction may have been intended.

The Bill of Sale and Chattel Mortgage Act, (*c*) uses words to clearly indicate an intended interest. A person contemplating giving credit to the bailee or vendee of a chattel has not a present interest therein and the possibility of credit being given and thereby a future interest being acquired, is too remote to establish such person in the character of an "interested person." The opinion is ventured that even a creditor who has not established his right to proceed against the chattel is without the class included in the term "interested person." On the principle of *ejusdem generis* the words "or other interested person" have a meaning, somewhat narrowed by the preceding words "any proposed purchaser," (*d*) and it is quite possible the very purpose of legislation may be defeated on account of the absence of clear and unambiguous words. The word "person" mentioned in the clause includes any body corporate, or politic, or party, and the heirs, executors, administrators, or other legal representative of such person to whom the context can apply according to law. (*e*) In case of dispute the onus would be upon the person making the demand, to show that he was entitled under the Act to the information asked for.

(5) The five days begin to run from, and exclusive of, the day upon which the application is made. If the application be made on the first of August, then the information must be furnished on or before the 6th of August following, (*f*) but the application is not made until it be received, and hence the five days begin to run from and exclusive of the day of the date, when the application is received, and the information is received, when it is given by regis-

(*c*) R. S. O. cap. 125, sec. 4.
(*d*) See *Evans* v. *Mostyn*, 2 C. P. D. 547: *Manton* v. *Tabois*, L. R. 30 Ch. D. 92.
(*e*) R. S. O. 1887, cap. 1, sec. 8, sub-sec. 13.
(*f*) *McLean* v. *Pinkerton*, 7 A. R. 492.

tered letter, deposited in the post office, (*g*) thus more than five days may elapse before the information is received, and yet the Act be complied with.

Sunday counts as one day, whether it intervenes, or be the first or last day of the five. When by statute a certain number of days is given for doing an act, the last of which happens to fall on a Sunday, that day is in such cases included in the time given, and the party has no further time within which to do the act, unless the statute expressly provide, which this statute does not, that it may be done on the day following. (*h*) When necessary to carry out the ends of justice, the Court will divide a day, or even an hour, and thus give the party equitably entitled thereto the benefit of every moment of time, (*i*) but in determining the operation of a statute the fraction of a day is not taken into consideration. (*j*)

(6) The statute suggests a course which should be adopted in furnishing the information asked for. (*k*) This course should in all cases be followed, not that any other, even one by word of mouth, is illegal, but because in any other than that suggested by the statute the duty, possibly a difficult one, of proving that the information was given, would rest upon the manufacturer, vendor, or bailor, whereas the information is presumed to have been received by the person applying for it, if the statutory course is proved to have been followed. The following is suggested as a simple and sufficient form to be used in supplying the information demanded.

(*g*) Section 3, *post*.

(*h*) *McLean* v. *Pinkerton*, 7 A. R. 490; *Gibson* v. *Michael's Bay Lumber Co.*, 7 O. R. 746; *In re Parke*, 13 L. R. Chy. Ir. 85.

(*i*) *Beckman* v. *Jarvis*, 3 Q. B. 280.

(*j*) *Mitchell* v. *Dobson*, 3 L. J. 185.

(*k*) See sec. 3, *infra*.

To of

(the name and post office address given by the person enquiring.)

Sir,

The amount due (*or*) The balance due (*or*) The amount unpaid (*or*) The balance unpaid on that certain manufactured chattel referred to by you in your application for information bearing date the day of 188 , and received by the undersigned on the day of 188 , is the sum of $. The terms of payment of such amount (*or*) balance are as follows *(here state fully the sum to be paid, the time or time of payment, with or without interest if on, or by way of promissory note, or by way of rent or otherwise).*

This statement is mailed to you at the above address and registered.

Dated this day of

at in the

(Signature of manufacturer, or vendor, or bailor).

(7) The refusal or neglect is the refusal or neglect of the manufacturer, bailor, or vendor, to whom application is made. No provision is made in case the application is to a person in the employ, or the agent, of the manufacturer, bailor, or vendor. The application then must be brought home to the knowledge of the manufacturer, etc., before the proceedings consequent upon a refusal or neglect can be taken.

(8) It is only the information *asked for* that must be furnished, and then not beyond that which the statute mentions. Should the application confine the information wanted within the scope of information compellable under the statute, then the manufacturer cannot be proceeded against for not furnishing the full information provided for in the statute.

If the words "within the time aforesaid" had been added after the word "for" in the seventh line of this section, a doubt would not arise, which may now arise, as to whether the manufacturer renders himself liable to the penalty mentioned when he omits to furnish the information until after the expiration of the period of five days.

(9) For proceedings on appeal see Rev. Stat. O. (1887) cap. 75, p. 802.

3. The person (1) so enquiring (if by letter) shall give a name and post office address to which a reply may be sent (2) and it shall be sufficient if the information aforesaid be given by registered letter deposited in the post office (3) within the said five days (4) addressed to the person enquiring at his proper post office address, (5) or where a name and address is given as aforesaid, addressed to such person by the name and at the post office so given. (6)

(1) The person so enquiring must be a proposed purchaser or other person interested in the chattel. (*a*)

(2) It seems to be imperative on the person applying to give a name and post office address to which a reply may be sent, and yet the duty does not seem to be a condition precedent to a reply being sent, because provision is made by this section for sending the reply to the person enquiring at *his proper* address, *or* to the written address *when given*, which latter address may not be the *proper address* of the person enquiring. (*b*) When an address is given the information must be sent to that address; if none is given then to his proper address.

(3) If the letter is deposited in the post office it is not necessary to prove that it was received. Any loss or miscarriage will not prejudice the sender. (*c*) The statute permits and justifies mailing the information, which, in effect, is the same as if the enquirer gave instructions so to send the information (*d*). The letter should be posted at the general post office, or at an authorized receiving house. (*e*)

(*a*) *Ante* sec. 2, foot note 4.

(*b*) See *Eastern Bank* v. *Brown*, 17 Me. 356: *Crowley* v. *Barry*, 4 Gill. 194; *Bell* v. *Hagerstown Bank*, 7 Gill. 216: *Barmester* v. *Barron*, 17 Q. B. 828.

(*c*) *Warwick* v *Noakes*, Peake N. P. 67: *Parker* v. *Gordon*, 7 East 385; *Dobree* v. *Eastwood*, 3 C. & P. 250; *Stocken* v. *Collen*, 7 M. & W. 515.

(*d*) *Nat. Bank of Bellefonte* v. *McManigle*, 69 Penn St. 156.

(*e*) *Hawkins* v. *Rutt*, Peake's N. P. C. 186.

Delivery to a mail-carrier is not sufficient. (*f*) The post-mark is *prima facie* evidence that the letter was mailed in the office to which the marks relate on the day designated, (*g*) but not conclusive evidence, (*h*) and the genuineness of the post-mark may be proved, not alone by a post office employee, but by any witness. (*i*) Should the letter miscarry through the indistinctness of the handwriting of the manufacturer, vendor or bailor, then the statute will not have been complied with. (*j*) It will not be sufficient to show that the letter was placed in a tray to be carried to the post office, and that in the usual course of the manufacturer's business all letters deposited in the tray were carried to the post office by a clerk, (*k*) though it might be sufficient if the clerk established that, though he had no recollection of the particular letter, he invariably carried to the post office all the letters found in the tray. (*l*)

(4) The person to whom application is made for information has five days from the day of the date of the application within which to deposit the letter containing the information in the post office. The time does not begin to run until the application is received, which may not be until the second day, or even later, after the application was mailed. If the second day, then that day is excluded, the time beginning to run on the third day, which

(*f*) *Hawkins* v *Rutt*, *supra*.

(*g*) *Early* v. *Preston*, 1 Pat. and Heath 228: *Crawford* v. *Branch Bank*, 1 Ala. 205: *New Haven Co. Bank* v. *Mitchell*, 15 Conn. 206: *Archangelo* v. *Thompson*, 2 Camp. 620: *Rex* v. *Plumer*, Rus. & Ry. 264: *Langdon* v. *Hulls*, 5 Esp. 156: *Fletcher* v. *Braddyll*, 3 Stark 64.

(*h*) *Stocken* v *Collin*, 7 M. and W. 545: 9 C. & P. 653 (38 E. C. L. R.)

(*i*) *Woodcock* v. *Houldsworth*, 16 M. and W. 124: *Fletcher* v. *Braddyll*, *supra*.

(*j*) *Hewitt* v. *Thompson*, 1 Mood & Rap. 543.

(*k*) *Hetherington* v. *Kemp*, 4 Camp. 194: *Hawkes* v. *Salter*, 4 Bing. 715, E. C. L. R. vol. 13: 1 Mo. & P. 750 S. P. See 3 Camp. 379: 1 M. & Sel. 567 S. C.

(*l*) *Skilbeck* v. *Garbett*, 14 L. J. 338 Q. B.: 7 Q. B. 846.

becomes the first day of the five, then on the fifth day therefrom, the information is posted, and if the letter containing it be not received until (say) the second day after day of mailing, a period of nine days will have elapsed, and yet the statute be not disregarded. (*m*)

(5) The statute appears to contemplate an omission by the applicant to furnish a post office address, and yet the duty of the applicant to do so appears to be imperative. What is a man's *proper* address? The office to which a person actually goes for his letters is always the proper one, even though he may not live there or have his place of business there, (*n*) but if such is not the office where he receives his letters then the information should be directed to the post office at or nearest to the applicant's place of residence. (*o*) Care should be exercised in writing the address, for, should the letter miscarry by reason of a confused or indistinct address, the information will not be considered as having been furnished. (*p*)

A general address will hardly be sufficient, especially when the information is intended for one at a large place, for example "Mr. Jones, Toronto," is a direction more likely than otherwise not to reach the person for whom it is intended, (*q*) but, if the first name were prefixed, it might be sufficient. (*r*) Should there be two places of delivery in one town, an address to the town itself will be sufficient, unless it be known at the time to the sender of the letter at which of the two post offices the party

(*m*) See *ante* section 2, foot note (5).

(*n*) *Farmers Bank* v. *Gurnell*, 26 Grat. 137: *Bressard* v. *Levering*, 6 Wheat. 102.

(*o*) *Bank of Columbia* v. *Lawrence*, 1 Pet. 582: *Bank of Geneva* v. *Howlett*, 4 Wend. 328: *Mercer* v. *Lancaster*, 5 Barr, 160: *Jones* v. *Lewis*, 8 W. & S. 14.

(*p*) *Hewitt* v. *Thompson*, 1 Mood & Rob, 543.

(*q*) *Mann* v. *Moors*, 1 R. & M. 249: *Clarke* v. *Sharpe*, 3 M. & W. 166.

(*r*) *True* v. *Collins*, 3 Allen 440.

receives his letters. (*s*) If a person usually receives his letters at the place where he is engaged in business, then the information should be sent there, but if such place is not known, then the letter should be sent to the place where the person lives. (*t*) Where it is known that a party receives letters at two different post offices, then it would be safer to direct the information asked for to both addresses, but a letter addressed to either place will be sufficient, (*u*) and it will be sufficient if addressed to one post office, equi-distant with another post office, from the party's residence, although the latter post office is where he usually receives his letters. (*v*) A place of temporary sojourn is not a proper address whereat to send information; (*w*) but if the information is requested by a member of the House of Commons or Legislative Assembly it will be sufficient to send the reply to the applicant addressed at the place where the bodies are in session, (*x*) but this rule will only apply during the period of session.

(6) Care should be taken to address the information to the post office and by the name given. The statute, then, stands between the person applied to and the person applying, and the former runs no risk. It will always suffice to follow the direction given by the applicant although the address given be not that whereat the applicant usually receives his letters. (*y*)

(*s*) *Morton* v. *Westcott*, 8 Cush. 425: *Cabot Bank* v. *Russett*, 4 Tidy 167: *Bank of Manchester* v. *Slason*, 13 Vt. 334: *Downer* v. *Remer*, 21 Wend. 10.

(*t*) *Seneca Co. Bank* v. *Neass*, 3 Coms. 442: 5 Denio 329.

(*u*) *Exchange* v. *Boyce*, 3 Rob (La) 307. See *Chonteau* v. *Webster*, 6 Mete 1.

(*v*) *Rand* v. *Reynolds*, 2 Grat 171.

(*w*) *Runyon* v. *Mountfort*, Beebee 371: *Stewart* v. *Eden*, 2 Caines 121.

(*x*) *Chonteau* v. *Webster*, 6 Mete 1: *Graham* v. *Sangston*, 1 Md. 59: *Marr* v. *Johnston*, 9 Yerg. 1.

(*y*) *Eastern Bank* v. *Brown*, 17 Me. 356: *Crowley* v. *Barry*, 4 Gill 194.

4. If any manufacturer, bailor or vendor (1) of such chattel or chattels (2) or his successor in interest (3) where there has been a conditional sale or promise of sale, (4) take possession thereof for breach of condition, (5) he shall retain the same for twenty days, (6) and the bailee or his successor in interest may redeem the same within such period (7) on payment of the full amount then in arrear, together with interest and the actual costs and expenses of taking possession which have been incurred. (8)

(1) The manufacturer, bailor, or vendor are those mentioned in section one. It is not indispensable that the article conditionally sold or promised to be sold, should belong to the owner. It might be sold by a third party with the owner's consent.

(2) See *ante* section one, note (4).

(3) Any one who acquires the entire interest of the manufacturer, bailor or vendor, becomes the successor in interest of such manufacturer, bailor and vendor. A mortgagee of the chattel succeeds the bailor in interest. (*a*) In such a case the bailee might properly decline to give up the chattel to the bailor, because to do otherwise would render the bailee liable to an action. (*b*)

(4) Unless there has been a conditional sale or a promise of sale, this section has no application. The writer ventures the suggestion that the term conditional sale is not appropriately used here or throughout the statute. A conditional sale, strictly speaking, appears to be a sale with right of *re*-purchase in the vendor. This statute is intended to meet the case of a sale with right of purchase in the vendee. In the one case the sale is made with right of re-purchase in the vendor: in the other case the sale is not yet really made, but the right of purchase is in the vendee. In the one case the property passes; in the other

(*a*) *Everest* v. *Hale*, 67 Me. 497.

(*b*) *European and Australian Royal Mail Co.* v. *Royal Mail Steam Packet Co.*, 8 Jur. N. S. 136: 30 L. J. C. P. 247.

the possession only passes. (*bb*) An instance of a promise of sale, or an agreement to sell upon a condition, is found in the case of *Stevenson* v. *Rice*, (*c*) where the agreement was as follows :—

Received from Weber & Company a seven octave rosewood piano, No. 6854, on hire for three months, at $6 per month, payable in advance, the said piano being valued at $300, which sum I agree to pay in the event of the said instrument being destroyed, injured, or not returned to the said Weber & Co. on demand, free of expense, in good order, reasonable wear excepted. It is agreed that I may purchase the said piano for the sum of $300, payable as follows :—Three promissory notes, payable in one, twelve and twenty-four months from the date hereof. The whole to be paid within the said time with interest at seven per cent. per annum from date. But until the whole of the said purchase money be paid, the said piano shall remain the property of the said Weber & Co., on hire by me. And in default of the punctual payment of any instalment of the said purchase money, or of the said monthly rental in advance, the said Weber & Co may secure possession of the said piano without any previous demand, although a part of the purchase money may have been paid, or a note or notes given by me on account thereof, this agreement for sale being conditional, and punctual payment being essential to it. But in the event of the said piano being so returned to the said Weber & Co. in good order, any sum received on account of the purchase money beyond the amount due for rent, and any expenses incurred reference to the said instrument will be paid.

Witness, } (Signed) JEROME MAICK.

(*bb*) For instance, of conditional sales wherein the property passes, see *ante* p. 3, note (3).

(*c*) 24 U. C. C. P. 215.

Another instance is found in *Newhall* v. *Kingsbury*, (*d*) where a mowing machine was agreed to be sold, the price therefor being paid in instalments, but the machine was not to become the property of the vendee until paid for. Another instance was in *Howland* v. *Johnson*, (*e*) where a sewing machine was agreed to be sold; another in *Lathem* v. *Sumner*, (*f*) where a piano was so sold; and other instances in the following several cases: *Singer Sewing Co.* v. *Treadway*, (*g*) *Howe Machine Co.* v. *Willie*, (*h*) *Preston* v. *Whitney*, (*i*) *Johnson* v. *Whittemore*, (*j*) *Hine* v. *Roberts*, (*k*) *Third National Bank of Syracuse* v. *Armstrong*, (*l*) *Minneapolis, etc. Co.* v. *Holly*, (*m*) *Ketchum* v. *Brennan*. (*n*) And again another instance in the case of *Whelan* v. *Couch*, (*o*) wherein the agreement was in the following words:—

"This agreement made this thirty-first day of August, 1874, between John Whelan of Toronto, saloon-keeper, and Josiah Thomas Couch, of the same place, saloon-keeper. The said Whelan hath agreed to sell, and the said Couch to purchase the right to use the fixtures of bowling alley in and pertaining to the premises in rear of number sixty-six, on the west side of Jarvis street, in the city of Toronto, as now used by the said Whelan, and access to use the same thereto from Jarvis street, together with the beds, balls and pins only (as the other fixtures and fittings do not pertain to the bargain), for the sum of ten hundred and seventy-eight dollars in gold, payable three hundred and fifty

(*d*) 131 Mass. 445.
(*e*) 7 Daley 297.
(*f*) 89 Ill. 233.
(*g*) 4 Brad. 57.
(*h*) 85 Ill.
(*i*) 23 Mich. 260, 267.
(*j*) 27 Mich. 463, 470.
(*k*) 48 Conn. 267.
(*l*) 25 Minn. 530.
(*m*) 27 Id. 495.
(*n*) 53 Miss. 596.
(*o*) 26 Grant 74.

dollars in cash at this time, and one hundred and nine dollars on the first day of each of the months of October, November and December next ensuing the date thereof, and the sum of fifty-nine dollars on the first day of January next, 1875; and the further sum in equal payments of nine dollars per month (the first of such payments of nine dollars to be made on the first day of February, 1875), on the first days of each and every month after the said first day of January as aforesaid, until the full balance of said purchase money shall have been paid in full without interest. The said Couch to have possession on the first day of September next, but only as in the nature of one subservient to said Whelan, and he is not to have any other right or title to the place, nor is this agreement intended to be complete nor to operate in favour of said Couch until the whole of the said payments have been made, when this right or title shall be considered complete. And in case of default in the after payments, as above, or any of them, all matters hereunder are supposed and considered to fall through, and moneys paid hereunder to be forfeited to said Whelan. It is further agreed that said Couch is to keep the place orderly, quiet, decent and peaceable, and well cleaned, and to close the place at twelve o'clock each night, and open at six o'clock each morning. He shall also keep the place open, in good running order, each and every lawful day and night, and properly managed and looked after, and make it as productive as possible.

"The players at each alley to have the privilege of playing three balls for the benefit of the house.

"The place and things pertaining to said alleys passing by this agreement to be insured.

"The said Couch shall conduct no other business upon said premises. Time to be of the essence of this agreement.

"The said beds, balls and pins are not to be removed from said premises until paid for in full.

"As witness our hands and seals this thirty-first day of August, 1874.

JOHN WHELAN. [L. S.]
J. T. COUCH, JR." [L. S.]

(5) Upon breach of condition, the vendor may at once take possession of the chattels, and, so far as the legal rights of the parties are concerned without reference to this statute, he may henceforth treat the chattels absolutely as his own, regardless of the contract under which they were agreed to be sold. He may sell them or give them away; squander them or destroy them. (*p*)

This statute appears only to contemplate the case of possession being taken as a breach on condition. It does not, in express terms, interfere with the common law right to take possession at any time, even before breach of condition, when by the contract the vendor retains in himself the ownership, and does not provide for possession being had by the vendee until default or condition broken. If the contract do not contain a clause giving the vendee the right to possession until default, or until condition broken, then possession taken at any time under such a contract, provided it retain the ownership in the vendor, is a possession which the vendor had a right to acquire without reference to the vendee, and would effect the same result, as if the taking of possession had resulted from the act of the vendee. (*q*)

(*p*) Jones on Ch. Mtge., 2nd Ed. p. 1. *Pate* v. *Parmley*, 43 How. (N.Y.) Pr. 445: 34 N. Y., S. C. 398: *Tompkins* v. *Batie* 11 Neb. 147, 151.

(*q*) *Smith* v. *Fair*, 11 A. R. 763.

Possession follows the property, is the rule of law. The right of possession is an incident to the right of property. The property being in the vendor, the right to possession is in him too, provided the contract does not otherwise provide, and therefore the vendor may assume possession at any time. (*r*)

This rule of law, however, may be relaxed where an implication arises that possession was unquestionably intended to remain with the vendee. (*s*)

Such an implication may arise in all those instances wherein the absolute use and possession of the chattel is indispensable to the performance by the vendee of his covenants in regard thereto; (*t*) but it does not appear that the simple reservation of the right to the vendor to enter and take possession upon default in payment and sell to satisfy his claim, will override the general rule of law as above stated. (*u*)

This feature of the law is only important, in regard to the present subject, if it be found that the statute, by providing for a course to be pursued when possession is taken for breach of condition, does not by implication or otherwise modify the common law doctrine, as to taking possession above referred to. The view is taken that the statute does not provide against such a taking possession, and the anticipation is indulged, that the manufacturer, seeking to evade the trouble to them of compliance with the statute, will act upon their common law right whenever it is possible so to do.

(*r*) *Porter* v. *Flintoft*, 6 C. P. 335: *White* v. *Morris* 11 C. B. 1015: *Ruttan* v. *Beamish*, 10 C. P. 90: *McAuley* v. *Allen*, 20 C. P. 417: *Samuel* v. *Colter*, 28 C. P. 240: *Coles* v. *Clark*, 3 Cush. (Mass.) 399: *Hall* v. *Sampson*, 35 N. Y. 274: *London* v. *Emmons*, 97 Mass. 37.

(*s*) *Samuel* v. *Colter*, *supra*: *Bingham* v. *Bettison*, 30 C. P. 438: *Wheeler* v. *Montefiori* 2 Q. B. 133: *Albert* v. *Grosvenor Invest Co.*, L. R. 3 Q. B. 123.

(*t*) *Babcock* v. *McFarland*, 43 Ill. 381.

(*u*) *Ferguson* v. *Thomas*, 26 Me. 499: *Smith* v. *Fair*, 11 A. R. 763.

If there is a license to the vendor in the contract to take possession upon default, the license is irrevocable, and the vendor may upon default, in whole or in part of the purchase money, enter the buyer's house and forcibly remove the chattel; (*v*) but the entry must be made in a reasonable manner and without needless violence, (*w*) and will not justify the vendor in creating a breach of the criminal law in order to acquire the property. (*x*) He may go on another man's land to get his chattel, (*y*) at least, if he can show it was not on the land through his own fault or neglect, (*z*) and even then he may do so at the risk of having to pay any damages incurred in exercising this right.

(6) The twenty days is exclusive of either the first or last day of the taking possession. This is in accordance with the general rule as to the computation of time, which is to make the first day inclusive, and the last day exclusive, or *vice versa*. (*a*)

Sunday is counted as one day whether it be the first or last day or intervened. (*b*)

(7) The vendor, having taken possession, must do nothing calculated to prevent restoration of the property in as good and sound a condition as when taken, in the event of the bailee deciding to redeem, at the end of the period of twenty days. Should he so act as to prevent restoration, he becomes amenable to the law, and liable in damages for placing the property beyond redemption. This not only is

(*v*) *Walsh* v. *Taylor*, 39 Md. 592: *McClelland* v. *Nichols*, 24 Minn. 176.
(*w*) *Drury* v. *Herrey*, 126 Mass 519: *Churchill* v *Hulbert*, 110 Mass. 42.
(*x*) *London Co.* v. *Drake*, 6 C. B. N. S. 768.
(*y*) *McGregor* v. *McNeill*, 32 C. P. 538: *Wolfe* v. *Home*, 2 Q. B. D. 355 *Saint* v. *Pelley*, L. R. 10 Ex. 137.
(*z*) *Read* v. *Smith*, Ber. 173.
(*a*) See cases cited Barron on Bills of Sale, etc., 2nd ed., p. 317.
(*b*) *McLean* v. *Pinkerton*, 7 A. R. 490.

the result of the present statutory enactment, but it is the law in those cases wherein the vendor takes possession, prior to condition broken, by virtue of the omission in the contract of the right to possession being with the vendee. (*c*)

Not only can the bailee redeem, but the right is given to any one who is his successor in interest. His mortgagee may be such a successor in interest, and should the mortgagee redeem, then his interest would merge in the higher or greater interest, and he would become owner. (*d*) But for the statute the vendor might take the property from the vendee, or from any one claiming through him, though he be a purchaser or mortgagee in good faith, and without notice of the condition, and deprive them of all right or interest in the property, (*e*) but now all claiming under, from, or through the bailee has an equal right to redeem within the statutory period of twenty days. The right is, too, possessed by the vendee's vendee, his mortgagee, executor or administrator or legal representative. No one entitled to redeem can in any way impair his right to redeem. This statutory right to redeem is now paramount to the instrument itself and may be enforced even in opposition to its terms, as for instance, in defiance of an agreement by the bailee in the instrument of bailment to abandon his right of redemption, upon his failure to perform the condition. (*f*)

(8) The amount can be ascertained by adopting the proceedings given by section 2 and 3, *ante* foot note (6), p. 45.

(*c*) Lush, J., *Albert* v. *Grosvenor Investment Co.*, L. R. 3, Q.B. 123: *Bingham* v. *Bettison*, 30 U. C. C. P. 438: *Spaulding* v. *Barnes*, 4 Gray. (Mass.) 330: *per* Osler, J., *Smith* v. *Fair*, 11 A. R. 763.

(*d*) *Forman* v. *Proctor*, 9 B. Mon. (Ky.) 124: *Chase* v. *Ingalls*, 122 Mass. 381: *Currier* v. *Knapp*, 117 Mass. 324.

(*e*) *Whelan* v. *Couch*, *supra*.

(*f*) *Bunacleugh* v. *Poolman*, 3 Daly (N. Y.) 236: *Laveque* v. *Navarine*, 52 Vt. 267.

5. When the goods or chattels (1) have been sold or bailed (2) originally for a greater sum than $30 (3) the same, when taken possession of, as in the preceding section mentioned (4) shall not be sold without five days' (5) notice (6) of the intended sale (7) being first given to the bailee or his successor in interest. (8) The notice may be personally served (9) or may, in the absence of such bailee or his successor in interest, be left at his residence or last known place of abode in Ontario, or may be sent by registered letter deposited in the post office at least seven days before the time when the said five days will elapse, addressed to the bailee or his successor in interest, at his last known post office address in Canada. (10) The said five days or seven days may be part of the twenty days in section 4 mentioned. (11)

(1) See *ante* page 5, note (4).

(2) See *ante* page 11, note (7).

(3) This section does not apply to a bailment wherein the goods when sold were sold for less than $30.00, but, nevertheless the goods, no matter what the price therefor was, have still to be retained by the bailor, when possession is retaken, for a period of twenty days, as provided for by section 4, *ante* page 50.

(4) See *ante* page 50, note (5).

(5) This means five clear days "where there is given to a party a certain space of time to do some act, which space of time is included between two other acts to be done by another person, both the days of doing the acts ought to be excluded in order to insure to him the *whole* of that space of time. Here is a case in which one party (the bailor) is required to give notice to another (the bailee), a certain time before a particular act can be done by the former; the party to whom the notice is given cannot fix the period of the day when it is to be given." But the Act of Parliament allows him five days, as an intervening period within which he may deliberate whether he will do a certain act, viz. redeem, and unless you exclude both the

first and the last day you do not give him the whole five days for that purpose. (*a*) If the statute had said five days *at least*, then it would be apparent beyond question that five complete days were meant to be given, (*b*) but "a day is a day whether 'at least' be added or not." (*c*)

It is to be observed however, that while the words "at least" are omitted in reference to the period of five days, they are used in defining the period of seven days" which must elapse after depositing the notice in the post office.

The five days here mentioned can be five of the days of the twenty, during which twenty days the goods or chattels must be kept so as to permit of redemption, but in order to so compute the period of five days, the necessary notice must be given not later than on the fourteenth day of the twenty days so as to allow the last of the five days to expire before the end of the term of twenty days.

(6) The following is a form of notice which may be adopted.

To , of

SIR:—

Notice is hereby given you that, at the expiration of five days from the day of service of this notice upon you, to wit.: upon day of 188 . I shall proceed to sell the following goods or chattels, namely, (describe the property) at in the of in the county of . The said goods or chattels were taken possession of by me, on account of the breach of condition in the conditional sale or promise of sale thereof by me to you. If you desire to redeem the said goods or chattels you are at liberty to do so, at any time within twenty days after the day of (the day of taking possession) on payment of the sum of $ being the

(*a*) Alderson, B., *Young* v. *Higgon*, 6 M. & W. at p. 54.

(*b*) *Zouch* v. *Dempsey*, 4 B. & Ald. 522.

(*c*) Littledale, J., *Regina* v. *Justices' of Shropshire*, 8 Ad. & Ell. 173: see *Young* v. *O'Rielly*, 24 U. C. Q. B. 173: *Stadacona Fire & Life Ins. Co.* v. *Mackenzie*, 29 C. P. 10: *Hans* v. *Johnston*, 3 O. R. 100.

amount in arrear on such conditional sale together with interest and actual costs and expenses of taking possession which have been incurred.

Dated this day of 18 .

(7) It must not be inferred from the words of the statute that the goods must be sold, but only, if sold, then a certain notice of the intended sale must be given. The bailee is given twenty days from the taking possession by the bailor within which to redeem, a right he cannot deprive himself of, so that the bailee cannot be heard to complain at a sale being made after the time of redemption has elapsed without the right of redemption being exercised.

(8) The notice should be, not only of the intended sale, but of the intended place of sale, for, without the latter, a notice could hardly be said to be a notice of an intended sale.

(9) See *ante* page 46, note (3).

(10) There are three different means of effecting service.

(i) Personal service, which of course is the safest and surest, and therefore the best method to be adopted.

(ii) Service by mail; that is, by depositing in the post office, a registered letter containing the notice, addressed to the bailee at his last known post office address in Canada.

(iii) Service at the bailee's residence or last known place of abode in Ontario.

(11) Personal service is only dispensed with in the event of absence of the bailee, etc., that is absence from his residence or last known place of abode in Ontario. (*d*) Absence of the bailee from the place whereof he is described in the instrument is not necessarily absence from his resi-

(*d*) See *Mayer* v. *Corporation of Vienna*, 10 [illegible] J. 27

dence, because the description in the instrument, at most, is but *prima facie* evidence of the residence of the bailee. (*e*)

Though personal service can be effected, such does not appear to be compulsory, when the alternative method of service by mail is adopted. But if the post is made the means of service, strict care must be exercised in complying with the statute. The letter must be addressed to the last known post office address of the bailee in Canada. If the bailee is known to have left, and to be residing out of Canada a notice addressed to his last known address in Canada, would scarcely be deemed sufficient. In such a case it would be advisable to leave the notice at the bailee's last known place of abode in Ontario. The letter must be registered and it must be deposited in the post office at least seven days before the last day of the five previously mentioned (*f*) would expire. Thus if the five days would elapse on the 20th of the month, the notice must be mailed and registered on or before the 13th of the same month. (*g*)

It is not safe to conclude that a man's residence is at the place whereat his family reside. Nor is it conclusive as to a man's residence to fix it of the place whereat his family reside. (*h*) There may be a constructive residence, as well as actual residence. Absence of the bailee from his constructive residence would not entitle the bailor to dispense with personal service. (*i*) A person may have more than one residence. If he has houses in different places at each of which he keeps an establishment each may be called his residence though he may not go there for years. (*j*)

(*e*) *Miller* v. *Van Norman*, 13 Q. B. 461.

(*f*) *Ante* p. 47, note (4).

(*g*) See *ante* p. 3, notes (4), (5), (6), section 2, note (5).

(*h*) *Miller* v. *Van Norman*, *supra*: see *Bank of Toronto* v. *Fanning*, 17 Chy. 514: *LaPlante* v. *G. T. R. Co.*, 26 Q. B. 479.

(*i*) *Queen* v. *Vice-Chancellor of Oxford*, 7 Q. B. 471.

(*j*) *Walcott* v. *Botfield*, Kay 534, 18 Jur. 570.

By section 4 the period of twenty days must in all cases elapse after possession taken to permit of the bailee redeeming should he be so disposed. This section provides a course which must be pursued should the bailor sell the property after taking possession, but that the bailor may not be compelled to hold the property any longer than twenty days, though the sale cannot take place until their expiration, the proceedings leading up to sale may all be taken within that period.

6. Section 1 of this Act shall not apply to household furniture (1) but pianos, organs, or other musical instruments (2) are not included in the term "household furniture" when it appears in this section; nor shall section 1 apply to chattels (3) where the manufacturer, bailor or vendor, within ten days from the execution (4) of any receipt note, hire receipt, order or other instrument evidencing the bailment or conditional sale given to secure the purchase money, or part thereof, shall file (5) with the clerk of the County Court of the county in which the bailee or conditional purchaser resided at the time of the bailment or conditional purchase (6) a copy (7) of the said receipt note, hire receipt, order or other instrument evidencing the bailment or conditional sale.

(1) What is comprised in the term household furniture? We are told by this section that pianos, organs, and other musical instruments are not included in the term, but apart from this statutory definition as to what is not household furniture it becomes no easy matter to define exactly what is household furniture. It has been said to comprise everything that contributes to the use and convenience of the householder, or ornaments of the house (*a*) and yet whether one regards the ordinary use of language or the technicalities of the law relating to fixtures, such articles as fixtures do not pass under the word "furniture" (*b*) and certainly fixtures are an essential contribution to the use and convenience of a householder, but the intention as to fixtures decides their

(*a*) *Kelley* v. *Powlet*, Amb. 605: see *Paton* v. *Sheppard*, 10 Sim. 192.
(*b*) *Finney* v. *Grice*, L. R. 10 Ch. D. 13.

character (*c*) and according as the intention is, or the special circumstances are, so may fixtures be, or not be comprised within the term "household furniture," (*d*) but as a general rule fixtures are not comprised within the term "furniture" (*idem*). "Fixed furniture," though in a sense fixed, as where glasses are fastened by nails, and the book cases by screws, yet are not fixtures but furniture. (*e*)

(2) For forms relating thereto see appendix.

(3) See *ante*, section one, note (4), p. 5.

(4) In computing the period of ten days, the first day, or the day of execution of the instrument, is excluded, so that if an instrument is executed on the first day of the month, the instrument is duly filed if filed on or before the eleventh day of the same month, unless that day falls on a Sunday, when it must be filed on or before the Saturday previous. (*f*)

The time from which the five days is to be computed is not the date of the instrument, but the date of the execution. The presumption is, that the execution was upon the day of the date of the instrument, but this can be rebutted. The date of a deed or instrument, generally means the time when the deed was really made or delivered, not always the day that may have been inserted in the deed, which sometimes may be an impossible day. (*g*)

(*c*) *Lancaster* v. *Eve*, 5 C. B. N. S.: see L. R. 14 Ch. D. 379: *Smith* v. *Wagoner*, 50 Wis. 155: *Godard* v. *Gould*, 14 Barb. (N. Y.) 662: *Gooding* v. *Riley*, 50 M. H. 400: *Doran* v. *Willard*, 14 N. B. R. 358: *Alexander* v. *Corvil*, 19 N. B. R. 599.

(*d*) *Finney* v. *Grice*, *supra*.

(*e*) *Birch* v. *Dawson*, 2 A. & E. 37.

(*f*) *McLean* v. *Pinkerton*, 7 A. R. 492.

(*g*) *Beckman* v. *Jarvis*, 3 U. C. Q. B. 280: 2 Bla. Com.

Parol evidence is admissible to show that a mistake was made in the insertion of the date. (*h*)

A purchaser or mortgagee finding an instrument under the statute registered more than five days after the date, must not take it for granted that therefore the instrument is void. He is affected with notice, if the fact be, that the mortgage was filed within the period fixed by the statute, because he is presumed to know the law, and to know that the date of the instrument may not, after all, be the date of its execution. (*i*) When asserting any rights under the mortgage it is incumbent on the mortgagee to prove its validity as to filing, and though the statute (*j*), makes the clerk's certificate evidence of registration, it is only *prima facie* so, and therefore evidence can be gone into, to show when the mortgage was left in the clerk's office, for at such time mortgages are considered as filed. (*k*)

(5) Upon receipt of any instrument under the Act, presented to him for that purpose, the clerk shall file the same. It has been held that filing consists in simply handing the instrument to the proper officer; (*l*) but the meaning of the word "file," at common law, namely a thread, string, or wire, upon which writs and other exhibits in courts and offices are fastened or filed for the more safe keeping, and ready turning of the same," (*m*) would indicate that the present statutory use of the word was correct. The simple leaving of a mortgage with the clerk, does not necessarily constitute filing. Should the clerk receive it with instruc-

(*h*) *Shaughnessey* v. *Lewis*, 130 Mass. 355; *Stonebreaker* v. *Kerr*, 40 Ind. 186; Hoadley, 48 Ind. 452; *Holman* v. *Doran*, 56 Ind. 358.
(*i*) *Stonebreaker* v. *Kerr*, *supra*.
(*j*) *Post*, section 16.
(*k*) Jones on Mortgages, 1 Ed., 499.
(*l*) *Graham* v. *Summers*, 25 Minn. 81.
(*m*) Whart. Law Lex.

tions not to register it for a few days, there is no filing within the statute, at least until further orders are received concerning the instrument; (*n*) and the fact of the clerk acting contrary to his instructions, and endorsing thereon the time of filing, or of its receipt by him, will not create a filing within the statute. (*o*)

(6) The instruments mentioned above are to be filed in the office of the clerk of the county court, or union of counties, as the case may be, where the purchaser resides at the time of the execution of the instrument. It formerly was the law in relation to bills of sale and chattel mortgages that registration should take place in the county wherein the mortgagee or bargainee resided, and not in the county wherein were the goods, except in the event of the bargainor residing out of Ontario.

Information can be more speedily acquired by examining the records in a county wherein a man resides or was residing at the time of the registry, than could the necessary information be acquired by being compelled to know where goods were at a certain period of time at which place a search would require to be made. For this reason it is submitted that the amendment made by later legislation (*p*) will not be found to be an improvement, and the law of this statute will be found to be preferable.

Under no circumstances is the instrument to be filed in the county where the goods are if different from the county wherein the purchaser resides. Should such be done the transaction will be invalid.

(*n*) *Low* v. *Pettergill*, 12 N. H. 337; see *Ross* v. *Hamilton* E. T. 3 Vic.: *Foster* v. *Smith*, 13 U. C. R. 243: In *re Ross*, 3 Prac. R. 304; *B. of M.* v. *Munro*, 23 U. C. R. 414: *Kerr* v. *Landley*, 15 C. P. 531; *T. & L. Co.* v. *Cuthbert*, 13 Grant 412.

(*o*) *Town* v. *Griffith*, 17 N. H. 165: *Parker* v. *Palmer*, 13 R. I. 349.

(*p*) 43 Vic. cap. 15, sec. 1

(*q*) *Stowe* v. *Meserve*, 13 N. H. 46.

Registration, in compliance with the Act, is for the purpose of notice. An instrument properly registered within the period of ten days limited by this section, relates back, operates and takes effect upon, from and after the day of its execution.

(7) As the alternative of filing the instrument itself, the statute gives the power of filing a copy thereof.

It generally is the practice under the law relating to bills of sale and chattel mortgages to register the instrument itself, and, for the party entitled thereto, to keep the copy. It is submitted that the better course is that directed by this statute, namely, to register the copy, and for the party entitled thereto to keep the original.

By this means, in the event of the instrument being questioned in a court of law, the expense and trouble of the officer attending to produce the original is avoided. To prove the execution of the instrument, the original must, of course, be produced, and, to do this, under the system generally prevailing of registering the original, the clerk of the court, by whom it is filed, must be subpœnaed to attend.

Far more convenient would it be, therefore, in view of possible litigation, involving the contents, construction, or execution of an instrument, to file a copy, as required by this statute, retaining the original, or to make duplicate originals, filing one, and retaining the other, having attached to the latter the clerk's certificate. (*r*)

The word "copy" is used: but this does not necessarily mean "an exact copy." Where, for instance, in the copy, Gardner's name was spelt with an "e" instead of an "o". The Act does not require the copy filed to be an absolutely exact copy, so long as any errors or omissions

(*r*) *Emmott* v. *Marchant*, L. R. 3 Q. B. D. 555.

in the copy filed are merely clerical, but that it shall be so true that nobody reading it could by any possibility misunderstand it. (*s*)

7. The clerk of the court (1) on receipt of such copy shall (2) duly file the same and cause it to be properly entered in an index book to be kept for that purpose, and shall be entitled to charge ten cents for every such filing and five cents for every search in respect thereof. A clerical error which does not mislead, or an error in an immaterial or non-essential part of the said copy so filed, shall not invalidate the said filing or destroy the effect thereof. (3)

(1) The clerk of the court of the county wherein the bailee or vendee resides. It has been held that, during a vacancy in the office of clerk, the filing is valid when performed by any person in charge of the office for the time being. (*a*)

(2) Upon receipt of any instrument under the Act, presented to him for that purpose, the clerk shall file the same. It has been held that filing consists in simply handing the instrument to the proper officer; (*b*) but the meaning of the word "file," at common law, namely, "a thread, string, or wire, upon which writs and other exhibits in courts and offices are fastened or filed for the more safe keeping and ready turning of the same," (*c*) would indicate that the present statutory use of the word was correct. The simple leaving of an instrument with the clerk, does not necessarily constitute filing. Should the clerk receive it with instructions not to register it for a few days, there is no filing within the statute, at least until further orders are received concerning the instrument; (*d*) and the fact of

(*s*) *In re Hewer, ex parte Kitchen*, 21 Ch. D. 871, sec. 7 *infra*.
(*a*) *Bishop* v. *Cook*, 11 Barb. (N. Y.) 326.
(*b*) *Graham* v. *Summers*, 25 Minn. 81.
(*c*) Whart. Law Lex.
(*d*) *Low* v. *Pettergill*, 12 N. H. 337; see *Ross* v. *Hamilton*, E. T. 3 Vic.; *Foster* v. *Smith*, 13 U. C. R. 243; *In re Ross*, 3 Prac. R. 394; *B. of M.* v. *Munro*, 23 U. C. R. 111; *Kerr* v. *Landey*, 15 C. P. 531; *T. & L. Co.* v. *Cuthbert*, 13 Grant 412.

the clerk acting contrary to his instructions, and endorsing thereon the time of filing, or of its receipt by him, will not create a filing within the statute. (*c*)

(3) See *ante* p. 66, note (7).

8. The manufacturer, bailor or vendor shall leave a copy (*a*) of the receipt note, hire receipt, order or other instrument by which a lien on the chattel is retained, or which provides for a conditional sale, with the bailee or conditional vendee at the time of the execution (*b*) of the instrument, or within twenty days thereafter. (*c*)

9. This Act shall not come into force until the first day of January, 1889.

(*c*) *Town* v. *Griffith*, 17 N. H. 165: *Parker* v. *Palmer*, 13 R. I. 359.
(*a*) See *ante* p. 66.
(*b*) See *ante* p. 63.
(*c*) See *ante* p. 56.

FORMS.

RENT AGREEMENT WITH PRIVILEGE OF PURCHASE.

———————, ————, 18

1. This is to Certify, That I have this day hired from and said has to me leased, for the term of six months, with the privilege of further retaining as long as the rent is promptly paid, a Cabinet Organ, style No. valued at Dollars; for the use of which I agree to pay to said , Dollars per month, payable monthly, in advance, and at that rate for any fraction of a month, at the office of said

2. And in consideration of the renting to me of said Instrument, I hereby agree that it shall be kept at, and not be removed from my premises, viz., without the consent of said, first had in writing; I agree to preserve it carefully, and that when returned to, or otherwise repossessed by said it shall be in as good order as when received by me, ordinary wear from careful use excepted.

3. In case of any damage to said instrument by fire, water, or any cause other than careful use, I agree to pay to said the amount of said damage; and in case of the destruction thereof from any cause, to pay the above valuation, less any amount of rent which may have been paid.

4. Provided, however, and these presents are upon the condition, that if I shall fail to perform any of my agreements as herein provided, said shall have the right without further notice or demand, to take possession of said Organ

and remove the same, and for that purpose to enter any place of mine where said has reasonable cause to believe said Organ to be, without being deemed to have done anything wrongful, and upon such taking, said term and my right to hold or use said Organ shall cease, but without prejudice to the right of said for arrears of rent, if any, or on account of preceding breach of agreement.

Signed,

Post Office address,

5. I HEREBY AGREE that if said continue to hold said Organ and pay rent therefor, on or before the day it is due, as herein provided, until payments have been made, amounting to the valuation aforesaid, said Organ shall become the property of said but until the completion as aforesaid of said payments, said Organ shall remain the property of said

6. For the time any payment is made before it is due, a deduction will be made at the rate of ten per cent. per annum for such time.

Residence,——————

CONDITIONAL SALE OF MACHINERY, WITH STATEMENT BY VENDEE OF OWNERSHIP OF LAND.

AGREEMENT, made the day of in the year of our Lord one thousand eight hundred and eighty

Between of the , , of the first part, and of the of the second part, whereby the said agrees to manufacture for the said , in a good workmanlike manner, the following machinery, that is to say:

The said party of the first part is to be ready to deliver the said machinery free and in good order on the cars on his siding at for station on or about the day of next, after which delivery the same is to be at the risk and expense of the said party of the second part.

The said party of the first part also agrees, if required by the said party of the second part on receiving reasonable notice of the arrival of the said machinery at the place where the same is to be erected for use, to send a competent workman to make the the connections between boiler and engine, and start the engine running or leave it ready to start. But all other materials and labour of every kind to be provided by the said party of the second part.

And the said party of the second part agrees at the proper time and in a convenient manner, to prepare and provide all proper foundations, frames, erections and materials, and a sufficient supply of water convenient to boiler, and all the labour and assistance required for the speedy and convenient erection and putting in running order the said machinery; in default of which, the said party of the first part shall thereupon be freed from further duty or concern in respect of the said machinery.

And the said party of the second part agrees to pay for the said machinery to be manufactured and delivered as aforesaid, the sum of Dollars, when ready for delivery, in cash, or by note, payable as follows:

and interest on the whole amount unpaid to be paid with each payment, and to furnish good, sufficient and satisfactory security. Provided that if any default shall happen to be made in the payment of any such sums of money, then all the said sums then unpaid, whether due or not, shall immediately become due and payable in like manner and with the like consequences and effects as if the time herein mentioned for payment of such sums had fully come and expired.

The property in the said goods shall not pass to the party of the second part until the purchase money and the notes given therefor shall have been fully paid. But the said party of the second part is to have possession and to use the said machinery until default is made in the payment of the price, or of some part thereof. Or if any statements herein made are ascertained to be untrue, or if the said party of the second part becomes insolvent, absconds, encumbers, or attempts to, or does dispose of his property herein mentioned, or has his property seized for debt, rent, or taxes, or leaves the machinery unprotected, or fails to pay his taxes within seven days after lawful demand made therefor, then and in such case the whole debt immediately becomes due and payable and is to bear interest at
per cent. per annum till paid, and the said party of the first part may, at his option, resume possession and recover such costs and damages as he may have incurred in consequence of such default, or of any other cause above stated. And it is further agreed between the said parties, that the said party of the first part shall have a charge upon the said lands for the amount of the said purchase money, until the said notes and all renewals thereof shall have been fully paid. And the said lands are hereby charged with the payment of the said notes and all renewals thereof.

This order and acceptance thereof constitute the whole contract between us, and there is no other agreement between us respecting these articles but what is herein expressed.

The said party of the second part also agrees to insure the said machinery for not less than two-thirds the amount of the purchase money, and the policy to be made "loss, if any, payable to the party of the first part."

And also if he shall require the said party of the first part to superintend the erection of the said machinery as aforesaid, to pay the actual travelling expenses from
aforesaid and back (including board) of the said party of the first part, his workmen, servants and agents for that purpose; and the said parties also agree that the said party of the first

part is not to be responsible in damage or otherwise for any delay or failure in fulfilling the terms of this contract on his part, arising from a strike or strikes of workmen, or from any unforeseen or unavoidable cause.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED, in presence of) SEAL.

) SEAL.

I, the party of the second part in the foregoing agreement mentioned, own and have a deed of, duly registered in my name, acres of land, it being Lot No, Concession Township County the current cash value of which is not less than $ and the same is free and clear of all encumbrance, except

and no interest or instalments are in arrear, and I will not sell or further encumber the same until all notes or other indebtedness to the party of the first part are paid, and the said notes or any renewal thereof and said indebtedness, shall be a charge upon the said lands until fully paid, and the said lands are hereby charged with the payment of the said notes or any renewals thereof.

I also own personal property, not exempt from execution, of the value of at least $ in excess of all my debts and liabilities.

Dated at

the day of 18

FORM OF HIRE OR RENT RECEIPT WITH RIGHT OF PURCHASE.

RECEIVED from (*name of Vendor in full*) *here describe the chattel in detail.*

On hire, for months, at Dollars, per month, payable in advance, the said above described chattel being valued at Dollars, which sum agree to pay in the event of the said Instrument being injured, destroyed by Fire or otherwise, or not being returned to the said on demand, free of expense, in good order, reasonable wear excepted. And I agree that the said Instrument shall not be removed from the premises now occupied by me at without notice to and the consent of

IT IS AGREED, that I may purchase the said above described chattel for the sum of Dollars, payable as follows : and interest on the unpaid principal @ per cent., from date of agreement, but until the whole of the said purchase money be paid, the said instrument shall remain the property of on hire by me. And, in default of the punctual payment of any instalment of the said purchase money, or of the said monthly rental in advance, may resume possession of the said instrument without any previous demand, although a part of the purchase money may have been paid, or a Note or Acceptance given by me on account thereof—this agreement for sale being conditional, and punctual payment being essential to it ; but, in the event of the said instrument being so returned to them in good order, any sum received on account of the purchase money, beyond the amount due for rent and any expenses incurred in reference to the said instrument, will be repaid. On payment in full of purchase money and interest, no rent or hire will be charged.

Dated at this day of , 18

(Name)

(Address)

FORM OF RELEASE OF RIGHT OF DISTRESS BY LANDLORD UPON CHATTELS PURCHASED BY WAY OF RENT RECEIPT OR OTHERWISE.

I the landlord of the house and premises rented by hereby release all claim and right of distress for rent now due or which hereafter may become due for the same upon that certain instrument mentioned in an agreement bearing such date herewith hired by the said from

Dated the day of A.D. 18

Witness

FORM OF HIRE RECEIPT WITH RIGHT OF PURCHASE.

Toronto, 18

THIS CERTIFIES that I have hired of hereinafter called the Vendors, one Sewing Machine, numbered style , on the following terms, viz.:

I have paid this day Dollars, and agree to pay promptly at the office of the said Vendors, at when the same becomes due, without any demand whatsoever to be made therefor, the further sum of Dollars, on the day of each and every month hereafter as a monthly Rent therefor until the sum of Dollars shall have been paid to the said vendors.

And I hereby expressly admit that I have examined and tried the said machine, and that it is now in perfect order and condition.

And it is expressly understood that until the whole sum of Dollars shall have been paid the said vendors, I will neither part with, nor do I acquire, any title to said machine; and in case of my failure to pay any of the said amounts above stated within the time aforesaid, I do hereby authorize the said vendors or any of their agents, without process of law, to retake possession of said machine, and with that object to enter any of my premises to search for or obtain the said machine and to remove the same therefrom, using such force as may be necessary for so doing: and I hereby waive and release any right of action which I might otherwise have against the said vendors, or any of their agents, by reason of their procuring or attempting to procure possession of said machine after default as aforesaid; and I agree to pay all costs and expenses of every kind which may or can arise or accrue to said vendors by reason of such default; but such taking and removal of, said machine shall not relieve me from payment of the rent as herein agreed.

And it is further agreed, that upon default of payment of any of the above instalments, the whole of the balance of the said sum of Dollars shall immediately become due and payable as rent for the said machine.

I also agree not to permit the said machine to be removed from without the written consent of the said vendors, and in the event of the said machine being so removed, the said vendors are to be at liberty to repossess the same forthwith, and the whole balance of rent then remaining unpaid shall forthwith be due and payable by me.

And finally, it is hereby acknowledged that there has not been any alteration or modification of the terms or provisions of this lease, either written or verbal, made by said vendors or any of their agents; and further, that any future modification of its terms or provisions, to be of any binding effect on said vendors, shall be stated in writing on this lease, and be signed by said vendors.

Witness } Residence
P.O. Address

RENT AGREEMENT WITHOUT CONDITIONS OF PURCHASE WHERE LESSORS ASSUME FOR A CASH CONSIDERATION ALL RISKS FROM FIRE.

RECEIVED from

on hire for months, at Dollars per payable in advance. The value of the said is dollars, for which sum I will be responsible, in case of any accident other than fire that may damage or destroy the said instrument; and I further bind myself to return the same, free of expense, in like good order as when received, reasonable wear excepted. And should the above period be extended, this agreement shall continue to be binding.

Dated at Ottawa, this day of , 18

RENT AGREEMENT WITHOUT CONDITIONS OF PURCHASE, LOSS BY FIRE TO BE BORNE BY THE LESSEE.

RECEIVED from Messrs.

on hire for months, at Dollars per payable in advance. The value of the said is Dollars, for which sum I will be responsible, in case of fire or any other accident, that may damage or destroy the said instrument; and I further bind myself to return the same, free of expense, in like good order as when received, reasonable wear excepted. And should the above period be extended, this agreement shall continue to be binding.

Toronto, 18

RENT AGREEMENT WITH CONDITIONS OF PURCHASE.

No.

Received from Messrs. , hereinafter called the vendor (*describe the chattel*) on hire at Dollars per month, payable in advance, the said chattel being valued at Dollars, which sum agree to pay in the event of the said instrument being injured, destroyed, or not being returned to the vendors, on demand, free of expense, in good order, reasonable wear excepted.

It is agreed that I may purchase the said for the sum of Dollars, payable as follows:

but, until the whole of the purchase money be paid, the said shall remain the property of the vendor, on hire by me. And, in default of the punctual payment of any instalment of the said purchase money, at the time above stated respectively, or at any time or times, to which the payment thereof, or any part thereof, may hereafter be extended, or of the said monthly rental in advance, the vendor, or his agent or agents, may, without rendering themselves liable to any action or actions for so doing, enter upon the premises where the said may be, and resume possession thereof, without any previous demand, although a part of the purchase money may have been paid, or a Note or Notes, Draft or Drafts, given on account thereof, and although the same may be then outstanding under discount, this agreement for sale being conditional, and punctual payment being essential to it; but in the event of the said being so assumed by the vendors, and being returned in good order, any sum received on account of the purchase money, beyond the amount due for rent, and any expenses incurred in reference to the said instrument, is to be repaid to me, and any Notes or Drafts received on account of the purchase money are to be

returned to me at maturity. On payment in full of purchase money, and interest, no rent or hire is to be charged to me.

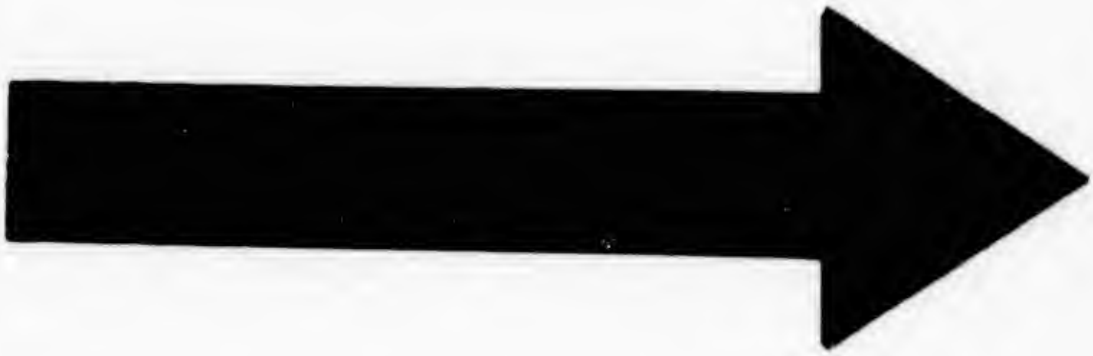
It is further agreed that this receipt and agreement embodies the whole of the agreement between myself and the vendors, with respect to said and I hereby waive all verbal agreements not embodied herein, and agree that I am not entitled to receive credit at any time for any moneys which may be received by the vendors by the discount of any of the Notes, or Drafts, which may been taken by them, on account of said purchase money.

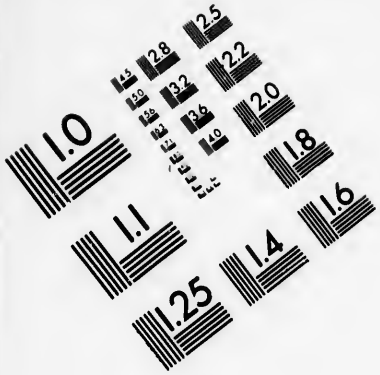
Dated this day of A.D. 18

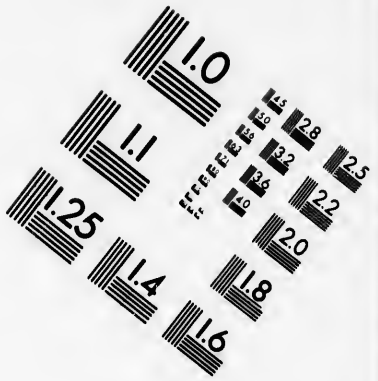
Witness

AGREEMENT TO SELL UPON CONDITION.*

Received from , on hire for three months, at per month, payable in advance, the said chattel being valued at , which sum I agree to pay in the event of the said chattel being destroyed, injured, or not returned to the said on demand, free of expense, in good order, reasonable wear excepted. It is agreed that I may purchase the said chattel for the sum of , payable as follows:—Three promissory notes payable in one, twelve and twenty-four months from the date hereof. The whole to be paid within the said time with interest at seven per cent. per annum from date. But until the whole of the said purchase money be paid, the said chattel shall remain the property of the said , on hire by me. And in default of the punctual payment of any instalment of the said purchase money, or of the said monthly rental in advance, the







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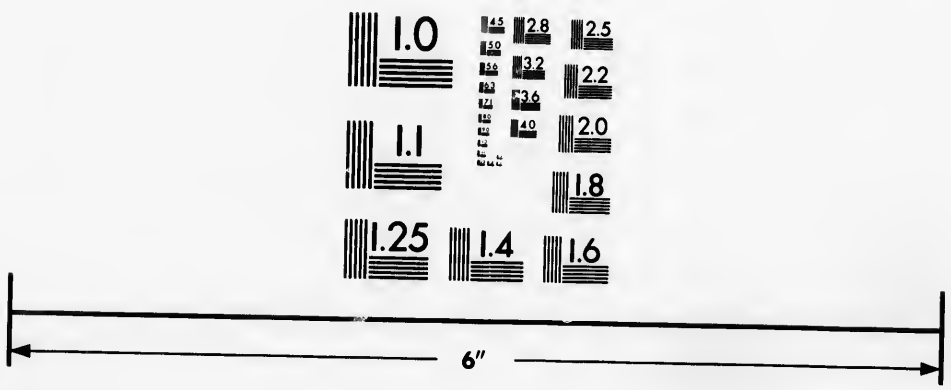

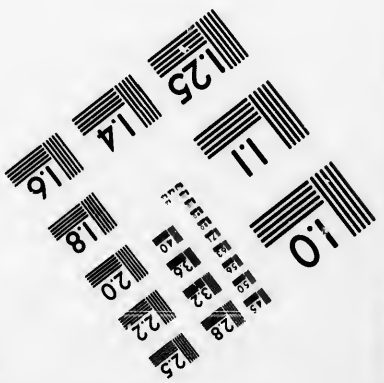

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said may secure possession of the said chattel without any previous demand, although a part of the purchase money may have been paid, or a note or notes given by me on account thereof, this agreement for sale being conditional, and punctual payment being essential to it. But in the event of the said chattel being so returned to the said in good order, any sum received on account of the purchase money beyond the amount due for rent, and any expenses incurred with reference to the said chattel will be paid.

Witness, } (Signed)
}

* This form is taken from *Stevenson* v. *Rice*, 24 U. C. C. P. 245.

ANOTHER FORM. †

This agreement made this thirty-first day of August, 1874, between John Whelan of Toronto, saloon-keeper, and Josiah Thomas Couch, of the same place, saloon-keeper. The said Whelan hath agreed to sell, and the said Couch to purchase the right to use the fixtures of bowling alley in and pertaining to the premises in rear of number sixty-six, on the west side of Jarvis street, in the city of Toronto, as now used by the said Whelan, and access to use the same thereto from Jarvis street, together with the beds, balls and pins only (as the other fixtures and fittings do not pertain to the bargain), for the sum of ten hundred and seventy-eight dollars in gold, payable three hundred and fifty dollars in cash at this time, and one hundred and nine dollars on the first day of each of the months of October, November and December next ensuing the date thereof, and the sum of fifty-nine dollars on the first day of January next, 1875; and the further sum in equal payments of nine dollars per month

(the first of such payments of nine dollars to be made on the first day of February, 1875), on the first days of each and every month after the said first day of January as aforesaid, until the full balance of said purchase money shall have been paid in full without interest. The said Couch to have possession on the first day of September next, but only as in the nature of one subservient to said Whelan, and he is not to have any other right or title to the place, nor is this agreement intended to be complete nor to operate in favour of said Couch until the whole of the said payments have been made, when this right or title shall be considered complete. And in case of default in the after payments, as above, or any of them, all matters hereunder are supposed and considered to fall through, and moneys paid hereunder to be forfeited to said Whelan. It is further agreed that said Couch is to keep the place orderly, quiet, decent and peaceable, and well cleaned, and to close the place at twelve o'clock each night, and open at six o'clock each morning. He shall also keep the place open, in good running order, each and every lawful day and night, and properly managed and looked after, and make it as productive as possible.

The players at each alley to have the privilege of playing three balls for the benefit of the house.

The place and things pertaining to said alleys passing by this agreement to be insured.

The said Couch shall conduct no other business upon said premises. Time to be the essence of this agreement.

The said beds, balls and pins are not to be removed from said premises until paid for in full.

As witness our hands and seals this thirty-first day of August, 1874.

JOHN WHELAN. [L.S.]

J. T. COUCH, JR. [L.S.]

† Taken from *Whelan* v. *Couch*, 26 Grant 74.

FORM OF PROMISSORY NOTE GIVEN FOR PROPERTY, THE TITLE AND RIGHT WHEREIN IS RETAINED BY THE PAYEE.

$ 18

On the first day of 18 , for value received I promise to pay to or Order at his office in Ontario, the sum of Dollars.

The title and right to the possession of the property for which this note is given shall remain in till paid.

Witness

ANOTHER FORM.

$ Lindsay, Ont. 18

On or before the first day of 18 , I promise to pay to or order, at his office in Lindsay, the sum of Dollars, for value received with Interest at seven per cent. per annum until due, and ten per cent. after due until paid.

The express condition of the sale and purchase of the machine for which this note is given, is such that the title or ownership thereof does not pass from the said until this note, or notes given in renewal thereof, is paid with interest; and should I sell or dispose of my property; he may declare this note due and payable, even before maturity of same, and suit may be entered, tried, and finally disposed of in the Court where the office of is located, and he may retake possession of the machine, without process of law, and sell the said machine at public or private sale, the proceeds thereof to be applied upon the amount unpaid of the purchase price.

Witness

ANOTHER FORM.

$

Lindsay, Ont. 18

Months after date I promise to pay or order, at the Dominion Bank here the sum of Dollars with interest at per cent. from date until maturity, and also after maturity of note until paid for value received.

And I agree to the conditions hereunder written.

I further agree to furnish security, satisfactory to the payee, at any time, if required. If I fail to furnish such security when demanded, or if I make any default in payment, or should I dispose of my landed property, the payee may then declare the whole price of the article for which the above note is given, due and payable, and suit therefor may be immediately entered, tried, and finally disposed of in the Court in whose division the payee is, and the payee may retake possession of the machinery without process of law and sell it to pay the unpaid balance of the price whether due or not. Subject to the aforesaid provisions I am to have possession and use of the machinery at my own risk, but the title thereto is not to pass to me until full payment of the price, or any obligation given therefor. These conditions and agreements are to continue in force until the full payment of the price is made.

Witness

I hereby acknowledge that I have, on the date of the within note, received from the payee, a true copy of the above agreement.

Witness

ANOTHER FORM OF NOTE, WHEN THE CONDITION IS THAT THE PROPERTY SHALL NOT PASS, AND THE VENDOR SHALL MAKE REMITTANCES ON SALES MADE BY HIM.

$

Ont., 18

On or before first day of 18 ,
promise to pay or bearer, at
the sum of dollars for value received, with
months' interest at seven per cent.

The Title and Right to the possession of the property for which this Note is given, shall remain vested in the payee until this note is paid, and all returns received by me for said property shall be promptly forwarded to the payee, as collateral security on this note and if default in remitting said notes is made, or should (said property) be carelessly sold or disposed of, or if for any reason the payee should consider this note insecure, they shall have full power to declare it due and payable even before maturity of same.

FORM OF ORDER FOR DELIVERY AND SALE OF SPECIFIC CHATTELS FROM ONE WHO AGREES TO SELL THE SAME AND NO OTHER WITHIN CERTAIN TERRITORY.

To

GENTLEMEN,—

Please enter my order at your regular list price for the season, to be delivered on board the cars at addressed as follows:
about the day of 18 , for which I

agree to give you my note or notes, payable at your office as follows : (*here describe how notes are to be payable*).

Implements.	Number Ordered and Remarks.
Here describe the Implements.	.. ..

Territory

Freights

No travellers are authorized to sell or consign goods on any other terms than those on this sheet.

Positively no verbal arrangements recognized.

The title and rights to the possession of the property for which this sales contract is given shall remain vested in the vendor until fully paid for.

The vendors agree to ship goods to you as herein set forth until further notice.

The undersigned agree to settle for all goods ordered by him from the vendors as herein set forth.

In consideration for the control of the sale of your implement in the above territory, I agree to push the sale of them with energy and to become interested in the sale of no other of the same line of manufacture as made by you.

Name.

P.O.

Ry. Station.

ANOTHER FORM OF ORDER FOR CHATTEL, WITH SPECIAL WARRANTY BY VENDOR.

Toronto, 18

To

Sir,—Please sell us (*here describe the chattel*) and have the same ready about the next, to be delivered at Toronto for station, for which we agree to pay, when ready for delivery, the sum of $ in cash, or by note, payable at your office, Toronto, as follows:

with interest at seven per cent. per annum.

We further agree to furnish satisfactory security if required. We are to have immediate possession and use of the articles, but the property therein is not to pass to us until full payment of the price, and of any obligation given therefor, or for any part thereof. If we make any default, or if the property is seized for debt or rent, the whole amount of the notes is at once to become payable, and to bear interest at ten per cent. per annum till paid, and you may resume possession, and sell the articles, towards paying the unpaid price or balance thereof. This order and your acceptance thereof constitute the whole contract between us, and there is no other agreement between us respecting these articles but what is herein expressed.

SPECIAL WARRANTY.

The above machinery is warranted to be made of good material and with proper usage to work well. If the above machine will not bear the above warranty after a trial of one day, written notice shall be given to and the agent of whom purchased, stating wherein it fails to satisfy the warranty, and reasonable time shall be given to send a competent person to remedy the difficulty, the purchaser rendering necessary and friendly assistance. If the machinery cannot be made to fill the warranty, it is to be immediately returned by the

purchaser to the place where received, free of charge, and another substituted therefor that shall fill the warranty, or the money and notes returned. When at the request of the purchaser a man is sent to operate the above machinery which is found to have been carelessly or ignorantly handled, to its injury in doing good work, putting same in working order again, the expense incurred by him shall be paid by purchaser. Continued possession shall be evidence of satisfaction.

Witness :

DELIVERY ORDER FOR CHATTEL, WITH RIGHT OF PROPERTY RETAINED IN VENDOR.

Lindsay, Ont. 18

To (hereafter called the vendor).

You are hereby instructed by the undersigned (hereinafter called the purchaser), to ship to my address, with such reasonable business despatch as your convenience will permit, from at purchaser's risk and expense to me at in the Province of and in care of the following as per prices agreed upon : *(here describe minutely the property.)*

The above machinery is warranted, with proper usage, to do good work, and to be of good materials throughout and in good order.

It is also agreed that the purchaser will supply competent men to properly operate said machinery.

Each purchaser certifies that he is the owner in fee, in his own right of the property described as follows :

The property in the said goods shall not pass to the purchaser until the purchase money hereinafter mentioned, and the notes given therefor or by way of renewal (if any), shall have been fully paid. Provided that in default of payment of said notes, or

renewals thereof, all payments made shall be forfeited, but the said purchaser to have possession and to use the said machinery until default is made in the payment of the price, or of some part thereof, or of any obligation given therefor. If any statements herein made are ascertained to be untrue, or if the said purchaser becomes insolvent, absconds, is about to abscond, encumbers, is about to encumber, or is disposing of his, or has his, property attached, or sells, or attempts to sell his property or machinery without leave from the said Vendor, or his assigns in writing, then in such case the whole debt and any note or notes given on account thereof shall become due and payable, and the said Vendor or his assigns, may at his option, assume possession of above machinery, with or without legal process, and recover such costs and damages as he may have incurred in consequence of such default, or of any other cause above stated, and any balance remaining unpaid. All prior payments to be considered as rent only.

And the purchaser further agrees with the said Vendor and his assigns, that he shall have a charge upon the said lands for the amount of the said purchase money, and interest upon the said lands and any other land whereof such purchaser is now or shall hereafter own or be interested in until the said notes and all renewals thereof shall have been fully paid, and the said lands are hereby charged with the payment of the said purchase money, notes and all renewals thereof, and interest as hereinafter mentioned, and for the purpose of securing the same, the purchaser hereby grants to the vendor aforesaid, his heirs and assigns, the said land and all such other lands aforesaid, and agrees with the Vendor, that on default (for one month) in payment he, the Vendor or his survivor or his heirs, administrators or assigns shall be entitled to exclusive possession of the said lands, and may, (after one month's previous written notice to the purchaser, his heirs or assigns of his or their intention to exercise this power, which notice may be given by mailing at such notice addressed to the purchaser at the Post Office address hereunder given, or leaving the same at the usual or last place of abode in this Province of the purchaser), sell and

convey, or before sale let or demise to any person or persons all or any of said lands hereby charged, for such consideration as he or they shall deem proper, and either subject or not to any prior encumbrances thereon, and apply the residue of the proceeds (after reimbursing himself or themselves thereout the expenses about such sale or about retaking or removing or endeavoring to retake said machinery, or about the collection of any of said notes) in or towards payment of the then unpaid notes or renewals or purchase moneys aforesaid, and any surplus shall belong to the undersigned or their assigns, and production of any of said notes overdue shall be conclusive evidence to any such purchaser or lessee of such default having been made and continued from the maturity thereof. All moneys which shall be owing to the purchaser for work done by (or by the agents or servants of) the purchaser during any season hereafter, either wholly or partly, with or by the aid of such machinery or any thereof, shall (to the extent of the purchase moneys hereunder, or notes therefor, then overdue or falling due within six months thereafter), belong to and are hereby assigned by the undersigned to the Vendor aforesaid, he to apply to any amounts actually received by him therefrom (less the expenses in collecting same), on account of such moneys or notes overdue or so falling due, and the balance repaid to the purchaser. Non-registration hereof against said lands shall not, nor shall failure or neglect to collect earnings hereby assigned, or to notify persons liable therefor, release or affect the liability of persons liable as surety or endorser for payment of any of said purchase moneys or notes, it being intended that the Vendor shall not be bound to resort to such lands or earnings further than they deem proper for their own security. Failing to make payment at office, expense of collection to be paid by the purchaser. I hereby waive all legal and homestead exemptions as to our real and personal estate. If from any cause not under the control of the Vendor, said machinery is delayed beyond the time agreed for its delivery, no damages shall be claimed by the purchaser.

In consideration whereof, the undersigned agree to receive the same; and to pay freight and charges from place of shipment,

on arrival, and also on delivery to pay the sum of dollars to the said Vendor, his executors, administrators or assigns, in lawful money, on the following terms of payment:

CASH, on or before delivery, $ Balance as follows.

with eight per cent. interest per annum from date until due, and any arrears of interest to be added to the principal annually, and bear interest at rate aforesaid:

And it is hereby agreed that if the said notes are not executed and satisfactory security furnished, as agreed, before the said machinery is used and within ten days after the delivery of the said machinery, then in such case the whole debt becomes due and payable. Witness our hands and seals the day and year above written.

(SEAL).
P. O.
(SEAL).
P. O.
(SEAL).
P. O.

FORM OF AFFIDAVIT OF EXECUTION TO ACCOMPANY NEXT PRECEDING INSTRUMENT FOR PURPOSE OF REGISTRATION.

PROVINCE OF
County of } I *(Name in full of witness:)*
of the of in the County of
in the Province of Ontario, make oath and say:

1.—I was personally present and did see the within instrument duly signed, sealed and executed by the parties thereto.

2.—That the said instrument was executed at

3.—That I know the said parties.

4.—That I am a subscribing witness to the said instrument and duplicate.

Sworn before me at
in the County of this
day of 188

A Commissioner, &c.

ANOTHER FORM OF DELIVERY ORDER.

Lindsay 18

To Messrs.

GENTLEMEN,—Please supply me with one
and ship the same to Station.
Railway, about the day of
next, for which I agree to pay the sum of dollars
on delivery, in payment as follows:
a satisfactory note for $ due
do $ due
do $ due
payments, with seven per cent.
interest.

I agree to settle for this machine in cash or notes acc g to above terms as soon as it is started and fills the warranty. I am to have possession and use of this machine, but the title therein is not to pass to me until payment of the price or of any obligations given therefor; and if any default in the payment is made possession is to revert to you, and should I sell or dispose of my property you may declare all payments due and payable even before maturity of same, and may also retake possession of the machine.

This Order is not to be binding on you until received and ratified by you, and is subject to warranty and agreement hereunder written.

Customer's P. O.

(Signed),
Agent.

The above machine is purchased and sold subject to the following

WARRANTY AND AGREEMENT.

The said machine is made of good material, and with proper management it is capable of doing good work. The purchaser shall have one day to give it a fair trial, and if it should not work well, he is to give written notice, stating wherein it fails, to the Agent through whom it was ordered, and also to the Vendors, and allow reasonable time to get to it and remedy the defects, if any, the purchaser rendering necessary and friendly assistance, furnishing a suitable team, driver, etc., when, if it cannot be made to do good work, he shall return it to the place where received free of charge, in as good condition as when received except the natural wear, and a new machine will be given in its place, or the notes and money will be refunded. Should any part of the machine break during the first season through defective material or workmanship and by fair usage, it shall be replaced free of charge when the broken parts are returned to the Vendors or the Agent through whom the machine was purchased. Continued possession of the machine or failure to give notice as above shall be conclusive evidence that the machine fulfils the Warranty.

(Signature of Vendors.)

No Agent has authority to change the above Warranty.

ANOTHER FORM OF DELIVERY ORDER.

Toronto, 18

To

Toronto, Canada.

GENTLEMEN,—You will please ship to my address, about 188 , of your

(here describe the implements.)

Which I agree to receive and give a fair and impartial trial, without being influenced by any other manufacturers' agents, and to purchase if it proves equal to your Warranty, and as guaranteed, or to return within ten days after receipt of implement as above to the Station, and notify you that it is there subject to your order.

This is given in good faith, as I wish to purchase the best.

The Price, complete, as above, is dollars, for which I agree to give settlement, payable as follows:

after trial as above, and until fully settled for, the title and property to remain in the Vendors.

This order is subject to the memorandum hereunder written.

WARRANTY AND SPECIAL NOTICE.

The foregoing implements will not be received if returned to us without our permission, and no implements returned under this warranty will be credited on account, but will be made perfect and returned, or new ones sent in their place, as the Vendors may elect.

The Vendors warrant each implement to do first-class work when properly adjusted. After ten days allowed after delivery for time to give it a trial in the field, if it fails to give satisfaction, notice must be given to the dealer selling it, and reasonable time given him to make it work as represented, failing in which the implement can be returned. If used to do more than one day's work on trial terms as above, the implement will be considered sold.

The Vendors agree to repair implements pr[illegible] defective, but no allowance will be made on broken parts not retur[illegible]o Vendors or their agents.

Implements with defective iron or steel parts to be taken down, marked with an explanation of the defect, and signed by the sender, that the Vendors may know who it is from, the Vendors will put in order, free, and return.

The Vendors will not undertake to pay for repairing implements away from shop.

All Warranty cancelled when implement passes into other hands or loaned to neighbors.

(Signature of Vendors.)

ANOTHER FORM OF DELIVERY ORDER.

To Lindsay, Ont. 18

GENTLEMEN,—Please supply me with one and ship the same to Station, Railway, about the day of next, for which I agree to pay the sum of Dollars on delivery, in payment as follows:

Satisfactory note for $ due 188 , with 8% interest
do do $ due 188 , with 8% interest
do do $ due 188 , with 8% interest

I agree to settle for this machine in cash or notes according to above terms as soon as it is started and fills the Warranty.

I am to have possession and use of machine, but the title therein is not to pass to me until payment of price or of any obligations given therefor; and if any default in payment is made, possession is to revert to you, and should I sell or dispose of my property you may declare all payments due and payable even before maturity of same, and suit may be entered, tried and finally disposed of in the court where the head office of the Vendors is located, and may retake possession of the machine, without process of law, and sell machine to pay the unpaid balance of the price whether due or not.

This Order is not to be binding on the Vendors until received and ratified by them, and is subject to Warranty and Agreement hereunder written.

I declare the above to be a true copy of the bargain for the sale of this machine.

Agent.

(SIGNED),

General Agent.

The above-mentioned machine is purchased and sold subject to the following

WARRANTY AND AGREEMENT.

The machine is made of good material, and with proper management it is capable of doing good work. The purchaser shall have one day to give it a fair trial, and if it should not work well, he is to give written notice, stating wherein it fails, to the agent through whom it was ordered, and also to the Vendors, Lindsay, Ont., and allow reasonable time to get to it and remedy the defects, if any, the purchaser rendering necessary and friendly assistance, furnishing a suitable team, driver, etc., when, if it cannot be made to do good work, he shall return it to the place where received, free of charge, in as good condition as when received, except the natural wear, and a new machine will be given in its place, or the notes and money will be refunded. Should any part of the machine break during the first season through defective material or workmanship, and by fair usage, it shall be replaced free of charge when the broken parts are returned to us or the agent through whom the machine was purchased. Continued possession of the machine, or failure to give notice as above, shall be conclusive evidence that the machine fulfils the Warranty.

No agent has authority to change the above Warranty.

STATEMENT TO OBTAIN CREDIT.

I own and have a deed of, duly registered in my name acres of land, it being Lot No. of the Concession of the Township of in the County Province the current cash value of which is not less than $. and the same is free and clear of all incumbrance except

I also own personal property not exempt from execution of the value of at least $ in excess of the amount of all my debts and liabilities

(This statement is made to Vendors to procure credit from them in the purchase of the goods mentioned in the above order, and the same are sold by them on the faith thereof.)

Signature of purchaser

Dated at

ANOTHER FORM OF DELIVERY ORDER.

To The Company, Toronto, Ont. 18

You are hereby authorized to ship to me, to Station, on or about day of next, or before required for use, the following implements and machinery: *(here describe the property.)*

For which I agree to pay you Dollars in cash; or my notes, payable as follows:

Note for $ due the first day of 18 , with int. at 7%
Note for $ due the first day of 18 , with int. at 7%
Note for $ due the first day of 18 , with int. at 7%

Payable at

This machine to be warranted as per Manufacturers' printed Warranty, hereunder written, and I agree to settle for it upon above terms, as soon as it is started and fills the Warranty.

I further agree to furnish security, satisfactory to you, at any time, if required. If I fail to furnish such security when demanded, or if I make any default in payment, or should I

dispose of my landed property, you may then declare the whole price due and payable, and suit therefor may be immediately entered, tried, and finally disposed of in the Court in whose division the head office of The Company is, and you may retake possession of the machinery without process of law and sell it to pay the unpaid balance of the price whether due or not. Subject to the aforesaid provisions I am to have possession and use of the machinery at my own risk, but the title thereto is not to pass to me until full payment of the price, or any obligation given therefor. These conditions and agreements are to continue in force until the full payment of the price is made.

NOTE.—This Order is not to be binding on The Company until received and ratified by them.

(Signed),

Agent,

Witness,

WARRANTY.

WE, THE UNDERSIGNED, agree that the for which Mr. has given his order this day, shall be well made and of good material, and will work well on a fair trial; also, that should any part break during the first season, through defective material or workmanship and by fair usage, it shall be replaced free of charge, if the broken parts are returned to us or our Agent from whom the machine was purchased, before the following date of purchase.

If after a fair trial of one day, the said does not work according to Warranty, it will be the duty of the purchaser to immediately give written notice to us at Toronto, and also to the Agent through whom it was purchased, stating wherein it fails, and allow reasonable time to get to it and remedy the defects, if any; the purchaser rendering necessary and friendly assistance, furnishing a suitable team, driver, etc., when, if the machine cannot be made to do good work, he shall return it to the place where received free of charge, in as good condition as when received, except the natural wear, and a new machine will be given in its place, or the notes or money will be refunded.

Continued possession of the machine, or failure to give notice as above, shall be conclusive evidence that the machine fulfils the Warranty.

This Warranty is not valid or binding upon The Company, unless delivered to the purchaser without alteration, interlining, or erasure.

Dated 188

Agent Signature of Vendors

ANOTHER FORM OF DELIVERY ORDER.

Toronto, 18

To

Please ship to my address with such reasonable business despatch as your convenience will permit, from place of manufacture, or the following as per prices agreed upon:

	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
Terms: Amount,	$

And I hereby agree that if the said machinery or goods is not settled for, by cash or notes, according to the above terms of sale, within 20 days after date of shipment, then the whole amount shall become due, and I, for value received, promise to pay the same on demand.

And I further agree not to countermand this order, and until payment in full of the purchase money the said machinery and goods shall be at my risk, and I will insure in your favor for amount sufficient at all times to cover your interest therein, and on demand will assign and deliver to you the policy of insurance, and should I fail to do so within ten days after receipt of goods, you are at liberty and are hereby instructed, to insure them as per this agreement, and the charges and costs for so insuring shall become part of this indebtedness and be added to the first cash payment, and the title in the said machinery

and goods shall not pass from you until all the dues, terms and conditions of this order shall have been fully complied with by me, and I will not sell or remove any of the said machinery or goods from my premises without your consent in writing so to do, and in case of default of any of the payments or provisions of this order you are at liberty without process of law to enter upon my premises and take down and remove the said machinery and goods, and I hereby agree to deliver the said machinery and goods to you in like condition as received, subject to ordinary wear and tear, and I hereby waive all claims for damages or loss, and will pay the expenses of such removal. And I hereby declare that the foregoing embodies all the agreements made between us in any form, and that any note or notes or other security given by me to you for this indebtedness shall be collateral thereto.

Yours truly,

Ship *via*

FORM OF RECEIPT TO BE GIVEN BY BAILEE OR CONDITIONAL VENDEE OF RECEIPT NOTE, HIRE RECEIPT, OR ORDER, UNDER SECTION 8 OF THE ACT (*See ante p.* 68), AND WHICH SHOULD ACCOMPANY ALL INSTRUMENTS UNDER THE ACT.

Lindsay, Ont., 18

I acknowledge to have received on the above date a true and correct copy of the receipt note, the hire receipt, order, or sale note (as the case may be), by which a lien on that certain property (*describe property*), conditionally sold to me, on the day of , 18 , has been retained by (*here insert name of Vendors*).

Signature of Bailee or Vendee.

FORM OF APPLICATION BY PROPOSED PURCHASER FOR INFORMATION RESPECTING AMOUNT OR BALANCE DUE OR UNPAID ON MANUFACTURED ARTICLES UNDER SECTION 2, *ante p.* 41.

To of

Sir,

I (*name in full*) am a proposed purchaser of (*or*) interested in the following manufactured chattel, namely: (*here describe the same*) now in the possession of (*give the name and description in full of the person in whose possession the chattel is*).

I request full information respecting the amount due, or the balance due or unpaid to you, if anything, on said manufactured chattel, and the terms of payment of such or balance.

My name is (*here give name in full*) and my post office address to which a reply may be sent is (*here give name of post office*).

Dated at this day of A.D. 188 .

(*Signature of Applicant*).

FORM OF LETTER SUPPLYING THE INFORMATION DEMANDED BY FOREGOING APPLICATION UNDER SECTION 2, *ante p.* 41.

To of

(*the name and post office address given by the person enquiring*).

Sir,

The amount due (*or*) The balance due (*or*) The amount unpaid (*or*) The balance unpaid on that certain manufactured chattel referred to by you in your application for information bearing date the day of 188 , and received by the undersigned on the day of 188 , is the sum of $. The terms of payment of such

amount (*or*) balance are as follows (*here state fully the sum to be paid, the time or time of payment, with or without interest if on, or by way of promissory note, or by way of rent or otherwise*).

This statement is mailed to you at the above address and registered.

Dated this day of
at in the

(*Signature of manufacturer, or vendor, or bailor*).

FORM OF NOTICE OF SALE UNDER SECTION 5, *ante p.* 58.

To , of

Sir,

Notice is hereby given you that, at the expiration of five days, from the day of service of this notice upon you, to wit: upon day of 188 . I shall proceed to sell the following goods or chattels, namely, (*describe the property*) at in the of in the county of .

The said goods or chattels were taken possession of by me, on account of the breach of condition in the conditional sale or promise of sale thereof by me to you. If you desire to redeem the said goods or chattels you are at liberty to do so, at any time within twenty days after the day of (the day of taking possession) on payment of the sum of $ being the amount in arrear on such conditional sale together with interest and actual costs and expenses of taking possession which have been incurred.

Dated this day of 18 .

INDEX.

ACCEPTANCE:
necessary to complete execution of deeds, 2.

ACTUAL KNOWLEDGE:
in mortgagee or purchaser, not inconsistent with good faith, 31.

ADDRESS:
of manufacturer or vendor necessary, etc., 30.
time when it must be placed on chattel conditionally sold, 36.
of applicant for information must be given, 46, 48, 49.
if no address given, then to be sent to "proper address," 46.
what is man's "proper address," 48.
if reply indistinctly addressed and miscarry, on whom the loss falls, 47.
general address insufficient, 48.

ADMINISTRATOR:
of vendee or bailee may redeem chattel, 57.

AGENT:
may be appointed verbally, or by writing, 40.
by subsequent ratification, 40.
when, by subsequent ratification, principal's existence necessary, 40.
no particular form of writing necessary to create agency, 40.
implied authority to agent, how it may arise, 40.
who may be an agent, 41,
bailee or vendee cannot be agent for bailor or vendor, 41.

AGREEMENT:
usually provides for payment of rent to be applied on purchase money, 4.
when rentals, the purchase money, transaction one of sale with reservation, 4.
construction put thereon by Canadian Courts, 4.
effect of Statute thereon, 4.

ALTERNATIVE:
Statutory alternatives provided for, 37.

AMOUNT:
of claim of vendor, etc., how to be ascertained, 41.

APPEAL:
for proceedings on appeal, see R. S. O. (1887) cap 75, 892.

APPLICANT:
who may be an applicant for information, 46.
must give his name and post office address, 46.
for information omitting to give his address, 48.
must bear the loss of his giving indistinct address, 48.
address of, must be distinctly written, 48.

APPLICATION:
for information, how made, 41.
to whom to be made, 45.
by whom to be made, 42, 46.
if, by letter, what, 46.
may be verbally, 41.
objections to verbal method, 42.
form of, when made in writing, 42.
not made until received, 43.
should not be to employee or agent of vendor, etc., 45.
if to employee or agent, must be brought to knowledge of vendor, 45.
what it should be for, 42.
only information asked for need be furnished, 45.

ATTESTATION:
not necessary, 38.
meaning of word, 38.

BAILEE:
meaning of term, 11.
when interests of, are severable, instrument within the Act, 12.
when entitled to action for interference with chattel, 13.
what care required to be exercised by, 17.
cannot be agent under the Act for the bailor, 41.
must not put article to use other than that which was intended, 19.
may redeem chattel, 57.
his successor in interest may redeem, 57.
liability for negligence in case of joint bailees, 20.
liability, etc., in case of sub-agent, 20.
signature of, to instrument required, 38.
may mortgage or sell his interest, 21, 22.

BAILEE —*Continued.*
may dispute bailor's title, 21, 50.
his act may amount to felony, 21.
bailment determined by sale, 21.
See VENDEE, MORTGAGEE.

BAILMENT:
effect of word in Statute, 6.
meaning of, 13.
of undivided interest in chattel not within the Act, 7.
essence of contract of bailment is possession passing, 8.
presence or absence of certain conditions, the test of application of Act, 11.
if some conditions within, some without the Act, Statute applies if interests severable, 12.
when interests are severable, 12.
what is bailment, 13.
how divided and distinguished, 14.
must be in writing as against subsequent purchaser or mortgagee, 1, 16.
what necessary to procure legal obligation of, 16.

BAILOR:
cannot lose his rights in chattel by bailee attaching to freehold, 8.
when interests of, are several under the Act, 12.
when entitled to an action for interference with chattel, 13.
obligation devolving on, in relation to chattel, 20.
different obligations, when bailor gratuitous, 20.
may mortgage or sell his interest in chattel, 21.
his interest liable under execution, 21, 22.
if he sells or mortgages, bailee may refuse to deliver to bailor, 21.
See VENDOR, MANUFACTURER, OWNER.
must, on application, furnish certain information, 11.
successor in interest may take possession, 50.
mortgagee of, a successor in interest, 50.
may take possession for breach of condition, 54.
rights of, in chattel, after taking possession, 51.
See POSSESSION.
must leave a copy of instrument with bailee or vendee, 68.

CAPACITY:
to contract, rules of common law applicable to cases under the Act, 16, 17.

CARE:
of chattels by vendee, 17, 18,
circumstances to be considered, 18.

CHATTELS:

meaning of, within the Act, 5, 8.
how divided, 5.
personal, meaning of, 5.
Statute applies only to moveable chattels, 6.
not to chattels to be acquired, 6.
delivery and change of possession essential, 6, 22.
Statute applies to a specific chattel, 7, 8, 22.
in bond or custom house incapable of bailment, not within the Act, 7.
subject to or charged with claims of third parties, not within the Act, 7, 8.
when possession does not pass then Statute does not apply, 8.
cannot be attached to realty so as to make chattel part of realty against the interest of the vendor, 8.
when chattels are fixtures, 9.
See FIXTURES.
care of, by vendee, 17.
circumstances to be considered, 18.
Statute only applies to chattels where ownership therein does not pass, 22.
of value of $30, when taken possession, cannot be sold without notice given, etc., 58.

CHEATING: *See* COLLUSION, 31.

CLERK:

his certificate as to filing may be disputed in evidence, 64.
his duties on presentation of instrument under the Act, 64, 67.
filing of instrument, when clerk absent, 67.

COLLUSION:

between vendee and purchaser to defraud vendor makes compliance with Act unnecessary, 31.

COMPUTATION:

of time, 47, 56.
See INFORMATION, DAYS.

CONDITION:

upon breach of, possession may be taken, 54.
presence or absence of what conditions gives the Statute an application, 11.
if instrument contains conditions within and without Statute, then, if severable, Statute has partial application, 12.
defin[illegible] of, 12.

CONDITIONAL SALE:

what necessary to procure legal obligation of, 16, 50.
instances of, 3, 50, 51, 52.
of piano, to be used in house of ill-fame, illegal, 16.
strictly speaking, not hit at by the Act, 3.
only those contemplated wherein possession changes and not ownership, 3.
both ownership and possession changes in some cases, 3.
when right of re-purchase exists sale is conditional, 3.
Act does not apply to sales with right of repurchase reserved, 3.
nor to "sales to arrive," only to transactions covered by "receipt notes," "hire receipts," "orders for chattels," 1, 3.
latter transactions common, 3.
reasons why such transactions numerous, 4.
of moiety, or part interest, in a chattel, not within the Act, 7.

CONSIDERATION:

money consideration contemplated by Statute, 26, 35.
if any other, not within the Act, 26.
what is a valuable consideration, 35, 36.
fact of purchase or consideration money not being payable to vendor does not deprive Statute of application, 26, 27.
taking note for consideration money does not prevent application of Statute, 27.
but otherwise, if taken in satisfaction of purchase money, 27.
no objection to discounting notes representing consideration, 27.
so doing not waiver of ownership in property, 27.
may be payable by way of rentals, 27.
rentals usually the consideration, 4.
construction thereof by Canadian Courts, 4.
money a valuable consideration, 35.
anything bearing a known value is such, 35.
any benefit to the promisor, 35.
marriage, 35.
loss, trouble, detriment, etc., 36.
suspension, or forbearance of legal proceedings, 36.

COPY:

of instrument must be filed, not original, 66.
copy need not be an exact copy, 66, 67.
must be left with vendee or bailee, 68.

CREDITORS:

compliance with the Act not necessary as against creditors, 30.
have no better title than their debtor, 30.

CUSTOMS:

goods in, not within the Act, 7.

DATE:

of instrument not necessarily evidence as to when instrument executed, 64.

parol evidence, admissible to shew date of instrument, not the date of execution, 64.

DAYS:

"five days," when they begin to run, 43, 47, 58.
See INFORMATION.

"twenty days," how computed, 56.

"seven days at least," how computed, 61.

"ten days," how computed, 63.

DELIVERY:

signing and delivery necessary in all instruments under the Act, 2.

after the 1st January, 1889, brings instruments signed before them, within the Act, 2.

of chattel essential under the Act, 6,

DESCRIPTION:

of person not a signature, 10.

DILIGENCE:

in care of chattel, what degree of, required, 17, 18.

circumstances to be considered, 18.

DISTINCTION:

between Act respecting conditional sales of chattels and Act relating to bills of sale and chattel mortgages, 1.

DISTRESS:

landlord may distrain on goods subject of conditional sale under the Act, 33.

extent of powers of distress, 33, 34.

ENTRY:

forcible entry may be made to remove chattel, 56.

must not, however, create a breach of peace, 56.

on another's land, legal to get chattel, 56.

not legal if chattel on land through fault of owner, 56.

ESTOPPEL:

doctrine of, 23.

application of principles of, 23, 24, 25.

EXECUTED:

meaning of word in connection with signing, etc., of deeds, 2.

EXECUTION:
of instrument from whence time begins to run, 63.
not necessarily upon the date, 64.
EXECUTOR:
of bailee or vendee may redeem chattel, 57.
EVIDENCE:
parol evidence admissible to shew date not correct date, 64.
may be given to dispute correctness of clerk's certificate as to filing, 64.
See POST OFFICE, INFORMATION, ADDRESS, ESTOPPEL, APPLICATION.
FILING:
copy must be filed, not the original, 66.
clerk's certificate of, only *prima facie* correct, and may be disputed in evidence, 64.
what it consists of, 64, 65.
where instruments are to be filed, 65.
FIXTURES:
intention in regard thereto decides their character, 9.
bailee cannot alter their character by annexing to freehold, 9.
owner of chattels cannot annex them to freehold and claim them as fixtures, 9.
generally sale of, are chattels, 9.
how long fixtures retain their identity as such, 9.
when leathern driving belts are fixtures, 9.
key of house a fixture, 10.
FORMS:
rent agreement, with privilege of purchase, 69.
of conditional sale of machinery with statement by vendee of ownership of land, 70.
of lien or rent receipt with right of purchase, 73.
of release of right of distress by landlord upon chattels purchased by way of rent receipt or otherwise, 75.
of hire receipt, with right of purchase, 75.
rent agreement, without conditions of purchase, where lessors assume, for a cash consideration, all risks from fire, 77.
rent agreement, without conditions of purchase, loss by fire to be borne by the lessee, 77.
rent agreement, with conditions of purchase, 78.
agreement to sell upon condition, 79.
another form, 80.
form of promissory note given for property, the title and right wherein is retained by the payee, 82.
another form, 82, 83.

FORMS—*Continued.*
another form, where vendor is to make remittance in sales made by him, 84.
of order for delivery and sale of specific chattels from one who agrees to sell the same, and no other within certain territory, 84.
another form, with special warranty by vendor, 86.
delivery order for chattel, with right of property retained in vendor, 87.
of affidavit of execution to accompany instrument for purpose of registration when land affected, 90.
another form of delivery order, 91, 92, 93, 95, 97.
of receipt to be given by bailee, or conditional vendee of receipt note, hire receipt, or order, under section 8, and which should accompany all instruments under the Act, 98.
of application by proposed purchaser for information respecting amount or balance due or unpaid on manufactured article under section two, 99.
of letter supplying the information demanded by foregoing application, under section two, 99.
of notice of sale, under section two, 100.
FRAUD:
fraction of a day sometimes considered, 10, 44.
an inquiry to, a loss of, chattel through fraud in vendee inexcusable, 17.
vitiates all agreements, 30.
"GIVEN BY":
meaning of word in section 1 of Statute, 2, 10.
date of instrument usually, evidence of, when given, 10.
time of day "when given" should be noted, 10.
"GOOD FAITH":
meaning of, 31.
required in purchaser and mortgagee, 31.
actual knowledge not inconsistent with, 31.
may exist, though notice possessed, 31.
what is a purchaser in good faith, 32.
HOUSEHOLD FURNITURE:
are chattels within the Act, 5, 62.
are fixtures comprised within term "household furniture," 62.
what is fixed furniture, 63.
INFORMATION:
who must furnish information relating to chattels, 41.
application for, how made, 41.

INFORMATION—*Continued.*
to whom to be made, 45.
if made by letter, 46.
may be verbally made, 41.
objections to verbal method of application, 42.
form of application for, when made by letter, 42.
who is entitled to information, 42,
what information must be furnished, 45.
onus on person demanding it to shew he is within the description of persons entitled to it under the Act, 43.
must be furnished within five days, 41, 43, 47.
five days and more may elapse, and yet statute be complied with, 44.
when five days begin to run, 43, 47.
how information furnished, 46.
when it is presumed to be received, 43.
statutory method should be followed, 44, 46.
form of letter giving information, 45.
refusal or neglect to give information, must be that of the vendor, etc., 45.
by whom to be applied for, 46.
his name and address must be given, 46.
reply with, may be sent by registered letter, 46.
how and where to be addressed, 46, 48, 49.
when no address given, how and where to be sent, 46, 48, 49.
if reply with information is deposited in postoffice, not necessary to prove that it was received, 46.
loss or miscarriage of, upon whom it falls, 46.
delivery to a mail-carrier of reply not sufficient, 47.
post-mark *prima facie* evidence that reply sent, 47.
genuineness of post-mark, how proved, 47.
if reply indistinctly addressed and miscarry, loss falls on sender, 47.
deposit in postoffice of reply must be proved, 47.

INITIALS:
See SIGNING, SIGNATURE, and p. 38-39.

INJURY:
to chattel when in possession of vendee, who responsible for and to what degree, 17.
resulting from fraud inexcusable, 17.

INSTRUMENTS:
within the Act, when interest severable, not so when not severable, 12.

INSTRUMENTS—*Continued.*
must be in writing, 37.
no particular form of writing necessary, 37.
what it must embody, 37.
INTERESTED PERSON:
what is meaning of the term, 42, 43.
LANDLORD:
may be a purchaser under the Act, 32, 33.
not, however, after illegal distress, 33.
may distrain goods sold by instrument under the Act, 33.
his powers of distress, 33.
LICENSE:
to take possession irrevocable, 56.
justifies entry, 56.
not, however, if entry will cause breach of peace, 56.
LOSS:
of reply with information, upon whom it falls, 46.
MANUFACTURED:
chattel only within the Act, except household furniture, 5, 62.
MANUFACTURER:
name of, must be painted on article, 4, 30.
See OWNER, VENDOR.
address of, must be given, 30.
registration of instrument by, 30.
effect of non-compliance with the Act, 30.
cannot be deprived of his rights in the chattel by vendee attaching it to realty, 8.
time when name and address must be placed upon chattel, 36.
name and address may be "attached," 36.
imperfection of Statute as to attaching name, 36.
must, on demand, furnish certain information, 41.
"successor in interest" may take possession, 50.
mortgagee of chattel a successor in interest of bailor or manufacturer, 50.
may take possession on breach of condition, 54.
right of, in chattel after taking lawful possession, 54.
See POSSESSION.
must leave a copy of instrument with bailee or vendee, 67.
MORTGAGEE:
as against subsequent mortgagee, bailment must be in writing, 16, 37.
subsequent mortgagee obtains priority if name not printed, etc., or instrument registered, 5, 31.

MORTGAGEE—*Continued.*
subsequent mortgagee in good faith protected by the Statute, 28, 31.
only protected so far as to give effect to his mortgage, 28.
means subsequent mortgagee from the bailee or vendee, 29.
reason for declaring such instruments invalid, 29.
must be one in good faith, 31.
collusion by, with vendee to defraud manufacturer, vendor, or owner, vendee's compliance with Act unnecessary, 31
notice in mortgagee not inconsistent with good faith, 31.
of simply interest of vendee cannot take advantage of non-compliance with the Statute, 34.
at liberty to shew claim liquidated, 31.
or that chattel never subject to claim, 34.
who prejudices the interests of vendor to protect his own is still a mortgagee in "good faith," 34, 35.
subsequent mortgagee not required to register his mortgage under Act relating to bills of sale, etc., so as to maintain priority over instrument not registered under the Act, 35.
subsequent mortgagee *pro tanto* a purchaser, 35.
occupies same legal position as a purchaser, 35.
of vendee may redeem, 57.

MARK:
by marksman. *See* SIGNING, SIGNATURE, 38, 39.

MUSICAL INSTRUMENTS:
are chattels within the Act, 5, 62.

NAME:
must be plainly painted, or else registration, 4.
effect of omitting both, 5.
time when it must be placed upon chattel, 36.

NEGLECT:
to give information must be the neglect of the vendor, 45.

NEGLIGENCE:
in use of chattel by vendee, 17.
circumstances to be considered, 18.
different degrees of, 19.
to put article to other use than that intended for it, 19.

NOTICE:
in purchaser or mortgagee may not rebut good faith, 31.

OBJECT:
of the Statute, 1, 6, 7.

ORGAN:
a chattel within the Act, 5.

OWNER:
name of, must be painted, etc., on the chattel, 4.
may be attached, 36.
imperfection of the Act in regard to attaching name, 36.
time when name, etc., should be attached, 36.
effect of omitting to paint name and to register, 5.
though name not placed on chattel, Act complied with, if registration made within 10 days, 37.
may take possession for breach of condition, 54.
rights of, in chattel after taking possession, 54.
See POSSESSION, STATUTE.
of soil, cannot retain chattel improperly fixed to realty, 8, 9.

OWNERSHIP:
Statute only applies when ownership does *not* pass, 22.
when ownership passes, but not possessson, then another Statute applies, 22.
intention of parties as to ownership passing decides applicability of Statute, 22.

"PAYMENT:
of the purchase or consideration money," these words contemplate a money consideration, 26.

PARTIES:
between original parties, compliance with the Act unnecessary, 30.
See PURCHASER, MORTGAGEE, LANDLORD, MANUFACTURER, OWNER, VENDOR, and VENDEE, BAILOR and BAILEE.

PHRASES:
See WORDS.

PIANO:
a chattel within the Act, 5.

PLEDGE OR PAWN:
not within the Act, 15.
definition of, 15.

POSSESSION:
under the Statute possession changes, not the ownership, 2.
can pass without manual delivery, 6.
there can be constructive change of possession, 6.
change of possession essential, 6.
when possession cannot be given consistently with the object of the agreement in regard thereto, Act does apply, 7.
when possession does not pass, then Act inapplicable, 8.
remaining with vendee after time of credit expired does not estop bailor or vendor from claiming goods as against third party, 24.

POSSESSION—*Continued.*
may be taken, upon breach of condition, 54.
right of vendor, bailor, etc , in chattel, after possession taken, 54.
may be taken before breach of condition, 54.
effect of taking possession before condition broken, 54.
"possession follows property" a rule of law, 55.
relaxation of this rule, 55.
when relaxation of this rule presumed, 55.
to obtain possession, entry may be made on another's land, 56.
must be retained for twenty days before sale, 56.
how the twenty days are computed, 56.
having been taken, nothing must be done to prevent restoration within twenty days, 56.
when taken of chattels sold for over $30, the goods must not be sold without 5 days' notice, 58.
"five days," how computed, 58.
"five days" may be part of "twenty days" allowed for redemption, 59.

POSTOFFICE:
address must be given by person applying for information, 46.
if letter deposited in postoffice, not necessary to prove that received, 46.
if address indistinct and letter miscarry, loss falls on sender, 47.
See ADDRESS, INFORMATION, APPLICATION.

PROMISSORY NOTE:
signature to, might not be sufficient to embrace a marginal agreement, 38.

PROPERTY:
passing in chattel Statute does not apply, 22.
question of intention decides applicability of Act, 22.

PURCHASE MONEY:
usually in form of rentals, 4.
when rentals purchase money, transaction may be one of sale with reservation, 4.
construction put thereon by Canadian Courts, 4.
effect of Statute thereon, 4.

PURCHASER:
secures priority if name of owner, etc., etc., not painted, etc., on article or instrument not registered, 5.

PURCHASER—*Continued.*
as against subsequent purchaser bailment must be in writing, 16, 37.
collusion by, with vendee to defraud vendor makes compliance with Act unnecessary, 31.
subsequent, in good faith protected by Statute, 28, 31.
only so far as to give effect to his purchase, 28.
who is a subsequent purchaser in good faith, 32,
means subsequent purchaser from the vendee, 29, 32.
by mutual assent of parties, 32.
not one who unlawfully converts the property, 32
not one in good faith who pays a judgment got against him by vendee, 32.
reason for declaring such instruments invalid, 29.
must be one in good faith, 32.
notice to, not inconsistent with good faith, 32.
bona fide purchaser can only receive protection to extent of his payments, 32.
purchase money must be paid, not secured, 32.
at sheriff's sale intended to be protected, 32.
landlord may become purchaser under the Act, 32, 33.
not after illegal distress, 33.
buying interest of vendee cannot take advantage of Statute, 34.
but can shew that vendor's claim satisfied, 34.
or that no such claim ever existed, 34.
subsequent mortgagee *pro tanto* a purchaser, 35.
occupies same legal position as subsequent mortgagee, 35.

REDEMPTION:
may be had within 20 days, 56.
period of 20 days must elapse in all cases, 62.
who may redeem, 57.
right of redemption can be enforced in defiance of agreement against such, 57.

REFUSAL:
or neglect to give information must be refusal or neglect of vendor, 45.

REGISTRATION:
there must be registration, or else name, etc., painted, etc., 4, 30.
effect of omitting both, 5, 30.
ten days allowed for registration, 37.
object of, 66.

RENTALS:
agreements usually provide for payment of on account of purchase money, 4.
usually simply instalments of purchase money, 4.
construction put thereon by Canadian Courts, 4.
effect of Statute thereon, 4.

REPLY:
See INFORMATION.

SALE:
of goods cannot be had after possession taken without 5 days' notice being given, 58.
the 5 days' notice may be part of the 20 days allowed for redemption, 59.
form of notice of, 59, 60.
not obligatory on vendor, 60.
cannot in any case be had until after 20 days from taking possession, 62.
proceedings leading up to sale may be taken prior to expiration of 20 days, 62.

SEALING:
not necessary in any instrument executed under the Act, 2, 40.
addition of a seal will not vitiate the instrument, 2.

SEAL:
not necessary on instrument under the Act, 2, 40.

SERVICE:
methods of service, 60.
when personal service dispensed with, 60, 61.
service by mail, 61.

SEWING MACHINES:
are they within the Act? 5, note (*r*).

SHALL:
meaning of word, 41.

SIGNATURE:
of vendee or bailee necessary, 38.
if made to promissory note, doubtful if sufficient to embrace marginal agreement, 38.
what is a signature, 38, 39.
description of person not a signature, 40.

SIGNING:
necessary with delivery in all instruments under the Act, 2.
what it consists in, 38, 39.

STATUTE:
51 Victoria cap. 19, Ont. 1, section 2; 41.
does not apply to conditional sales of a moiety or part interest in a chattel, 7.
restricted in its operation, 12.
compliance with, unnecessary between the parties, 30.
R. S. O. 1887, cap. 143, sec. 28; 33.

SUBSEQUENT PURCHASER:
without notice and in good faith, preferred to vendor who fails to comply with the Act when instrument signed before, but not delivered until after 1 January, 1889; 2, 3.
instrument under Act only valid against purchaser and mortgagee in good faith, 27.
invalid only so as to give effect to purchase of purchaser, or mortgage of mortgagee, and no further, 28.
means subsequent purchaser of mortgagee from the bailee or vendee, 29.
reason for declaring such instruments invalid, 29.
name and address of manufacturer or vendor required to be given, 30.
or registration under Act, 30.
effect of non-compliance with Act, 30.

SUCCESSOR:
in interest of manufacturer or vendor, etc., may take possession, 50.
who is a successor in interest, 50
of vendee or bailee may redeem chattel, 57.

SUNDAY:
counts as one day, 4, 56.

TIME:
when Statute came into force, 1, 2.
instruments signed before, but not delivered until after 1 January 1889, are within the Act, 2.
of day when instrument given should be noted, 10.
"ten days" allowed for registration, 37.
from when the ten days begin to run, 37.
"five days" allowed within which to furnish information, 43.

TIME—*Continued.*
when the five days begin and end, 43, 47.
See INFORMATION, DAYS, WORDS.
within "twenty days," how computed, 56, 68.
"seven days at least," how computed, 61.
"ten days," how computed, 63.
begins to run from execution, not necessarily date of instrument, 63.

THIRD PARTY:
might make a conditional sale with owner's consent, 50.

VENDEE:
what care required to be exercised by, in chattel, 17.
must not put article to use other than that intended for it, 19.
in case of two vendees, 20.
liable for injury by sub-agent, 20.
may mortgage or sell his interest, 21, 22.
may dispute vendor's title, 21.
may commit felony, 21.
bailment determined by sale, 21.
signature of the instrument required, 38.
cannot be agent for vendor under the Act, 41.

VENDOR:
loses priority as against subsequent purchaser or mortgagee, if he fails to register instrument, or comply with Act when instrument signed before, but not delivered until after 1 January, 1889; 2.
cannot be deprived of his rights in chattel by vendee attaching to realty, 8.
may mortgage his interest, 21.
may sell his interest, 21.
his interest liable under execution, 21.
address of, must be given, 30.
name of, must be given, 30.
time when name and address must be placed on chattel, 36.
may be attached, 36.
if attached, registration not necessary, 37.
imperfection of Statute, 36.
if not placed on chattel at time of sale, sale yet good if registration made within ten days, 37.
must on application furnish certain information, 41.
successor in interest may take possession, 50.
mortgagee from vendor a successor in interest, 50.
See POSSESSION, 54.

WITNESS:
not necessary to instrument under the Act, 38.
WORDS:
"shall only be valid as against," meaning and effect of, 27.
"payment of the purchase or consideration money," meaning and effect of, 26.
"null and void," meaning of, 27.
"fraudulent and void," meaning of, 27.
"as against," meaning of, 28.
"good faith," meaning of, 31.
"shall," meaning of, 41.
"interested person," meaning of, 42
"person," meaning of, 43.
"proper address," what it is, 48

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