

Bahamas:

Información aportada por la Sección Económica y Comercial de la Embajada Argentina en Jamaica.

Fecha: 18.09.2012

Adjuntamos la reglamentación de los países que fue aportada por la Embajada correspondiente. Dado que en muchos casos el texto de la ley no es específico aconsejamos leer el que figura para Alemania, pues si bien este solo rige para los 27 países que forman la UE el conocimiento de su texto ayuda a conocer los aspectos a tener en cuenta al firmar un contrato con un agente o representante.

De todas maneras puede también comunicarse con la embajada correspondiente solicitando mayor información.

Información y legislación:

A continuación encontrarán la legislación que reglamenta la actividad mercantil de Bahamas.

Adicionalmente le remito el nombre y dirección de la presidente del Colegio de Abogados de Bahamas para cualquier consulta.

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CHAPTER 310
PARTNERSHIP**An Act to declare the law of partnership.***36 of 1904**[Assent 9th June, 1904]**[Commencement 1st January, 1905]*

1. This Act may be cited as the Partnership Act. Short title.
2. (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit. Definition of “partnership”.
 - (2) But the relation between members of any company or association which is —
 - (a) registered as a company under the Companies Act or any other Act for the time being in force and relating to the registration of joint stock companies; Ch. 308.
 - (b) formed or incorporated by or in pursuance of any Act or Letters Patent or Royal Charter, is not a partnership within the meaning of this Act.
3. In determining whether a partnership does or does not exist, regard shall be had to the following rules — Rules for determining existence of “partnership”.
 - (a) joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
 - (b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;
 - (c) the receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying

with the profits of a business, does not of itself make him a partner in the business; and in particular —

- (i) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
- (ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
- (iii) a person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;
- (iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person to the effect that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such:

Provided that the contract is in writing, and signed by or on behalf of all parties thereto;

- (v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

4. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned section 3 of this Act, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an

Postponement of rights of person lending or selling in consideration of share of profits in cases of insolvency.

arrangement to pay his creditors less than one hundred cents in the dollar, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

5. Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.

Meaning of firm.

*Relations of Partners to Persons Dealing
with Them*

6. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

Power of partner to bind the firm.

7. An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other matter showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners:

Partners bound by acts on behalf of firm.

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

8. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.

Partner using credit of firm for private purposes.

Effect of notice that firm will not be bound by acts of partner.

9. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

Liability of partners.

10. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his separate debts.

Liability of the firm for wrongs.

11. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

Misapplication of money or property received for or in custody of the firm.

12. In the following cases, namely —

- (a) where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it;
- (b) where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

Liability for wrongs joint and several.

13. Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of sections 11 and 12 of this Act.

Improper employment of trust-property for partnership purposes.

14. If a partner, being a trustee, improperly employs trust-property in the business or on the account of the partnership, no other partner is liable for the trust-property to the persons beneficially interested therein:

Provided as follows —

- (a) this section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust;

- (b) nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

15. Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made:

Persons liable by “holding out”.

Provided that, where after a partner’s death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner’s name as part thereof shall not of itself make his executors or administrators estate or effects liable for any partnership debts contracted after his death.

16. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

Admissions and representations of partners.

17. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as a notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Notice to acting partner to be notice to the firm.

18. (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

Liabilities of incoming and outgoing partners.

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing guarantee by change in firm.

19. A continuing guarantee or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee or obligation was given.

Relations of Partners to One Another

Variation by consent of terms of partnership.

20. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing.

Partnership property.

21. (1) All property and rights and interest in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) The legal estate or interests in any land which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land not being itself partnership property are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

Property bought with partnership money.

22. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

Conversion into personal estate of land held as partnership property.

23. Where land has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a

deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate.

24. (1) A writ of execution shall not issue against any partnership property except on a judgment against the firm.

Procedure against partnership property for a partner's separate judgment debt.

(2) The court may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

25. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules —

Rules as to interests and duties of partners subject to special agreement.

- (a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm;
- (b) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him —
 - (i) in the ordinary and proper conduct of the business of the firm;
 - (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (c) a partner making, for the purpose of the partnership, any actual payment or advance

beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per centum per annum from the date of the payment or advance;

- (d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him;
- (e) every partner may take part in the management of the partnership business;
- (f) no partner shall be entitled to remuneration for acting in the partnership business;
- (g) no person may be introduced as a partner without the consent of all existing parties;
- (h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners;
- (i) the partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

Expulsion of partner.

26. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

Retirement from partnership at will.

27. (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing signed by the partner giving it shall be sufficient for this purpose.

Where partnership for term is continued over, continuance on old terms presumed.

28. (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

29. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Duty of partners to render accounts, etc.

30. (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connection.

Accountability of partners for private profits.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

31. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

Duty of partner not to compete with firm.

32. (1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

Rights of assignee of share in partnership.

(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

*Dissolution of Partnership and its
Consequences*

Dissolution by
expiration or
notice.

33. Subject to any agreement between the partners, a partnership is dissolved —

- (a) if entered into for a fixed term, by the expiration of that term;
- (b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking;
- (c) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

in the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by
bankruptcy,
death or charge.

34. (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

Dissolution by
illegality of
partnership.

35. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

Dissolution by
the court.

36. On application by a partner the court may decree a dissolution of the partnership in any of the following cases —

- (a) when a partner is shown to the satisfaction of the court to be of permanently unsound mind;
- (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;
- (c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to affect prejudicially the carrying on of the business;

- (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- (e) when the business of the partnership can only be carried on at a loss;
- (f) whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.

37. (1) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

Rights of persons dealing with firm against apparent members of firm.

(2) An advertisement in the *Gazette* shall be notice as to persons who had no dealings with the firm before the date of dissolution or change so advertised.

(3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the death, bankruptcy, or retirement respectively.

38. On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

Right of partners to notify dissolution.

39. After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Continuing authority of partners for purposes of winding up.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Rights of partners as to application of partnership property.

40. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interest as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the court to wind up the business and affairs of the firm.

Apportionment of premium where partnership prematurely dissolved.

41. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership was continued; unless —

- (a) the dissolution is, in the judgment of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

Rights where partnership dissolved for fraud or misrepresentation.

42. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled —

- (a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him;
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities;
- (c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

43. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per centum per annum on the amount of his share of the partnership assets:

Right of outgoing partner in certain cases to share profits made after dissolution.

Provided that, where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or out-going partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

44. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

Retiring or deceased partner's share to be a debt.

45. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed —

Rules for distribution of assets on final settlement of accounts.

- (a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;
- (b) the assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order —
 - (i) in paying the debts and liabilities of the firm to persons who are not partners therein;

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- (ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
 - (iii) in paying to each partner rateably what is due from the firm to him in respect of capital;
 - (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

Supplemental

Interpretation.

46. In this Act, unless the context otherwise requires —

“business” includes every trade, occupation or profession;

“court” means the Supreme Court.

Saving for rules of equity and common law.

47. The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

CHAPTER 311**PARTNERSHIP LIMITED LIABILITY****ARRANGEMENT OF SECTIONS**

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CHAPTER 311

PARTNERSHIP LIMITED LIABILITY

An Act to authorise the formation of partnerships with limited liability. *13 of 1861
5 of 1987*

[Commencement 11th May, 1861]

1. This Act may be cited as the Partnership Limited Liability Act. Short title.

2. Partnerships, with limited liability, for the transaction of any mercantile, mechanical or manufacturing business within The Bahamas, except banking or insurance, may be formed by two or more persons, upon the terms, with the rights and powers, hereinafter provided. Partnerships may be formed.

3. In any such partnership one or more of the members thereof shall be called the general partners, and shall be jointly and severally responsible, as partners now are by law; and the other members thereof shall be called the special partners, who shall each contribute a specific amount of capital, in cash, or other property, at cash value, to the common stock; and such special partners shall not be liable for the debts of the partnership beyond the amount of the fund so contributed by them respectively to the capital; except as hereinafter provided. General and special partners.

4. The persons desirous of forming such partnerships shall make, and severally sign, a memorandum of co-partnership, which shall be in the form in the Schedule to this Act, or as near thereto as circumstances will permit; and shall acknowledge the same before a notary public, who shall verify the same under his hand and seal of office which memorandum of co-partnership shall contain the following things, that is to say — Form of memorandum of co-partnership. Schedule.

- (a) the name of the firm under which the partnership business is to be conducted, and where the same is to be carried on;
- (b) the general nature of the business to be transacted;

-
- (c) the names of all the general and special partners interested therein, distinguishing which are general partners, and which are special partners, and their respective places of residence;
 - (d) the amount of capital stock, in cash, or other property, which each special partner shall have contributed to common stock;
 - (e) the period at which the partnership is to commence, and the period when it will terminate.

Declaration of
general partners.

5. After such memorandum of co-partnership shall have been so made, acknowledged and certified as hereinbefore provided, the general partners named therein shall also make and sign a solemn declaration before such notary to the effect that such portions of the capital stock as have been contributed in cash by the special partners have been deposited in a bank at Nassau in the name of the firm, and shall produce to such notary, to be annexed to such declaration, a certificate to that effect from the manager of the said bank and shall also declare that the amount in money, or other property, at cash value, specified in such memorandum has been actually and in good faith contributed for the purpose of being applied as set forth in the memorandum.

Declaration to be
recorded and
filed.

6. Every memorandum so acknowledged and verified, and every declaration so made and signed as aforesaid, shall, with the certificate as aforesaid of the manager of the bank, be recorded in the Registry of Records; and the originals shall then be filed in the said Registry; and such originals, and the respective records thereof, shall be open to the inspection of all persons desiring to peruse the same, during the time such Registry is open for the discharge of public business; and every person requiring a copy thereof shall be entitled to have the same furnished him on payment of the usual fees.

No partnership
to be deemed
formed until
declaration and
other papers
filed.

7. No such partnership shall be deemed to have been formed until such memorandum, with the verification thereto, and the declaration of the general partners, and certificate of the manager of the bank, shall have been filed as above directed; and, if any false statement be made in such memorandum or declaration, such partnership shall not be deemed a partnership with limited liability under this Act.

8. The partners shall publish the terms of the partnership, when recorded, for at least six weeks immediately after the recording thereof in all the newspapers printed in The Bahamas, and until such publication is made, for the period aforesaid, the partnership shall not be deemed a partnership with limited liability under this Act.

Publication of terms of partnership.

9. Affidavits of the publication of such notices, by the printers of the newspapers in which the same have been published, or some one in their employ, knowing of such publication, may be filed in the Registry of Records and shall be evidence of the fact therein contained.

Evidence of publication.

10. In the memorandum of co-partnership, to be made and filed as hereinbefore provided, the name or names of the general partner or partners only shall be inserted in the name of the firm under which the business of the partnership is to be carried on, with the word “Limited” as the last word of such name, and the business of the partnership shall be carried on under no other name than that inserted in the memorandum of the co-partnership, and the general partners only shall be authorised to transact the business of the partnership and to sign for and bind the same; and if any special partner's name be inserted, with his privity or consent, in the name of the firm under which the business of the said co-partnership is carried on, or if any special partner, in any manner, transact business, or contract in the name of the partnership, he shall incur all the liability in respect thereof which he otherwise would have if this Act had not been passed.

Name of general partners only to be inserted in memorandum.

11. In all business transactions, of any such partnership, the name of such partnership, as recorded in the memorandum of co-partnership, with the word “Limited,” as the last word of such name, shall be the name used; and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods, and all bills of parcels, invoices, receipts and letters, by, or on behalf of such partnership, such name with the word “Limited,” as the last word of such name, shall be written, printed or engraved, in legible characters, and if, any business transaction, or in any bill, note, endorsement, cheque, order, invoice, receipt or letter, any other name is used, or the word “Limited,” as the last word of such name, omitted, any person thereby induced to deal with such

Recorded name of partnership to be used.

partnership, or, who deals with the same, in any such transaction, or into whose possession any such bill, note, endorsement, cheque, order, invoice, receipt of letters, may be or come, in the ordinary course of mercantile dealings, shall have the same rights, and be entitled to the same remedies against all the partners, whether general or special, of the said partnership as he would have been entitled to, if the said partnership had not been formed under the provisions of this Act.

Name of partnership not to be identical with any other, or so nearly resembling as to deceive.

12. No partnership under this Act shall have a name identical with that inserted in the memorandum of co-partnership of a subsisting partnership, or, so nearly resembling the same as to be calculated to deceive, and it shall be the duty of the Registrar General to refuse and abstain from filing or recording any memorandum of co-partnership in which the name of the proposed partnership is identical with that of a subsisting partnership, under this Act, or which, in his opinion, so nearly resembles the same as to be calculated to deceive.

Memorandum declaration and certificate in renewal or continuance of partnership.

13. Upon the renewal or continuance of any partnership under this Act, beyond the time originally fixed for its duration, a memorandum of co-partnership shall be made, acknowledged and verified, with a declaration made, and the certificate of the manager of a bank obtained, and the said memorandum, declaration and certificate shall be filed in the Registry of Records in the same, and the like manner, as is hereinbefore provided for the formation of such partnership; and public notice of such continuance, or renewal, shall also be given in the same and the like manner, and for the same period, and subject to the same provisions, as is hereinbefore provided, upon the formation of such partnership.

No alteration to be made in number of partners during period mentioned in memorandum.

14. During the period mentioned in the memorandum of co-partnership, for the existence of the partnership, no alteration shall be made, in the number of the partners, whether general or special, or, in the name of the firm under which the partnership business is carried on, or the nature of the business carried on, or the capital in cash, or stock, or in any other matter specified, in the original memorandum of co-partnership; and any partnership which shall in any way be carried on, after any alteration in any of the above particulars shall have taken place, shall not be deemed a partnership, with limited liability, within the meaning of this Act.

15. During the continuance of the partnership, under the provisions of this Act, no part of the capital stock thereof shall be withdrawn, nor any division of interest or profits be made, so as to reduce the said capital stock below the sum stated in the memorandum above mentioned; and if, at any time, during the continuance, or, at the termination, of the partnership, the property or assets shall not be sufficient to pay the partnership debts, then the special partners shall, severally, be held responsible for all sums, by them received, withdrawn or divided, with interest thereon, from the time when such partnership is declared by the person authorised by the provisions of section 36 of this Act, to have become insolvent, such sums with interest thereon, to be over and above the amount which such special partners may have contributed, upon the formation of such partnership.

No capital stock to be withdrawn during continuance of partnership.

16. All suits respecting the business of such partnership shall be prosecuted by, and against, the general partnership only; except in those cases in which provision is made in this Act, that the partnership shall not be deemed a partnership; and excepting, also, those cases where special partners shall be held generally responsible, on account of any sums, by them received or withdrawn, from the common stock, as above provided.

Suits, except in certain cases, to be prosecuted by and against general partners.

17. No dissolution of a partnership, with limited liability, under this Act, shall take place, except by operation of law, before the time specified in the memorandum before-mentioned; unless a notice of such dissolution shall be recorded in the Registry of Records; and unless such notice shall also be published, twelve weeks, successively, in all the newspapers published in The Bahamas.

No dissolution, except by operation of law, to take place before the time specified unless with notice given.

18. A partnership may be wound up, by the court on its Bankruptcy Side, under the following circumstances, that is to say —

Provision for winding up partnership.

- (a) whenever the partners pass a special resolution requiring the partnership to be wound up, by the court;
- (b) upon the death of any of the partners;
- (c) whenever the partnership is unable to pay its debts;

- (d) whenever three-fourths of the capital of the partnership has been lost, or become unavailable;
- (e) whenever the special partners, or a majority of them, so require it.

When partnership shall be deemed unable to pay its debts.
5 of 1987, s. 2.

19. A partnership shall be deemed to be unable to pay its debts —

- (a) whenever a creditor to whom the partnership is indebted, in a sum exceeding two hundred dollars, then due, has served, on such partnership, by leaving the same, at the place of business thereof, a demand in writing, requiring the partnership to pay the sum so due, and the partnership have, for the space of one month, neglected to pay such sum, or secure or compound for the same to the satisfaction of the creditor;
- (b) whenever execution, issued on the judgment, decree or order obtained, in any court, in favour of any creditor, in any suit or other legal proceeding, instituted by such creditor against the partnership is returned unsatisfied in whole or in part.

Application for winding up shall be by petition.

20. Any application for the winding up of a partnership shall be by petition, and there shall be filed, or lodged at the time when such petition is presented, an affidavit verifying the same, and such petition may, in cases where the partnership is unable to pay its debts, be presented either by a creditor or general partner, but when any other ground is alleged for winding up the partnership, a partner alone is entitled to present the petition.

Court may dismiss petition with or without costs.

21. Upon the hearing of any petition presented by a creditor, the court may dismiss such petition with or without costs, to be paid by the petitioner, or it may make an order, or pronounce an interlocutor, directing such partnership, by a day to be named in the order, or interlocutor, to pay or secure payment to the creditor, of all moneys that may be found due to him, together with such costs as the court may direct, or the court may, if it so thinks fit, on the hearing of such petition, make an order or decree, for winding up the partnership in the first instance, or such other order as it deems just.

22. If at the expiration of the time named in such order or interlocutor such payment is not paid or security given, the court may thereupon make an order or decree for winding up the partnership.

Court may make order for winding up partnership if payment not made or security given.

23. Upon the hearing of a petition presented by a partner, the court may dismiss such petition with or without costs, to be paid by the petitioner, or it may make an order or decree for winding up the partnership, or such other order or decree as it deems just.

Power of court on hearing petition.

24. After the date of such order or decree for winding up the partnership, all suits against the partnership shall, if the court so orders, be stayed; no general partner or other person connected with the partnership shall, without the sanction of the court, dispose of any of the property, effects or things in action of the partnership.

After date of order or decree suits to be stayed, etc.

25. As soon as may be after making an order or decree for winding up the partnership, the court shall cause the assets of the partnership to be collected, and applied in discharge of its liabilities, in a due course of administration.

After order assets to be collected.

26. Any conveyance, mortgage, delivery of goods, payments, execution or other act relating to property, as would, if made or done, by or against any individual trader, be deemed, in the event of his bankruptcy, to have been made or done, by way of undue or fraudulent preference, of any creditor of such trader, shall, if made or done, by, or against any partnership formed under this Act, be deemed in the event of an order being made for winding up such partnership, to have been done, by way of undue or fraudulent preference, of such creditor of such partnership, and shall be invalid accordingly; and for the purposes of this section, the presentation of a petition for winding up a partnership shall be deemed to correspond with the filing of a petition, for adjudication of bankruptcy, in the case of an individual trader, and any conveyance or assignment, made by any partnership formed under this Act, of all its estate and effects, to trustees, for the benefit of all its creditors, shall be void to all intents and purposes.

Conveyance, mortgage, etc., by undue or fraudulent preference.

27. The court may, after it has made an order, or decree, for winding up the partnership, summon before it, any person known, or suspected to have in his possession,

Proceedings of court on winding up.

any of the estate or effects of the partnership, or supposed to be indebted to the partnership, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate or effects of the partnership, and the court may require any such person to produce any books, papers, deeds, writings or other documents, in his custody or power, which may appear to the court requisite to the full disclosure of any of the matters which the court thinks necessary to be inquired into for the purpose of winding up the partnership; and if any person so summoned refuses to come before the court, at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it) the court may, by warrant, authorise, and direct the persons therein named for that purpose to apprehend such person, and bring him before the court for examination.

Court may examine witnesses.

28. The court may examine, upon oath, either by word of mouth, or upon written interrogatories, any person appearing or brought before it in manner aforesaid, concerning the trade, dealings, estate or effects of the partnership, and may reduce into writing the answers of every such person, and require him to sign and subscribe the same.

Penalty on partner mutilating or altering books or papers.

29. If any partner of any partnership, for the winding up of which an order or decree has been made under this Act, destroys, mutilates, alters or falsifies any books, papers, writings or securities, or makes or is privy to the making of the false or fraudulent entry in any register, book of account or other document belonging to the partnership, with intent to defraud the creditors or partners of such partnership, or any of them, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted shall be liable to imprisonment for five years.

Books of partnership to be *prima facie* evidence.

30. All books, accounts and documents of the partnership, and of the liquidators hereinafter mentioned, shall, as between the partners of the partnership, be *prima facie* evidence of the truth of all matters therein contained, and purporting to be therein recorded.

Moneys received by court to be paid into bank.

31. All moneys received under the direction of the court on account of the sale, or conversion of any of the assets of the partnership, or of any other matters, shall be

paid into a bank at Nassau, to the credit of such account as the court may direct, and no money standing to such account shall be paid out of the bank, except upon cheques signed in such manner as the court directs.

32. The court may at any time after the presentation of a petition for winding up a partnership, and either before or after making an order for winding up the same, upon motion of any creditor or partner, appoint a receiver of the estate and effects of the partnership, and also, by notice or advertisement, require all creditors to present and prove their claims within a certain time, or be precluded from the benefits of any distribution which may be made before such claim is proved.

Court may appoint receiver of estate.

33. The court may, at any time after an order or decree has been made for winding up a partnership, upon the application by motion of any creditor or partner, and upon proof to the satisfaction of the court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, upon such terms and subject to such conditions as it deems fit.

Power of court to stay proceedings.

34. As soon as the creditors are satisfied, the court shall proceed to adjust the rights of the partners among themselves, and to distribute the surplus that may remain amongst the parties entitled thereto.

When creditors satisfied, court to distribute surplus.

35. The court may make such order as to the priority of payment out of the estate of the partnership, of the costs, charges and expenses incurred in winding up any partnership, as it thinks just.

Order as to priority of payment.

36. For the purpose of conducting the proceedings in winding up a partnership, and assisting the court therein, the Registrar General shall be appointed by the court, and called “Official Liquidator” under the provisions of this Act, but it shall be lawful in cases where the winding up takes place at the suit of the creditor, for the major part in value of the creditors assembled at a meeting to be held for the purpose, and in cases where the winding up takes place at the suit of a partner, for the major part in value of the partners assembled at a meeting to be held for the purpose, to appoint another official liquidator to act concurrently with the official liquidator so named by the court.

Registrar General to be official liquidator.

Official liquidator to be described as such, and not by name.

37. The official liquidator shall be described by the style of the official liquidator of the particular partnership in respect of which he is appointed, and not by his individual name. He shall take into his custody all the property, effects and things in action of the partnership and shall perform such duties in reference to the winding up of the partnership as may be imposed by the court.

Powers of official liquidator.

38. The official liquidator shall have power, with the sanction of the court to do the following things —

- (a) to bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name, and on behalf of the partnership;
- (b) to carry on the business of the partnership so far as may be necessary for the beneficial winding up of the same;
- (c) to sell the real and personal property, effects and things in action of the partnership by public auction or private contract, with power, if he thinks fit, to transfer the whole thereof to any person or persons, or to sell the same in parcels;
- (d) to execute in the name, and on behalf of the partnership, all deeds, receipts and other documents he may think necessary;
- (e) to refer disputes to arbitration, and compromise any debts or claims;
- (f) to draw, accept, make and endorse any bill of exchange, or promissory note, and also to raise upon the security of the assets of the partnership from time to time any requisite sum, or sums of money, and the drawing, accepting, making or endorsing of every such bill of exchange or promissory note as aforesaid, on behalf of the partnership, shall have the same effect, with respect to the liability of such partnership, as if such bill or note had been drawn, accepted, made, or endorsed by such partnership, in the course of carrying on the business thereof;
- (g) to do and execute all such other things as may be necessary for winding up the affairs of the partnership, and distributing its assets.

May appoint a counsel and attorney.
5 of 1987, Sch.

39. The official liquidator may, with the approval of the court, appoint a counsel and attorney and such clerks or officers as may be necessary to assist him in the

performance of his duties. There shall be paid to such solicitor and such clerks and officers such remuneration by way of fees, or otherwise as may be allowed by the court.

40. There shall be paid to the official liquidator such salary, or remuneration, by way of percentage, or otherwise, as the court directs.

Payment of official liquidator.

41. When the affairs of the partnership have been completely wound up, the court shall make an order or decree, declaring the partnership to be dissolved from the date of such order or decree, and the partnership shall be dissolved accordingly.

When the affairs of partnership wound up, court to dissolve the same.

42. Any order or decree so made shall be reported by the official liquidator to the Registrar General, who shall make a minute of the dissolution of such partnership, or the memorandum of co-partnership, and the record thereof in his office.

Order so made to be reported to Registrar General.

43. Nothing in this Act contained shall be construed to affect the alien laws of The Bahamas.

Proviso as to alien laws.

44. In this Act —

Interpretation.

“court” means the Supreme Court.

SCHEDULE (Section 4)

5 of 1987, s. 2.

MEMORANDUM OF CO-PARTNERSHIP OF A. B. C. D. AND COMPANY, LIMITED

The name of the firm under which this partnership business is to be conducted is A. B. C. D. and Company, Limited, and such business is to be carried on in the city of Nassau, in the Island of New Providence. The objects for which this partnership is established are for carrying on a general mercantile and commission business.

The general partners interested in this business are —

A. B., of the city of Nassau, merchant, residing in the City of Nassau;

C. D., of the city of Nassau aforesaid, also residing in the city of Nassau.

The names of the special partners interested therein are —

E. F., at present of the city of Nassau, but residing in the city of London, in Great Britain;

G. H., also at present of the said Island of New Providence, but residing in Matthew Town, in the Island of Inagua.

The amount of capital stock which the above-named special partner E. F. has contributed to common stock in dry goods is of the value of \$2,000.

The amount of capital stock which the above named special partner G. H. has contributed to common stock in cash is \$4,000.

This partnership is to commence on Monday, the eighth day of April, A.D. 1961, and will terminate on Wednesday, the eighth day of April, A.D. 1971.

We, the several persons whose names and addresses are hereinbefore set forth, and hereto subscribed, are desirous of forming a co-partnership, with limited liability in pursuance of this memorandum of co-partnership, according to the provisions of the Partnership Limited Liability Act.

Witness our hands this day of
A.D. 19.....

..... A. B.

..... C. D.

..... E. F.

..... G. H.

The above memorandum of co-partnership was duly acknowledged before me by the within-named A. B., C. D., E. F., and G. H., on this day of A.D. 19

In verification whereof I have hereunto set my hand and seal notarial the day and year last above written.

.....
(L.S.) S. M.
 Notary Public.

CHAPTER 322**TRADE MARKS****ARRANGEMENT OF SECTIONS**

SECTION

1. Short title.

PART I**REGISTRATION OF TRADE MARKS**

2. Interpretation.
3. Register of trade marks.
4. Trust not to be entered on register.
5. Inspection of and extract from register.
6. Trade mark must be for particular goods.
7. Registrable trade marks.
8. Coloured trade marks.
9. Restriction on registration.
10. Application for registration.
11. Advertisement of application.
12. Opposition to registration.
13. Disclaimers.
14. Date of registration.
15. Certificate of registration.
16. Non-completion of registration.
17. Identical trade marks.
18. Rival claims to identical marks.
19. Concurrent user.
20. Assignment and transmission of trade marks.
21. Apportionment of marks on dissolution of partnership.
22. Associated trade marks.
23. Combined trade marks.
24. Series of trade marks.
25. Assignment and user of associated trade marks.
26. Duration of registration.
27. Renewal of registration.
28. Procedure on expiry of period of registration.
29. Status of unrenewed trade marks.
30. Correction of register.
31. Registration of assignments, etc.
32. Alteration of registered trade mark.

33. Rectification of register.
34. Non-user of trade mark.
35. Defensive registration of well known trade marks.
36. Registered users.
37. Certification trade marks.
38. Powers of registered proprietor.
39. Rights of proprietor of trade mark.
40. Registration to be *prima facie* evidence of validity.
41. Registration to be conclusive after seven years.
42. Unregistered trade marks.
43. Infringement.
44. User of name, address or description of goods.
45. “Passing off” action.
46. Certificate of validity.
47. Registrar to have notice of proceedings for rectification.
48. Costs of proceedings before the court.
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52. Exercise of discretionary power by Registrar.
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61. Right to register trade mark registered in England.

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62. Forging or falsely applying trade marks.
63. Selling goods to which false trade mark applied.
64. Forging trade marks.
65. Applying trade marks.
66. Falsely applying trade marks.
67. Protection of servants acting in good faith.
68. Punishment of offence against Act.

CHAPTER 322**TRADE MARKS****An Act for the registration and protection of trade marks.**

6 of 1906
57 of 1959
G.N. 172/1964
43 of 1964
46 of 1964
E.L.A.O., 1974
5 of 1987
 Short title.

[Commencement 29th May, 1906]

1. This Act may be cited as the Trade Marks Act.

PART I**REGISTRATION OF TRADE MARKS**

2. In this Act, unless the context otherwise requires — Interpretation.

“court” means the Supreme Court, and includes a judge sitting in chambers;

“covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper;

“goods” means anything which is the subject of trade, manufacture or merchandise;

“label” includes any band or ticket;

“mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof;

“Minister” means the Minister responsible for Trade Marks; *E.L.A.O., 1974.*

“prescribed” means in relation to proceedings before the court, prescribed by rules of court, and, in other cases, prescribed by this Act or the rules thereunder;

“register” means the register of trade marks kept under the provisions of this Act;

“registered trade mark” means a trade mark which is actually upon the register;

“registrable trade mark” means a trade mark which is capable of registration under the provisions of this Act;

“Registrar” means the Registrar General;

“trade mark” means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale.

Register of trade marks.

3. There shall be kept at the Registry of Records for the purposes of this Act a book called the Register of Trade Marks, wherein shall be entered all registered trade marks, with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Registrar.

Trust not to be entered on register.

4. There shall not be entered in the register any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

Inspection of and extract from register.

5. The register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such rules as may be prescribed; and certified copies, sealed with the seal of the office, of any entry in such register shall be given to any person requiring the same on payment of the prescribed fee.

Trade mark must be for particular goods.

6. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable trade marks.

7. A registrable trade mark must contain or consist of at least one of the following essential particulars —

- (a) the name of a company, individual or firm represented in a special or particular manner;
- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) an invented word or invented words;
- (d) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or surname;
- (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraph (a) to (d) shall not, except by order of the court, be deemed a distinctive mark.

For the purposes of this section, “distinctive” shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the Registrar may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

43 of 1964, Third Sch.

8. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by the Registrar having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.

Coloured trade marks.

43 of 1964, Third Sch.

9. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

Restriction on registration.

10. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

Application for registration.

(2) Subject to the provisions of this Act, the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the court at the option of the applicant.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments and modifications, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of

objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the court hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as may be thought fit.

Advertisement of application.

11. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to registration.

12. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and, within the prescribed time after the receipt of such notice the applicant shall send to the Registrar, in the prescribed manner, a counterstatement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant send such counterstatement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the court.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may, either in the manner prescribed, or by special leave of the court, bring forward further material for the consideration of the court.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinabove provided, except by leave of the court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent or giving notice as prescribed.

(9) In any appeal under this section, the court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar shall have power in proceedings under this section to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in The Bahamas, the court may require such party to give security for costs of the proceedings before it relative to such opposition or appeal and, in default of such security being duly given, may treat the opposition or appeal as abandoned.

13. If a trade mark contains parts not separately registered by a proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any

Disclaimers.

right to the exclusive use of any part or parts of such trade marks, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration:

Provided that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration.

14. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed, the opposition has been decided in favour of the applicant, the Registrar shall register the said trade mark, and the trade mark when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Act to be the date of registration.

Certificate of registration.

15. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar and sealed with the seal of the office.

Non-completion of registration.

16. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

Identical trade marks.

17. Except by order of the court, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks.

18. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of

goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the court, or have been settled by agreement in a manner approved by him.

19. In case of honest concurrent user or of other special circumstances which, in the opinion of the court, make it proper so to do, the court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user, or otherwise, as it may think it right to impose.

Concurrent user.

20. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered, and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any country of the Commonwealth or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods.

Assignment and transmission of trade marks.

43 of 1964, Third Sch.

21. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Act as to associated trade marks) on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the court.

Apportionment of marks on dissolution of partnership.

43 of 1964, Third Sch.

22. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the Registrar may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Associated trade marks.

43 of 1964, Third Sch.

Combined trade marks.

23. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks.

24. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of —

- (a) statements of the goods for which they are respectively used or proposed to be used;
- (b) statements of number, price, quality or names of places;
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark;
- (d) colour,

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks.

25. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks:

43 of 1964, Third Sch.

Provided that, where under the provision of this Act user of a registered trade mark is required to be proved for any purpose, the Registrar may, if and so far as he shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

Duration of registration.

26. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

27. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or the last renewal of registration, as the case may be, which date is herein termed “the expiration of the last registration.”

Renewal of registration.

28. At the prescribed time, before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if, at the expiration of the time prescribed in that behalf, such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Procedure on expiry of period of registration.

29. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

Status of unrenewed trade marks.

30. (1) The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled to law to act in his name —

Correction of register.

- (a) correct any error in the name or address of the registered proprietor of a trade mark;
- (b) enter any change in the name or address of the person who is registered as proprietor of a trade mark;
- (c) cancel the entry of a trade mark on the register;
- (d) strike out any goods or classes of goods from those for which a trade mark is registered;
- (e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

*G.N. 172/1964 s.
6.*

(2) Any decision of the Registrar under this section shall be subject to appeal to the court.

Registration of
assignments, etc.

31. Subject to the provisions of this Act, where a person becomes entitled to a registered trade mark by assignment, transmission or other operation of law, the Registrar shall, on request in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the Registrar under this section shall be subject to appeal to the court.

Alteration of
registered trade
mark.

*G.N. 172/1964, s.
6.*

32. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave, or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the court. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of
register.

33. Subject to the provisions of this Act —

- (a) the court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongfully remaining on the register, or by an error or defect in any entry in the register, make such order for making, expunging, or varying such entry, as it may think fit;
- (b) the court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register;
- (c) in case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the court under the provisions of this section;
- (d) any order of the court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

34. A registered trade mark may, on the application to the court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connection with such goods, and there has in fact been no *bona fide* user of the same in connection therewith, or on the ground that there has been no *bona fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

Non-user of trade mark.

35. (1) Where a trade mark consisting of an invented word or invented words has become so well known as respects any goods in respect of which it is registered and in relation to which it has been used that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 34, the trade mark may, on the application in the prescribed manner of the proprietor registered in respect of the first mentioned goods, be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under section 34.

Defensive registration of well known trade marks.

57 of 1959, s. 2.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application by any person aggrieved to the court, or at the option of the applicant and subject to the provisions of section 53 of this Act, to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of subsection (1) of this section are no longer satisfied in respect of any goods in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in respect of which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in subsection (1) of this section.

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

36. (1) Subject to the provisions of this section, a person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

The use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject, is in this Act referred to as the “permitted use” thereof.

Registered users.
57 of 1959, s. 2.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for the purposes of section 34 of this Act and for any other purpose for which such use is material under this Act or at common law.

(3) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within two months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

A proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(4) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with a statutory declaration made by the proprietor, or by some person authorised to act on his behalf and approved by the Registrar —

- (a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;
- (b) stating the goods in respect of which registration is proposed;
- (c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter; and
- (d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof,

and with such further documents, information or evidence as may be required under the rules or by the Registrar.

(5) When the requirements of subsection (4) of this section have been complied with, if the Registrar after considering the information furnished to him under that subsection, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar thinks proper would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied subject as aforesaid.

(6) The Registrar shall refuse an application under the foregoing provisions of this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(7) The Registrar shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the foregoing provisions of this section (other than matter entered in the register) is not disclosed to rivals in trade.

(8) Without prejudice to the provisions of section 33 of this Act, the registration of a person as a registered user —

- (a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;
- (b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or
- (c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say —
 - (i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion;

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- (ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;
 - (iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(9) Provision shall be made by the rules of the notification of the registration of a person as a registered user to any other registered user of the trade mark, and for the notification of an application under subsection (8) of this section to the registered proprietor and each registered user (not being the applicant) of the trade mark, and for giving to the applicant on such an application, and to all persons to whom such an application is notified and who intervene in the proceedings in accordance with the rules, an opportunity of being heard.

(10) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods in respect of which the trade mark is no longer registered.

(11) Any decision of the Registrar under the foregoing provisions of this section shall be subject to appeal to the court.

(12) Nothing in this section shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

37. (1) A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified shall be registrable as a certification trade mark in respect of those goods in the name, as proprietor thereof, of that person:

Certification
trade marks.

57 of 1959, s. 2.

Provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified.

(2) In determining whether a mark is adapted to distinguish as aforesaid, the Registrar may have regard to the extent to which —

- (a) the mark is inherently adapted to distinguish as aforesaid in relation to the goods in question; and
- (b) by reason of the use of the mark or of any other circumstances, the mark is in fact adapted to distinguish as aforesaid in relation to the goods in question.

(3) Subject to the provisions of subsections (4) to (6) of this section, the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods, and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a person authorised by him under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either —

- (a) as being use as a trade mark; or
- (b) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or by his authorisation under the relevant regulations to use the trade mark or to goods certified by the proprietor.

(4) The right to the use of a certification trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(5) The right to the use of a certification trade mark given by registration, as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person —

- (a) in relation to goods certified by the proprietor of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the trade mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the trade mark; or
- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor:

Provided that paragraph (a) of this subsection shall not have effect in the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that paragraph, if such application is contrary to the relevant regulations.

(6) Where a certification trade mark is one of two or more registered trade marks that are identical or nearly resemble each other, the use of any of those trade marks in exercise of the right to the use of that trade mark given by registration shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

(7) There shall be deposited at the Registry of Records in respect of every trade mark registered under this section regulations approved by the Minister for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the trade mark, and may contain any other provisions that the Minister may require or permit to be

E.L.A.O., 1974.

E.L.A.O., 1974.

inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the trade mark in accordance with the regulations). Regulations so deposited shall be open to inspection in like manner as the register.

(8) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Registrar.

Powers of registered proprietor.

38. Subject to the provisions of this Act —

- (a) the person for the time being entered in the register as proprietor of a trade mark shall, subject to any right appearing from such register to be vested in any other person, have the power to assign the same, and to give effectual receipts for any consideration for such assignment;
- (b) any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark.

39. Subject to the provisions of section 41 of this Act and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered:

Provided that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be *prima facie* evidence of validity.

40. In all legal proceedings relating to a registered trade mark (including applications under section 33 of this Act) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

41. In all legal proceedings relating to a registered trade mark (including applications under section 33 of this Act) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Act, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section 9 of this Act:

Registration to be conclusive after seven years.

Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section 19 of this Act.

42. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark.

Unregistered trade marks.

43. In an action for the infringement of a trade mark the court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

Infringement.

44. No registration under this Act shall interfere with any *bona fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

User of name, address or description of goods.

45. Nothing in this Act contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

“Passing off” action.

46. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade

Certificate of validity.

mark, the court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark, on obtaining a final order or judgment in his favour, shall have his full costs, charges and expenses as between attorney and client, unless in such subsequent proceedings the court certifies that he ought not to have the same.

Registrar to have notice of proceedings for rectification.

47. In any legal proceedings in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the court. Unless otherwise directed by the court, the Registrar in lieu of appearing and being heard may submit to the court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

Costs of proceedings before the court.

48. In all proceedings before the court under this Act the costs of the Registrar shall be in the discretion of the court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

Mode of giving evidence
G.N. 172/1964,
s. 6.

43 of 1964, Third Sch.

49. In any proceeding under this Act before the Registrar the evidence shall be given by notarial declaration in the absence of directions to the contrary, but in any case in which he shall think right so to do, the Registrar may take evidence *viva voce* in lieu of or in addition to evidence by declaration. Any such notarial declaration may in the case of appeal be used before the court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *viva voce* the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as the court.

Sealed copies to be evidence.

50. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar and sealed with the seal of the office, shall be admitted in evidence in all proceedings without further proof or production of the originals.

51. A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing which he is authorised by this Act, or rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Certificate of Registrar to be evidence.

PART II PROCEDURE RELATING TO TRADE MARKS

52. Where any discretionary or other power is given to the Registrar by this Act or rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Exercise of discretionary power by Registrar.

53. Except where expressly given by the provisions of this Act or rules made thereunder there shall be no appeal from a decision of the Registrar, but the court, in dealing with any question of the rectification of the register (including all applications under the provisions of section 33 of this Act), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Appeal from Registrar.

G.N. 172/1964.

54. Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Act or in particular cases by special leave of the Minister be done by or to an agent of such party duly authorised in the prescribed manner.

Recognition of agents.

E.L.A.O., 1974.

55. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Attorney-General for directions in the matter.

Registrar may take directions from Attorney-General.

56. (1) Subject to the provisions of this Act the Minister may from time to time make such rules, prescribe such forms and generally do such things as may be thought expedient —

Power to make rules.
*E.L.A.O., 1974.;
46 of 1964, Sch.*

- (a) for classifying goods for the purposes of registration of trade marks;
- (b) for making or requiring duplicates of trade marks and other documents;
- (c) for securing and regulating the publishing and selling or distributing, in such manner as the Minister thinks fit, of copies of trade marks and other documents;
- (d) generally, for regulating the business of the office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar or of the Minister.

E.L.A.O., 1974.

(2) Before making any rules under this section the Minister shall publish notice of the intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as he may consider most expedient, so as to enable persons affected to make representations to the Minister before the rules are finally settled.

*46 of 1964, Sch.
Ch. 53.*

(3) It shall be lawful for rules of court to be made under section 76 of the Supreme Court Act regulating the conduct of legal proceedings under this Act either before the Registrar or the court.

Fees.

E.L.A.O., 1974.

57. There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by Order by the Minister.

Standardisation,
etc., trade marks.
*43 of 1964, Third
Sch.*

58. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic and certifies the result of such examination by mark used upon or in connection with such goods, the Registrar may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a good-will in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Registrar. Any decision of the Registrar under this section shall be subject to appeal to the court.

59. If any person makes or causes to be made a false entry in the register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing knowing the entry or writing to be false, he shall be guilty of an offence against this Act.

Falsification of entries in register.

60. (1) Any person who represents a trade mark as registered which is not so shall be liable for every offence on summary conviction to a fine of twenty dollars.

Penalty on falsely representing a trade mark.
5 of 1987, s. 2.

(2) A person shall be deemed for the purposes of this enactment to represent that a trade mark is registered if he uses in connection with the trade mark the word “registered” or any words expressing or implying that registration has been obtained for the trade mark.

61. Subject to any prior rights that may have been acquired by any local proprietor of a trade mark, the proprietor of any trade mark registered in England shall be entitled to the registration of such trade mark in The Bahamas, upon the production of a certificate of the registration of such trade mark in England under the hand of the Comptroller General of patents, designs and trade marks.

Right to register trade mark registered in England.

PART III PROTECTION OF TRADE MARKS

62. Every person who —

- (a) forges any trade mark;
- (b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive,

Forging or falsely applying trade marks.

shall, unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

63. Every person who sells, or exposes for sale, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall be guilty of an offence against this Act, unless he proves —

Selling goods to which false trade mark applied.

- (a) that having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark;
- (b) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things;
- (c) that otherwise he acted innocently.

Forging trade marks.

64. (1) A person shall be deemed to forge a trade mark who either —

- (a) without the assent of the proprietor of the trade mark makes that trade mark or mark so nearly resembling that trade mark as to be calculated to deceive;
- (b) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

(2) Any trade mark so made or falsified is in this Act referred to as a forged trade mark:

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Applying trade marks.

65. (1) A person shall be deemed to apply a trade mark or mark to goods who —

- (a) applies it to the goods themselves;
- (b) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture;
- (c) places, encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade mark has been applied;
- (d) uses a trade mark or mark in any manner calculated to lead to the belief that the goods in connection with which it is used are designated by that trade mark or mark.

(2) A trade mark or mark shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed, or affixed to the goods, or to any covering, label, reel or other thing.

66. A person shall be deemed falsely to apply to goods a trade mark or mark, who without the consent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

Falsely applying trade marks.

67. Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in The Bahamas who acts in good faith in obedience to the instructions of such master, and on demand made on behalf of the prosecutor has given full information as to his master.

Protection of servants acting in good faith.

68. Any person guilty of an offence against this Act shall be liable on summary conviction to a penalty of two hundred dollars and to the forfeiture of all goods in respect of which the offence was committed.

Punishment of offence against Act.
5 of 1987, s. 2.

CHAPTER 333**MERCANTILE AGENTS****ARRANGEMENT OF SECTIONS**

SECTION

1. Short title.
2. Interpretation.

Dispositions by Mercantile Agents

3. Powers of mercantile agent with respect to disposition of goods.
4. Effect of pledges of documents of title.
5. Pledge for antecedent debt.
6. Rights acquired by exchange of goods or documents.
7. Agreements through clerks, etc.
8. Provisions as to consignors and consignees.

Dispositions by Sellers and Buyers of Goods

9. Dispositions by sellers remaining in possession.
10. Disposition by buyers obtaining possession.
11. Effect of transfer of documents on vendor's lien or right of stoppage *in transitu*.

Supplemental

12. Mode of transferring documents.
13. Saving for rights of true owner.
14. Saving for common law powers of agent.

CHAPTER 333

MERCANTILE AGENTS

An Act relating to mercantile agents.

7 of 1904

[Commencement 2nd May, 1904]

1. This Act may be cited as the Mercantile Agents Act. Short title.
2. (1) In this Act, unless the context otherwise requires — Interpretation.
- “document of title” includes any bill of lading, dock warrant, warehouse-keeper’s certificate and warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;
- “goods” includes wares and merchandise;
- “mercantile agent” means a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;
- “pledge” includes any contract pledging, or giving a lien or security on goods whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.
- (2) A person shall be deemed to be in possession of goods or of the documents of title to goods, where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf.

Dispositions by Mercantile Agents

3. (1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge or other disposition of the Powers of mercantile agent with respect to disposition of goods.

goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same:

Provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge or other disposition, which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent:

Provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

4. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

5. Where a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

6. The consideration necessary for the validity of a sale, pledge or other disposition, of goods, in pursuance of this Act, may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of negotiable security, or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of

Effect of pledges of documents of title.

Pledge for antecedent debt.

Rights acquired by exchange of goods or documents.

other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

7. For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

Agreements through clerks, etc.

8. (1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

Provisions as to consignors and consignees.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge or disposition, by a mercantile agent.

Dispositions by Sellers and Buyers of Goods

9. Where a person, having sold goods, continues, or is, in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

Dispositions by sellers remaining in possession.

10. Where a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer, by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof, or

Disposition by buyers obtaining possession.

under any agreement for sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Effect of transfer of documents on vendor's lien or right of stoppage *in transitu*.

11. Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*.

Supplemental

Mode of transferring documents.

12. For the purposes of this Act, the transfer of a document may be by endorsement, or, where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

Saving for rights of true owner.

13. (1) Nothing in this Act shall authorise an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing.

(2) Nothing in this Act shall prevent the owner of goods from recovering the goods from an agent or his trustee in bankruptcy at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

(3) Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price subject to any right of set off on the part of the buyer against the agent.

14. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.

Saving for
common law
powers of agent.

CHAPTER 334

MERCANTILE LAW AMENDMENT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Consideration for Guarantee need not appear by Writing.
3. A Surety who discharges the Liability to be entitled to Assignment of all Securities held by the Creditor.

CHAPTER 334

MERCANTILE LAW AMENDMENT

An Act to amend the laws affecting trade and commerce.

*19 & 20 Vict.
c. 97 extended
by 23 of 1860
9 of 1995*

[Commencement 29th July, 1856]

1. [This Act may be cited as the Mercantile Law Amendment Act.]

Short title.

2. No special promise to be made by any Person after the passing of this Act to answer for the Debt, Default, or Miscarriage of another Person, being in Writing, and signed by the Party to be charged therewith or some other Person by him thereunto lawfully authorised, shall be deemed invalid to support an Action, Suit, or other Proceeding to charge the Person by whom such Promise shall have been made, by reason only that the Consideration for such Promise does not appear in Writing, or by necessary Inference from a written Document.

Consideration for Guarantee need not appear by Writing.

3. Every Person who, being Surety for the Debt or Duty of another, or being liable with another for any Debt or Duty, shall pay such Debt or perform such Duty, shall be entitled to have assigned to him, or to a Trustee for him, every Judgment, Specialty, or other Security which shall be held by the Creditor in respect of such Debt or Duty, whether such Judgment, Specialty, or other Security shall or shall not be deemed at Law to have been satisfied by the Payment of the Debt or Performance of the Duty, and such Person shall be entitled to stand in the Place of the Creditor, and to use all the Remedies, and, if need be, and upon a proper Indemnity, to use the Name of the Creditor, in any Action or other Proceeding, at Law or in Equity, in order to obtain from the principal Debtor, or any Co-Surety, Co-Contractor, or Co-Debtor, as the Case may be, Indemnification for the Advances made and Loss sustained by the Person who shall have so paid such Debt or performed such Duty, and such Payment or Performance so made by such Surety shall not be pleadable in bar of any such Action or other Proceeding by him:

A Surety who discharges the Liability to be entitled to Assignment of all Securities held by the Creditor.

Provided always that no Co-Surety, Co-Contractor, or Co-Debtor shall be entitled to recover from any other Co-Surety, Co-Contractor, or Co-Debtor, by the Means aforesaid, more than the just Proportion to which, as between those Parties themselves, such last-mentioned Person shall be justly liable.

CHAPTER 337**SALE OF GOODS****ARRANGEMENT OF SECTIONS**

SECTION

1. Short title.
2. Interpretation.

**PART I
FORMATION OF THE CONTRACT***Contract of Sale*

3. Sale and agreement to sell.
4. Capacity to buy and sell.

Formalities of the Contract

5. Contract of sale, how made.
6. Contract of sale for forty dollars and upwards.

Subject Matter of Contract

7. Existing or future goods.
8. Goods which have perished.
9. Goods perishing before sale but after agreement to sell.

The Price

10. Ascertainment of price.
11. Agreement to sell at valuation.

Conditions and Warranties

12. Stipulations as to time.
13. When condition to be treated as warranty.
14. Implied undertaking as to title, etc.
15. Sale by description.
16. Implied conditions as to quality or fitness.

Sale by Sample

17. Sale by sample.

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19. Property passes when intended to pass.
20. Rules for ascertaining intention.
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- 49. Action for price.
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- 56. Reasonable time a question of fact.
- 57. Rights, duties and liabilities enforceable by action.
- 58. Auction sales.
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CHAPTER 337**SALE OF GOODS****An Act relating to the sale of goods.***37 of 1904
5 of 1987**[Commencement 9th June, 1904]*

1. This Act may be cited as the Sale of Goods Act. Short title.
2. (1) In this Act, unless the context otherwise requires — Interpretation.
 - “action” includes counterclaim and set off;
 - “buyer” means a person who buys or agrees to buy goods;
 - “contract of sale” includes an agreement to sell as well as a sale;
 - “delivery” means voluntary transfer of possession from one person to another;
 - “document of title to goods” includes any bill of lading, dock warrant, warehouse-keeper’s certificate and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;
 - “fault” means wrongful act or default;
 - “future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale;
 - “goods” include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or undo the contract of sale;
 - “mercantile agent” means a mercantile agent having in the customary course of his business as such agent authority either to sell goods or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods;

“property” means the general property in goods, and not merely a special property;

“quality of goods” includes their state or condition;

“sale” includes a bargain and sale as well as a sale and delivery;

“seller” means a person who sells or agrees to sell goods;

“specific goods” means goods identified and agreed upon at the time a contract of sale is made;

“warranty” means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) A thing is deemed to be done “in good faith” within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not.

(4) Goods are in a “deliverable state” within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

PART I FORMATION OF THE CONTRACT

Contract of Sale

Sale and
agreement to sell.

3. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the

contract is called a sale; but where the transfer of the property in goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

4. (1) Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property:

Capacity to buy and sell.

Provided that where necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

(2) Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of the sale and delivery.

Formalities of the Contract

5. Subject to the provisions of this Act and of any Act in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties:

Contract of sale, how made.

Provided that nothing in this section shall affect the law relating to corporations.

6. (1) A contract for the sale of any goods of the value of forty dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

Contract of sale for forty dollars and upwards. 5 of 1987, s. 2.

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.

Subject Matter of Contract

Existing or future goods.

7. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called “future goods.”

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods which have perished.

8. Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

Goods perishing before sale but after agreement to sell.

9. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

The Price

Ascertainment of price.

10. (1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

11. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided:

Agreement to sell at valuation.

Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Conditions and Warranties

12. (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Stipulations as to time.

(2) In a contract of sale “month” means *prima facie* calendar month.

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

When condition to be treated as warranty.

(2) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in a contract.

(3) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract express or implied to that effect.

(4) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title, etc.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is —

- (a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods, and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;
- (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the same if the goods do not also correspond with the description.

Implied conditions as to quality or fitness.

16. Subject to the provisions of this Act and of any Act in that behalf, there is no implied warranty or condition as the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows —

- (a) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that in the case of a contract for the sale of a specified article under the patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

- (b) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;

- (c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (d) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Sale by Sample

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. Sale by sample.

- (2) In the case of a contract for sale by sample —
- (a) there is an implied condition that the bulk shall correspond with the sample in quality;
- (b) there is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (c) there is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

PART II EFFECTS OF THE CONTRACT

Transfer of Property as between Seller and Buyer

18. Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. Goods must be ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Rules for ascertaining intention.

20. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer —

- (a) where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed;
- (b) where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof;
- (c) where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof;
- (d) when goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer —
 - (i) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
 - (ii) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact;

- (e) where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made;
- (f) where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

21. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

Reservation of right of disposal.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

22. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:

Risk *prima facie* passes with property.

Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault:

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of Title

Sale by person
not the owner.

23. Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

Provided that nothing in this Act shall affect —

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- (a) the provisions of the Mercantile Agents Act, or any Act enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;
- (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Sale under
voidable title.

24. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Reverting of
property in stolen
goods etc., on
conviction of
offender.

25. (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen reverts in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise.

(2) Notwithstanding any Act to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revert in the person who was the owner of the goods, or his personal representative by reason only of the conviction of the offender.

26. (1) Where a person, having sold goods, continues or is in possession of the goods, or of the documents of title to the goods the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

Seller or buyer in possession after sale.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

27. A writ of *feri facias* or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the officer charged with the duty of executing it; and, for the better manifestation of such time, it shall be the duty of such officer, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month and year when he received the same:

Effect of writs of execution.

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of such officer.

PART III PERFORMANCE OF CONTRACT

28. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Duties of seller and buyer.

Payment and delivery are concurrent conditions.

29. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for the possession of the goods.

Rules as to delivery.

30. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he has one, and if not, his residence:

Provided that if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods in a deliverable state must be borne by the seller.

Delivery of wrong quantity.

31. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the

rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

32. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

Instalment deliveries.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

33. (1) Where in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier whether named by the buyer or not, for the purpose of transmission to the buyer is *prima facie* deemed to be a delivery of the goods to the buyer.

Delivery to carrier.

(2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to

insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant place.

34. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

35. (1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

36. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

37. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

38. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART IV
RIGHTS OF UNPAID SELLER AGAINST THE
GOODS

39. (1) The seller of goods is deemed to be an “unpaid seller” within the meaning of this Act — “Unpaid seller” defined.

- (a) when the whole of the price has not been paid or tendered;
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part of this Act the term “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

40. (1) Subject to the provisions of this Act, and of any Act in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law — Unpaid seller’s rights.

- (a) a lien on the goods for the price while he is in possession of them;
- (b) in the case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them;
- (c) a right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

Unpaid Seller's Lien

Seller's lien.

41. (1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely —

- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit, but the term of credit has expired;
- (c) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

42. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien.

43. (1) The unpaid seller of goods loses his lien thereon —

- (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment for the price of the goods.

*Stoppage in Transitu*Right of stoppage *in transitu*.

44. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods, as long as they are in course of transit, and may retain them until payment or tender of the price.

45. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee.

Duration of transit.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent, that he holds the goods on his behalf, and continues in possession of them as bailee for the buyer or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer it is a question depending upon the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent to the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

46. (1) The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods, or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

How stoppage *in transitu* is effected.

(2) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

Re-sale by Buyer or Seller

Effect of sub-sale or pledge by buyer.

47. Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge, or other disposition for value, the unpaid seller's right of lien or stoppage *in transitu* can only be exercised subject to the rights of the transferee.

Sale not generally rescinded by lien or stoppage *in transitu*.

48. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage *in transitu*.

(2) Where an unpaid seller who has exercised his right of lien or stoppage *in transitu* re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves a right of resale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

PART V
ACTIONS FOR BREACH OF THE CONTRACT

Remedies of the Seller

49. (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods. Action for price.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

50. (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance. Damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

Remedies of the Buyer

51. (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery. Damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods, at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Specific
performance.

52. In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment.

Remedy for
breach of
warranty.

53. (1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may —

- (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
- (b) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Interest and
special damages.

54. Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

**PART VI
SUPPLEMENTARY**

55. Where any right, duty or liability would arise under a contract of sale, by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

Exclusion of implied terms and conditions.

56. Where, by this Act, any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Reasonable time a question of fact.

57. Where any right, duty or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action.

Rights, duties and liabilities enforceable by action.

58. In the case of a sale by auction —

Auction sales.

- (a) where goods are put up for sale by auction in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;
- (b) a sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid;
- (c) where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; any sale contravening this rule may be treated as fraudulent by the buyer;
- (d) a sale by auction may be notified to be subject to a reserved price, and a right to bid may also be reserved expressly by or on behalf of the seller;
- (e) where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

59. (1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act contained.

Savings.

(2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) Nothing in this Act or in any repeal effected thereby shall affect any Act relating to the sale of goods which is not expressly repealed by this Act.

(4) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.