

RECENT LEGISLATION

South Australia, 1962

The South Australian Parliament has, during 1962, enacted legislation of particular interest to legal practitioners. This comment is intended as a brief synopsis, with some explanation, of this legislation, and includes also some enactments of a more general interest. No reference is made to the Companies Act 1962, which forms the subject of an article elsewhere in this review.

Hire-Purchase Agreements

Since the coming into operation of the Hire-Purchase Agreements Act 1960, a number of traders and financiers have avoided entering into hire-purchase agreements and instead have adopted other methods of selling goods on credit. Some companies have secured their advances by taking bills of sale over the goods sold, but as the bills do not contain the particulars required by the Bills of Sale Act 1886-1940, they cannot be registered under that Act. In South Australia this does not make the bills void, but simply deprives the grantees of certain rights to priority over other creditors if the grantors of the bills become insolvent.¹ This procedure enabled financiers and traders to include wide measures of protection in their bills of sale, including rights to enter premises and repossess the goods. However, a restriction has now been placed on this procedure by section 3 of the Hire-Purchase Agreements Act Amendment Act 1962,² which provides that any authority or licence to take possession of personal chattels contained in any agreement which operates as a bill of sale within the meaning of the Bills of Sale Act 1886-1940, but is not in registrable form, shall be wholly unenforceable by the grantee thereof.³

The amendment also inserts a new section, 46b, into the Hire-Purchase Agreements Act 1960-1962, which makes it an offence for any person knowingly to make demand upon the hirer of goods under a hire-purchase agreement for payment to the owner of any sum in

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1. Bills of Sale Act 1886-1940, s. 28. A registered bill of sale has priority over an unregistered bill under s. 18 of the Act: *Shepard v. Brown Brothers Limited* [1935] S.A.S.R. 177, 185.
 2. Hire-Purchase Agreements Act 1960-1962, s. 46a.
 3. It appears that the object of this amendment could be defeated simply by executing a bill of sale which is in registrable form, and omitting to register it. A bill of sale would presumably be in "registrable form" if it contained the particulars mentioned in s. 9 of the Bills of Sale Act.

excess of the amount properly due to the owner pursuant to the agreement.

Hirers are further protected by the insertion of section 46c into the principal Act. Some finance companies enter into agency agreements with dealers and traders under what is known as the "floor plan" system. The finance company buys stocks of goods, such as second-hand motor cars or television sets, and allows a dealer to have the goods on his premises and to act as its agent in selling, renting or hiring the goods. Members of the public are usually unaware that the person from whom they buy goods has no title to them and that his authority to deal with them is limited by the "floor plan" agreement. Sometimes, after receiving a number of payments from innocent purchasers, the dealer becomes insolvent, or makes default in paying the money he has received to the finance company. Then, depending on the circumstances, the company may inform the purchasers that they have no title to the goods and insist that the full purchase price be paid to it without any allowance for the amounts already paid to the dealer.⁴ In some cases the company would no doubt be estopped from denying the authority of its agent to sell the goods under the principle that "wherever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it".⁵ However, this principle does not protect innocent purchasers in every case.⁶ Section 46c of the Act therefore provides that where an owner places his goods in the hands of an agent in this way, any hire-purchase agreement or hiring agreement made by the agent acting in the ordinary course of his business⁷ shall be valid, and payments to the agent in respect of the goods shall be deemed to be made to the owner until the hirer has notice that future payments must be made to the owner.⁸ It is further provided that where the owner's goods are the subject of a hire-purchase agreement or unregistered bill

4. This occurred in *General Distributors Limited v. Paramotors Limited* [1962] S.A.S.R. 1.

5. The rule in *Lickbarrow v. Mason* (1787) 2 T.R. 63; 100 E.R. 35. Cf. Sale of Goods Act 1895-1952, s. 21 (1).

6. Cases of this kind invariably involve difficult questions of law and fact. In *General Distributors Limited v. Paramotors Limited* (*supra*) the Full Court (Chamberlain J. dissenting) held that the dealer was not authorized to sell a motor vehicle in the way in which he had in fact sold it, and that *vis à vis* the purchaser the finance company had done nothing more than allow the dealer to have possession of the car. In the circumstances, the company had done nothing which could be said to have misled the purchaser, who had not been deceived by the dealer's possession of the car, but by his false declaration that it was his sole property and free from all encumbrances. Accordingly, it was held that the finance company was not estopped from denying the dealer's authority to sell the car, and the purchaser was liable for conversion of the car.

7. See C. H. Bright: "The Ordinary Course of Business" (1961) 1 *Adelaide Law Review* 138.

8. Hire-Purchase Agreements Act 1960-1962, s. 46c (1) (a).

of sale, any sale by the dealer of such goods to a *bona fide* purchaser for value and without notice shall be deemed to be a valid sale by the owner to the purchaser, and any payment by the purchaser to the trader shall be deemed to be payment to the owner.⁹ This amendment does not lessen the liability of defaulting traders for tort or crime, and does not derogate from the existing rights of innocent purchasers.¹⁰

Third Party Insurers

Two amendments affecting the liability of third party insurers have been made to the Motor Vehicles Act 1959-1961.

In a recent case the High Court of Australia held that the enactment in New South Wales of legislation providing for the survival of causes of action against the estate of a deceased tortfeasor had impliedly repealed earlier third party legislation¹¹ giving a right of action against the authorised insurer of a deceased tortfeasor.¹² This meant that third persons no longer had any right of action against the insurer, and their only remedy was to sue the estate of the deceased tortfeasor under Lord Campbell's Act. The position in South Australia has been clarified by section 6 of the Motor Vehicles Act Amendment Act 1962, which declares that a right of action against the insurer where the insured is dead exists and has existed since the enactment of section 70d (2) of the Road Traffic Act and section 113 of the Motor Vehicles Act 1959-1962, notwithstanding that the claimant has or had a right of action against the estate of the deceased.¹³

The Motor Vehicles Act Amendment Act (No. 2) 1962 inserts into the principal Act a provision whereby approved insurers are made collectively responsible when one of their number becomes unable to meet its obligations under a third party policy of insurance.¹⁴ For this purpose the Treasurer, on the direction of the Governor, will appoint a nominal defendant who will have the same duties, liabilities, rights and powers as the defaulting insurer, including any rights it may have under a contract of re-insurance with another insurer.

9. *Ibid.*, s. 46c (1) (b).

10. *Ibid.*, s. 46c (2). The expression "at law" contained in sub-sec. (c) would presumably include common law, equity and other legislation: see *R. v. Darlington Local Board of Health* (1865), 6 B. & S. 562, 569; 122 E.R. 1303, 1306.

11. The corresponding provision in South Australia was s. 70d (2) of the Road Traffic Act 1934-1958, which has since been repealed and re-enacted in substance in s. 113 (1) of the Motor Vehicles Act 1959-1962.

12. *The Nominal Defendant v. Mabury* (1962) 35 A.L.J.R. 497. See also *Genders v. Government Insurance Office of New South Wales* (1959) 102 C.L.R. 363.

13. Motor Vehicles Act 1959-1962, s. 113 (2). In South Australia it could be argued that the express statement in the Motor Vehicles Act 1959 of the right to proceed against the insurer could not be affected by the Survival of Causes of Action Act, which was passed in 1940.

14. Motor Vehicles Act Amendment Act 1962, s. 4; Motor Vehicles Act 1959-1962, s. 118a.

Local Courts

The jurisdiction of local courts of limited jurisdiction has been increased from £30 to £100 by section 6 of the Local Courts Act Amendment Act 1962.¹⁵ The Act also amends the right of removal of Local Court judgments to the Supreme Court, and this right now exists only in respect of judgments for amounts exceeding £100.¹⁶ The power of a Local Court to suspend execution of a judgment in the case of sickness has been similarly widened and now includes cases where the amount of the judgment debt is under £100.¹⁷

However, these amendments are subject to two important reservations. In the first place, it is now provided that when the claim or counterclaim exceeds £30, contested cases shall not be heard by justices, but by a special magistrate.¹⁸ In the second place, section 58 of the principal Act relating to appeals has not been amended, and a right of appeal still exists where the amount involved is over £30.

Excessive Rents

The Excessive Rents Act 1962 was passed to take the place of the Landlord and Tenant (Control of Rents) Act 1942-1961, which expired at the end of 1962. Section 6 of the new Act provides that any tenant of a dwellinghouse may apply to a local court to determine whether his rent is excessive. The court has power either to dismiss the application, or to make an order preventing the giving of a notice to quit, or fixing the rent for a period of one year.¹⁹ The criteria to be considered by the Court in exercising its powers are contained in section 8. The rights of tenants under the Act are protected by section 15, which provides that a notice to quit cannot be given without leave while an application to a local court is pending or an order fixing the rent is in force.

The new Act does not apply to a written letting agreement for a period of one year or more, unless such agreement is made as a result of a notice to quit or a threat thereof.²⁰ Nor does it apply to sub-standard houses, for which the Housing Trust has power to fix rentals under the Housing Improvement Act 1940-1961.²¹

15. The limit of jurisdiction of Local Courts of limited jurisdiction had remained at £30 since 1926.

16. Local Courts Act Amendment Act 1962, s. 6; Local Courts Act 1926-1962, s. 196.

17. *Ibid.*, s. 6; s. 165.

18. *Ibid.*, s. 4; s. 21 (3).

19. Excessive Rents Act 1962, s. 7.

20. See the definition in s. 3 of "letting agreement".

21. *Ibid.*, s. 5.

Liability for Carriage by Air

The Commonwealth Civil Aviation (Carriers' Liability) Act 1959 was passed to give effect to the provisions of the Warsaw Convention and the Hague Protocol, which have been ratified by Australia and which establish uniform international rules governing the liability of international air carriers to passengers in respect of death or injury and loss of baggage and goods. The Act also applied these international rules with some modifications to domestic airline operators in so far as they were engaged in interstate or interterritorial carriage.

The Civil Aviation (Carriers' Liability) Act 1962 is based on a draft uniform Bill, which was prepared for enactment by the several States in order to apply to intrastate carriage the general principles of the conventions and the rules governing interstate carriage. Section 6 of the Act accordingly makes Part IV of the Commonwealth Act applicable to intrastate carriage in South Australia. Section 28 of that Act makes a carrier liable for the death or personal injury of a passenger resulting from an accident which took place on board or in the course of embarking on or disembarking from an aircraft. The position under this section is therefore different from the position at common law, where it was necessary to prove actual negligence on the part of a carrier of passengers.²² It is further provided that the carrier is liable for destruction of or loss or injury to baggage at any time during the period of the carriage unless he proves either that he took all necessary measures to avoid the loss or that it was impossible to take such measures.²³

The Act also limits the liability of the carrier for the death or injury of his passengers to £7,500 or any higher sum specified in the contract of carriage. Liability for baggage and goods is limited to £100 or a higher agreed sum.²⁴ The carrier is unable to contract out of his liability or to fix liability lower than the limits stated.²⁵ There are also a number of incidental provisions dealing with the period of limitation under the Act,²⁶ actions by the members of a deceased passenger's family,²⁷ and the assessment of damages.²⁸

22. *Ludditt v. Ginger Coote Airways Ltd.* [1947] A.C. 233, 241. S. 28 is subject to s. 39, which provides for a reduction of damages where a passenger has been guilty of contributory negligence.

23. *Ibid.*, s. 29.

24. *Ibid.*, s. 31.

25. *Ibid.*, s. 32. Cf. The Carriers Act 1891, which provides that a common carrier cannot limit his liability by public notice or declaration, but may do so by means of a special contract signed by his customer: see ss. 5, 7.

26. *Ibid.*, s. 34. The period is now two years.

27. *Ibid.*, s. 35.

28. *Ibid.*, ss. 36-38.

Legitimated Children

The provisions relating to legitimation contained in the Marriage Act 1961 (Cth.)²⁹ necessitated certain administrative amendments to the Births and Deaths Registration Act 1936-1960. The Commonwealth Act provides that a child may be legitimated after his parents have been married even if at the time of his birth there was a legal impediment to their marriage.³⁰ It is also provided that the child of a void marriage shall be deemed legitimate if at the time the child was begotten or the marriage took place, whichever was the later, either party to the marriage believed on reasonable grounds that the marriage was valid.³¹ The Births and Deaths Registration Act Amendment Act 1962 enables the Registrar to register the legitimation of a child pursuant to the Commonwealth Act.³² The sections in the principal Act dealing with the property rights of legitimated children are also amended to cover persons legitimated under the Commonwealth Act.³³

Unclaimed Moneys

A simplified procedure to enable private persons to dispose of unclaimed moneys is introduced by the Unclaimed Moneys Act Amendment Act 1962. From time to time business people find themselves in possession of small sums which they cannot dispose of because the owner cannot be traced for one reason or another. The amendment extends the principal Act, which previously applied only to companies, to private persons. It inserts into the principal Act a provision that any person (not being a company) who has been in possession of moneys for one year or upwards, of which the owner cannot be found, may pay such moneys to the Treasury for the use of the public revenue. The receipt of the Treasurer is a discharge of the liability of the person concerned.³⁴ Sections 5 and 6 are consequential amendments, which apply to private persons the existing provisions³⁵ relating to any claims to the money paid in and the Treasurer's responsibility therefor.

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29. The validity of these provisions was upheld by the High Court in *Attorney-General for Victoria v. The Commonwealth of Australia* (1962) 36 A.L.J.R. 104. The Court expressed some doubt on the validity of s. 92 of the Act, which confers jurisdiction on State courts to make a declaration of legitimacy, but made no decision on this point. The definition of "matrimonial cause" contained in s. 5 of the Matrimonial Causes Act 1959 does not include a claim for a declaration of legitimacy as such, and it seems that there is no jurisdiction to make a declaration of legitimacy under the inherent powers of the court in respect of declaratory judgments: see *Knowles v. Attorney-General* [1951] P. 54.
30. Marriage Act 1961 (Cth.), s. 89. Cf. Births and Deaths Registration Act 1934-1960, s. 42.
31. *Ibid.*, s. 91.
32. Births and Deaths Registration Act Amendment Act 1962, ss. 6-8.
33. *Ibid.*, ss. 4, 5.
34. Unclaimed Moneys Act Amendment Act 1962, s. 4; Unclaimed Moneys Act 1891-1962, s. 7a.
35. Unclaimed Moneys Act 1891-1962, ss. 8, 9.

Aborigines

The Aboriginal Affairs Act 1962 repeals the Aborigines Act 1934 and the Aborigines Act Amendment Act 1939, and abolishes all restrictions and restraints on aborigines as citizens, except for certain full-blood natives in areas to be defined. The object of the new Act is to place all aborigines under the same legal provisions as other South Australian citizens, and to give them the same opportunities and the same responsibilities.

The Aboriginal Affairs Board has the duty of assisting aborigines and promoting their assimilation.³⁶ It is also required to compile and maintain a Register of aborigines, from which it may remove the names of persons who in its opinion are capable of accepting the full responsibilities of citizenship.³⁷ There is no provision in the new Act for the Board to be the legal guardian of all aboriginal children under the age of twenty-one years. Instead, all cases of neglected, uncontrolled or destitute aboriginal children will be dealt with under the ordinary provisions of the Maintenance Act 1926-1958. Under the new Act, aboriginal reserves are primarily intended to be training centres, but aborigines may, with the written consent of the Minister, reside on any reserve.³⁸ In pursuance of the object of the Act, certain amendments have been made to the Licensing Act 1934-1960, enabling the Governor to proclaim areas in which the supply and consumption of liquor to and by aborigines or half-castes shall be permitted.³⁹

New Drugs

The National Health and Medical Research Council has recently recommended that, before any new drug is marketed, it should be submitted to State authorities for them to examine it and to decide whether it should be freely available to the public. The Food and Drugs Act Amendment Act 1962 accordingly inserts into the principal Act power to make regulations for the inspection and analysis of drugs by the Central Board of Health before they are sold to the public, and power to make regulations to prohibit, restrict or control the sale of drugs unless they have been inspected and analysed.⁴⁰

Sale of Human Blood

The Commonwealth patent relating to the process of extracting and separating the various fractions of human blood has recently expired. The Government is anxious to prevent the entry of commercial in-

36. Aboriginal Affairs Act 1962, s. 13.

37. *Ibid.*, s. 17.

38. *Ibid.*, s. 20.

39. *Ibid.*, s. 30.

40. Food and Drugs Act Amendment Act 1962, s. 3; Food and Drugs Act 1908-1962, s. 7A.

terests into this field, as this would interfere with the Red Cross Society's blood donation scheme, and might deprive the public of readily available free blood for transfusion and other purposes. The Sale of Human Blood Act 1962 accordingly prohibits the sale or purchase of human blood without a permit by the Minister.⁴¹ It also prohibits advertisements relating to the purchase of human blood unless they have been approved in writing by the Minister.⁴²

Explosives

In the interests of public safety, certain amendments have been made to the Explosives Act 1936-1958, to add to the power to make regulations with respect to explosives. This power has now been extended to cover such things as the sale, storage and display of explosives, the licensing of sellers, and the import of explosives into South Australia.⁴³ It will now be possible to make regulations which, for example, would prohibit the sale of fireworks to very young children, or which would require proper directions for the use of the explosives to be given in English.

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41. Sale of Human Blood Act 1962, ss. 2, 4.

42. *Ibid.*, s. 3.

43. Explosives Act Amendment Act 1962, s. 3; Explosives Act 1936-1962, s. 52, para. XXIIIc.

* LL.B. (Hons.) (Adel.).