

INSTRUMENTS. ORDINANCE 1936.⁽¹⁾

No. 25 of 1936.

An Ordinance Relating to Instruments and Securities.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

1. This Ordinance may be cited as the *Instruments Ordinance* 1936.⁽¹⁾ Short title.

2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.⁽¹⁾ Commencement.

3. Nothing in this Ordinance shall affect any instrument executed before the commencement of this Ordinance; and any law in force in the Territory at the commencement of this Ordinance shall continue to be as valid and effectual and apply to such instruments as if that law were in force and this Ordinance were not in force. Saving.

4.—(1.) In this Ordinance, unless the contrary intention appears— Definitions.

“chattels” means any personal property that can be completely transferred by delivery, and includes machinery, stock, and crops, but does not include—

- (a) chattel interests in real estate, title deeds, choses in action, or negotiable instruments; or
- (b) shares and interests in the stock, funds, or securities of any Government; or
- (c) shares and interests in the capital or property of any company or other corporate body; or

(1) Particulars of this Ordinance are as follows:—

Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Governor-General in Council.	Date on which came into operation.
27.2.1936	15.6.1936	1.6.1936 (<i>N.G. Gaz.</i> of 14.3.1936)

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- (d) debentures and interest coupons issued by any Government, or company, or other corporate body;
- “crops” means tea, cacao, coffee, coconuts, copra, flax, hemp, hops, rice, maize, barley, oats, grass (whether for hay or for grain), all cereal and root crops, fruit, and all other crops grown above or below the ground;
- “executed” means signed by the grantor or his attorney, and, in the case of an instrument by way of bailment, means signed by the grantor and grantee or their respective attorneys;
- “factory” or “workshop” means any premises on which any manual labour is exercised by way of trade or for purposes of gain in or about the making, altering, repairing, ornamenting, finishing, or adapting for sale of any article or part of any article;
- “grantee” means the party to an instrument to whom chattels therein referred to, or any interest in such chattels, are thereby granted or assigned, or agreed to be granted or assigned, and includes his executors, administrators, and assigns; and in the case of a company or corporation includes the successors and assigns of the company or corporation;
- “grantor” means the party to an instrument who thereby grants or assigns, or agrees to grant or assign, chattels therein referred to, or any interest in such chattels, and includes his executors, administrators, and assigns; and in the case of a company or corporation includes the successors and assigns of the company or corporation;
- “instrument” means any bill of sale, mortgage, lien, or any other document that transfers or purports to transfer the property in, or right to the possession of, chattels, whether permanently or temporarily, whether absolutely or conditionally, and whether by way of sale, security, pledge, gift, settlement, bailment, or lease, and includes the following:—
- (a) Inventories of chattels with receipt attached thereto;
 - (b) Receipts for purchase money of chattels;
 - (c) Other assurances of chattels;
 - (d) Declarations of trust without transfer;
 - (e) Powers of attorney, authorities, or licences to take possession of chattels as security for any debt; and

- (f) Any agreement, whether intended to be followed by the execution of any other instrument or not, by which a right in equity to any chattels, or to any charge or security thereon or thereover, is conferred,

but does not include the following:—

- (g) Securities over, or bailments or leases of, fixtures (except trade machinery), when mortgaged or leased in any mortgage or lease of any freehold or leasehold interest in any land or building to which they are affixed, and whether or not such fixtures are separately mortgaged or leased by mention thereof in separate words, and whether or not power is given by the mortgage or lease to sever such fixtures from the land or building to which they are affixed without otherwise taking possession of or dealing with that land or building;
- (h) Assignments for the benefit of the creditors of the person making them;
- (i) Transfers of or agreements to transfer instruments by way of security;
- (j) Transfers or assignments of any ship or vessel or any share thereof;
- (k) Transfers of chattels in the ordinary course of business of any trade or calling;
- (l) Debentures and interest coupons issued by any Government;
- (m) Bills of sale of chattels in any foreign parts or at sea;
- (n) Bills of lading, warehouse-keepers' certificates, warrants, or orders for the delivery of chattels, entries in an auctioneer's books, or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorizing or purporting to authorize, either by indorsement or delivery, the possessor of the document to transfer or receive the chattels thereby represented; or
- (o) Debentures and interest coupons issued by any company or other corporate body and secured upon the capital stock or chattels of the company or other corporate body.

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

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

“Registrar” means the Registrar of the Supreme Court and includes any person for the time being performing the duties of Registrar of the Supreme Court;

“registration” means the filing of an instrument with schedules, or a true copy thereof, with the prescribed affidavit;

“schedule” includes inventory;

“stock” includes sheep, cattle, horses, pigs, poultry, and any other living animals;

“trade machinery” means the machinery used in or attached to any factory or workshop; but does not include—

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

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

(c) the pipes for steam, gas, and water; or

(d) electric lines as defined in the *Electric Light and Power Ordinance 1929-1935*.⁽²⁾

(2.) For the purposes of this Ordinance, unless the contrary intention appears, chattels shall be deemed to be in the “apparent possession” of a person so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or as they are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof has been taken by or given to any other person.

(3.) Any reference in this Ordinance to a Form shall be read as a reference to a Form in the First Schedule to this Ordinance.

Attornment or
agreement
giving power
of distress.

5.—(1.) An attornment or agreement (not being a mining lease) whereby a power of distress is given or agreed to be given by one person to another by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a means of providing for the payment of interest on such debt or advance, or otherwise for the purpose of

(2) Now the *Electric Light and Power Ordinance 1929-1938*.

the security only, shall be deemed to be an instrument within the meaning of this Ordinance so far as regards any chattels seized or taken under the power of distress:

Provided that nothing in this sub-section shall prejudice the right of a landlord to distrain for rent:

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

(2.) Machinery and plant used for milking and machinery and plant used for shearing, shall not by reason of being attached to buildings or land become part of the land, nor shall any estate or interest therein pass by virtue of such attachment.

6.—(1.) Except as provided in the next succeeding sub-section, all persons shall be deemed to have notice of an instrument and of the contents thereof when and so soon as the instrument has been registered as provided by this Ordinance:

Registration of instrument to be notice.

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

(2.) Registration of any instrument to which the last preceding sub-section applies shall not in itself constitute notice of the existence of that instrument or of its contents to the grantee of any prior registered instrument relating to the same chattels or to any of those chattels.

7. Registration of an instrument shall be effected by filing it and all schedules indorsed thereon, annexed thereto, or referred to therein, or a true copy of the instrument and schedules, and an affidavit in accordance with Form 1 or to the like effect, in the District Office of the District (other than the District of New Britain) within which the chattels comprised in the instrument are situated at the time of the making or giving of the instrument:

Mode of registration.

Provided that all instruments affecting chattels in the District of New Britain shall be registered at the office of the Registrar.

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

Where instrument made under process.

9. An affidavit required by this Ordinance may be sworn before the Registrar, a solicitor, a commissioner of the Supreme Court for taking affidavits, or a justice of the peace.

Affidavits.

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Limitation of
time for
registration.

10.—(1.) The period within which an instrument may be registered shall be thirty days from the day on which it was executed.

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

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

Register and
index to be
kept.

11.—(1.) The District Officer and the Registrar shall cause every instrument registered in his office under this Ordinance to be numbered, and shall cause to be marked on each instrument, or on the filed copy thereof, the date of registration and the number, and shall at the time of registration cause to be entered in a register (in this Ordinance called "the Register") to be kept for the purpose in his office the particulars of the instrument registered, in accordance with Form 2.

(2.) The District Officer and the Registrar shall keep an index of the names of grantors and grantees of instruments, and shall refer therein to the entries in the Register of the instruments given by each such grantor.

(3.) The index referred to in the last preceding sub-section shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors and grantees whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each division need not be strictly alphabetical.

Entry where
instrument
made under
process.

12. Where any instrument is made or given by any person under or in the execution of any process of court, then the name, residence, and occupation of the person against whom the process of court issued, and also the name of the grantee of the instrument, shall be inserted in the Register to be kept under the last preceding section.

Territory
Register to be
kept by
Registrar.

13.—(1.) Forthwith after the registration of any instrument the District Officer shall send to the Registrar a copy of the particulars of the instrument entered in his Register.

(2.) In addition to a register and index of instruments affecting chattels in the District of New Britain, the Registrar shall keep a Territory Register and an index thereof as required by section eleven of this Ordinance relating to all instruments particulars of which have been received by him under this section and section seven of this Ordinance.

(3.) The provisions of this section shall apply, with the necessary modifications, to all entries in the Registers, including entries of satisfaction and entries of renewals of registration.

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

Time for registration may be extended, and mistakes in Register corrected.

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

15.—(1.) The registration of an instrument, whether executed before or after the coming into operation of this Ordinance, shall, during the subsistence of the instrument, be renewed in the manner prescribed by this section once in every period of five years, commencing from the day of the registration.

Registration to be renewed every five years.

(2.) If the registration of an instrument is not renewed as provided by the last preceding sub-section, the registration shall cease to be of any effect at the expiration of any period of five years during which it has not been renewed.

(3.) The registration of an instrument shall be renewed by filing in the office where the instrument was originally registered an affidavit in accordance with Form 3.

(4.) The District Officer or the Registrar, as the case may be, shall, when the registration of an instrument is renewed, cause—

- (a) the affidavit to be numbered as if it were an instrument presented for registration;
- (b) the instrument originally registered in the office, or the filed copy thereof, to be renumbered with a similar number and to be marked with the date of renewal of registration;
- (c) particulars of the instrument to be entered in the Register in like manner as on an original registration; and
- (d) the date of renewal of registration to be entered in the column provided therefor in the Register.

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Search of registers, &c.

16.—(1.) Any person shall have access to any register, index, or book kept under this Ordinance and may search any such register, index, or book during the usual office hours upon paying the prescribed fee for each search.

(2.) Any person shall, upon paying the prescribed fee for each office copy or extract, be entitled to have an office copy or extract of or from any instrument or document registered or filed under this Ordinance.

Instruments and affidavits presumed to have been duly executed or sworn.

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

(2.) The filed copy of any instrument and the schedules thereto, or an office copy of or extract from an instrument, schedule, or affidavit filed under this Ordinance certified by the District Officer or the Registrar, and a certificate by the District Officer or the Registrar of the time when any instrument or affidavit was registered or filed, shall in all courts and before all persons having by law or consent of parties authority to take evidence be received as *prima facie* evidence of the instrument, schedules, or affidavit, and of the signatures of the parties to the instrument and the attesting witnesses thereto, and of the fact and time of the registration or filing of the instrument or affidavit.

(3.) It shall not be necessary to prove the handwriting or official position of the person appearing to have certified the office copy or extract, or to have given the certificate.

Unregistered instruments to be void in certain cases.

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

- (a) the official trustee or trustee in insolvency, where an adjudication of insolvency is made under the *Insolvency Ordinance* 1912 of the Territory of Papua in its application to the Territory of New Guinea, as amended by the *Insolvency Ordinance* 1934, of the estate of the person whose chattels or any part thereof are comprised in the instrument; and the assignee or trustee of the estate of the person whose chattels or part thereof are comprised in the instrument, under any assignment for the benefit of the creditors of that person;
- (b) any sheriff, bailiff, and other person seizing the chattels or any part thereof comprised in the instrument in execution of the process of any court authorizing the

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seizure of the chattels of the person by whom or concerning whose chattels the instrument has been made; and

(c) every person on whose behalf the process has been issued,

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

(2.) Until the expiration of the time or extended time for registration of any instrument under this Ordinance, and so long as an instrument continues to be registered under this Ordinance, the chattels comprised in that instrument, if by way of bailment, shall not be deemed to be in the possession, order, or disposition of the grantee, or, if an instrument of any other kind, then of the grantor, within the meaning of the *Insolvency Ordinance 1912* of the Territory of Papua in its application to the Territory of New Guinea, as amended by the *Insolvency Ordinance 1934*.

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

Unregistered instrument not to affect *bona fide* purchaser for value.

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

Instrument be attested

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

Instrument to take effect from execution.

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

Registration to give priority.

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

Instrument to have inventory of chattels.

23. Every instrument shall contain, or shall have indorsed thereon or annexed thereto, a schedule of the chattels comprised therein, and, save as is otherwise expressly provided by this Ordinance, shall give a good title only to the chattels described in the schedule, and shall be void to the extent, and as against the persons, mentioned in sections eighteen and nineteen of this Ordinance in respect of any chattels not so described.

Instrument void where grantor not owner of chattels.

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

Provided that where an instrument by way of security over any chattels is therein expressed to be given as security for a loan to be expended, in whole or in part, in the purchase of those chattels, the grantor shall be deemed to have acquired the chattels at the time of the execution of the instrument.

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

25.—(1.) If an instrument is made or given subject to any defeasance, condition, or declaration of trust not contained in the body thereof, the defeasance, condition, or declaration of trust shall for the purposes of this Ordinance be taken as part of the instrument, and shall be written on the same paper or parchment on which the instrument is written, otherwise the instrument shall be void to the extent and as against the persons mentioned in section eighteen of this Ordinance so far as regards the property in, or right to the possession of, any chattels comprised in or affected by the instrument.

(2.) In the case of a document securing the payment of the moneys or any part thereof payable by virtue of an instrument, it shall not be necessary for the purposes of this section to write such document on the same paper or parchment so long as the date, names of the parties thereto, and the nature of the security are set forth in the instrument or in some schedule thereto.

Saving.

26. Nothing in the last three preceding sections shall render an instrument void in respect of any of the following chattels:—

(a) Stock and crops;

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- (b) Fixtures, plant, or trade machinery where they are used in, attached to, or brought upon any place in substitution for any of the like nature described in, or in the schedule to, the instrument;
- (c) Tractors, engines, machines, vehicles, implements, and farming plant of every description described in the instrument and used upon or in connection with any land or premises specified in the instrument.

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

- (a) prescribing any formalities to be observed on or about the execution of instruments within the meaning of this Ordinance; or
- (b) conferring or securing any rights or claims under or in respect of any such instrument.

Saving of Ordinances prescribing formalities as to execution of instruments, &c.

28. Where stock are comprised in any instrument they shall be described or referred to therein or in the schedule thereto by some brand, earmark, or other mark upon them, or shall be so described or referred to by sex, age, name, colour, or other mode of description as to be reasonably capable of identification, otherwise the instrument shall be void to the extent, and as against the persons, mentioned in section eighteen of this Ordinance, so far as regards such or so much of such stock as are not so described or referred to or are not reasonably capable of identification; and the land or premises on which such stock are or are intended to be depastured or kept shall be described or mentioned in the instrument or schedule.

How stock to be described.

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

Stock to include increase of stock, &c.

Special provisions as to poultry, &c.

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

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

Instrument may comprise book debts.

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

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

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

Form of instrument by way of security.

32.—(1.) Every instrument by way of security may be in accordance with Form 4 or to the like effect, with such variations or modifications thereof and additions thereto as are expressed in the instrument.

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

Where successive securities are given over same chattels.

33. Where an instrument by way of security is executed after the execution of a prior instrument which has never been registered, and comprises all or any of the chattels comprised in the prior instrument, then if the subsequent instrument is given as a security for the same debt as is secured by the prior instrument, or for any part of the same debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the chattels comprised in the prior instrument, be void

to the extent, and as against the persons, mentioned in section eighteen of this Ordinance, unless it is proved to the court having cognizance of the case that the subsequent instrument was *bona fide* given for the purpose of correcting some material error in the prior instrument, and not for the purpose of evading this Ordinance.

34.—(1.) Subject to the provisions of the next succeeding sub-section, an instrument by way of security may be granted over the crops described or referred to therein or in the schedule thereto then actually sown or growing, or to be sown or grown, in or upon the land mentioned in the instrument, and shall entitle the grantee thereof to the whole of the crops therein mentioned, not only while growing, but afterwards when cut or separated from the soil, and whether stacked or stored on the land where the crops were grown or on any other land or premises.

Security may be given over crops.

(2.) An instrument by way of security granted over crops shall not be granted or continue in force for a longer period than three years from the date of the execution of the instrument.

(3.) Nothing in the last preceding sub-section shall affect any instrument by way of security granted over crops before the commencement of this Ordinance.

35.—(1.) An instrument by way of security granted over crops referred to in the last preceding section shall not prejudicially affect the rights of any landlord or mortgagee of any land whereon the crops are growing, unless and so far as the landlord or mortgagee has consented in writing to such instrument:

Saving of rights of landlord and mortgagee.

Provided that such instrument being duly registered shall not be extinguished or prejudicially affected by any subsequent sale, lease, mortgage, or other encumbrance of or upon the land described or referred to in the instrument or in the schedule thereto.

(2.) For the purposes of this section "landlord", where the land whereon the crops are growing is vested in the Custodian of Expropriated Property, includes the Custodian of Expropriated Property.

36.—(1.) In the case of an instrument by way of security, upon the production at the office at which the instrument was registered of a memorandum of satisfaction in accordance with Form 5 or to the like effect, signed by the grantee thereof or his attorney, discharging the chattels comprised in the instrument or any specified part thereof from the moneys secured thereby or any specified part thereof, or from the performance of the obligation thereby secured or any specified part thereof, and on production of the instrument and payment of the prescribed fee, such

Filing of memorandum of satisfaction.

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memorandum of satisfaction shall be filed and an entry thereof made in the Register on the page where the instrument is registered.

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

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

Effect of filing memorandum of satisfaction.

37. From and after the filing of any memorandum of satisfaction referred to in the last preceding section, the debt or charge created by the instrument shall be vacated to the extent specified in such memorandum and the interest of the grantee in the chattels expressed to be discharged shall vest in the person for the time being entitled to the equity of redemption therein, but so far only as such interest is expressed by the memorandum to be determined, and subject to any lien or equity affecting the chattels.

Power of Judge to order memorandum of satisfaction to be filed.

38. A Judge may, upon application made to him for that purpose, order a memorandum of satisfaction to be filed in respect of any instrument by way of security if it appears to him that the debt (if any) for which the instrument was given as security has been satisfied or discharged, or that the obligation for securing the performance of which the instrument was given has been performed; and thereupon such order shall be filed and entered in the Register in like manner as if it were a memorandum within the meaning of section thirty-six of this Ordinance.

Grantor's interest in chattels may be sold in execution.

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

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

(3.) A grantee taking possession of the chattels under the last preceding sub-section shall be deemed to hold the chattels in trust for the purchaser of the right, title, and interest of the judgment debtor, subject to payment of all moneys due under the instrument.

(4.) If the chattels are afterwards sold under the power of sale expressed or implied in the instrument, and any surplus remains out of the proceeds of the sale after payment of all moneys

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due under the instrument, the grantee shall on demand pay over that surplus to the purchaser of the right, title, and interest of the judgment debtor.

(5.) If the grantee on demand makes default in paying over the surplus as provided by the last preceding sub-section, the purchaser may bring an action against him to recover the surplus, as money received to the use of the purchaser.

(6.) Nothing in this section shall be deemed to affect the right of an execution creditor to test the validity of any instrument by interpleader process.

40. There shall be implied in every instrument the covenants for title on the part of the grantor set out in the Second Schedule to this Ordinance, and such implied covenants shall have the same effect as if they were set out at length in the instrument.

Implied covenants for title.

41. There shall be implied in every instrument by way of security the covenants, provisos, agreements, and powers set out in the Third Schedule to this Ordinance, or such of them as are applicable; and such implied covenants, provisos, agreements, and powers shall, subject to any modification expressed in the instrument, have the same effect as if they were set out at length in the instrument.

Covenants, &c., implied in instruments by way of security.

42. Such of the expressions defined in section four of this Ordinance or in the Fourth Schedule to this Ordinance as are used in any instrument, or in any of the covenants, provisos, agreements, or powers implied in any instrument by this Ordinance, shall, unless the contrary is expressed in the instrument, or unless manifestly inconsistent with the context, have the meanings given to them in section four or in the Fourth Schedule to this Ordinance, and the meanings shall be implied in the instrument as fully and effectually as if they were set out therein.

Meaning of "abbreviated expressions".

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

Covenants to be several as well as joint.

44. Except in so far as a contrary intention appears, all covenants, conditions, provisos, agreements, and powers expressed in any instrument, or implied therein by this Ordinance, shall bind the executors, administrators, and assigns of the person, or the successors and assigns of a company or corporation, upon whom such covenants, conditions, provisos, agreements, and powers impose an obligation, and shall operate for the benefit of the

Covenants to bind executors.

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executors, administrators, and assigns of the person, or the successors and assigns of the company or corporation, for whose benefit they enure.

Covenants may be negatived or varied.

45. All or any of the covenants, provisos, agreements, or powers set out in the Second, Third, and Fourth Schedules to this Ordinance may be negatived, modified, or altered, or others may be added to them or inserted in their stead, by express words in the instrument.

Form of transfer of instrument.

46. Every instrument may be transferred by a transfer in accordance with Form 6 or to the like effect, and every transferee, his executors, administrators, and assigns, shall, in respect of the instrument transferred, have the same rights, powers, and remedies, and be subject to the same obligations, as the transferor.

Registration of transfers.

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

Attempt to defraud grantee.

48. Every grantor of an instrument by way of security who, by sale or delivery without the consent of the grantee of any chattels comprised in or affected by the instrument, or by any other means, defrauds or attempts to defraud the grantee of the chattels or any part thereof, and thus or by any other means directly or indirectly defeats, invalidates, or impairs the grantee's security over the chattels or any part thereof, and every person who wilfully aids and abets any person in defrauding or attempting to defraud the grantee by defeating, invalidating, or impairing the instrument or in attempting to do so, shall be guilty of an offence.

Penalty: Imprisonment for two years.

Ordinance binding on Administration.

49. This Ordinance shall bind the Administration in respect of all instruments to which the Administration is a party executed after the commencement of this Ordinance.

Fees.

50. The fees set out in the Fifth Schedule to this Ordinance shall be paid in respect of the matters set out in that Schedule.

Power to make regulations.

51.—The Administrator in Council may make regulations,⁽³⁾ not inconsistent with this Ordinance, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

(3) No regulations have been made.

THE FIRST SCHEDULE.

FORM 1.

TERRITORY OF NEW GUINEA.

Instruments Ordinance 1936.

AFFIDAVIT OF REGISTRATION OF INSTRUMENT.

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

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

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

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

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

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

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

Sworn at _____ the _____ day of _____, 19____, before me

Solicitor [or Registrar of the Supreme Court, or Commissioner for Affidavits, or Justice of the Peace].

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

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

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

FORM 2.

TERRITORY OF NEW GUINEA.

Instruments Ordinance 1936.

REGISTER.

No.	By whom given (or against whom process issued).			To whom given.			Nature and date of instrument.	Date and time of registration.	Date of renewal.	Satisfaction entered.
	Name.	Residence.	Occupation.	Name.	Residence.	Occupation.				

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

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FORM 3.

TERRITORY OF NEW GUINEA.

Instruments Ordinance 1936.

AFFIDAVIT ON RENEWAL OF REGISTRATION OF INSTRUMENT.

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

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

[If the affidavit is made by an agent, clerk, or servant of the grantee or grantor, state such fact, and also state briefly how deponent has become acquainted with the facts deposed to.]

2. The said instrument was registered on the day of , 19 .

3. The registration of the said instrument was last renewed on the day of , 19 . [This paragraph is inapplicable where registration of the instrument is being renewed for the first time.]

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

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

Solicitor [or Registrar of the Supreme Court, or Commissioner for Affidavits, or Justice of the Peace].

FORM 4.

TERRITORY OF NEW GUINEA.

Instruments Ordinance 1936.

INSTRUMENT BY WAY OF SECURITY.

A.B. of [Residence and occupation], being the owner of the chattels mentioned in the schedule hereto [where a schedule is necessary], in consideration of the sum of £ this day lent and advanced to him by C.D. of [Residence and occupation] [Or, if consideration not an advance of money, state any other consideration for which mortgage given], does hereby assign and transfer such chattels to the said C.D. by way of mortgage, to secure the payment of such sum of £ on the day of , 19 , with interest thereon in the meantime, and so long as such sum or any part thereof remains unpaid at the rate of £ per centum per annum by payments on the day of the months of and in each year. [Implied covenants, provisos, agreements, or powers may be negatived or varied.—See section 45 of the Instruments Ordinance 1936.]

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

[Schedule.]

Signed by the said A.B. in the presence of

[Residence and occupation.]

Instruments Ordinance 1936.

FORM 5.

TERRITORY OF NEW GUINEA.
Instruments Ordinance 1936.

MEMORANDUM OF SATISFACTION.

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

Dated this day of , 19 .

Grantee [or Assignee].

Witness:

[*Residence and occupation.*]

FORM 6.

TERRITORY OF NEW GUINEA.
Instruments Ordinance 1936.

TRANSFER OF INSTRUMENT.

I, *C.D.*, of [*Residence and occupation of transferor*], the grantee [or grantor, in the case of an instrument by way of bailment] of the instrument registered in the office of the at as No. , under the *Instruments Ordinance 1936*, do, in consideration of [*State consideration*], hereby transfer to *E.F.*, of [*Residence and occupation of transferee*], the chattels comprised in the said instrument, and all my right, title, estate, and interest thereunder.

In witness whereof *C.D.* has hereunto subscribed his name this day of , 19 .

Signed by the said *C.D.*, in the presence of

[*Residence and occupation.*]

THE SECOND SCHEDULE.

COVENANTS IMPLIED IN ALL INSTRUMENTS.

That the grantor has good right and full power to assign to the grantee the chattels purporting to be hereby assigned, and that free and clear from encumbrances other than such as are herein mentioned.

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

THE THIRD SCHEDULE.

COVENANTS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

1. That the grantor will pay to the grantee the principal money and interest hereby secured, at the rate and on the dates herein mentioned, without any deduction whatever.

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

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

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

PROVISOS AND AGREEMENTS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

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

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

POWERS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

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

Instruments Ordinance 1936.

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

THE FOURTH SCHEDULE.

MEANING OF ABBREVIATED EXPRESSIONS.

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

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

3. The words "will, upon demand, pay the balance due upon the account-current between them" mean that the grantor will, on demand, pay to the grantee the balance on the account-current of the grantor with the grantee for the time being owing for and on account of the moneys advanced on the execution hereof, or intended to be hereby secured, and for further advances as defined by the *Instruments Ordinance 1936*, and for interest, commission, and other lawful charges from the day of such demand being made till the actual payment thereof, at the rate mentioned in this instrument without any deduction; and it is hereby declared and agreed that the said account-current shall be made up with half-yearly rests on the half-yearly days mentioned for that purpose in this instrument, in each year (or, if no such days are mentioned in the instrument, then on the thirty-first day of March and the thirtieth day of September in each year), until the final balance of account is fully paid; and that this instrument shall be a continuing security for all moneys for the time being owing by the grantor to the grantee, notwithstanding that the account-current between them may have at any time theretofore been in credit by payments, settlement of account, or otherwise; and also that upon every such half-yearly day interest shall be considered as converted into principal, and the balance shall be chargeable with interest as aforesaid as upon further advances, and also that in making up such account interest at the rate specified in this instrument shall be calculated on the daily debtor balances; and also that, upon any such demand as aforesaid, all bills of exchange or promissory notes given by the grantor to the grantee and then current may, at the option of the grantee, and shall, in case of entry into possession or sale by the grantee, be considered as matured or become due, subject to a rebate of interest upon the amount thereof for the time during which they have to run, to be calculated at the rate at which interest is payable under this instrument, and that the amount of such bills of exchange or promissory notes, subject to such rebate, may be charged to the grantor in such account at the time of making such demand.

4. The words "will insure" mean that the party liable to insure will insure and at all times while this instrument remains in force will keep insured against loss or damage by fire all chattels comprised herein of a nature or kind capable of being insured against loss or damage by fire, the

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insurance to be effected in the name of the other party to this instrument and in some insurance office to be approved of by him, and to be for the full amount herein specified (or, if no amount is specified, then for the full insurable value of the chattels); and will, at the request of the other party, hand over to and deposit with him the policy of insurance, and produce and deliver to him the receipt or receipts for the annual or other premiums payable on account thereof; and also that all moneys received under the insurance shall, in the event of loss or damage by fire, be laid out and expended, so far as such moneys extend, in making good such loss or damage (or, if the instrument is given by way of security, in discharging the moneys hereby secured, if the other party so elects):

Provided that, if default is made in the observance or performance of this covenant, the other party may, without prejudice to and concurrently with the powers granted him by this instrument or otherwise by law, insure such chattels, and may forthwith recover the costs and charges of the insurance from the party liable to insure in like manner as if they had been advanced by way of loan on the security of this instrument.

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

THE FIFTH SCHEDULE.

FEEs.

	<i>s.</i>	<i>d.</i>
Registration or filing of an instrument, of a memorandum of satisfaction, or of a transfer registered under section 47 of this Ordinance	5	0
Searching index, register, or book, for each name	1	0
Inspection of an instrument, or a copy thereof, and all documents relating thereto	2	0
For every office copy of or extract from any document	5	0
and for every folio of seventy-two words after the first five folios, per folio	0	6