

# BILLS OF SALE ORDINANCE, 1912.<sup>(1)</sup>

## No. 45 of 1912.

### An Ordinance to amend the Law relating to Bills of Sale of Personal Chattels.

**B**E it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Bills of Sale Ordinance*, 1912.<sup>(1)</sup> Short title.

2. This Ordinance shall commence on a day to be fixed by the Lieutenant-Governor by proclamation published in the *Gazette*.<sup>(1)</sup> Commencement.

3.—(1.) In this Ordinance unless the context otherwise indicates the following terms have and include the meanings set against them respectively that is to say:— Interpretation.  
Q. 55 Vic.  
No. 23, s. 3.

The term “Bill of Sale” includes bills of sale assignments transfers of chattels declarations of trusts of chattels without transfer inventories of chattels with receipts thereto attached receipts for purchase moneys of chattels and any other assurances of chattels and also powers of attorney or authorities or licences to take possession of chattels as security for a debt and also any agreement by which any legal or equitable right to any chattels or to any charge or security thereon is conferred whether such agreement is intended or not intended to be followed by the execution of any other instrument; but does not include the following documents that is to say— assignments for the benefit of the creditors of the person making the same marriage settlements or agreements for marriage settlements transfers or assignments of a ship or vessel or a share thereof transfers of goods in the

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

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16.7.1912	(a)	23.12.1912 (Papua Govt. Gaz. of 23.12.1912)

(a) No notice of non-disallowance has been published in Papua Govt. Gaz.

## COMMERCIAL LAW—

ordinary course of business of any trade or calling bills of sale of goods in foreign parts or at sea bills of lading India warrants warehouse-keepers' certificates warrants or orders for the delivery of goods or any other documents used in the ordinary course of business as proof of the possession or control of chattels or authorising or purporting to authorise either by indorsement or by delivery the possessor of such document to transfer or receive the chattels thereby represented preferable liens on wool or crops or mortgages of sheep cattle or horses under *The Mercantile Act of 1867* (Queensland Adopted)<sup>(2)</sup> or any Ordinance amending the same or substituted therefor or debentures issued by any incorporated or joint-stock company and secured upon the capital stock or chattels of the company;

The term "Chattels" includes goods furniture fixtures and other articles capable of complete transfer by delivery but does not include chattel interests in real estate nor shares or interest in the stock funds or securities of any Government or in the capital or property of incorporated or joint-stock companies nor choses in action nor any stock or produce upon any land which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from the land where the same are at the time of the execution of the bill of sale;

The term "Registrar" means the Registrar of the Central Court.<sup>(3)</sup>

Application  
of Ordinance.  
Q. 55 Vic.  
No. 23, s. 3.

(2.) Save as hereinafter provided this Ordinance applies only to bills of sale under which the holder or grantee has power either with or without notice and either immediately or at any future time to seize or take possession of any chattels comprised therein or made subject thereto and which are executed on or after the commencement of this Ordinance whether they are absolute or conditional or subject or not subject to any trust.

Certain  
instruments  
giving powers  
of distress to  
be subject to  
this Ordinance.  
Q. 1b. s. 3.

(3.) Every attornment instrument or agreement not being a mining lease by which a power of distress is given or agreed to be given by any person to any other person by way of security for any present future or contingent debt or advance and by which any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of such security only shall be deemed a bill of sale within

(2) *The Mercantile Act of 1867* (Queensland, adopted) was repealed in the Territory of Papua by the *Ordinances Revision Ordinance, 1913*. As to liens on crops and wool and stock mortgages, see now the *Liens on Crops and Wool and Stock Mortgages Ordinance, 1912*.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

*Bills of Sale Ordinance, 1912.*

the meaning of this Ordinance of any chattels which may be seized or taken under such power of distress:

Provided that nothing in this enactment shall extend to any mortgage of any estate or interest in any land tenement or hereditament which the mortgagee being in possession demises to the mortgagor as his tenant at a fair and reasonable rent.

(4.) When by any instrument it is expressed that any person lets any chattels to any other person at a rent to be paid upon instalments upon the terms that the property in such chattels shall pass to such other person upon payment of the instalments but not otherwise the instrument shall for the purpose of this Ordinance unless the person by whom the chattels are let is a person who ordinarily sells chattels of the same class and the contract is made in the ordinary course of his business be deemed to pass the property in the chattels comprised in it to such other persons notwithstanding the fact that the instalments have not been paid and shall be deemed to be a bill of sale made by such other person to secure the payment by him of such instalments.

Time payment contracts to be subject to this Ordinance. Q. 55 Vic. No. 23, s. 3.

4. Every bill of sale executed after the commencement of this Ordinance shall be registered in the proper registry in the manner prescribed by this Ordinance and shall truly set forth the consideration for which it was given and no such bill of sale shall have any effect as to any chattels comprised in it whether as between the parties to it or as against any other person unless the consideration is truly set forth therein nor until it has been so registered.

Bills of sale inoperative until registered. Q. *Ib.* s. 4.

And for the purposes of any law avoiding assignments as against creditors the date of the first registration of any such bill of sale shall be deemed to be the date of the execution of the bill of sale.

5. The registry at which a bill of sale is to be registered shall be the office of the Registrar of the Central Court<sup>(3)</sup> at Port Moresby.

The registry. Q. *Ib.* s. 5, altered.

6. The mode of registration of a bill of sale shall be as follows:—

- (1) The bill of sale with every schedule or inventory annexed to it or referred to in it or a true copy thereof and of every attestation of the execution thereof together with an affidavit truly stating the time of the execution of the bill of sale and the residence and occupation of the person making it or if it is made under or in the execution of the process of a court of law then the residence and occupation of the person against whom the process was issued and also in either case stating the residence and occupation of

Mode of registering bills of sale. Q. *Ib.* s. 6.

---

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

## COMMERCIAL LAW—

every attesting witness to the bill of sale shall be filed in the registry ;

- (2) If the bill of sale is made subject to any defeasance or condition or declaration of trust not contained in the body of the bill of sale such defeasance condition or declaration shall be deemed to be part of the bill of sale and shall be written on the same paper or parchment before the registration otherwise the registration shall be void.

If two or more bills of sale are given comprising in whole or in part any of the same chattels they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale may be but need not be registered.

Registration of bills of sale executed before the commencement of this Ordinance.

Q. 55 Vic. No. 23, s. 7.

7. Every bill of sale executed before the commencement of this Ordinance must be registered as prescribed by this Ordinance within three months after the commencement of this Ordinance unless it has then already been registered under the enactments hereby repealed ; otherwise such bill of sale shall at the expiration of three months after the commencement of this Ordinance become inoperative as to any chattels comprised in it whether as between the parties to it or as against any other person.

Until such registration the bill of sale shall have the same effect as to any chattels comprised in it as if this Ordinance had not been passed and no greater effect.

Renewal of registration.

Q. 60 Vic. No. 11, s. 3.

8. The registration of a bill of sale whether it was executed before or after the commencement of this Ordinance must be renewed once at least in every three years and if a period of three years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal as the case may be the bill of sale shall become inoperative as to the chattels comprised in it whether as between the parties to it or against any other person.

Mode of renewal of registration.

Q. 55 Vic. No. 23, s. 9.

9. The renewal of the registration shall be effected by filing in the registry an affidavit made by the person or one of the persons entitled to the money secured by the bill of sale or his or their attorney or agent who is able to depose of his own knowledge to the amount owing on the security thereof or in the case of a corporation by its manager or some other officer who is able so to depose and stating the amount estimated to be owing on the security of the bill of sale at the date of swearing the affidavit.

The affidavit must be filed within forty-two days of the day of swearing it.

*Bills of Sale Ordinance, 1912.*

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

10. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Ordinance shall not be deemed to be in the possession order or disposition of the grantor of the bill of sale within the meaning of *The Insolvency Act 1874*<sup>(4)</sup> (Queensland Adopted) or of any Ordinance amending the same or substituted therefor.

Order and disposition.  
Q. 55 Vic.  
No. 23, s.10.

11. A bill of sale registered before the commencement of this Ordinance shall have the same effect as to any chattels comprised in it as if it had been registered under this Ordinance.

Previously registered bills of sale.  
Q. *ib.* s. 11.

But except as in the last preceding section mentioned a bill of sale executed before the commencement of this Ordinance shall not by reason of registration acquire any greater effect as to any chattels comprised in it than it would have had if this Ordinance had not been passed.

12. The registrar shall keep a book in this Ordinance called "the register" for the purpose of this Ordinance and shall upon the registration of a bill of sale in his office under this Ordinance enter in the book in the form set forth in the Schedule to this Ordinance the name residence and occupation of the person by whom the bill of sale was made or if it was made under or in the execution of the process of a court of law then the name residence and occupation of the person against whom the process was issued and also the name of the person or persons to whom or in whose favour the bill of sale was made and the other particulars shown in the said Schedule and shall number all such bills of sale registered in each year consecutively according to the respective dates of their registration.

Form of register.  
Q. *ib.* s. 12.

Schedule.

Upon the renewal of the registration of a bill of sale the like entry shall be made with the addition of the date and number of the last previous entry relating to the same bill of sale and the bill of sale or copy originally filed shall be thereupon marked with the number assigned to the bill of sale upon the renewal of registration.

The registrar shall also keep an alphabetical index of the names of the grantors of registered bills of sale with references to entries in the register of the bills of sale given by each such grantor.

13. The registrar may enter in writing a memorandum of satisfaction upon a registered bill of sale or copy upon production to him of a consent to such satisfaction signed by the person entitled to the benefit of the bill of sale and verified by affidavit; and a

Entry of satisfaction.  
Q. *ib.* s. 13.

---

(4) *The Insolvency Act 1874* (Queensland, adopted) was repealed and replaced in the Territory of Papua by the *Insolvency Ordinance, 1912.*

## COMMERCIAL LAW—

judge of the Central Court<sup>(3)</sup> may order a memorandum of satisfaction to be written upon a registered bill of sale or copy if it appears to him that the debt if any for which the bill of sale was made has been satisfied or discharged.

Copies may  
be taken, &c.  
Q. 55 Vic.  
No. 23, s. 14.

14. Any person shall be entitled to have an office copy of or extract from any registered bill of sale or affidavit filed upon the registration thereof or of any affidavit filed upon the renewal of the registration of a bill of sale upon paying for the same at the same rate as for office copies of judgments of the Court and any copy of a registered bill of sale or affidavit purporting to be an office copy thereof shall in all Courts and before all arbitrators or other persons be admitted as *primâ facie* evidence of the execution and of the contents of the bill of sale and of the fact and date of registration as shown thereon.

Any person shall be entitled at all reasonable times to search the register on payment of a fee of one shilling and shall be entitled at all reasonable times to inspect examine and make extracts from any registered bill of sale or any affidavit filed upon the renewal of the registration of a bill of sale upon payment of a fee of one shilling for each bill of sale or affidavit inspected: Provided that the extract shall be limited to the names addresses and occupations of the parties the chattels affected the date of execution registration renewal of registration or satisfaction and the amount secured.

Fees.  
Q. *Ib.* s. 15.

15. The following fees shall be paid to and received by the registrar that is to say:—

On registering a bill of sale or a transfer or assignment of a bill of sale or on renewing the registration of a bill of sale in the office of a Registrar—Two shillings and six pence;

On entry of a memorandum of satisfaction of a bill of sale—Two shillings and six pence.

Rectification  
of mistakes,  
&c.  
Q. *Ib.* s. 17.

16. A judge of the Central Court<sup>(3)</sup> on being satisfied that the omission to file or register any document under this Ordinance within the time hereby prescribed or that any omission or misstatement made in the process of the filing or registration of any document was unavoidable or accidental or due to inadvertence may in his discretion order such omission or misstatement to be rectified by extending the time for such filing or registration or by allowing any document book or register to be corrected or amended on such terms and conditions if any as to security notice by advertisement or otherwise as he thinks fit.

---

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

*Bills of Sale Ordinance, 1912.*

17. From and after the commencement of this Ordinance sections twenty to twenty-six inclusive of *The Mercantile Act of 1867*<sup>(2)</sup> (Queensland Adopted) shall be repealed:

Repeal of 31  
Vic. No. 36,  
ss. 29 to 26,  
inclusive.  
Q. 55 Vic.  
No. 23, s. 19.

Provided that except as is herein expressly enacted with respect to the registration of bills of sale not already registered before the commencement of this Ordinance and except with respect to the renewal of registration of such bills of sale nothing in this Ordinance shall affect any bill of sale executed before the commencement of this Ordinance and as regards bills of sale so executed the enactments hereby repealed shall except as aforesaid continue in force.

**SCHEDULE.**

Satisfaction entered.	Number.	By whom given or against whom process issued.			To whom given.	Nature of Instrument.	Amount Secured.	Date.	Date of Registration.	Date of Registration of Affidavit of Renewal.	Amount due at Date of Renewal.
		Name.	Residence.	Occupation.							

(2) See footnote (2) printed on p. 336.

COMMERCIAL LAW—