

Chapter 254.
Instruments Act 1953.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 254.

Instruments Act 1953.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Instruments Act 1953,

Being an Act relating to bills of sale of personal chattels and to liens on crops and wool and stock mortgages, and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**agricultural produce**” includes tea, coffee, cacao, coconuts, flax, hemp, hops, rice, wheat, maize, sorghum, barley, oats, lucerne, grass (whether for hay or for grain), cotton, tobacco, sugar-cane, latex, kenaf, all cereal and root crops, fruit and all other crops grown above or below the ground;

“**bill of sale**” includes—

- (a) a bill of sale; and
- (b) an assignment or transfer of chattels; and
- (c) a declaration of trusts of chattels without transfer; and
- (d) an inventory of chattels with receipt attached; and
- (e) a receipt for purchase money of chattels and any other assurance of chattels; and
- (f) a power of attorney, authority or licence to take possession of chattels as security for a debt; and
- (g) an agreement by which a legal or equitable right to chattels or to a charge or security over chattels is conferred (whether or not the agreement is intended to be followed by the execution of another instrument),

but does not include—

- (h) an assignment for the benefit of the creditors of the person making it; or
- (i) a marriage settlement or an agreement for a marriage settlement; or
- (j) a transfer or assignment of a ship or vessel required to be registered under the Acts adopted by Section Sch. 2.6 of, and Part 2 of Schedule 5 to, the *Constitution*, or a share of any such ship or vessel; or
- (k) a transfer of goods in the ordinary course of business of a trade or calling; or
- (l) a bill of sale of goods outside the country or at sea; or
- (m) a bill of lading, india warrant, warehouse keeper's certificate, warrant or order for the delivery of goods, or any other document used in the ordinary course of business as—
 - (i) proof of the possession or control of chattels; or
 - (ii) authorizing or purporting to authorize, by endorsement or by delivery, the possessor of the document to transfer or receive the chattels represented; or
- (n) a preferable lien on wool or crops or a stock mortgage; or
- (o) a debenture issued by an incorporated or joint-stock company and secured on the capital stock or chattels of the company; or
- (p) a hire-purchase agreement;

“chattels” includes goods, furniture, fixtures and other articles capable of complete transfer by delivery, but does not include—

- (a) chattel interests in real estate; or
- (b) shares or interests in the stock, funds or securities of a government or in the capital or property of incorporated or joint-stock companies; or
- (c) things in action; or
- (d) stock or produce on land that, by virtue of a covenant or agreement or of the custom of the country, ought not to be removed from the land where the stock or produce is at the time of the execution of the bill of sale;

“crops” means crops of agricultural produce;

“executed” means—

- (a) signed by the grantor or his attorney; or

- (b) in the case of an instrument by way of bailment—signed by the grantor and grantee or their respective attorneys;

“grantee” means the party to an instrument to whom—

- (a) chattels, crops, wool or stock referred to in the instrument; or
- (b) an interest in any such chattels, crops, wool or stock,

are or is granted or assigned, or agreed to be granted or assigned, and his executors, administrators and assigns, or in the case of a company or corporation its successors and assigns;

“grantor” means the party to an instrument who by the instrument grants or assigns, or agrees to grant or assign—

- (a) chattels, crops, wool or stock referred to in the instrument; or
- (b) an interest in any such chattels, crops, wool or stock,

and his executors, administrators and assigns, or in the case of a company or corporation its successors and assigns;

“hire-purchase agreement” includes an agreement (other than a bill of sale) by which—

- (a) a person agrees to hire goods and obtains an option to purchase them; or
- (b) a person agrees to pay for the hire of goods a sum or sums amounting in all to not less than 75% of the value of the goods when taken on hire;

“instrument” means a bill of sale, a lien on crops, a lien on wool or a stock mortgage;

“instrument by way of bailment” means an instrument by which chattels, crops, wool or stock are leased or bailed, other than a hire-purchase agreement;

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

“lien on crops” means an agreement of a kind referred to in Section 14;

“lien on wool” means a lien of a kind referred to in Section 22;

“the Registrar” means the Registrar of the National Court;

“the Registry” means the office of the Registrar;

“schedule” includes inventory;

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

“stock mortgage” means a mortgage of a kind referred to in Section 26.

2. APPLICATION.

This Act does not apply to an instrument executed before 25 February 1954 (being the date of commencement of the pre-Independence *Instruments Act 1953*).

PART II. – BILLS OF SALE.

Division 1.

Preliminary.

3. APPLICATION OF PART II.

(1) Except as provided in this Part, this Part applies to a bill of sale under which the holder or grantee has power, with or without notice, and immediately or at a future time, to seize or take possession of chattels comprised in it or made subject to it, whether it is–

- (a) absolute or conditional; or
- (b) subject or not subject to a trust.

(2) Subject to Subsection (3), an attornment, document or agreement, not being a mining lease, by which–

- (a) a power of distress is given, or agreed to be given, by a person to another person by way of security for a present, future or contingent debt or advance; and
- (b) a rent is reserved or made payable as a mode of providing for the payment of interest on the debt or advance, or otherwise for the purpose of the security only,

shall be deemed, for the purposes of this Part, to be a bill of sale of any chattels seized or taken under the power of distress.

(3) Subsection (2) does not extend to a mortgage of an estate or interest in land, tenements or hereditaments that the mortgagee, being in possession, demises to the mortgagor as his tenant at a fair and reasonable rent.

Division 2.

Bills of Sale Generally.

4. REQUIREMENTS OF BILLS OF SALE.

(1) A bill of sale shall–

- (a) be registered in the manner prescribed by this Part; and
- (b) truly set out the consideration for which it was given.

(2) A bill of sale has no effect as to chattels comprised in it, whether as between the parties to it or as against any other person, unless–

- (a) it is registered within 60 days after the day on which it was executed; and
- (b) the consideration is truly set out in it.

5. MANNER OF REGISTRATION OF BILLS OF SALE.

(1) Each bill of sale, together with each schedule that is annexed to it or referred to in it, or a true copy of each bill of sale and of every attestation of its execution, shall be registered by being filed in the Registry.

(2) If a bill of sale is made subject to a defeasance, condition or declaration of trust not contained in the body of the bill, the defeasance, condition or declaration—

(a) forms a part of the bill of sale; and

(b) shall be written on the same paper or parchment before the registration.

(3) The registration of a bill of sale that does not comply with Subsection (2)(b) is void.

6. PRIORITY OF REGISTERED BILLS OF SALE.

Where two or more bills of sale are given, comprising in whole or in part any of the same chattels, they have priority, as regards those chattels, in the order of the dates of their respective registrations.

7. REGISTRATION OF TRANSFERS OF BILLS OF SALE.

(1) A transfer of a bill of sale by way of security may be registered at any time after the execution of the transfer in the same manner as that in which a bill of sale is registered.

(2) Where two or more transfers of a bill of sale by way of security are executed, a registered transfer has priority over an unregistered transfer.

(3) Where two or more transfers of a bill of sale by way of security are registered, priority shall be given to the transfers in the order of their time of registration.

8. REGISTER OF BILLS OF SALE.

(1) The Registrar shall cause—

(a) each bill of sale registered under this Part to be numbered; and

(b) the bill of sale, or the filed copy of the bill of sale, to be marked with the date of registration and the number; and

(c) particulars of the bill of sale to be entered in a register to be kept for the purpose in the prescribed form; and

(d) an index of the names of grantors and grantees of bills of sale to be kept with reference to the entries in the register of the bills of sale given by each grantor.

(2) The index referred to in Subsection (1)(d) 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) are comprised in one division, but the arrangement within each division need not be strictly alphabetical.

(3) Where a bill of sale is made or given by a person under or in the execution of a process of a court—

(a) the name, residence and occupation of the person against whom the process issued; and

(b) the name of the grantee of the bill of sale,

shall be inserted in the register kept under this section.

9. RENEWAL OF REGISTRATION.

(1) The registration of a bill of sale shall, during the subsistence of the bill, be renewed in the manner prescribed by this section once every five years, commencing from the date of registration.

(2) If the registration of a bill of sale is not renewed as provided by Subsection (1), the registration ceases to be of effect at the expiration of five years from the registration or the last renewal, as the case may be.

(3) The renewal of the registration of a bill of sale shall be effected by filing in the Registry an affidavit made—

(a) by—

(i) the person, or one of the persons, entitled to the money secured by the bill; or

(ii) his or their attorney or agent who is able to depose of his own knowledge to the amount owing on the security; or

(b) in the case of a corporation—by its manager or some other officer who is able to so depose,

and stating—

(c) the dates of—

(i) the registration; and

(ii) the last renewal of registration of the bill; and

(d) the names, residences and occupations of the parties to the bill as stated in the bill; and

(e) that the bill is still an existing security; and

(f) what amount is then due under the bill.

(4) When the registration of a bill of sale is renewed, the Registrar shall cause—

(a) the affidavit filed under Subsection (3) to be numbered as if it were a bill of sale presented for registration; and

(b) the bill of sale originally registered in the office, or the filed copy—

- (i) to be renumbered with a similar number; and
- (ii) to be marked with the date of renewal of registration; and
- (c) particulars of the bill of sale to be entered in the register in the same manner as on an original registration; and
- (d) the date of renewal of registration to be entered in the column provided for the purpose in the register.

(5) A renewal of registration of a bill of sale is not necessary by reason only of a transfer or assignment of the bill of sale.

10. ATTESTATION OF BILLS OF SALE.

Sealing is not essential to the validity of a bill of sale, but each execution of a bill of sale shall be attested by at least one witness, who shall add his place of residence and his occupation.

Division 3.

Satisfaction of Bills of Sale by way of Security.

11. FILING OF MEMORANDA OF SATISFACTION OF BILLS OF SALE BY WAY OF SECURITY.

(1) In the case of a bill of sale by way of security, on production at the Registry of—

- (a) a memorandum of satisfaction in the prescribed form, signed by the grantee or his attorney, discharging the chattels, or a specified part of the chattels, comprised in the bill—
 - (i) from the money, or a specified part of the money, secured by the bill; or
 - (ii) from the performance of the obligation, or a specified part of the obligation, secured by the bill; and
- (b) the bill,

and on payment of the prescribed fee, the memorandum of satisfaction shall be filed and an entry of it made in the register on the page where the bill is registered.

(2) The execution of the memorandum of satisfaction shall—

- (a) be attested by at least one witness, who shall add his place of residence and his occupation; and
- (b) be verified by the affidavit of the witness.

(3) The Registrar may, in his discretion, dispense with the production of the bill of sale on proof, by statutory declaration, to his satisfaction that the bill of sale—

- (a) has been destroyed; or
- (b) cannot be found; or

- (c) cannot be produced.

12. EFFECT OF FILING OF MEMORANDUM OF SATISFACTION.

On the filing of a memorandum of satisfaction under Section 11–

- (a) the debt or charge created by the bill of sale is vacated to the extent specified in the memorandum; and
- (b) the interest of the grantee in the chattels expressed to be discharged vests in the person for the time being entitled to the equity of redemption–
 - (i) so far only as the interest is expressed by the memorandum to be determined; and
 - (ii) subject to any lien or equity affecting the chattels.

13. ORDER FOR FILING OF MEMORANDUM OF SATISFACTION.

(1) On application made to him for the purpose, a Judge may order a memorandum of satisfaction to be filed in respect of a bill of sale by way of security if it appears to him that–

- (a) the debt (if any) for which the bill was given as security has been satisfied or discharged; or
- (b) the obligation for securing the performance of which the bill of sale was given has been performed.

(2) An order under Subsection (1) shall be filed and entered in the register in the same manner as if it were a memorandum of satisfaction under Section 11.

PART III. – LIENS ON CROPS.**14. LIENS ON YEARLY CROPS.**

(1) Where–

(a) a person–

- (i) makes a *bona fide* advance of money or goods; or
- (ii) gives a valid promissory note or bill,

to a holder of land on condition of receiving as security for it the growing crop on the land; and

(b) the agreement relating to the security–

- (i) is made in the form or to the effect of Schedule 1; and
- (ii) purports on the face of it to have been made as security for the advance; and

(c) the agreement is registered, in accordance with Section 15, within 60 days after its execution,

the person making the advance has a preferable lien on, and is entitled to, the whole of the crop and the whole produce of the crop, whether the advance is made before, at or after the date of the agreement.

(2) Possession of the crop by the lienor shall be deemed for all purposes to be possession by the lienee.

(3) When the advance is repaid with the interest specified in the agreement, the possession of, and the property in, the crop reverts to and vests in the lienor.

15. MANNER OF REGISTRATION OF LIENS ON CROPS.

A lien on crops shall be registered by being filed, or by a true copy of it being filed, in the Registry.

16. EFFECT ON LIENS ON CROPS OF SALE, ETC., OF LAND.

A lien on crops registered under Section 15 is not extinguished or otherwise prejudicially affected by–

- (a) the death or insolvency of the lienor; or
- (b) a sale, mortgage or other encumbrance of or on the land on which the crop is growing.

17. RIGHT OF LIENOR TO GATHER AND SELL CROP.

Subject to Section 18, if the lienor under a lien on crops, or his executors, administrators or assigns, neglects or refuses–

- (a) to pay off the whole of the advance with interest as agreed on; or

- (b) to give up the crop to the lienee in pursuance of the agreement, the lienee, his executors, administrators or assigns—
- (c) may enter into possession of the crop; and
- (d) may gather, carry away and sell it and apply the proceeds in paying himself or themselves the advance, with interest, and all expenses of clearing, carrying away, making marketable and selling the crop; and
- (e) shall pay the balance to the lienor, his executors, administrators or assigns.

18. PAYMENTS TO LANDLORD AND MORTGAGEE BEFORE SALE OF CROP.

(1) If the lienor under a lien on crops is a tenant, before selling the crop the lienee shall pay to the landlord of the land on which the crop is growing such sum (not exceeding one year's rent) as is due to the landlord for rent at the time of the carrying away of the crop.

(2) If at the time of the making of a lien on crops there is in force a mortgage of the land on which the crop is growing and the land is, at the time of harvesting the crop, in the occupation of the mortgagee, the lienee shall, before selling the crop, pay to the mortgagee the amount of interest (not exceeding one year's interest) due on the mortgage at the time of the carrying away or sale of the crop.

(3) The lienee may repay himself the sum paid under Subsection (1) or (2) out of the proceeds of the sale of the crop before paying over the balance to the lienor.

19. REGISTER OF LIENS ON CROPS.

The Registrar shall keep a separate alphabetical register of all liens on crops registered under this Part.

20. DURATION OF LIENS ON CROPS.

(1) Subject to Subsection (3), a lien on crops shall not continue in force for a longer period than one year from the date of its execution.

(2) At the request of both parties to a registered lien on crops, the Registrar shall enter satisfaction on it.

(3) Where a lien on crops is given on any crop that does not come to maturity within one year, the lienee may, on or before the day on which the lien expires, renew it for a period not exceeding one year by filing in the Registry an affidavit stating—

- (a) that the crop is still immature; and
- (b) that the lien is unsatisfied; and
- (c) the period for which he desires to renew the lien.

(4) On the filing of an affidavit under Subsection (3), the lien continues in force for such further period (not exceeding one year) as the lienee specifies in the affidavit.

21. TRANSFER OF LIENS ON CROPS.

(1) Subject to Subsection (2), a lien on crops is transferable by endorsement.

(2) The transfer shall be registered within 30 days after the date of endorsement of the transfer by leaving in the Registry a true copy of it, verified by affidavit.

(3) The transfer gives to the transferee the same rights, title and interest in the lien as was held by the original lienee.

PART IV. – LIENS ON WOOL AND STOCK MORTGAGES.***Division 1.******Liens on Wool.*****22. LIENS ON WOOL.**

(1) Where—

(a) a person—

(i) makes a *bona fide* advance of money or goods; or

(ii) gives a valid promissory note or bill, to the owner of any sheep on condition of receiving in payment or as security for the money, goods, promissory note or bill, as the case may be, the wool of the next clip of the owner; and

(b) the agreement relating to the purchase or security—

(i) is made in the form or to the effect of Schedule 2; and

(ii) purports on the face of it to have been made in payment of or as security for the advance; and

(c) the agreement is registered, in accordance with Section 23, within 60 days after the date of its execution,

the person making the purchase or advance has a preferable lien on, and is entitled to, the whole of the wool specified in the agreement, whether the money or goods is or are advanced, or the note or bill is made, as the case may be, before, at or after the granting of the lien.

(2) The possession of the wool by the lienor shall be deemed for all purposes to be possession by the lienee.

(3) When the advance is repaid with the interest and commission specified in the agreement, the possession of, and the property in, the wool reverts to and vests in the lienor.

23. MANNER OF REGISTRATION OF LIENS ON WOOL.

A lien on wool shall be registered by being filed, or by a true copy of it being filed, in the Registry.

24. EFFECT ON LIENS ON WOOL OF SALE, ETC., OF SHEEP.

(1) A lien on wool registered under Section 23 is not extinguished, suspended, impaired or otherwise prejudicially affected by—

(a) the insolvency of the lienor; or

(b) a sale, mortgage or other encumbrance of the sheep described in the lien,

but is as valid and effectual against—

- (c) a subsequent purchaser, mortgagee, encumbrancer or other claimant or possessor of the sheep; or
- (d) the trustees or assignees of an insolvent lienor,

as against the original lienor who granted the lien.

25. RIGHT OF LIENOR TO SHEAR SHEEP.

(1) If the lienor under a lien on wool, or a subsequent mortgagee, encumbrancer, trustee or other claimant or possessor of the sheep, neglects or refuses to shear and deliver the wool of sheep for which the lien was granted, the lienee, or his executors, administrators or assigns, may wash and shear the sheep bearing the wool, and may for that purpose take possession of them.

(2) All expenses attending the shearing and the conveyance of the wool to the place of abode of the lienee, or to such other place as is named in the lien as the place of delivery, shall be deemed to be part of the amount secured by the lien.

Division 2.

Stock Mortgages.

26. RIGHTS OF STOCK MORTGAGEES.

(1) Subject to Subsection (2), where—

- (a) a mortgage of stock is made *bona fide* and for valuable consideration; and
- (b) the names of the parties to the mortgage and the particulars of the mortgage are duly registered in accordance with Section 27 within 60 days after the date of the mortgage,

the mortgage is valid for all purposes whether the money secured by the mortgage is payable presently or not, and notwithstanding that—

- (c) the mortgaged stock are not delivered to the mortgagee but remain and continue in every respect in the possession, order and disposition of the mortgagor; or
- (d) the mortgagor afterwards takes the benefit of a law for the relief of insolvent debtors.

(2) Unless the contrary is expressed in the mortgage, a stock mortgage includes—

- (a) the stock included in the mortgage; and
- (b) the natural increase of the stock; and
- (c) all stock of every kind (whether of the classes described in the mortgage or not) the property of the mortgagor—

- (i) that are branded, earmarked or marked as specified in the mortgage; or
- (ii) that the mortgagor has covenanted or agreed by the mortgage to brand, earmark or mark.

27. MANNER OF REGISTRATION OF STOCK MORTGAGES.

A stock mortgage shall be registered by the filing in the Registry of a statement in the prescribed form containing the prescribed particulars.

Division 3.

General.

28. LIMITATION OF LIENS AND MORTGAGES.

As long as a lien or stock mortgage on or of any wool or sheep remains unsatisfied, the lienor or mortgagor shall not grant a further lien or mortgage on or of the wool or sheep without the written consent of the lienee or mortgagee, notwithstanding any practice to the contrary.

29. REGISTERS.

The Registrar shall keep—

- (a) a separate and distinct register from year to year of all agreements for purchases of wool or advances for those purchases; and
- (b) a separate and distinct register of the particulars of all stock mortgages.

30. TRANSFER OF LIENS ON WOOL AND STOCK MORTGAGES.

(1) A lien on wool or a stock mortgage is transferable by endorsement.

(2) A transfer shall be registered within 30 days after the date of the endorsement of the transfer by leaving in the Registry a true copy of it.

(3) The endorsement gives to the holder the same rights, title and interest in the lien or mortgage as that held by the original lienee or mortgagee.

Division 4.

Cancellation and Satisfaction.

31. CANCELLATION OF LIENS ON WOOL.

(1) At the end of 12 months after the expiration of the year for which a lien on wool has been given, the Registrar may remove the lien from the records of his office, and may destroy or cancel it.

(2) At the request of both parties, the Registrar shall enter satisfaction on the lien.

32. REGISTRATION OF SATISFACTION OF STOCK MORTGAGES.

(1) When—

- (a) the amount of principal and interest due on a stock mortgage has been or is paid to the person entitled to receive it, or to his agent for that purpose; and
- (b) a written receipt for the amount paid has been or is given, signed by the party entitled or by his agent, acknowledging the payment to be in satisfaction of the mortgage,

the mortgagor, or his executors, administrators or assigns, may cause a verified copy of the receipt to be registered in the Registry by producing to the Registrar—

- (c) the original receipt; and
- (d) the mortgage deed to which it relates.

(2) After the registration of a verified receipt under Subsection (1), the payment operates for all purposes as an extinction of—

- (a) the mortgage; and
- (b) the rights, titles and interests created by the mortgage,

but without prejudice to any registered subsequent mortgage, affecting the same stock, or a part of the same stock.

(3) A similar written receipt endorsed on the back of a second or subsequent mortgage and registered under this section operates as an extinction of the subsequent mortgage and of all rights, titles and interests created by that mortgage.

Division 5.***Miscellaneous.*****33. SAVING OF RIGHTS OF STATE.**

This Part shall not be construed to affect the rights or prerogative of the State as to any Government land described in a lien on wool or stock mortgage as the land where the stock concerned are depasturing.

PART V. – INTERPRETATION OF, AND COVENANTS IN, REGISTERED INSTRUMENTS.

34. ABBREVIATED EXPRESSIONS.

(1) Subject to Section 39, expressions defined in Section 1 or Schedule 5 that are used in–

- (a) an instrument registered under this Act; or
- (b) a covenant, *proviso*, agreement or power implied in such an instrument by this Act,

have, unless the contrary is expressed in the instrument, or it is manifestly inconsistent with the context, the respective meanings given to them in Section 1 or Schedule 5, as the case may be.

(2) The meanings are implied in the instrument as fully and effectually as if they were set out at length in it.

35. IMPLIED COVENANTS FOR TITLE.

(1) Subject to Section 39, there is implied in an instrument registered under this Act the covenants for title on the part of the grantor specified in Schedule 3.

(2) Covenants implied under Subsection (1) have the same effect as if they were set out at length in the instrument.

36. IMPLIED COVENANTS IN INSTRUMENTS BY WAY OF SECURITY.

(1) Subject to Section 39, there is implied in an instrument by way of security registered under this Act the covenants, *provisos*, agreements and powers set out in Schedule 4, or such of them as are applicable.

(2) Covenants, *provisos*, agreements and powers implied under Subsection (1) have, subject to any modification expressed in the instrument, the same effect as if they were set out at length in the instrument.

37. COVENANTS SEVERAL AS WELL AS JOINT.

Unless the contrary intention appears, where there are–

- (a) two or more grantors; or
- (b) two or more grantees,

of an instrument, a covenant, condition, *proviso*, agreement or power expressed in, or implied by this Act to be in, the instrument–

- (c) imposing an obligation on the grantors or grantees; or
- (d) enuring for the benefit of the grantors or grantees,

shall be deemed to impose the obligation or confer the benefit, as the case may be, severally as well as jointly.

38. COVENANTS BINDING ON EXECUTORS, ETC.

Unless the contrary intention appears, a covenant, condition, *proviso*, agreement or power expressed in, or implied by this Act to be in, an instrument—

- (a) binds—
 - (i) the executors, administrators and assigns of any person; and
 - (ii) the successors and assigns of any company or corporation,
on whom the covenant, condition, *proviso*, agreement or power imposes an obligation; and
- (b) operates for the benefit of—
 - (i) the executors, administrators and assigns of any person; and
 - (ii) the successors and assigns of any company or corporation,
for whose benefit they enure.

39. VARIATION, ETC., OF COVENANTS.

All or any of the covenants, *provisos*, agreements or powers set out in Schedules 3, 4 and 5 may be negatived, modified or altered, or others may be added to them or inserted in their stead, by express words in the instrument.

PART VI. – MISCELLANEOUS.**40. AFFIDAVITS.**

An affidavit required by this Act may be sworn before the Registrar, a Provincial Administrator, a Commissioner for Oaths or a justice.

41. RECTIFICATION OF FAILURES TO REGISTER, ERRORS IN REGISTERS, ETC.

(1) On being satisfied—

(a) that the failure to register or file an instrument, affidavit or renewal—

(i) within the time prescribed by this Act; or

(ii) according to the form or effect required by this Act; or

(b) that the omission or mis-statement, in a register or in an affidavit, of the name, place of residence or occupation of any person, or of any other matter,

was accidental or due to inadvertence, a Judge may order the failure, omission or mis-statement to be rectified by—

(c) the extension of the time for registration or filing; or

(d) the filing of a supplementary affidavit; or

(e) the insertion in the register of the true name, residence or occupation,

as the case requires.

(2) An order under Subsection (1) may be made on such terms and conditions as the Judge thinks proper.

42. SEARCH OF REGISTERS, ETC.

(1) Any person—

(a) shall be given access to any register, index or book kept under this Act; and

(b) may search it during the usual office hours,

on paying the prescribed fee for each search.

(2) On paying the prescribed fee, a person is entitled to have an office copy of, or an extract from, an instrument or document that has been registered or filed under this Act.

43. EVIDENCE.

(1) An instrument or affidavit registered or filed under this Act, and purporting to be duly executed or sworn, is *prima facie* evidence that it has been duly executed or sworn, as the case may be.

(2) A copy, certified by the Registrar, of an instrument of a schedule to an instrument, or an office copy so certified of, or extract so certified from, an instrument, schedule or affidavit, that has been filed under this Act, and a certificate by the Registrar of the time when an instrument or affidavit was registered or filed, is in all courts and before all persons having by law or consent of parties authority to take evidence *prima facie* evidence of—

- (a) the instrument, schedule or affidavit; and
- (b) in the case of an instrument or a schedule to an instrument—the signatures of the parties and of the attesting witnesses; and
- (c) the fact and time of the registration or filing of the instrument or affidavit.

(3) It is not necessary to prove the handwriting or official position of the person appearing to have given a certificate referred to in Subsection (2).

44. SUCCESSIVE SECURITIES OVER SAME CHATTELS, ETC.

(1) Subject to Subsection (2), where an instrument by way of security—

- (a) is executed within 30 days after the day of the execution of a prior instrument that has never been registered; and
- (b) comprises all or any of the chattels, crops, wool or stock comprised in the prior instrument; and
- (c) is given as security for the same debt as is secured by the prior instrument, or for any part of that debt,

the instrument is void—

- (d) to the extent to which it is security for the same debt or any part of that debt; and
- (e) so far as respects the chattels, crops, wool or stock comprised in the prior instrument.

(2) Subsection (1) does not apply if it is proved that the subsequent instrument was bona fide given for the purpose of correcting a material error in the prior instrument and not for the purpose of evading this Act.

45. INSTRUMENTS EXECUTED OUTSIDE PAPUA NEW GUINEA.

Notwithstanding this Act, an instrument, affidavit or document executed or sworn outside the country may be registered or filed within 30 days from the day on which the instrument or the copy of the instrument, or the affidavit or document, as the case may be, would, in due course of post, and if despatched with due diligence, have been received in the country.

46. EFFECT OF INSOLVENCY ON CHATTELS, ETC., HELD AS SECURITY.

Unless otherwise provided in this Act—

- (a) chattels comprised in a bill of sale that is registered under Part II.; and
- (b) growing crops that are the security for an advance under an agreement registered under Part III.; and
- (c) wool and stock that are the security for an agreement registered under Part IV.,

shall not be deemed to be in the possession, order or disposition of the grantor, the lienor or the mortgagor, as the case may be, within the meaning of the *Insolvency Act 1951*.

47. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing fees for—

- (a) filing or registering an instrument or document; and
- (b) searching a register; and
- (c) furnishing a copy or certificate; and
- (d) doing any other act or thing.

SCHEDULE 1 – LIEN ON YEARLY CROP.

Sec. 14.

In consideration of the advance of K . . . , paid to me in money by (*or value for which I admit having received in goods from*) (*name of lienee, address*), I give . . . a preferable lien to the extent of that advance, together with interest at the rate of . . . % per annum, on the crop of (*state the nature of the produce*) of this year growing and to grow on the land (*describe the land*) in Papua New Guinea. It is further agreed that unless on or before . . . 20..., I pay to (*name of lienee*) the sum of K . . . , together with interest at the rate of . . . %, per annum, the crop shall be gathered, carried away and made marketable by me or at my expense and shall be delivered at . . . to (*name of lienee*) or his order, in which event he may sell it by (*state mode and conditions of sale*) and from the proceeds may pay himself that sum and interest and all cost, and shall pay over to me the balance (if any), or if there is any deficiency may recover that deficiency from me as a debt.

Dated . . . 20...

(Signature of Lienor.)

Witness:

SCHEDULE 2 – LIEN ON WOOL.

Sec. 22.

In consideration of K . . . bona fide value, that I admit having received in money (*or goods or both, as the case may be*) from (*name of lienee, address*), I give to (*name of lienee*) a preferable lien to the extent of that advance* on the wool of the next clip to be shorn from my flocks of sheep consisting in number of about . . . and now depasturing at . . . in Papua New Guinea under the superintendence of

It is further agreed that the sheep shall be shorn by me at my expense and that the wool shall be delivered by me at . . . to the order of (*name of lienee*).

Dated . . . 20...

(*Signature of Lienor.*)

Witness:

* If the goods or money advanced are or is for the absolute purchase of the wool, instead of the words “to the extent of that advance” insert the words “for the absolute purchase and whole value of”.

SCHEDULE 3 – COVENANTS IMPLIED IN ALL INSTRUMENTS.

Sec. 35.

1. That the grantor has good right and full power to assign to the grantee the chattels, crops, wool or stock purporting to be assigned, free and clear from encumbrances, other than the encumbrances referred to in this (*description of instrument*).
2. 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 afterwards of the person so requiring), do and execute all such acts, deeds, matters and things for better assigning the chattels, crops, wool or stock assigned, or intended to be assigned, as by the grantee (*or person so requiring*) are from time to time reasonably required.

SCHEDULE 4 – COVENANTS, ETC., IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

Sec. 36.

PART I – IMPLIED COVENANTS.

1. That the grantor will pay to the grantee the principal money and interest secured, without any deduction, at the rate and on the dates specified.
2. That the grantor will pay to the grantee interest on any further advance that may be secured by this instrument, computed from the time of making the advance, at the rate and on the dates specified for the payment of interest in this instrument.
3. That the grantor—
 - (a) will not, at any time while any money remains owing on this security, do or allow any act or deed by which the chattels, crops, wool or stock assigned will or may become prejudicially affected; and
 - (b) will, at all times while any money remains owing on the security, duly pay all rents from time to time becoming due in respect of any land or premises on which any of the chattels, crops, wool or stock assigned are for the time being situated.
4. That the grantor—
 - (a) will, at all times while any money remains owing on the security, keep and maintain all the chattels, crops, wool or stock assigned in the same good order and condition as that in which they are at the date of this instrument; and
 - (b) if any of them are damaged or destroyed, or cease to exist, will repair the damage, or replace the chattels, crops, wool or stock destroyed or ceasing to exist, with other chattels of a like nature; and
 - (c) will, if required to do so by the grantee, execute any instrument that is necessary to give to the grantee security over chattels; crops, wool or stock replacing the chattels that have been destroyed or have ceased to exist.

PART II – IMPLIED PROVISOS AND AGREEMENTS.

5. It is declared and agreed, that until—
 - (a) the grantor makes default in—
 - (i) the payment of any of the money secured; or
 - (ii) the observance or performance of any covenant, condition or agreement expressed or implied in this instrument, and to be observed and performed by him; or
 - (b) the grantor becomes insolvent; or

- (c) a judgement of a court against the grantor has remained unsatisfied for 10 days,

the grantor may retain possession and use of the chattels, crops, wool or stock assigned under this instrument.

(1) Until the bill or note is honoured or met, the giving by the grantor to the grantee of a bill of exchange or promissory note for the whole or any part of the money secured by this instrument—

- (a) shall not be considered as payment of, or as being on account of, the money secured by this instrument; and
- (b) does not in any way affect or alter the rights or powers of the grantee by virtue of this instrument.

(2) Neither—

- (a) a promissory note or bill of exchange that before, at or at any time after the execution of this instrument is given by the grantor to the grantee for the whole or any portion of the money secured; nor
- (b) the remedy under any such note or bill to the grantee or the holder of it,

will merge in the covenants expressed or implied in this instrument.

PART III – POWERS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

(1) It is declared and agreed, that, if—

- (a) default is made by the grantor in—
 - (i) payment, on the day on which they ought to be paid according to this instrument, of any of the principal or interest covenanted to be paid; or
 - (ii) the observance or performance of any of the covenants, conditions or agreements expressed or implied in this instrument, and to be observed and performed by the grantor; or
- (b) the grantor becomes insolvent; or
- (c) a judgement of a court against the grantor remains at any time unsatisfied for 10 days,

the succeeding provisions of this section apply.

(2) The grantee, personally or by his agent or servants, may—

- (a) immediately or at any time afterwards; and
- (b) without any further consent by the grantor; and
- (c) without giving to the grantor any notice or waiting any time; and
- (d) notwithstanding any subsequent acceptance of any payment of any money due on this security,

enter on any land or premises where the chattels, crops, wool or stock for the time being subject to this security may be, and take possession of the chattels, crops, wool or stock.

(3) Where possession is taken under Subsection (2) of any chattels, crops, wool or stock, the grantee may sell and dispose of them, or any part of them, by private sale or public auction, separately or together, in the lots and generally in the manner in every respect as the grantee thinks expedient, with power—

- (a) to allow time for payment of purchase money or to buy in the chattels, crops, wool or stock, or any part of them, at the auction; and
- (b) to rescind or vary the terms of any contract or sale; and
- (c) to resell without being answerable for any loss or expense occasioned by the sale; and
- (d) to execute all assurances and do all things for giving effect to any sale that are necessary or proper,

and the receipt of the grantee or his agent is a sufficient discharge to a purchaser at the sale for any of the purchase money.

(4) On a sale purporting to be made in exercise of the powers expressed or implied in this instrument, a purchaser is not bound to inquire as to the propriety or regularity of the sale, and is not affected by notice, express or constructive, that the sale is improper or irregular.

(5) The grantee shall stand possessed of the proceeds of the sale on trust, after paying out of them the costs, charges and expenses of and incidental to the taking of possession and sale, and the preparation and registration of this instrument, to apply the proceeds in reduction of the money then owing on the security of this instrument, including all money covenanted to be paid, notwithstanding that—

- (a) the money may not then have become due; or
- (b) any promissory notes or bills of exchange may then be current for it,

and to pay the balance to the grantor.

SCHEDULE 5 – MEANING OF ABBREVIATED EXPRESSIONS.

Sec. 34.

1. **“On demand”**: means on demand being made by written notice—

(a) signed by—

(i) the person entitled to make the demand; or

(ii) an agent, clerk or servant of that person; and

(b) served on the person on whom the demand is to be made—

(i) personally; or

(ii) by posting it in a registered letter addressed to him at his usual or last-known place of abode in the country.

2. **“Further advances”**: means any further sum or sums of money that are advanced or paid by the grantee to the grantor after the execution of this instrument, and include such sums as become owing by the grantor to the grantee during the continuance of this security for—

(a) goods supplied; and

(b) bills and notes discounted and paid; and

(c) other loans, credits and advances that may be made,

during the continuance of this security, by the grantee to, for the accommodation of, or at the request of, the grantor.

3. **“Will, on demand, pay the balance due on the account-current between them”**: means that—

(a) 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—

(i) for and on account of the money advanced on the execution of this instrument, or intended to be secured by this instrument; and

(ii) for further advances as defined by the *Instruments Act*; and

(iii) for interest, commission and other lawful charges from the day on which the demand is made until the actual payment, at the rate specified in this instrument without any deduction; and

(b) it is declared and agreed that—

(i) the account-current will be made up with half-yearly rests on the half-yearly days specified for that purpose in this instrument in each year (or, if no such days are specified in the instrument, on 31 March and 30 September in each year), until the final balance of account is fully paid; and

(ii) this instrument is a continuing security for all money for the time being owing by the grantor to the grantee, notwithstanding that

the account-current between them may have at any time been in credit by payments, settlement of account or otherwise; and

- (iii) on each half-yearly day interest shall be considered as converted into principal, and the balance is chargeable with interest as on further advances; and
- (iv) in making up the account interest at the rate specified in this instrument shall be calculated on the daily debtor balances; and
- (v) on any such demand all bills of exchange or promissory notes given by the grantor to the grantee and then current—
 - (A) may, at the option of the grantee; and
 - (B) 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 on the amount for the time during which they have to run, to be calculated at the rate at which interest is payable under this instrument; and
- (vi) the amount of the bills of exchange or promissory notes, subject to the rebate, may be charged to the grantor in the account at the time of making the demand.

4. “Will insure”: means that—

- (a) the party liable to insure will insure, and at all times while this instrument remains in force keep insured, against loss or damage by fire all chattels, crops, wool or stock comprised in the instrument of a nature or kind capable of being insured against loss or damage by fire; and
- (b) the insurance referred to in Paragraph (a) will be—
 - (i) effected in the name of the other party to this instrument and in an insurance office approved by him; and
 - (ii) for the full amount specified (or, if no amount is specified, for the full insurable value of the chattels, crops, wool or stock); and
- (c) the party liable to insure will, at the request of the other party—
 - (i) hand over to and deposit with him the policy of insurance; and
 - (ii) produce and deliver to him the receipt or receipts for the annual or other premiums payable on account of the insurance; and
- (d) in the event of loss or damage by fire all money received under the insurance will be laid out and expended, so far as they extend, in making good the loss or damage (or, if the instrument is given by way of security, in discharging the money secured, if the other party so elects); and

- (e) 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 by this instrument or otherwise by law—
 - (i) insure the chattels, crops, wool or stock; and
 - (ii) recover the cost and charges of the insurance from the party liable to insure in the same manner as if they had been advanced by way of loan on the security of this instrument.

5. “Will brand, earmark and mark”: means that—

- (a) 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 brands, earmarks and marks specified in this instrument; and
- (b) if that party fails to do so it will be lawful for, but not imperative on, the other party to the instrument—
 - (i) to enter on any land or premises where any stock subject to this security are; and
 - (ii) to take possession of the stock; and
 - (iii) to 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 necessary for the purpose; and
- (c) all costs, charges and expenses occasioned to the other party by the exercise of his powers under Paragraph (b) are 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.

Office of Legislative Counsel, PNG