

GOODS ORDINANCE 1924. ⁽¹⁾

No. 36 of 1924.

An Ordinance to consolidate the Law relating to Dealings in Goods.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Goods Ordinance 1924*. ⁽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. This Ordinance is divided into Parts as follows:— Parts.
 - Part I.—Preliminary.
 - Part II.—Sale of Goods—
 - Division 1.—Interpretation.
 - Division 2.—Formation of Contract.
 - Division 3.—Effects of Contract.
 - Division 4.—Performance of Contract.
 - Division 5.—Rights of Unpaid Seller against the Goods.
 - Division 6.—Actions for Breach of Contract.
 - Division 7.—Supplementary.
 - Part III.—Consignees, Mercantile Agents, Documents of Title to Goods and Bills of Lading.
 - Part IV.—Effect of Execution and Conviction on Title to Goods.

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

Date on which made by Governor-General in Council.	Date on which notified in <i>Commonwealth Gazette</i> .	Date on which took effect.
19.11.1924	21.11.1924	14.4.1925 (<i>N.G. Gaz.</i> of 31.3.1925)

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Sections 3A and
5-20 of
Mercantile
Ordinance of
Papua to cease
to apply.

4. Upon the commencement of this Ordinance Section three A and Sections five to twenty (both inclusive) of the *Mercantile Ordinance* 1912 of the Territory of Papua shall cease to apply to the Territory.

PART II.—SALE OF GOODS.

DIVISION 1.—INTERPRETATION.

Interpretation.

5.—(1.) In this Part unless the contrary intention appears—

“Action” includes counterclaim and set-off;

“Buyer” means a person who buys or agrees to buy goods;

“Contract of sale” includes an agreement to sell as well as a sale;

“Delivery” means voluntary transfer of possession from one person to another;

“Document of title” has the same meaning as it has in Part III. of this Ordinance;

“Fault” means wrongful act or default;

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract for sale;

“Goods” includes all chattels personal other than things in action and money, and includes emblements and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

“Mercantile Agent” has the same meaning as it has in Part III. of this Ordinance;

“Plaintiff” includes defendant counterclaiming;

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

“Quality of goods” includes their state or condition;

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

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

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

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

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

(3.) A person shall be deemed to be insolvent within the meaning of this Part who either has ceased to pay his debts in the

ordinary course of business or cannot pay his debts as they become due whether he has committed an act of insolvency or not.

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

6.—(1.) The rules in insolvency relating to contracts of sale shall continue to apply thereto notwithstanding anything in this Part contained.

Saving of rules of insolvency and common law.

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

7.—(1.) Nothing in this Part or in any repeal effected by this Ordinance shall affect the enactments relating to bills of sale, contracts of sale followed by contracts of letting and hiring, liens on crops, liens on wool, stock mortgages or assignments of book debts or any enactment relating to the sale of goods which is not expressly repealed by this Ordinance.

Saving of unrepealed enactments, &c.

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

DIVISION 2.—FORMATION OF CONTRACT.

Contract of Sale.

8.—(1.) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.

Sale and agreement to sell.

(2.) There may be a contract of sale between one part owner and another.

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

(4.) Where, under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

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

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Capacity to
buy and sell.

9.—(1.) Capacity to buy and sell shall be regulated by the general law concerning capacity to contract and to transfer and acquire property:

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

(2.) In this section “necessaries” means goods suitable to the condition in life of the infant or other person and to his actual requirements at the time of the sale and delivery.

Formalities of the Contract.

Contracts of
sale, how made.

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

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

Contract for
sale of Ten
pounds and
upwards.

11.—(1.) A contract of sale of any goods of the value of Ten pounds or upwards shall not be enforceable by action unless the buyer accepts part of the goods so sold and actually receives that part, or gives something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

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

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

Subject Matter of Contracts.

Existing or
future goods.

12.—(1.) The goods which form the subject of a contract of sale may be either existing goods owned or possessed by the seller or future goods.

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

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

13.—Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract shall be void. Goods which have perished.

14. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish before the risk passes to the buyer, the agreement shall be deemed to be thereby avoided. Goods perishing before sale but after agreement to sell.

The Price.

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

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

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

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

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

Conditions and Warranties.

17. Unless a different intention appears from the terms of the contract, stipulations as to time of payment shall not be deemed to be of the essence of a contract of sale. Whether another stipulation as to time is of the essence of the contract or not shall depend on the terms of the contract. Stipulations as to time.

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

(2.) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise

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to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, shall depend in each case on the construction of the contract. A stipulation may be a condition though called a warranty in the contract.

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

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

Implied
undertaking as
to title, &c.

19. There shall be implied in a contract of sale, unless the contrary intention appears from the circumstances of the contract—

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

Sale by
description.

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

Implied
conditions as
to quality
or fitness.

21.—(1.) Subject to the provisions of this Part and of any law of the Territory there shall be no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.

(2.) Notwithstanding anything contained in the last preceding sub-section—

- (a) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods

are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not) there shall be an implied condition that the goods are reasonably fit for that purpose:

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

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

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

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

Sale by Sample.

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

(2.) In the case of a contract for sale by sample—

- (a) there shall be an implied condition that the bulk corresponds with the sample in quality;
- (b) there shall be an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample; and
- (c) there shall be an implied condition that the goods are free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

DIVISION 3.—EFFECTS OF CONTRACT.

Transfer of Property as Between Seller and Buyer.

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

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Property passes
when intended
to pass.

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

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

Rules for
ascertaining
intention.

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

Rule 1. Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed.

Rule 2. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state the property does not pass until that thing be done and the buyer has notice thereof.

Rule 3. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until that act or thing is done and the buyer has notice thereof.

Rule 4. When goods are delivered to the buyer on approval, or on “sale or return”, or other similar terms, the property therein passes to the buyer—

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction; or

(b) if he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of that time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5. (1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller, with the assent of the buyer, or by the buyer,

with the assent of the seller, the property in the goods thereupon passes to the buyer. The assent may be express or implied and may be given either before or after the appropriation is made.

(2) Where in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer and does not reserve the right of disposal he is deemed to have unconditionally appropriated the goods to the contract.

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

Reservation of right of disposal.

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

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

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

Risk *prima facie* passes with property.

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

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

Transfer of Title.

28. Nothing in this Part unless specially so expressed shall affect—

Saving of other provisions.

- (a) the provisions of Part III. of this Ordinance or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;
or

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(b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Sale by person
not the owner.

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

Market overt.

30.—(1.) Where goods are sold in market overt according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.

(2.) Nothing in this section shall affect the law relating to the sale of cattle.

Sale under
voidable title.

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

Seller in
possession
after sale.

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

(2.) For the purposes of this and the next succeeding section, the transfer of a document of title to goods may be by indorsement, or, where the document is by custom or by its express terms transferable by delivery or makes the goods deliverable to bearer, by delivery, and a person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or control or are held by any other person subject to his control or for him or on his behalf.

Buyer in
possession
after sale.

33. Where a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving them in good faith and without notice of any lien or other right of the original seller in respect

of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

DIVISION 4.—PERFORMANCE OF THE CONTRACT.

34. It shall be the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale. Duties of seller and buyer.

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

36.—(1.) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer shall be a question depending in each case on the contract express or implied between the parties. Rules as to delivery.

(2.) Apart from any such contract, express or implied, the place of delivery shall be the seller's place of business, if he have one, and, if not, his residence:

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

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

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

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

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

(6.) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

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

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(2.) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he shall pay for them at the contract rate.

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

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

Instalment deliveries.

38.—(1.) Unless otherwise agreed, the buyer of goods shall not be bound to accept delivery thereof by instalments.

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

Delivery to carrier.

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

(2.) Unless otherwise authorized by the buyer, the seller shall make such contract with the carrier on behalf of the buyer as is reasonable, having regard to the nature of the goods and the other circumstances of the case.

(3.) If the seller omit to make a contract in accordance with the provisions of the last preceding sub-section, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.

(4.) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit under circumstances in which it is usual to insure, the seller shall give such notice to the buyer as will enable him to insure them during their sea transit, and if the seller fails to do so the goods shall be deemed to be at his risk during the sea transit.

Risk where goods are delivered at distant place.

40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the

buyer shall nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

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

Buyer's right of examining the goods.

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

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

Acceptance.

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

Buyer not bound to return rejected goods.

44.—(1.) When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after that request take delivery of the goods, he shall be liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

Liability of buyer for neglecting or refusing delivery of goods.

(2.) Nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

DIVISION 5.—RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

45.—(1.) The seller of goods shall be deemed to be an "unpaid seller" within the meaning of this Part—

"Unpaid seller" defined.

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

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

Unpaid
seller's rights.

46.—(1.) Subject to the provisions of this Part and of Part III. of this Ordinance and of any law of the Territory in that behalf, notwithstanding that the property in the goods has passed to the buyer, the unpaid seller of goods as such shall have, by implication of law—

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

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

Unpaid Seller's Lien.

Seller's lien.

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

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

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

Part delivery.

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

Termination
of lien.

49.—(1.) The unpaid seller of goods shall lose his lien thereon—

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

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

Stoppage in Transitu.

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

Right of stoppage in transitu.

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

Duration of transit.

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

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

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

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

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

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

52.—(1.) The unpaid seller may exercise his right of stoppage in transitu either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are.

How stoppage in transitu is effected.

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(2.) The notice may be given either to the person in actual possession of the goods or to his principal.

(3.) Where the notice is given to the principal, the notice, to be effectual, shall be given at such time and under such circumstances that the principal by the exercise of reasonable diligence may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(4.) When notice of stoppage in transitu is given by the seller to the carrier or other bailee in possession of the goods, the carrier or other bailee shall re-deliver the goods to or according to the directions of the seller.

(5.) The expenses of the re-delivery shall be borne by the seller.

Re-sale by Buyer or Seller.

53. Subject to the provisions of this Part and of Part III. of this Ordinance, the unpaid seller's right of lien or stoppage in transitu shall not be affected by any sale or other disposition of the goods which the buyer has made unless the seller has assented thereto.

54.—(1.) Subject to the provisions of this section, a contract of sale shall not be deemed to be rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transitu.

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

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

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

DIVISION 6.—ACTIONS FOR BREACH OF CONTRACT.

Remedies of the Seller.

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

Effect of sub-sale or pledge by buyer.

Sale not generally rescinded by lien or stoppage in transitu.

Action for price.

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

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

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

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

Remedies of the Buyer.

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

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

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

58.—(1.) In any action for breach of contract to deliver specific ascertained goods, the court may, if it thinks fit on the application of the plaintiff, by its judgment direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages. Specific performance.

(2.) The judgment may be unconditional or upon such terms and conditions as to damages, payment of the price and otherwise as to the court seems just, and the application by the plaintiff may be made at any time before judgment.

59.—(1.) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a Remedy for breach of warranty.

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condition on the part of a seller as a breach of warranty, the buyer shall not by reason only of the breach of warranty be entitled to reject the goods; but he may—

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

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

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

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

Interest and Special Damages.

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

DIVISION 7.—SUPPLEMENTARY.

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

62. Where by this Part any reference is made to a reasonable time the question what is a reasonable time shall be a question of fact.

63. Where any right duty or liability is declared by this Part it may unless otherwise provided by this Part be enforced by action.

64.—(1.) Where goods are put up for sale by auction in lots, each lot shall *prima facie* be deemed to be the subject of a separate contract of sale.

(2.) A sale by auction shall be deemed to be complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until that announcement is made any bidder may retract his bid.

Interest and special damages.

Exclusion of implied terms and conditions.

Reasonable time a question of fact.

Rights, &c., enforceable by action.

Auction sales.

(3.) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, the seller may not bid himself or employ any person to bid at the sale, nor may the auctioneer knowingly take any bid from the seller or any such person. Any sale contravening this sub-section may be treated as fraudulent by the buyer.

(4.) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

(5.) Where a right to bid is expressly reserved but not otherwise the seller or any one person on his behalf may bid at the auction.

**PART III.—CONSIGNEES, MERCANTILE AGENTS,
DOCUMENTS OF TITLE TO GOODS, BILLS OF LADING.**

65.—(1.) In this Part unless the contrary intention appears— Interpretation.

“Advance” includes a payment of money and the delivery of a bill of exchange or other negotiable security;

“Document of title” includes bill of lading dock warrant, warehousekeeper’s certificate, wharfinger’s certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of the document to transfer or receive the goods thereby represented;

“Goods” includes goods wares and merchandise;

“Mercantile agent” means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods or of documents of title;

“Pledge” includes any contract pledging or giving a lien or security on goods whether in consideration of an original advance or of any further or continuing advance.

(2.) The provisions of this Part shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Ordinance.

66.—(1.) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that that person Provisions as to consignees.

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is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of that person, have the same lien on the goods as if that person was the owner of the goods, and may transfer any such lien to another person.

(2.) The person in whose name any goods have been shipped shall, for the purposes of this section, unless the contrary is shown, be taken to have been given possession of the goods for the purpose of consignment or sale.

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

Powers of mercantile agents with respect to disposition of goods.

67.—(1.) Where a mercantile agent is entrusted as such with the possession of any goods or the documents of title to any goods, any sale, pledge or other disposition of the goods made by him in the ordinary course of business of a mercantile agent shall, subject to the provisions of this Part, be as valid as if he was expressly authorized by the owner of the goods to make the sale, pledge or other disposition:

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

(2.) Where a mercantile agent so entrusted continues in possession of goods or of the documents of title to goods, any sale, pledge or other disposition, which would have been valid if the entrusting had continued, shall be valid notwithstanding the determination thereof:

Provided that the person taking under the disposition has not at the time thereof notice of the determination.

Presumptions, &c.

68. For the purposes of this Part—

- (a) a mercantile agent in possession of goods or of the documents of title to goods shall be deemed to have been entrusted with the goods or documents as such agent until the contrary is shown;
- (b) a mercantile agent entrusted as such agent and possessed of the documents of title to goods, whether derived immediately from the owner of the goods or obtained by reason of the agent having been entrusted with the possession of the goods or of any other document of title thereto, shall be deemed to be entrusted with the possession of the goods represented by the documents;
- (c) an agent shall be deemed to be possessed of goods or documents of title to goods whether the goods or documents are in his actual custody or control or are held by any other person subject to his control or for him or on his behalf;

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- (d) any contract whether made directly with an agent or with any clerk or other person on his behalf shall be deemed to be a contract with the agent;
- (e) a pledge of the documents of title to goods shall be deemed to be a pledge of the goods represented by the documents;
- (f) where any loan or advance is bona fide made to a mercantile agent, entrusted with goods or documents of title to goods as such agent, on the faith of any contract or agreement in writing to consign, deposit, transfer or deliver goods or documents of title to goods, and the goods or documents are actually received by the person making the loan or advance without notice that the agent was not authorized to make the pledge, every such loan or advance shall be deemed to be a loan or advance on the security of the goods or documents within the meaning of this Part although the goods or documents are not actually received by the person making the loan or advance till a period subsequent thereto; and
- (g) the transfer of a document of title to goods may be by endorsement, or, where the document is by custom or by its express terms transferable by delivery or makes the goods deliverable to bearer, by delivery.

69. Where a mercantile agent pledges goods in consideration of the delivery or transfer of any other goods, or documents of title to goods, or negotiable securities, upon which the person delivering or transferring them had, at the time, a valid and available lien and security for, or in respect of, a previous advance by virtue of some contract or agreement made with the agent, the pledge, if the pledgee acts in good faith and without notice that the agent had not authority to make the pledge, shall be deemed to be in consideration of an advance within the meaning of this Part as if there had been a present advance of money, but the pledgee shall acquire no right or interest in excess of the value of the goods documents or negotiable securities when so delivered or transferred.

Pledges by way of exchange protected.

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

Pledge for antecedent debt.

71. Where a document of title of goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes it in good

Effect of transfer of document of title by owner or buyer.

faith and for valuable consideration, then, if the last-mentioned transfer is by way of sale, the unpaid seller's right of lien or stoppage in transitu shall be defeated, and, if the last-mentioned transfer is by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transitu may be exercised only subject to the rights of the transferee.

Delivery of warrant to pass possession as well as property.

72.—(1.) Without limiting the generality of the last preceding section, the delivery of a warrant for goods endorsed by the person to whom it has been issued or by his agent or authorized employee to a purchaser of the goods mentioned in the warrant shall pass the possession as well as the property in the goods, and no unpaid vendor of the goods shall have any right to resume the possession of or to stop the goods or any part thereof in transitu after the delivery of the warrant.

(2.) Where a warrant for goods has been endorsed by the person to whom it has been issued or given or by his agent duly authorized in that behalf, and is delivered to any person, the last-mentioned person and any subsequent holder of the warrant in good faith shall, as against the person by or on whose behalf the warrant has been issued or given, be entitled to the goods and the possession thereof to the same extent as if the contract contained in or evidenced by the warrant had been made with the person to whom the warrant has been so endorsed and delivered or with the holder thereof (as the case may be).

(3.) In this section the expression "warrant for goods" means a warehousekeeper's certificate, wharfinger's certificate, dock warrant, or warrant or order for the delivery of goods.

Rights to vest in consignee or endorsee.

73. Without limiting the generality of the provisions contained in the last two preceding sections, every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes upon or by reason of the consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of the goods as if the contract contained in the bill of lading had been made with himself, but nothing in this section shall prejudice or affect any right of stoppage in transitu otherwise existing, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being the consignee or endorsee or of his receipt of the goods by reason or in consequence of the consignment or endorsement.

When bills of lading conclusive evidence.

74. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped shall be in all civil proceedings conclusive evidence of the shipment against the master or other person signing the bill of lading, notwithstanding that the goods or some part thereof were not so

shipped, unless the holder had actual notice at the time of receiving the bill of lading that the goods had not been in fact laden on board.

75. Any person who signs any receipt, acknowledgment or bill of lading which represents or purports to represent that the goods therein mentioned have been shipped in or upon, or laden on board the ship or vessel therein named, unless the goods have in fact been so shipped or laden or unless they are at the port where the ship is loading, and are for the purpose of shipment at the absolute order and disposition of the master of the ship or vessel, shall be guilty of an offence.

Signing untrue bills of lading an offence.

76. Subject to the preceding provisions of this Part, the person signing any receipt, acknowledgment or bill of lading previously mentioned in this part, may, in all proceedings, whether civil or criminal, exonerate himself in respect of any misrepresentation such as is referred to in the last preceding section, by showing that it was caused without any default on his part and by the fraud of the shipper or of the holder or of some person under whom the holder claims.

Procedure by which a person signing can exonerate himself.

77. Any person who deposits or assigns either by way of sale or of pledge or otherwise deals with any receipt, acknowledgment or bill of lading previously mentioned in this Part, knowing that the receipt, acknowledgment or bill of lading has been signed contrary to the provisions of this Part shall be guilty of an offence.

Dealing with untrue bills of lading an offence.

78. The fact that any receipt, acknowledgment or bill of lading has been signed contrary to the provisions of section seventy-five of this Ordinance shall not of itself invalidate any such receipt, acknowledgment or bill of lading or in any way affect the operation thereof.

Bills of lading not invalidated by improper signature.

79. Every offence against this Part shall be punishable by a fine of not more than Two hundred pounds or by imprisonment with or without hard labour for a term of not more than two years.

Punishment of offences.

80. Nothing in this Part—

- (a) shall authorize an agent to exceed or depart from his authority as between himself and his principal or shall exempt him from liability civil or criminal for so doing;
- (b) shall prevent the owner of goods or documents from recovering them from an agent or his assignee or trustee in insolvency at any time before the sale or pledge thereof;
- (c) shall prevent the owner of any goods sold by an agent from recovering from the buyer the price or sum agreed to be paid subject to any rights of set-off of the buyer against the agent; or

Saving of rights.

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(d) shall prevent the owner from having the right to redeem goods or documents pledged at any time before sale thereof, on satisfying the claim for which the goods were pledged, and on paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or documents or any of them by way of lien as against the owner; or shall prevent the owner from recovering, from any person with whom any such goods have been pledged, any balance or sum of money remaining in his hands as the produce of sale after deducting the amount of his lien:

Provided that, in the case of the bankruptcy or insolvency of any such agent, the owner of the goods so redeemed shall, in respect of any sum paid by him on account of the agent for redemption, be held to have paid that sum for the use of the agent before insolvency, and shall be held *pro tanto* to have discharged any debt due by him to the agent; or, in case there has been no such redemption, the owner shall be deemed to be a creditor of the insolvent for the value of the goods so pledged, and shall, if he thinks fit, be entitled in either of those cases to prove for or set off the sum so paid or the value of the goods (as the case may be).

PART IV.—EFFECT OF EXECUTION AND CONVICTION ON TITLE TO GOODS.

Effect of writs of execution.

81.—(1.) A writ of *feri facias* or warrant or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed, and, for the better manifestation of the time, the sheriff shall, without fee, upon the receipt of any such writ, endorse upon the back thereof the hour, day, month, and year when he received it:

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

(2.) In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution.

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

Reverting of property in stolen goods on conviction of offender.

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

Property not to revert in case of fraud.

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