

MERCANTILE ORDINANCE, 1912-1924.⁽¹⁾

An Ordinance to amend the Laws relating to Mercantile Matters.

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

1. This Ordinance may be cited as the *Mercantile Ordinance, 1912-1924.*⁽¹⁾

Short title.

Amended by
No. 2 of 1930,
s. 2.

It shall come into operation on a day to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette.*⁽¹⁾

Commencement.

Assignment of Personalty.

2. Any person shall have power to assign personal property now by law assignable, including chattels real, directly to himself and another person by the like means he might assign the same to another.

Assignment to
self and others.
Imp. 22 and 23
Vic. c. 35, s. 21;
Q. 31 Vic.
No. 36, s. 1.

(1) The *Mercantile Ordinance, 1912-1924*, comprises the *Mercantile Ordinance, 1912*, as amended by the other Ordinances referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

| Short title, number and year. | Date of assent by Lieut.-Gov. | Date of reservation by Lieut.-Gov. | Date on which assent of Gov.-Gen. published in Papua Govt. Gaz. | Date on which came into operation. |
|--|-------------------------------|------------------------------------|---|--|
| <i>Mercantile Ordinance, 1912</i> (No. 38 of 1912) | 16.7.1912 ^(a) | — | — | 23.12.1912 (Papua Govt. Gaz. of 23.12.1912) |
| <i>Ordinances Revision Ordinance, 1913</i> (No. 3 of 1914) | — | 14.8.1913 | 4.2.1914 | 4.2.1914 (Papua Govt. Gaz. of 4.2.1914) |
| <i>Mercantile Ordinance, 1924</i> (No. 15 of 1924) | 30.7.1924 ^(b) | — | — | 30.7.1924 (<i>Ordinances etc. of Papua, 1924</i> , p. 49) |
| <i>Sale of Goods Ordinance, 1927</i> (No. 3 of 1927) | 9.6.1927 ^(c) | — | — | 7.3.1928 (Papua Govt. Gaz. of 7.3.1928) |
| <i>Factors Ordinance, 1927</i> (No. 4 of 1927) | 9.6.1927 ^(d) | — | — | 9.6.1927 (<i>Ordinances etc. of Papua, 1927</i> , p. 31) |

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

(b) Notified in Papua Govt. Gaz. of 24.12.1924 as not disallowed by Gov.-Gen. in Council.

(c) Notified in Papua Govt. Gaz. of 7.12.1927 as not disallowed by Gov.-Gen. in Council.

(d) Notified in Papua Govt. Gaz. of 7.11.1927 as not disallowed by Gov.-Gen. in Council.

Assignment of debts and chose in action.

Q. 40 Vic. No. 6, s. 5(6).
Inserted by No. 15 of 1924, s. 2.

2A. Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action of which express notice in writing shall have been given to the debtor trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Ordinance had not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice and all legal and other remedies for the same and the power to give a good discharge for the same without the concurrence of the assignor:

Debtor may interplead or pay money into Court.

Provided always that if the debtor trustee or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him or of any other opposing or conflicting claims to such debt or chose in action he shall be entitled if he think fit to call upon the several persons making claim thereto to interplead concerning the same in the manner provided by the *Interdict Act of 1867*⁽²⁾ (Queensland Adopted) in like cases or he may if he think fit pay the same into Court under and in conformity with the provisions of the Ordinances for the relief of trustees.

Powers of Attorney.

Conveyances, &c., under certain powers of attorney executed after death or revocation and before notice thereof to be valid.

Imp. 22 and 23 Vic. c. 35, s. 26.

3.—(1.) Whenever the person who may have executed or shall hereafter execute any power of attorney (whether such person were or be at the time within the Territory or not) shall have declared or shall declare therein that such power shall continue in force until notice of his death or of the revocation of such power shall have been received by the attorneys named therein, such power shall operate accordingly; and every act hereafter done, performed, or submitted to by the said attorneys within the scope of the powers and authority conferred upon them after such death or revocation as aforesaid and before notice thereof shall have been received shall be as effectual in all respects as if such death or revocation had not happened or been made.

(2.) A statutory declaration made by any such attorney that he has not received any notice of the revocation of such power of attorney by death or otherwise shall, if made immediately before or after executing any such conveyance or other instrument as aforesaid, or doing or performing or submitting to any such act as aforesaid, be taken to be conclusive proof of such non-revocation at the time of such execution in favour of any person who shall *bona fide* and for valuable consideration, and without notice to himself of any such revocation, have accepted any such con-

(2) Printed below, title COURTS.

veyance or other instrument from or dealt with such attorney in the name of his principal.

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Section 3A inserted by No. 3 of 1914, s. 3 and Second Schedule; repealed by No. 3 of 1927, s. 4 and Schedule.

Satisfied Securities.

4.—(1.) Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty shall be entitled to have assigned to him or to a trustee for him every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty.

A surety who discharges the liability to be entitled to assignment of all securities held by the creditor.

Imp. 19 and 20 Vic. c. 97, s. 5; Q. 31 Vic. No. 36, s. 4.

(2.) Such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be and upon a proper indemnity, to use the name of the creditor in any action or other proceeding in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty; and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him.

(3.) No co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid more than the just proportion to which as between those parties themselves such last-mentioned person shall be justly liable.

Bills of Lading.

5. Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Rights under bills of lading to vest in consignee or indorsee.

Imp. 18 and 19 Vic. c. 111, s. 1; Q. *Ib.* s. 5.

6. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee by reason or in consequence of his being such consignee

Not to affect right of stoppage *in transitu* or claims for freight.

Imp. *Ib.* s. 2; Q. *Ib.* s. 6.

or indorsee or of his receipt of the goods by reason or in consequence of such consignment or indorsement.

Bill of lading in hands of consignee conclusive evidence of shipment as against master.

Imp. 18 and 19 Vic. c. 112, s. 3; Q. 31 Vic. No. 36, s. 3.

7. Every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board.

Sections 8-20 repealed by No. 4 of 1927, s. 2.

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Gaming Securities.

All notes mortgages &c. where the consideration is for money won by gaming or for repayment of money lent at such gaming, &c., shall be deemed made, &c., for illegal consideration.

Imp. 19 Ann c. 14, s. 1; Imp. 5 & 6 Wm. IV. c. 41, s. 1. Vide Imp. 5 & 6 Wm. IV. c. 41, s. 3; Q. 31 Vic. No. 36, s. 43.

21. All notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever given, granted, drawn, or entered into or executed by any person, where the whole or any part of the consideration of such conveyances or securities shall be for any money or other valuable thing whatsoever won by gaming or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever, or by betting on the sides or hands of such as do game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting as aforesaid, or lent or advanced at the time and place of such play, to any person or persons so gaming or betting as aforesaid or that shall during such play so play or bet, that shall be deemed and taken to have been made, drawn, accepted, given, or executed for an illegal consideration to all intents and purposes whatsoever, any statute, law, or usage to the contrary thereof in any wise notwithstanding:

Provided always that nothing herein contained shall prejudice or affect any note, bill, or mortgage which would have been good and valid if this Ordinance had not been passed.

Fraudulent assurances of lands or goods to deceive creditors shall be void.

Imp. 50 Edw. III. c. 6; Q. 1b. s. 44.

22. Because that divers people inherit of divers lands and tenements, borrowing divers goods in money or in merchandise of divers people to give their tenements and chattels to their friends by collusion thereof to have the profits at their will, and do live a great time with an high countenance of another man's goods and profits of the said lands, tenements, and chattels, till the said creditors shall be bound to take a small parcel of their debt and release the remnant, now therefore be it enacted that, if it be found that such gifts be so made by collusion, that the said creditors shall have execution of the said tenements and chattels as if no such gift had been made.

23. That where oftentimes deeds of gift of goods and chattels have been made to the intent to defraud their creditors of their duties, and that the person or persons that maketh the said deed or gift occupieth and liveth with the said goods and chattels, their creditors being unpaid, be it enacted that all deeds of gift of goods and chattels made or to be made of trust to the use of that person or persons that made the same deed of gift be void and of none effect.

All deeds of gift of goods to defraud creditors shall be void.
Imp. 3 Hen. VII. c. 4;
Q. 31 Vic. No. 36, s. 45.

24. For the avoiding and abolishing of feigned, covinous, and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions as well of land and tenements as of goods and chattels, which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions have been and are devised and contrived of malice, fraud, covin, collusion, or guile to the end, purpose, and intent to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining, and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued: Be it therefore declared and enacted that all and every feoffment, gift, grant, alienation, bargain, and conveyance of lands, tenements, hereditaments, goods, and chattels, or of any of them, or of any lease, rent, common, or other profit or charge out of the same lands, tenements, hereditaments, goods, and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment, and execution at any time had and made, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators, and assigns, and every of them whose actions, suits, debts, accounts, damages, penalties, or forfeitures by such guileful, covinous, or fraudulent devices and practices as is aforesaid are, shall, or might be in any wise disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate, and of none effect, any pretence, colour, feigned consideration expressing of use or any other matter or thing to the contrary notwithstanding.

Fraudulent deeds made to avoid the debts of others shall be void and the penalties of the parties to such fraudulent assurances.
Imp. 13 Eliz. c. 5, preamble.

All fraudulent conveyances made to avoid the debt or duty of others shall be void.
Imp. 1b. s. 2;
Q. 1b. s. 46.

25. All and every the parties to such feigned, covinous, or fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, and other things before expressed, and being privy and knowing of the same or any of them, which at any time shall wittingly and willingly put in use, avow, maintain, justify, or defend the same or any of them

The forfeiture of the parties to fraudulent deeds.
Imp. 1b. s. 3;
Q. 1b. s. 47.

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as true, simple, and done, had, or made *bona fide* and upon good consideration, or shall alien or assign any the lands, tenements, goods, leases, or other things before mentioned to him or them conveyed as is aforesaid or any part thereof, shall incur the penalty and forfeiture of one year's value of the said lands, tenements, and hereditaments, leases, rents, commons, or other profits of or out of the same, and the whole value of the said goods and chattels and also so much money as are or shall be contained in any such covinous and feigned bond, the one moiety whereof to be to the King, and the other moiety to the party aggrieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and other things aforesaid to be recovered in the Central Court⁽³⁾ by action or information.

Estates made upon good consideration and *bona fide*.
Imp. 13 Eliz. c. 5, s. 6;
Q. 31 Vic. No. 36, s. 48.

26. The two last preceding sections of this Ordinance or anything therein contained shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods, or chattels had, made, conveyed, or assured, or hereafter to be had, made, conveyed, or assured, which estate or interest is or shall be upon good consideration and *bona fide* lawfully conveyed or assured to any person not having, at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud, or collusion as is aforesaid, anything before mentioned to the contrary hereof notwithstanding.

Preamble.
Imp. 27 Eliz. c. 4.

27. Forasmuch as not only the King's Most Excellent Majesty but also divers of His Majesty's subjects, after conveyances obtained or to be obtained, and purchases made or to be made, of lands, tenements, leases, estates, and hereditaments for money or other good consideration, may have, incur, and receive great loss and prejudice by reason of fraudulent and covinous conveyances, estates, gifts, grants, charges, and limitations of uses heretofore made or hereafter to be made of, in, or out of lands, tenements, or hereditaments so purchased or to be purchased, which said gifts, grants, charges, estates, uses, and conveyances were or hereafter shall be meant and intended by the parties that so make the same to be fraudulent and covinous of purpose and intent to deceive such as have purchased or shall purchase the same, or else by the secret intent of the parties to the same be to their own proper use and at their free disposition coloured nevertheless by a feigned countenance and show of words and sentences, as though the same were made *bona fide* for good causes and upon just and lawful considerations: Now for remedy of which inconveniences and for the avoiding of such fraudulent, feigned, and covinous con-

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

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veyances, gifts, grants, charges, uses, and estates, and for the maintenance of upright and just dealing in the purchasing of lands, tenements, and hereditaments, be it enacted that all and every conveyance, grant, charge, lease, estate, encumbrance, and limitation of use or uses of, in, or out of any lands, tenements, or other hereditaments whatsoever had or made any time heretofore, or at any time hereafter to be had or made, for the intent and of purpose to defraud and deceive such person as has purchased or shall afterwards purchase in fee-simple, fee-tail, for life, lives, or years the same lands, tenements, and hereditaments or any part or parcel thereof so formerly conveyed, granted, leased, charged, encumbered, or limited in use, or to defraud and deceive such as have or shall purchase any rent, profit, or commodity in or out of the same or any part thereof, shall be deemed and taken only as against that person, his heirs, successors, executors, administrators, and assigns, and against all and every other person lawfully having or claiming by, from, or under them or any of them, which have purchased or shall hereafter so purchase for money or other good consideration the same lands, tenements, or hereditaments or any part or parcel thereof, or any rent, profit, or commodity in or out of the same, to be utterly void, frustrate, and of none effect, any pretence, colour, feigned consideration, or expressing of any use or uses to the contrary notwithstanding.

Fraudulent conveyances made to deceive purchasers shall be void.

Imp. 27 Eliz. c. 4, s. 2;
Q. 31 Vic. No. 36, s. 48.

28. All and every the parties to such feigned, covinous, and fraudulent gifts, grants, leases, charges, or conveyances before expressed, or being privy and knowing of the same or any of them, which shall wittingly and willingly put in use, avow, maintain, justify, or defend the same or any of them as true, simple, and done, had, or made *bona fide* or upon good consideration, to the disturbance or hindrance of the said purchaser or purchasers, lessees, or grantees, or of or to the disturbance or hindrance of their heirs, successors, executors, administrators, or assigns, or such as have or shall lawfully claim anything by, from, or under them or any of them, shall incur the penalty and forfeiture of one year's value of the said lands, tenements, and hereditaments so purchased or charged, the one moiety whereof to be to the King, and the other moiety to the party grieved by such feigned and fraudulent gift, grant, lease, conveyance, encumbrance, or limitation of use, to be recovered in the Central Court⁽³⁾ by action or information.

The penalties of the parties to fraudulent conveyances who do avow the same.

Imp. *Ib.* s. 3;
Q. *Ib.* s. 49.

29. The two last preceding sections or anything therein contained shall not extend or be construed to impeach, defeat, make void, or frustrate any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest or limitation of use or uses

Conveyances made upon good considerations and *bona fide*.

Imp. *Ib.* s. 4;
Q. *Ib.* s. 50.

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

of, in, to, or out of any lands, tenements, or hereditaments heretofore at any time had or made, or hereafter to be had or made, upon or for good consideration and *bona fide*, or any voluntary conveyance or other disposition as aforesaid had or made before or after the commencement of this Ordinance, if in fact made *bona fide* and without any fraudulent intent to any person, anything before mentioned to the contrary hereof notwithstanding.

Imp. 56 and 57
Vic. c. 21,
ss. 2, 3, 4.

Lands first
conveyed with
condition of
revocation or
alteration and
after sold for
money or other
good
consideration.

Imp. 27 Eliz.
c. 4, s. 5;
Q. 31 Vic.
No. 36, s. 51.

30. If any person having heretofore made or who shall hereafter make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance of, in, or out of any lands, tenements, or hereditaments, with any clause, provision, article, or condition of revocation, determination, or alteration at his will or pleasure of such conveyance, assurance, grants, limitations of uses, or estates of, in, or out of the said lands, tenements, or hereditaments, or of, in, or out of any part or parcel of them contained or mentioned in any writing, deed, or indenture of such assurance, conveyance, grant, or gift, and after such conveyance, grant, gift, demise, charge, limitation of uses, or assurance so made or had, shall or do bargain, sell, demise, grant, convey, or charge the same lands, tenements, or hereditaments or any part or parcel thereof to any person for money or other good consideration paid or given (the said first conveyance, assurance, gift, grant, demise, charge, or limitation not by him or them revoked, made void, or altered according to the power and authority reserved or expressed unto him in and by the said secret conveyance, assurance, gift, or grant), then the said former conveyance, assurance, gift, demise, and grant as touching the said lands, tenements, and hereditaments so after bargained, sold, conveyed, demised, or charged against the said bargainee, vendee, lessee, grantee, and his heirs, successors, executors, administrators, and assigns, and against all and every person and persons which have, shall, or may lawfully claim anything by, from, or under them or any of them, shall be deemed taken and adjudged to be void, frustrate, and of none effect by virtue and force of this present Ordinance.

Mortgages
lawfully made.
Imp. 1b. s. 6;
Q. 1b. s. 52.

31. Provided nevertheless that no lawful mortgage made or to be made *bona fide* and without fraud or covin upon good consideration shall be impeached or impaired by force of this Ordinance, but shall stand in the like force and effect as the same should have done if this Ordinance had never been had or made, anything in this Ordinance to the contrary in any wise notwithstanding.