

## CHAPTER 67.

## BILLS OF SALE.

[No. XXII of 1916.]

[1st January, 1917.]

Short title. 1. This Ordinance may be cited as the Bills of Sale Ordinance.

Application of Ordinance. 2. This Ordinance shall apply to every bill of sale executed on or after the first day of January, nineteen hundred and seventeen, (whether absolute, or subject or not subject to any trust), whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised therein or made subject thereto.

Interpretation of terms: 3. In this Ordinance, unless the context otherwise requires,—

“ bill of sale ” includes bills of sale, assignments, transfers, declarations of trusts without transfers, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, is conferred, but does not include the following documents, that is to say,

exemptions :

(a) assignments for the benefit of the creditors of the person making or giving them, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sales of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers certificates, warrants or orders for the delivery of goods, or any

other documents used in the ordinary course of business as proof of the possession or control of goods, authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented; or

- (b) an instrument charging or creating any security on, or declaring trusts of, imported goods, given or executed at any time prior to their deposit in a warehouse, factory, or store, or to their being reshipped for export, or delivered to a purchaser not being the person giving or executing that instrument :

Provided that nothing in this paragraph shall affect the operation of section forty-two of the Insolvency Ordinance in respect of goods comprised in any instrument in this paragraph described if those goods would otherwise be goods within the meaning of sub-paragraph (c) of that section.

Proviso ;  
saving of  
chapter 180,  
s. 42.

“ personal chattels ” means goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but does not include—

- (i) any interest whatsoever in immovable property;
- (ii) fixtures (except trade machinery as hereinafter defined) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed;
- (iii) growing crops when assigned together with any interest in the land on which they grow;
- (iv) shares or interests in the stock, funds, or securities of any Government, or in the capital or property of incorporated or joint stock companies;
- (v) choses in action;
- (vi) any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm

where they are at the time of making or giving of the bill of sale;

personal chattels shall be deemed to be in the " apparent possession " of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof has been taken by or given to any other person;

" prescribed " means prescribed by rules made under the provisions of this Ordinance.

#### PART I.

Application  
of Ordinance  
to trade  
machinery.

4.—(1) From and after the commencement of this Ordinance trade machinery, for the purposes of this Ordinance, shall be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Ordinance.

(2) For the purposes of this Ordinance—

(a) " trade machinery " means the machinery used in or attached to any factory or workshop, exclusive of—

- (i) the fixed motive-powers, such as their water-wheels and steam engines, and their steam-boilers, donkey engines, and other fixed appurtenances; and
- (ii) the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and,
- (iii) the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this sub-section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Ordinance;

(b) " factory or workshop " means any premises on which any manual labour is exercised by way of

trade, or for purposes of gain, in or incidental to the making of any article or part of an article, or the altering, repairing, ornamenting, finishing, of any article, or the adapting for sale of any article.

5. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress or levy is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on that debt or advance, or otherwise for the purpose of the security only, shall be deemed to be a bill of sale, within the meaning of this Ordinance, of any personal chattels which may be seized or taken under the power of distress.

Certain instruments giving powers of distress or levy to be subject to this Ordinance.

6.—(1) No fixtures or growing crops shall be deemed, under this Ordinance, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with the land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which those fixtures are affixed, or in the land on which those crops grow, is also conveyed or assigned to the same person or persons.

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

(2) The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Ordinance and then subsisting and in force, in all questions arising under any insolvency, liquidation, assignment for the benefit of creditors, or execution of any process of a court, which takes place or is issued after the commencement of this Ordinance.

7. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in the prior bill of sale, then, if the subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of that debt, it shall, to the extent of which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in

Avoidance of certain duplicate bills of sale.

the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was given in good faith for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Ordinance.

Attestation  
and regis-  
tration of  
bills of sale.

8.—(1) A bill of sale shall be attested and registered under this Ordinance in the following manner, that is to say,—

- (a) the execution of every bill of sale shall be attested by two credible witnesses who are not parties thereto;
- (b) the bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of the bill and of every schedule or inventory, and of every attestation of the execution of the bill together with an affidavit of the date, hour, and minute when the bill is made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving it (or if it is made or given by anyone under or in the execution of any process, then a description of the residence and occupation of the person against whom that process is issued), and of every attesting witness to the bill, shall be presented to, and the copy and affidavit shall be filed with, the registrar of deeds within seven clear days after the making or giving of the bill, and a notice that a bill of sale has been filed shall be published by the registrar in the Gazette within one week after the filing;
- (c) if the bill of sale is made or given subject to any defeasance or condition, or declaration of trust, not contained in the body thereof, that defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Ordinance therewith and as part thereof, otherwise the registration shall be void.

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

(3) A transfer or assignment of a registered bill of sale shall be attested and registered like a bill of sale but need not be advertised.

9.—(1) The registration of a bill of sale, whether executed before or after the commencement of this Ordinance, must be renewed annually, and if a period of more than one year elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

Renewal of  
registration.

(2) The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security, and the affidavit may be in form 1 given in the schedule hereto.

Schedule ;  
form 1.

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

10.—(1) The registrar shall keep a book (in this Ordinance called "the register") for the purposes of this Ordinance, and shall, upon the filing of a bill of sale or copy under this Ordinance, enter therein in form 2 in the schedule hereto, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case it was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom that process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the schedule or to be prescribed under this Ordinance, and shall number all bills registered in each year consecutively, according to the respective dates of their registration.

Form of  
register.

Schedule ;  
form 2.

(2) Upon the filing of an affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to the affidavit of renewal.

Affidavit of  
renewal.

(3) The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by

each of those grantors, and the index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each division need not be strictly alphabetical.

The  
registrar.

11. The registrar of deeds shall be the registrar for the purposes of this Ordinance, but any one officer whom the Governor may appoint may perform all or any of the duties of the registrar.

Rectification  
of register.

12. Any judge of the Supreme Court on being satisfied that the omission to register a bill of sale, or an affidavit of renewal thereof, within the time prescribed by this Ordinance, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order the omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for registration on the terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, he thinks fit to direct.

Entry of  
satisfaction.

13. Subject to and in accordance with rules to be made under and for the purpose of this Ordinance, the registrar may order a memorandum of satisfaction to be written upon a registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which that bill of sale was made or given has been satisfied or discharged.

Copies and  
searches :

14.—(1) Anyone shall be entitled to have an office copy or extract of any registered bill of sale and affidavit of execution filed therewith, or copy thereof and of any affidavit filed therewith (if any), or registered affidavit of renewal, upon paying for it at the like rate as for office copies of documents of the Supreme Court, and any copy of a registered bill of sale and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as *primâ facie* evidence thereof, and of the fact and date of registration as shown thereon.

(2) From and after the commencement of this Ordinance anyone shall be entitled at all reasonable times to search the register, on payment of a fee of twenty-four cents

or any other prescribed fee, and subject to the prescribed regulations, and shall be entitled at all reasonable times to inspect, examine, and make extracts from, any and every registered bill of sale, without being required to make a written application, or to specify any particulars in reference thereto, upon payment of twenty-four cents for each bill of sale inspected :

Provided that those extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars. Proviso.

15. Every affidavit required by or for the purposes of this Ordinance may be sworn before a commissioner for oaths and whoever wilfully makes or uses any false affidavit for the purposes of this Ordinance shall be deemed guilty of wilful and corrupt perjury. Affidavits.

16. There shall be paid and received the following fees, viz. :— Fees.

On filing a bill of sale	... ..	\$1 00
On filing the affidavit of execution of a bill of sale	... ..	1 00
On filing the affidavit for the purpose of re-registering a bill of sale (to include the fee for filing)	... ..	1 00
For publication of any notice by the registrar in the Gazette	... ..	1 50

17. Regulations for the making of fees and for the general purposes of this Ordinance may be made and altered from time to time by the Governor and Legislative Council. Regulations.

18. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open. Time for registration.

PART II.

19. This part of this Ordinance shall not apply to bills of sale as in this Ordinance defined which are given otherwise than by way of security for the payment of money. Application of provisions of Part II.



Schedule to  
bill of sale.

**20.** Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and the bill of sale except as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in that schedule, and shall be void, except against the grantor, in respect of any personal chattels not so specifically described.

Bill of sale  
not to affect  
after-  
acquired  
property.

**21.** Except as hereinafter mentioned, a bill of sale shall be void, save as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Exception as  
to certain  
things.

**22.** Nothing contained in the foregoing sections of this Ordinance shall render a bill of sale void in respect of any of the following things, that is to say—

- (a) any growing crops separately assigned or charged where they were actually growing at the time when the bill of sale was executed;
- (b) any fixtures separately assigned or charged, and any plant, or trade machinery, when used in, attached to, or brought upon, any land, farm, factory, workshop, shop, house, warehouse, or other place, in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to the bill of sale.

Bill of sale  
with power  
to seize  
(except in  
certain  
events) to  
be void:

**23.** Personal chattels assigned under a bill of sale shall not be liable to be seized or taken into possession by the grantee for any other than the following causes, namely, if the grantor—

- (a) makes default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale necessary for maintaining the security;
- (b) becomes an insolvent or suffers the goods or any of them to be distrained for rent, rates or taxes;
- (c) fraudulently either removes the goods, or suffers them or any of them to be removed, from the premises;
- (d) does not, without reasonable excuse upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes;

(e) has had execution levied against his goods under any judgement at law :

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the Supreme Court, or to judge thereof in chambers, and the Court or judge, if satisfied that by payment of money or otherwise the cause of seizure no longer exists, may restrain the grantee from removing or selling the chattels, or may make any order that seems just.

24. Every bill of sale to which Part II applies shall be duly attested as in section eight of this Ordinance and shall be registered and advertised as in that section provided within seven clear days after the execution thereof, or, if it is executed in any place out of the colony, then within seven clear days after the time at which it would in the ordinary course of post arrive in the colony if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise the bill of sale shall be void in respect of the personal chattels comprised therein.

Bill of sale to be void unless attested and registered.

25. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with form 3 in the schedule hereto.

Form of bill of sale; form 3.

26. Every bill of sale made or given in consideration of any sum under fifty dollars shall be void.

Bill of sale under \$50 to be void.

27. All personal chattels seized or of which possession is taken after the commencement of this Ordinance, under or by virtue of a bill of sale (whether registered before or after the commencement of this Ordinance), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

Chattels not to be removed or sold.

28. A bill of sale to which this Ordinance applies shall be no protection in respect of personal chattels included therein which but for that bill of sale would have been liable under summary or parate execution for the recovery of taxes.

Bill of sale not to protect chattels against summary or parate execution.

## SCHEDULE.

## FORM 1.

(Section 9.)

I (*A.B.*), \_\_\_\_\_, of \_\_\_\_\_, do swear that a bill of sale, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ (*insert the date of the bill*), and made between (*insert the names and descriptions of the parties in the original bill of sale*), and which said bill of sale (*or, and a copy of which said bill of sale, as the case may be*) was registered on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ (*insert date of registration*), is still a subsisting security.

Sworn, etc.

## FORM 2.

(Section 0.)

Satisfaction entered.	Number.	By whom given (or against whom process issued).			To whom given.	Nature of instrument.	Time and date.	Time and date of registration.	Time and date of registration of affidavit of renewal.
		Name.	Residence.	Occupation.					

## FORM 3.

(Section 25.)

## FORM OF BILL OF SALE FOR SECURITY OF PAYMENT OF MONEY.

This Indenture made the \_\_\_\_\_ day of \_\_\_\_\_, between *A.B.*, of \_\_\_\_\_, of the one part, and *C.D.*, of \_\_\_\_\_, of the other part, witnesseth that in consideration of the sum of \$ \_\_\_\_\_ now paid to *A.B.* by *C.D.*, the receipt of which the said *A.B.* hereby acknowledges (*or whatever else the consideration may be*), he the said *A.B.* doth hereby assign unto *C.D.*, his executors, administrators, and assigns, all and singular

the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of \$ \_\_\_\_\_ and interest thereon at the rate of \_\_\_\_\_ per centum per annum (*or whatever else may be the rate*). And the said *A.B.* doth further agree and declare that he will duly pay to the said *C.D.* the principal sum aforesaid, together with the interest then due, by equal \_\_\_\_\_ payments of \$ \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ (*or whatever else may be the stipulated times or time of payment*). And the said *A.B.* doth also agree with the said *C.D.* that he will (*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*).

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C.D.* for any cause other than those specified in section twenty-three hereof.

In witness, etc.

Signed by the said *A.B.* in the presence of us *E.F.* and *G.H.* (*add witnesses' names, address, and description*).