

CHAPTER 225**BILLS OF SALE**

*Ordinances, Nos. 8 of 1879, 35 of 1959, 1 of 1965,
7 of 1966, 17 of 1969, Acts Nos. 6 of 1972,
3 of 1975.*

AN ACT RELATING TO BILLS OF SALE

[30th January, 1879.]

Short title

1. This Act may be cited as the Bills of Sale Act.

Application

2. This Act shall apply to every bill of sale whereby the holder or grantee has power, either with or without notice, at any time to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

Interpretation

3. In this Act, unless the context otherwise requires—

“bills of sale” includes bills of sale, assignments, transfers, declarations of trust without transfer, 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:—

- (a) assignments for the benefit of the creditors of the person making or giving the same;
- (b) marriage settlements;
- (c) transfers or assignments of any ship or vessel or any share thereof;
- (d) transfers of goods in the ordinary course of business of any trade or calling;
- (e) bills of sale of goods in foreign parts or at sea;
- (f) bills of lading;
- (g) warehouse-keepers' certificates;
- (h) warrants or orders for the delivery of goods; or
- (i) any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented;

"personal chattels" means goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures, stock and growing crops, but does not include chattel interests in real estate, nor fixtures when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interest in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action;

"apparent possession" of personal chattels is deemed to be such possession as may be had by the person making or giving a bill of sale, so long as such chattels remain or are in or upon any house, plantation, 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 may have been taken by or given to any other person;

"Registrar" means the Registrar of Deeds; (*Inserted by 17 of 1969 s. 2*).

"stock" includes every animal or creature kept for working or for feeding and breeding on a plantation or farm.

Where fixtures, etc., are assigned with freehold or leasehold

4. No fixture, stock or growing crops shall be deemed to be separately assigned or charged under the conditions attached to bills of sale if, by the same instrument, any freehold or leasehold interest in the land or building is also conveyed or assigned to the same person or persons.

As to growing crops

5. No bill of sale of growing crops shall continue in force for a longer period than one year from the date thereof.

Rights not affected by transfer of land

6. The transfer or transmission of the land upon which crops are growing over which a bill of sale has been given shall not affect the rights of the person or persons holding a bill of sale over such crops.

Bill of sale to be attested and registered within time prescribed

7. Every bill of sale to which this Act applies shall be duly attested, and shall be registered, within seven days after the making or giving thereof if made or given in Suva, or within twenty-one days if made or given elsewhere than the city of Suva, and shall set forth the consideration for which such bill of sale was given; otherwise such bill of sale shall be deemed fraudulent and void:

(Amended by 6 of 1972 s. 2.)

Provided that the provisions of this section shall be deemed to have been complied with in respect of any bill of sale made or given in Rotuma if within seven days after the making or giving thereof such bill of sale is lodged with the District Officer, Rotuma, for transmission to the Registrar and the date of such lodgment shall be deemed to be the date of registration of such bill of sale for the purposes of this Act. (*Amended by 1 of 1965, s. 2.*)

Subsequent bill of sale

8. Where a subsequent bill of sale is executed within or on the expiration of such seven days or twenty-one days after the execution of a prior unregistered bill of sale including all or any part of the personal chattels comprised in such prior bill of sale, and to secure the same debt or any part thereof, it shall so far be absolutely void, unless it is proved to the satisfaction of the Supreme Court that such subsequent bill of sale was bona fide given for the purpose of correcting some material error in the prior bill, and not for the purpose of evading this Act.

Persons by whom bills of sale are to be attested

9.—(1) A bill of sale shall be attested by—

- (a) the Registrar or by the Deputy Registrar of Titles; or
- (b) a magistrate; or
- (c) the Commissioner of a division or a district officer; or
- (d) a barrister and solicitor of the Supreme Court of Fiji; or
- (e) a commissioner for oaths of the Supreme Court of Fiji; or
- (f) a notary public; or
- (g) a justice of the peace; or

(h) any fit and proper person specially appointed by the Registrar, who shall before the execution of the bill of sale explain the effect thereof to the grantor and satisfy himself that such grantor appeared to understand the meaning of the same. (*Substituted by 3 of 1975 s. 2.*)

(2) The person attesting the execution by any grantor of a bill of sale under the provisions of subsection (1) shall, either in the attestation clause or in a separate certificate endorsed upon or attached to such bill, certify the date upon which the bill of sale has been executed by such grantor and the place of execution.

(3) Any certificate given under the provisions of subsection (2) shall have effect in the same manner as if it were a statutory declaration made under the provisions of the Statutory Declarations Act. (*Cap. 43.*)

(*Subsections (2) and (3). Inserted by 6 of 1972 s. 3.*)

Form whereby bills of sale are to be registered

10. A bill of sale shall be registered by presenting such bill, with every schedule or inventory annexed or referred to therein and a true copy thereof, to the Registrar within the period mentioned in section 7, and the Registrar shall—

- (a) mark the original and the copy with a number and the date of presentation;
- (b) return the copy to the person presenting the same;
- (c) file the original in his office; and
- (d) enter the particulars in the book required to be kept by him under the provisions of the Registration Act: (*Cap. 224.*)

Provided that in the case of any bill of sale made or given in Rotuma the requirements of this section as to presentation of such bills of sale to the Registrar shall be deemed to have been complied with by lodging such bill of sale with the District Officer, Rotuma, for transmission to the Registrar.

(*Substituted by 6 of 1972, s. 4.*)

Where bill of sale is given subject to defeasance etc.

11. If a bill of sale is made or given subject to any defeasance, or condition, or declaration, of trust, not contained in the body thereof, such 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 registration; otherwise the registration shall be void:

Provided that in the case of a document securing the payment of the moneys or any part thereof payable by virtue of a bill of sale it shall not be necessary for the purposes of this section to write such document on the same paper or parchment so long as the date, names of the parties thereto and the nature of the security are set forth in the bill of sale or in some schedule thereto.

(Amended by 35 of 1959, s. 2.)

Order of registration to have priority

12. In case two or more bills of sale are given comprising in whole or in part the same chattels, they shall have priority in the order of their registration.

Transfers

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

Registration to be renewed every five years

14. The registration of a bill of sale must be renewed, or further renewed, as the case may be, at least once every five years, and, if a period of five years elapse without such renewal or further renewal the registration shall become void.

Form of renewal

15. The renewal of a registration shall be effected by filing with the Registrar an affidavit in the form set forth in the Schedule, and shall state 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 Registrar shall make entries of the fact of the renewal in the registration time-book and on the bill of sale filed in his office.

Copies of documents may be obtained and received as evidence

16. Any person shall be entitled to have an office copy of any document filed under this Act by paying the proper fees, and an office copy certified by the Registrar shall in all cases be received as prima facie evidence of such bill of sale.

As to memorandum of satisfaction

17. The Registrar may order a memorandum of satisfaction to be written on the margin of the register book or across the entry of the bill of sale, and to be written upon the bill of sale filed, upon sufficient evidence being given that such bill of sale has been satisfied or discharged, or the debt in respect of which it was given has been paid. In the event of any question arising between the Registrar and any person desiring such entry of satisfaction to be made as to the sufficiency of the evidence adduced, the Registrar or such person may give in a short memorandum of the point to the Supreme Court, and the Court shall give such direction to the Registrar as shall appear just.

Chattels not deemed to be in possession, etc., of grantor

18. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order or disposition of the grantor of the bill of sale within the meaning of the laws of bankruptcy.

