

MERCANTILE ORDINANCE, 1912⁽¹⁾ (PAPUA, ADOPTED) IN ITS APPLICATION TO THE TERRITORY OF NEW GUINEA.

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.*⁽¹⁾ Short title.

It shall come into operation on a day to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette.*⁽²⁾ Commencement.

Assignment of Personality.

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*, of the Territory of Papua in its application to the Territory of New Guinea comprises the original *Mercantile Ordinance, 1912*, of the Territory of Papua, as amended by the other adopted Papuan Ordinance referred to in Part I. of the following Table, and as amended by the Ordinance of the Territory of New Guinea referred to in Part II. of the following Table:—

TABLE.

PART I.—ORDINANCES OF THE TERRITORY OF PAPUA.

Short title, number and year.	Ordinance by which adopted.	Date on which adoption took effect.
<i>Mercantile Ordinance, 1912</i> (No. 28 of 1912)	<i>Laws Repeal and Adopting Ordinance 1921</i> (No. 1 of 1921)	9.5.1921 (<i>Cwth. Gaz.</i> of 6.5.1921)
<i>Ordinances Revision Ordinance, 1913</i> (No. 3 of 1914)	<i>Laws Repeal and Adopting Ordinance 1921</i> (No. 1 of 1921)	9.5.1921 (<i>Cwth. Gaz.</i> of 6.5.1921)

PART II.—ORDINANCE MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Governor-General in Council.	Date on which notified in <i>Commonwealth Gazette.</i>	Date on which took effect.
<i>Goods Ordinance 1924</i> (No. 36 of 1924)	19.11.1924	21.11.1924	14.4.1925 (<i>N.G. Gaz.</i> of 31.3.1925)

(2) By Proclamation dated 11th December, 1912, and published in *Papua Govt. Gaz.* of 23rd December, 1912, the *Mercantile Ordinance, 1912*, was proclaimed to commence in the Territory of Papua on 23rd December, 1912.

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

Section 3A
inserted by
No. 3 of 1914,
s. 3 and Second
Schedule
(Papua), and
repealed by
No. 36 of 1924,
s. 4.

* * * * *

Satisfied Securities.

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.

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.

(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;

Mercantile Ordinance, 1912 (Papua, adopted).

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.

* * * * *

Sections 5 to 20
repealed by
No. 36 of 1924,
s. 4.

Gaming Securities.

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:

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 and 6 Wm. IV. c. 41 s. 3; Q. 31 Vic. No. 36, s. 43.

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.

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.

Fraudulent assurances of lands or goods to deceive creditors shall be void.
Imp. 50 Edw. III. c. 6;
Q. 7b. s. 44.

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

All deeds of gift of goods to defraud creditors shall be void.
Imp. 3 Hen. VII., c. 4;
Q. 7b. s. 45.

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.

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.

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.

All fraudulent conveyances made to avoid the debt or duty of others shall be void.
Imp. 17. s. 2 ;
Q. 31 Vic.
No. 36, 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 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

The forfeiture of the parties to fraudulent deeds.
Imp. 17 s. 3 ;
Q. 17. s. 47.

Mercantile Ordinance, 1912 (Papua, adopted).

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.

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.

Estates made upon good consideration and *bona fide*.
Imp. 13 Eliz. c. 5, s. 6;
Q. 31 Vic. No. 36, s. 148.

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 conveyances, 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,

Preamble.
Imp. 27 Eliz. c. 4.

Fraudulent conveyances made to deceive purchasers shall be void.
Imp. 27 Eliz. c. 4 s. 2;
Q. 17, s. 48.

(3) See Section 17 of the *Laws Repeal and Adopting Ordinance 1921-1939*. At the date of the adoption of the *Mercantile Ordinance, 1912*, of the Territory of Papua as a law of the Territory of New Guinea, there was a "Central Court" in both Territories. As to references in any Ordinance to the "Central Court", see now Section 7A of the *Judiciary Ordinance 1921-1938*.

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.

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

Imp. 27 Eliz c. 4, s. 3;
Q. 31 Vic. No. 36 s. 49.

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.

Conveyances made upon good considerations and *bona fide*.
Imp. 1b. s. 4;
Q. 1b. s. 50.

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

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 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.

(3) See footnote (3) printed on p. 237.

Mercantile Ordinance, 1912 (Papua, adopted).

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.

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.

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.

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

COMMERCIAL LAW—