

TRINIDAD AND TOBAGO.

No. 33—1925.

I ASSENT,

[L.S.]

H. A. BYATT,
Governor.

18th June, 1925.

AN ORDINANCE relating to Bills of Sale.

[18th June, 1925.]

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the Bills of Sale Short title. Ordinance, 1925.

2. This Ordinance shall apply to every bill of Sale Application of Ordinance. (whether the same be 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 in or made subject to such bill of sale.

[Price 6d.]

Interpretation. 3. In this Ordinance, unless there be something in the subject or context repugnant to such construction :

The expression " bill 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 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 shall not include the following documents, that is to say, deeds whereby any live stock or dead stock or other chattels shall be conveyed or mortgaged together with any plantation or lands, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, assignments of any ship, vessel, boat or craft of any description or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods not in the Colony, 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 authorize either by endorsement or by delivery the possessor of such document to transfer or receive goods thereby represented :

The expression " mortgage bill of sale " means any bill of sale given by way of security for the payment of money :

The expression " personal chattels " means goods, furniture and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures but shall 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 nor shares or interests 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, nor any live or dead stock or produce upon any plantation which by virtue of any covenant or agreement ought not to be removed from the plantation where the same are at the time of the making or giving of such bill of sale :

The expression "The Registrar" means the Registrar-General.

4. Every attornment, instrument or agreement, whereby a power of distress 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 such debt or advance, or otherwise for the purpose of such 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 such power of distress : Provided that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditaments which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

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

5. No fixtures 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 without otherwise taking possession of or dealing with such land or building, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, is also conveyed or assigned to the same persons or person.

Fixtures ~~are~~ not to be deemed separately assigned.

Bill of sale
to have
Schedule
of property
attached.

6. 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 such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said Schedule ; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

After-acquired
property.

7. Save as hereinafter mentioned, a bill of sale shall be void, except 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.

8. Nothing contained in this Ordinance shall render a bill of sale void in respect of any fixtures separately assigned or charged where such fixtures are used in, attached to or brought upon any land, plantation, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures specifically described in the Schedule to such bill of sale.

Bill of Sale
to be void
unless attested
and registered.

9. Every bill of sale and every transfer or assignment thereof shall be duly attested, and shall be registered 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 such bill of sale, transfer or assignment shall be void in respect of the personal chattels comprised therein.

Powers to
seize chattels.

10. Personal chattels assigned under a mortgage bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes :—

- (1) If the grantor 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 mortgage bill of sale and necessary for maintaining the security :

- (2) If the grantor becomes a bankrupt, or suffers the said goods or any of them to be distrained for rent, rates or taxes :
- (3) If the grantor fraudulently either removes or suffers the said goods, or any of them, to be removed from the premises :
- (4) If the grantor, without reasonable excuse, upon demand in writing by the grantee, fails to produce to him his last receipts for rent, rates, and taxes :
- (5) If execution has been levied against the goods of the grantor under any judgment 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 a Judge thereof in Chambers, and such Court or Judge if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

11. A mortgage bill of sale shall be void, except as ^{Form.} against the grantor, unless made in accordance with the form in Schedule I, provided that no variation of such form shall render a bill of sale void if the Court shall be satisfied that such variation was accidental or due to inadvertence or to some other sufficient cause and is not of a nature to prejudice the rights of third parties.

12. Every bill of sale shall be executed, attested and registered under this Ordinance in the following manner :— ^{Execution and registration}

- (1) Such bill of sale shall be executed by the grantor in the presence of such persons and attested and subscribed in such manner as by the law for the time being in force is necessary to render it capable of registration as a deed.
- (2) Every Schedule or inventory annexed to a bill of sale or referred to therein shall be registered with such bill of sale otherwise the registration shall be void.

- (3) 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, 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 the registration, otherwise the registration shall be void.

In case 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 such chattels.

Bill of Sale
under £30.

13. Every mortgage bill of sale made or given in consideration of any sum under ten pounds shall be void.

Chattels not to
be removed
or sold.

14. All personal chattels seized or of which possession is taken under or by virtue of any mortgage bill of sale 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.

Rates and
taxes.

15. A mortgage bill of sale to which this Ordinance applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress for the recovery of rates or taxes.

Avoidance of
certain
duplicate
bills of sale.

16. When 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 such prior bill of sale then if such 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 such debt, it shall, to the extent to 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 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 *bona fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Ordinance.

17. The registration of a bill of sale must be renewed once at least every three years, and if a period of three years 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. The renewal of a registration shall be effected by registering an affidavit stating the date of the bill of sale and of the last registration thereof, and the names of the parties thereto as stated therein, and that the bill of sale is still a subsisting security. Renewal of registration

Every such affidavit may be in the form set forth in Schedule II.

18. 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 was accidental or due to inadvertence, may in his discretion extend the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct. Rectification of register.

19. On the production of a receipt or memorandum signed by the grantee his executors, administrators or assigns acknowledging that the debt for which any mortgage bill of sale was made or given has been satisfied or discharged the signature or signatures of such grantee his executors administrators or assigns being duly attested by one witness at least and verified by the affidavit or solemn declaration of such witness the Registrar shall endorse upon or annex to such mortgage bill of sale an entry to the effect that such bill of sale is discharged and the same shall be deemed to be discharged accordingly. Entry of satisfaction.

20. Every affidavit or solemn declaration required by or for the purposes of this Ordinance may be sworn before any person empowered to take affidavits or solemn declarations required for the registration of deeds by the law for the time being in force in the Colony. Affidavits.

Fees. 21. The following fees shall be paid to the Registrar, viz.:

On registering any bill of sale, transfer or assignment by which any property is sold, mortgaged or assigned when the consideration money expressed to be paid does not exceed twenty-five pounds sterling	....	....	....	....	....	£0 5 0
And when such consideration money exceeds the sum of twenty-five pounds and does not exceed the sum of fifty pounds	....	....	....	....	....	0 10 0
And when such consideration money exceeds the sum of fifty pounds	....	....	....	....	....	1 0 0
On the affidavit used for the purpose of re-registering or discharging a bill of sale, when the consideration money does not exceed the sum of twenty-five pounds	....	....	....	....	....	0 5 0
And when the consideration money exceeds the sum of twenty-five pounds	....	....	....	....	....	0 10 0

Application of fees.

22. All fees received by the Registrar under this Ordinance shall be accounted for in the same manner as any other fees received by him by virtue of his office.

Time for registration.

23. When the time for registering or renewing the registration of 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.

Repeal.

24. The Bills of Sale Ordinance, No. 63, is hereby repealed.

SCHEDULE I.

MORTGAGE BILL OF SALE.

THIS DEED 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 by way of security for the payment of the sum of £ _____ and interest thereon at the rate

of _____ per cent., per annum (or whatever else may be the rate of interest or without interest as the case may be) And the said A.B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid (if interest provided for add) together with the interest then due by equal _____ payments of £ _____ on the day of _____ or whatever else may be the stipulated times or time for 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 this behalf in the Bills of Sale Ordinance.

In witness, &c.

SCHEDULE II.

I, _____ A.B. _____ of _____ do swear that a bill of sale, bearing date the _____ day of _____ 19 _____ and made between (insert the names of the parties in the original bill of sale), and which said bill of sale was registered on the _____ day of _____ 19 _____ (insert date of registration), is still a subsisting security.

Sworn, &c.

Passed in Council this thirteenth day of June, in the year of Our Lord one thousand nine hundred and twenty-five.

E. F. AANENSEN,
Acting Clerk of the Council.

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 this behalf in the Bills of Sale Ordinance.

In witness, &c.

SCHEDULE II.

I, A.B. of _____ do swear
that a bill of sale, bearing date the _____ day of _____ 19____
and made between (insert the names of the parties in the original bill of sale),
and which said bill of sale was registered on the _____ day of _____
19____ (insert date of registration), is still a subsisting
security.

Sworn, &c.

Passed in Council this _____ day of _____,
in the year of Our Lord one thousand nine hundred and
twenty-five.

Clerk of the Council.

OBJECTS AND REASONS.

As a result of a resolution passed in the Legislative Council on the 23rd May, 1924, the Governor appointed a Committee to enquire into the possibility of amending the existing laws of the Colony with a view to embodying a simple and inexpensive system of securing advances made on the security of chattels, against crops of sugar, cocoa, coconuts and other produce.

The Committee appointed consisted of Mr. C. A. Child, Mr. J. D. Hobson, Mr. W. Savary, Mr. H. I. Jeffers, Mr. G. C. Pantin and the late Hon'ble J. D. Sellier.

To this Committee, Mr. F. M. Boland and Mr. O. V. Fitzwilliam were subsequently added.

The Committee reported on the 20th May, 1925, and its recommendations include the introduction of the foregoing Bill, which re-enacts the Bills of Sale Ordinance, No. 63 with the following variations:—

Section 3.—The Ordinance excepts ships and vessels from its operation. The Bill specifically extends the exception to all craft in order to remove doubts which have arisen as to whether or not mortgages of motor boats and other nondescript craft should be by bill of sale.

All reference to growing crops has been omitted from the Bill as it is intended to deal with crops in a separate Ordinance.

All reference to trade machinery has been omitted from this section of the Bill and section 4 of the Ordinance, which deals with trade machinery, has been omitted altogether (entailing the re-numbering of the subsequent sections). The provisions under the Ordinance with regard to trade machinery are difficult to interpret and apply and it is considered expedient to allow trade machinery when fixtures to be dealt with as other fixtures and when not fixtures as other personal chattels which are not fixtures.

Section 11.—Section 12 of the Ordinance provides that a mortgage bill of sale shall be void unless made in accordance with the form in Schedule I to the Ordinance. This section in the Ordinance has been replaced and amended by section 11 of the Bill. It is considered that a departure from the form should not avoid a bill of sale as against the grantor who is protected from fraud by the provision in section 9 of the Bill requiring the consideration to be truly set forth, and by the proviso to section 12 of the Bill which avoids the registration of a bill of sale if it is made subject to any condition not written therein. It is further considered that as regards third parties a bill of sale should not be avoided by a variation not calculated to prejudice their position.

Section 12.—Section 13 of the Ordinance is replaced by section 12 of the Bill. The provisions of sub-section (2) have been modified as it is considered that the provisions of the Registration of Deeds Ordinance, No. 57, provide ample protection against forgery or fraud in connection with the execution of deeds.

Section 17 replaces section 18 of the Ordinance and reduces the period for the renewal of registration from 5 to 3 years, which is the prescribed period for the registration of judgments.

Section 18 replaces section 19 of the Ordinance with amendments consequential on the amendments contained in section 12 of the Bill.

Section 19 replaces and amends section 12 of the Bill.

Section 20 replaces section 21 of the Ordinance with amendments consequential on the amendments contained in section 12 of the Bill.

Section 24 repeals the Ordinance; existing rights and liabilities thereunder are preserved by virtue of section 20 of the Interpretation Ordinance, 1912.

The form of bill of sale contained in the Schedule has been slightly amended, partly with the object of making it clear that loans without interest may be secured by a bill of sale.

Section 25 of the Ordinance empowers the Chief Justice with the concurrence of a Puisne Judge to make rules; no such rules have ever been made and it is considered expedient to omit this section from the Bill.

COMPARATIVE TABLE.

The Mortgages of Produce Ordinance, 1925.

SECTION.	REMARKS.
1	Short title.
2	Interpretation.
3	Agricultural Produce (Advances) Ordinance, 1917, section 2.
4	Id. section 3.
5	Provides as to effect of mortgages of growing crops not in accordance with the Ordinance.
6	Agricultural Produce (Advances) Ordinance, 1917, section 4 (1). Amended to enable growing crops to be mortgaged apart from the land.
7	Id. section 4 (2).
8	Id. section 5.
9	Bills of Sale Ordinance, No. 63, section 11.
10	Introduced in order that it may be clear that the powers conferred on a mortgagee by the Ordinance are in addition to the powers conferred generally by law on mortgagees.
11	Agricultural Produce (Advances) Ordinance, 1917, section 6.
12	Id. section 7.
13	Id. section 8. Amended by extending the period of registration from 7 to 21 days.
14	Bills of Sale Ordinance, No. 63, section 19.
15	Id. section 14.
16	Repeal.
Schedule	Agricultural Produce (Advances) Ordinance, 1917. Schedule amended.