

AUSTRALIAN CAPITAL TERRITORY.

No. 15 of 1954.

AN ORDINANCE

Relating to the Sale of Goods.

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909-1938* and the *Seat of Government (Administration) Act 1910-1947*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Sale of Goods Ordinance* 1954.* Short title.
2. This Ordinance shall come into operation on the first day of October, One thousand nine hundred and fifty-four. Commencement.
3. This Ordinance is divided into Parts, as follows:— Parts.
 - Part I.—Preliminary (Sections 1-5).
 - Part II.—Formation of the Contract.
 - Division 1.—Contract of Sale (Sections 6-7).
 - Division 2.—Formalities of the Contract (Sections 8-9).
 - Division 3.—Subject Matter of the Contract (Sections 10-12).
 - Division 4.—The Price (Sections 13-14).
 - Division 5.—Conditions and Warranties (Sections 15-19).
 - Division 6.—Sale by Sample (Section 20).
 - Part III.—Effects of the Contract.
 - Division 1.—Transfer of Property as between Seller and Buyer (Sections 21-25).
 - Division 2.—Transfer of Title (Sections 26-30).
 - Part IV.—Performance of the Contract (Sections 31-41).
 - Part V.—Rights of Unpaid Seller against the Goods.
 - Division 1.—General (Sections 42-43).
 - Division 2.—Unpaid Seller's Lien (Sections 44-46).
 - Division 3.—Stoppage *in transitu* (Sections 47-49).
 - Division 4.—Re-sale by Buyer or Seller (Sections 50-51).

* Notified in the *Commonwealth Gazette* on 12th August, 1954.

1645.—PRICE 1s.

Part VI.—Actions for Breach of the Contract.

Division 1.—Remedies of the Seller (Sections 52-53).

Division 2.—Remedies of the Buyer (Sections 54-57).

Part VII.—Miscellaneous (Sections 58-62).

Certain laws to
cease to be in
force.

4. The following laws shall cease to be in force in the Territory:—

The Imperial Act 29 Charles II., chapter 3, entitled an Act for the prevention of Frauds and Perjuries (commonly known as the Statute of Frauds) sections 15 and 16 (commonly cited as sections 16 and 17); and the Usury, Bills of Lading, and Written Memoranda Act, 1902 of the State of New South Wales, section 11.

Definitions and
interpretation.

5.—(1.) In this Ordinance, unless the contrary intention appears—

“action” includes counterclaim and set off;

“buyer” means a person who buys or agrees to buy goods;

“contract of sale” includes an agreement to sell as well as a sale;

“delivery” means voluntary transfer of possession from one person to another;

“document of title”, in relation to goods, includes—

(a) bill of lading, dock warrant, warehouse keeper’s certificate, wharfinger’s certificate and warrant or order for the delivery of the goods; and

(b) any other document used in the ordinary course of business as proof of the possession or control of the goods or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive the goods which it represents;

“fault” means wrongful act or default;

“future goods” means goods which are to be manufactured or acquired by the seller after the making of the contract of sale;

“goods” includes all chattels personal other than things in action and money and also includes emblements, industrial growing crops, and things attached to or forming part of the land, which are to be severed before sale or under the contract of sale;

“mercantile agent” means a mercantile agent having in the customary course of his business as a mercantile agent authority either to sell goods or to consign goods for the purpose of sale, or to buy goods or to raise money on the security;

“plaintiff” includes a defendant counterclaiming;

“property” means the general property in goods and not merely a special property;

“quality”, in relation to goods, includes a state or condition of the goods;

“sale” includes a bargain and sale as well as a sale and delivery;

“seller” means a person who sells or agrees to sell goods;

“sheriff” includes any officer charged with the enforcement of a writ or warrant of execution;

“specific goods” means goods identified and agreed upon at the time a contract of sale is made;

“warranty” means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of the contract, breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(2.) For the purposes of this Ordinance—

(a) a thing is done in good faith when it is in fact done honestly, whether it is done negligently or not;

(b) what is a reasonable time, a reasonable hour or a reasonable price is a question of fact;

(c) a person is insolvent who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not and whether he has become a bankrupt or not; and

(d) goods are in a deliverable state when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

PART II.—FORMATION OF THE CONTRACT.

Division 1.—Contract of Sale.

6.—(1.) A contract of sale of goods is a contract by which the seller transfers or agrees to transfer property in goods to the buyer for a money consideration, called the price. Sale and agreement to sell.

(2.) There may be a contract of sale between one part owner and another.

(3.) A contract of sale may be absolute or conditional.

(4.) Where, under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale. Where the transfer of the property in the goods is to take place at a future time or subject to a condition to be fulfilled after the transfer of the property in the goods, the contract is called an agreement to sell.

(5.) An agreement to sell becomes a sale when the time elapses at which, or the conditions are fulfilled subject to which, the property in the goods is to be transferred.

Capacity to buy and sell.

7.—(1.) Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

(2.) Where necessaries are sold to an infant or to a person who, by reason of mental incapacity or drunkenness, is incompetent to contract, he must pay a reasonable price for the goods.

(3.) In this section, “necessaries” means goods suitable to the condition and life of the infant or other person and to his actual requirements at the time of the sale and delivery.

Division 2.—Formalities of the Contract.

Manners of making contracts of sale.

8.—(1.) Subject to this Ordinance and to any other law, a contract of sale may be made—

- (a) in writing, either with or without seal;
- (b) by word of mouth; or
- (c) partly in writing and partly by word of mouth,

or may be implied from the conduct of the parties.

(2.) This section does not affect the law relating to corporations.

Contracts for sale of Ten pounds and upwards.

9.—(1.) A contract for the sale of goods of the value of Ten pounds or upwards is not enforceable by action unless—

- (a) the buyer accepts part of the goods so sold and actually receives them;
- (b) the buyer gives something in earnest to bind the contract or in part payment; or
- (c) a note or memorandum in writing of the contract is made and signed by the party to be charged or by his agent in that behalf.

(2.) The last preceding sub-section applies to all such contracts, notwithstanding—

- (a) that the goods are intended to be delivered at a future time;
- (b) that the goods may not, at the time of the contract, be actually made, procured or provided or be fit or ready for delivery; or
- (c) an act is requisite for the making or completing of the goods or rendering them fit for delivery.

(3.) There is an acceptance of goods within the meaning of this section when the buyer does an act in relation to the goods which recognizes a pre-existing contract of sale, whether there is an acceptance in performance of the contract or not.

Division 3.—Subject Matter of the Contract.

Existing or future goods.

10.—(1.) The goods which form the subject of a contract of sale may be either existing goods which are owned or possessed by the seller or future goods.

(2.) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3.) Where, by the contract of sale, the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

11. Where there is a contract for the sale of specific goods and the goods have, without the knowledge of the seller, perished at the time when the contract was made, the contract is void. Goods which have perished.

12. Where there is an agreement to sell specific goods and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is avoided. Goods perishing before sale but after agreement to sell.

Division 4.—The Price.

13.—(1.) The price in a contract of sale— Ascertainment of price.

(a) may be fixed by the contract;

(b) may be left to be fixed in a manner agreed by the contract; or

(c) may be determined by the course of dealing between the parties.

(2.) Where the price is not determined in accordance with the last preceding sub-section, the buyer must pay a reasonable price.

14.—(1.) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and that third party cannot or does not make the valuation, the agreement is avoided, but, if the goods, or a part of them, have been delivered to and appropriated by the buyer, he must pay a reasonable price for them. Agreement to sell at valuation.

(2.) Where the third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Division 5.—Conditions and Warranties.

15.—(1.) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Stipulations as to time.

(2.) Whether any other stipulation as to time is of the essence of the contract depends on the terms of the contract.

(3.) In a contract of sale, unless a different intention appears from the terms of the contract, “month” means calendar month.

16.—(1.) Where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat a breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated. When condition to be treated as warranty.

(2.) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated or a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated depends in each case on the construction of the contract.

(3.) A stipulation may be a condition although it is called a warranty in the contract.

(4.) Where—

- (a) a contract of sale is not severable and the buyer has accepted the goods or part of them; or
- (b) the contract is for specific goods the property in which has passed to the buyer,

the breach of a condition to be fulfilled by the seller can be treated only as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated unless there is a term of the contract express or implied to that effect.

(5.) This section does not apply to a condition or warranty the fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title.

17. In a contract of sale, unless the circumstances of the contract are such as to show a different intention—

- (a) there is an implied condition on the part of the seller—
 - (i) in the case of a sale—that he has a right to sell the goods; and
 - (ii) in the case of an agreement to sell—that he will have the right to sell the goods at the time when the property is to pass;
- (b) there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods; and
- (c) there is an implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party who is not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

18.—(1.) Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description.

(2.) If the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied conditions as to quality and fitness.

19.—(1.) Except as provided by this section, and subject to this Ordinance and to any other law, there is no implied warranty or condition as to the quality or fitness for a particular purpose of goods supplied under a contract of sale.

(2.) Subject to the next succeeding sub-section, where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is a manufacturer or not), there is an implied condition that the goods shall be reasonably fit for that purpose.

(3.) In the case of a contract for the sale of a specified article under a trade name, there is no implied condition as to its fitness for a particular purpose.

(4.) Where goods are bought by description from a seller who deals in goods of that description (whether he is a manufacturer or not), there is an implied condition that the goods shall be of merchantable quality but if the buyer has examined the goods there is no implied condition as to defects which the examination ought to have revealed.

(5.) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6.) An express warranty or condition does not negative a warranty or condition implied by this Ordinance unless inconsistent with it.

Division 6.—Sale by Sample.

20.—(1.) A contract of sale is a contract for sale by sample where there is a term of the contract express or implied to that effect. Sale by sample.

(2.) In the case of a contract for sale by sample, there is an implied condition—

- (a) that the bulk shall correspond with the sample in quality;
- (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample; and
- (c) that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

PART III.—EFFECTS OF THE CONTRACT.

Division 1.—Transfer of Property as between Seller and Buyer.

21. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. Goods must be ascertained.

22.—(1.) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Property passes where intended to pass.

(2.) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

23.—(1.) Unless a different intention appears from the terms of the contract, the intention of the parties as to the time at which the property in the goods is to pass to the buyer is ascertained in accordance with the succeeding provisions of this section.

(2.) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial that the time of payment or the time of delivery, or both, are postponed.

(3.) Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them in a deliverable state, the property does not pass until the thing is done and the buyer has notice of its having been done.

(4.) Where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until the act or thing is done and the buyer has notice of its having been done.

(5.) Where goods are delivered to the buyer “on approval”, “on sale or return” or on other similar terms, the property in the goods passes to the buyer—

(a) when he signifies his approval or acceptance to the seller or does some other act adopting the transaction; or

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection—

(i) if a time has been fixed for the return of the goods—on the expiration of that time; and

(ii) if no time has been fixed—on the expiration of a reasonable time.

(6.) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

(7.) The assent referred to in the last preceding sub-section may be express or implied and may be given either before or after the appropriation is made.

(8.) For the purposes of sub-section (6.) of this section, where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

24.—(1.) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of the disposal of the goods until certain conditions are fulfilled. Reservation of right of disposal.

(2.) In such a case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee, for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(3.) Where goods are shipped and, by the bill of lading, the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(4.) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and, if he wrongfully retains the bill of lading, the property in the goods does not pass to him.

25.—(1.) Subject to the next succeeding sub-section, unless a different intention appears from the terms of the contract, the goods remain at the seller's risk until the property in the goods is transferred to the buyer but when the property in the goods is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not. Risk *prima facie* passes with property.

(2.) Where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault so far as any loss which might not have occurred but for that fault is concerned.

(3.) This section does not affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Division 2.—Transfer of Title.

26.—(1.) Subject to this Ordinance, where goods are sold by a person who is not the owner of them and does not sell them under the authority or with the consent of the owner, the buyer does not acquire a better title to the goods than the seller had unless the owner of the goods is, by his conduct, precluded from denying the seller's authority to sell. Sale by person not the owner.

(2.) Nothing in this Ordinance affects—

- (a) the provisions of the Factors Act, 1899 of the State of New South Wales in its application to the Territory or of any Ordinance made in substitution for that Act; or
- (b) the validity of a contract of sale under a special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Resale under voidable title.

27. Where the seller of goods has a voidable title to them but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods provided he buys them in good faith and without the notice of the seller's defect of title.

Revesting of property in stolen goods on conviction of offender.

28.—(1.) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods reverts in the person who was the owner of the goods, or in his personal representative, notwithstanding any intermediate dealing with them.

(2.) Notwithstanding any other law to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in the goods does not revert in the person who was the owner of the goods or in his personal representative by reason only of the conviction of the offender.

Seller or buyer in possession after sale.

29.—(1.) Where a person who has sold goods continues, or is, in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under a sale, pledge or other disposition to a person receiving the goods or documents of title in good faith and without notice of the previous sale has the same effect as if the person making delivery or transfer were expressly authorized by the owner of the goods to make the delivery or transfer.

(2.) Where a person who has bought, or agreed to buy, goods obtains, with the consent of the seller, possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under a sale, pledge or other disposition of the goods or documents of title to a person receiving the goods or documents in good faith and without notice of any lien or other right of the original seller in respect of the goods has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Effects of writs of execution.

30.—(1.) Subject to the next succeeding sub-section, a writ or warrant of execution against goods binds the property in the goods of the execution debtor as from the time when the writ or warrant is delivered to the sheriff to be executed.

(2.) It is the duty of the sheriff, without fee, on the receipt of any such writ or warrant, to endorse upon the back of the writ or warrant the hour, day, month and year when he receives it.

(3.) A writ or warrant of execution against goods does not prejudice the title to the goods acquired by a person in good faith and for valuable consideration unless that person had, at the time when he acquired his title, notice that the writ or warrant, or any

other writ or warrant by virtue of which the goods of the execution debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff.

PART IV.—PERFORMANCE OF THE CONTRACT.

31. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Duties of seller and buyer.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Payment and delivery are concurrent conditions.

33.—(1.) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.

Rules as to delivery.

(2.) Apart from any such contract, the place of delivery is the seller's place of business, if he has one, or, if not, his residence, but if the contract is for the sale of specific goods which, to the knowledge of the parties when the contract is made, are in some other place, then that place is the place of delivery.

(3.) Where, under the contract of sale, the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(4.) Where the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until the third person acknowledges to the buyer that he holds the goods on behalf of the buyer.

(5.) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour.

(6.) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

(7.) This section does not affect the operation of the issue or transfer of a document of title to goods.

34.—(1.) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them. If the buyer accepts the goods so delivered he must pay for them at the contract rate.

Delivery of wrong quantity.

(2.) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3.) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description or quality not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or he may reject the whole.

(4.) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment deliveries.

35.—(1.) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.

(2.) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract or is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

Delivery to carrier.

36.—(1.) Where, in pursuance of the contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether known by the buyer or not, for the purpose of transmission to the buyer, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2.) Unless otherwise authorized by the buyer, the seller must make such a contract with the carrier on behalf of the buyer as is reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits to do so and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.

(3.) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, the seller must give such notice to the buyer as will enable him to insure the goods during their sea transit and, if the seller fails to do so, the goods shall be deemed to be at his risk during the sea transit.

Risk where goods are delivered at a distant place.

37. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

38.—(1.) Where goods which the buyer has not previously examined are delivered to him, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2.) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

39. The buyer is deemed to have accepted the goods when—

Acceptance.

- (a) he intimates to the seller that he has accepted them;
- (b) the goods have been delivered to him and he does an act in relation to them which is inconsistent with the ownership of the seller; or
- (c) after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

40. Unless otherwise agreed, where goods are delivered to the buyer and, having the right to refuse to accept them, he refuses to accept them, he is not bound to return the goods to the seller and it is sufficient if he intimates to the seller that he refuses to accept the goods.

Buyer not bound to return rejected goods.

41.—(1.) Where the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not, within a reasonable time after the request, take delivery of the goods, the buyer is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

Liability of buyer for neglecting or refusing delivery of goods.

(2.) This section does not affect the rights of the seller where neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART V.—RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

Division 1.—General.

42.—(1.) The seller of goods is deemed to be an unpaid seller within the meaning of this Part—

Unpaid seller defined.

- (a) when the whole of the price has not been paid or tendered; or
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2.) In this Part, the expression “seller” includes a person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

43.—(1.) Subject to this Ordinance and to any other law, the unpaid seller of goods, as such, has by implication of law—

- (a) a lien on the goods for the price while he is in possession of them;
- (b) in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them; and
- (c) a right of re-sale as provided by this Ordinance.

(2.) The last preceding sub-section has effect notwithstanding that the property in the goods may have passed to the buyer.

(3.) Where the property in the goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

Division 2.—Unpaid Seller's Lien.

Seller's lien.

44.—(1.) Subject to this Ordinance, where—

- (a) goods have been sold without any stipulation as to credit;
- (b) goods have been sold on credit but the term has expired; and
- (c) the buyer of goods becomes insolvent,

the unpaid seller of the goods, if he is in possession of them, is entitled to retain possession of them until payment or tender of the price.

(2.) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

45. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder unless part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien.

46.—(1.) The unpaid seller of goods loses his lien on the goods—

- (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving a right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods; or
- (c) by waiver of the lien.

(2.) The unpaid seller of goods who has a lien on the goods does not lose his lien by reason only that he has obtained judgment for the price of the goods.

Division 3.—Stoppage in transitu.

47. Subject to this Ordinance, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods so long as they are in course of transit and may retain them until payment or tender of the price.

Right of stoppage *in transitu*.

48.—(1.) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land, water or air, or other bailee, for the purpose of transmission to the buyer until the buyer, or his agent in that behalf, takes delivery of them from the carrier or other bailee.

Duration of transit.

(2.) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3.) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4.) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive the goods back.

(5.) When the goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of a particular case whether they are in possession of the master as a carrier or as agent of the buyer.

(6.) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7.) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped *in transitu* unless the part delivery was made under such circumstances as to show an agreement to give up possession of the whole of the goods.

49.—(1.) The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are.

Method of effecting stoppage *in transitu*.

(2.) The notice may be given either to the person in actual possession of the goods or to his principal.

(3.) Where the notice is given to the principal, the notice is not effectual unless it is given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(4.) Where notice of stoppage *in transitu* is given by the seller to the carrier or other bailee in possession of the goods, the carrier or other bailee must re-deliver the goods to, or according to the directions of, the seller.

(5.) The expenses of the re-delivery must be borne by the seller.

Division 4.—Re-sale by Buyer or Seller.

Effect of
sub-sale or
pledge by
buyer.

50.—(1.) Subject to this Ordinance, an unpaid seller's right of lien or stoppage *in transitu* is not affected by a sale or other disposition of the goods which the buyer may have made unless the seller has assented to it.

(2.) Where a document of title to goods has been lawfully transferred to a person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration, if the last-mentioned transfer—

- (a) was by way of sale—the unpaid seller's right of lien or stoppage *in transitu* is defeated; or
- (b) was by way of pledge or other disposition for value—the unpaid seller's right of lien or stoppage *in transitu* can only be exercised subject to the rights of the transferee.

Sale not
generally
rescinded by
lien or
stoppage *in
transitu*.

51.—(1.) Subject to this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage *in transitu*.

(2.) Where an unpaid seller who has exercised his right of lien or stoppage *in transitu* re-sells the goods, the buyer acquires a good title to them as against the original buyer.

(3.) Where the goods are of a perishable nature or the unpaid seller gives notice to the buyer of his intention to re-sell and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4.) Where the seller expressly reserves a right of re-sale in case the buyer should make default and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded but without prejudice to any claim the seller may have for damages.

PART VI.—ACTIONS FOR BREACH OF THE CONTRACT.

Division 1.—Remedies of the Seller.

52.—(1.) Where, under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects to pay for the goods according to the terms of the contract, the seller may maintain an action against the buyer for the price of the goods. Action for price.

(2.) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay the price, the seller may maintain an action for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

53.—(1.) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance. Damages for non-acceptance.

(2.) The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract.

(3.) Where there is an available market for the goods, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, at the time of the refusal to accept.

Division 2.—Remedies of the Buyer.

54.—(1.) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery. Damages for non-delivery.

(2.) The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.

(3.) Where there is an available market for the goods, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, at the time of the refusal to deliver.

55.—(1.) In an action for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the application of the plaintiff, direct, by its judgment, that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. Specific performance.

(2.) The judgment may be unconditional or upon such terms and conditions as to damages, payment of the price or otherwise as the court thinks just.

(3.) The application by the plaintiff may be made at any time before judgment.

Remedy for breach of warranty.

56.—(1.) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat a breach of a condition on the part of the seller as a breach of warranty, the buyer is not, by reason only of that breach, entitled to reject the goods but may—

- (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
- (b) maintain an action against the seller for damages for the breach of warranty.

(2.) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events from the breach of warranty.

(3.) In the case of breach of warranty of quality, the loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4.) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Interest and special damages.

57. This Ordinance does not affect the right of the buyer or of the seller to recover interest or special damages in any case where by law interest or special damages are recoverable or to recover money paid where the consideration for the payment has failed.

PART VII.—MISCELLANEOUS.

Exclusion of implied terms and conditions.

58. Where a right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied—

- (a) by express agreement;
- (b) by the course of dealing between the parties; or
- (c) by usage, if the usage is such as to bind both parties to the contract.

Rights, &c. enforceable by action.

59. Rights, duties and liabilities declared by this Ordinance may, unless otherwise provided by this Ordinance, be enforced by action.

Auction sales.

60.—(1.) This section applies in respect of sales by auction.
(2.) Where goods are put up for sale in lots, each lot is *prima facie* to be the subject of a separate contract of sale.

(3.) The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner.

(4.) Until the announcement is made any bidder may retract his bid.

(5.) A right to bid may be reserved expressly by or on behalf of the seller.

(6.) Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

(7.) Where a sale is not notified to be subject to a right to bid on behalf of the seller, it is not lawful—

(a) for the seller to bid himself;

(b) for the seller to employ a person to bid; or

(c) for the auctioneer knowingly to take a bid from the seller or any such person.

(8.) The buyer may treat as fraudulent a sale which contravenes the provisions of the last preceding sub-section.

(9.) A sale may be notified to be subject to a reserved or upset price.

61. Any term, express or implied, in a contract of sale of wool providing that, in computing the price of the wool, a deduction of the kind commonly known as a draft allowance is to be made from the weight of the wool is void.

Draft allowance
on wool.

62.—(1.) The rules of the common law, including the law merchant, except insofar as they are inconsistent with this Ordinance, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress, coercion, mistake or other invalidating cause continue to apply to contracts for the sale of goods.

Savings.

(2.) This Ordinance does not affect the law relating to bills of sale.

(3.) The provisions of this Ordinance relating to contracts of sale do not apply to a transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

Dated this third day of August, 1954.

W. J. SLIM

Governor-General.

By His Excellency's Command,

W. S. KENT HUGHES

Minister of State for the Interior.

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