

CHAPTER 17 - BILLS OF SALE

AN EDICT TO MAKE PROVISION FOR THE EXECUTION OF BILLS OF SALE IN THE STATE AND TO REPEAL LAW APPLYING ENGLISH LEGISLATION IN THESE MATTERS

[15 June 1985]

1. This Edict may be cited as the Bills of Sale Edict.
2. This Edict shall be deemed to have come into operation on the 1st day of October, 1987.
3. —(1) In this Edict unless the context otherwise requires:-

"Bill of Sale" means an instrument in writing whereby one person transfers to another the property he has in goods or chattels and the holder or grant has power to seize or take possession of any chattels comprised in or made subject to the bill of sale; and shall include bills of sale, assignments, transfers, declarations of trust without transfers, inventories of goods with receipt attached thereto, 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 therein shall be conferred, but shall not include the following documents, that is to say: assignment for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfer of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign countries or at sea, bills of lading, 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 or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented, or any instrument charging or creating any security on or declaring trusts of imported goods given or executed at any time prior to their deposit in a warehouse, factory or store or to their being reshipped for export or delivered to a purchaser not being the person giving or executing such instrument; and bills of sale or other documents mentioned herein which may be given other than by way of security for payment of money shall not constitute bills of sale for the purpose of security bills of sale;

"Commissioner" means the Commissioner charged with responsibility for Bills of Sale;

"factory or workshop" means any premises on which manual labour is exercised by way of trade or for purpose of gain in or incidental to the making of any article or part of an article, or the altering, repairing ornamenting or finishing or any article or the adapting for sale or any article;

"personal chattels" means any goods, furniture and other articles of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate nor fixtures (except trade machinery as hereinafter defined) when assigned together with a right of occupancy or other interest in any land or with a freehold or leasehold interest in any 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 interests in the stock, funds or securities of any government, or in the capital or property of incorporated or joint stock, companies, or choses in action, or any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom or the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale;

"prescribed" means prescribed by rules made under the provisions of this Edict;

"Registrar" means the Registrar of Land or Title or Deeds for the State; and

"trade machinery" means the machinery used in or attached to any factory or workshop but excluding the following, that is to say, the fixed motive-powers and the fixed appurtenances of such motive-powers, and the fixed power machinery and fixed appurtenances thereof which transmit the action of the motive-powers to the other machinery, fixed and loose, and the pipes for steam gas or water and the wiring and other fixed fittings for transmitting electrical current, in the factory or workshop.

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

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

(4) Every attornment, instrument or agreement, not being a mining lease, 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 for 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 of any personal chattels which may be seized or taken under such power of distress:

Provided that nothing in this subsection shall extend to any mortgage of any estate or interest in any land, tenement or hereditament which the mortgagee, being in possession, shall have demised to the mortgager as his tenant at a fair and reasonable rent.

(5) No fixtures or growing crops shall be deemed to be separately assigned or changed by reason only that they are assigned by separate words or that power is given to sever them from the land or building to which they are affixed or from the land on which they grow without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any right of occupancy or other interest in the land to which such crops grow, or any right of occupancy or other interest in the building to which such fixtures are affixed, is also transferred or assigned to the same person or persons.

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

4. Subject to the provisions of Parts, II and III, this Edict shall apply to every bill of sale executed on or after the commencement of this Edict 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, whether the same be:-

(a) an absolute bill, that is to say, given otherwise than as security for payment of money, and whether or not subject to a trust; and

(b) a security bill, that is to say, given security for payment of money.

PART II—BILLS OF SALE

5. Every absolute bill of sale shall be duly attested and registered under this Edict within seven days after the time at which it would in the ordinary course of post arrive at the principal registry if posted immediately after the execution thereof and shall set forth the consideration for which such bill of sale was given.

6. The execution of an absolute bill of sale shall be attested by a legal practitioner who shall before the execution of the same explain to the grantor of the bill, and the attestation shall state that fact.

7. An absolute bill of sale which does not comply with the requirements of Section 6 shall as against:-

(a) all trustees or assignees of the estate of the person whose chattels or any of them are comprised in such bill of sale under any written law relating to bankruptcy or liquidation or under any assignment for the benefit of the creditors of such persons;

(b) all sheriffs, officers and other persons seizing any chattels comprised in such bill of sale in the execution of the process of any court authorizing the seizure of chattels of the person by whom or of whose chattels such bill has been made; and

(c) every person on whose behalf such process shall have been issued;

be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which at or after the time of the filing of the petition for bankruptcy or liquidation or of the execution of such assignment or of executing such process, as the case may be, and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale or of any person against whom the process has been issued under or in execution of which such bill has been made or given as the case may be.

PART III—SECURITY BILLS OF SALE

8. A security bill of sale for the payment of money by the for grantor thereof shall be void unless made in accordance with Form A in the Schedule to this Edict.

9. Every security bill of sale shall have annexed to it or written on it 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.

10.—(1) Every security bill of sale shall be attested by one or more witnesses, not being party or parties thereto, and shall be registered under this Edict within seven days after the execution thereof or if it is executed at any place out of the State, then within seven clear days after the time at which it would in the ordinary course of post arrive at the principal registry if posted immediately after the execution thereof, and shall truly set forth the consideration for which it was given.

(2) A security which does not comply with the requirements of subsection (1) shall be void in respect of the personal chattels comprised therein.

11. Save as hereinafter mentioned, a security 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.

12. Nothing contained in the foregoing sections of this Part shall render a security bill of sale void in respect of any of the following things namely:

(a) any growing crops separately assigned or charged where such crops were actually growing at the time when bill of sale was executed; and

(b) any fixtures separately assigned or charged and any plant or trade machinery where such fixtures, plant or trade machinery are used in, attached to or brought upon any land, farm factory or workshop, shop, house, warehouse or other place in substitution for any of the like fixtures, plant or trade machinery specifically described in the Schedule to such bill of sale.

13.—(1) Personal chattels assigned under a security bill of sale shall be liable to be seized or taken possession of by the grantee only for any of the following causes:-

(a) if the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(b) if the grantor becomes bankrupt or allows the said goods or any of them to be distrained for rent, rates or taxes;

(c) if the grantor fraudulently either removes or allows to be removed from the premises the said goods or any of them;

(d) if the grantor does not, without reasonable excuse, upon demand in writing by the grantee permit him to inspect the goods or any of them, or produce to him his last receipts for rent, rates and taxes; and

(e) if execution has been levied against the goods of the grantee under any judgement of a court or tribunal of competent jurisdiction.

(2) Notwithstanding subsection (1) above the grantor may within five days from the seizure or taking possession of any chattels on account of any of the causes mentioned in that subsection, apply to the High Court and the Court 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.

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

15. A security of sale 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 under a Warrant for and rates, the recovery of taxes and rates.

16. Nothing in this Part shall apply to any debentures issued by Debentures any mortgage, loan or other incorporated company, and secured does upon the capital stock or goods, chattels and effects of such not apply, company.

PART IV—REGISTRATION

17. The Registrar shall keep a book (in this Edict referred to as "the register") for the purposes of this Edict.

18. Every bill of sale to which this Edict applies shall be registered in the manner prescribed in this Part.

19. —(1) For the purpose of registering an absolute bill of sale there shall be filed with the Registrar the following documents:-

- (a) the bill of sale duly attested;
- (b) a true copy of the bill as attested; and
- (c) an affidavit verifying the bill.

(2) For the purpose of registering a security bill of sale, there shall be filed with the Registrar the following documents:-

- (a) the bill of sale duly attested;
- (b) a true copy of the bill as attested;
- (c) every Schedule or inventory attached to the bill or referred to therein;
- (d) a true copy of such Schedule or inventory; and
- (e) an affidavit verifying the bill.

(3) The affidavit referred to in this Section shall state, inter alia:-

- (a) the time of making or giving the bill and of its due execution and attestation;
- (b) a description of the residence and occupation of the person making or giving the same (or in case the bill is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issues); and
- (c) a description of the residence and occupation of every attesting witness to the bill of sale.

Entering of documents in register. Schedule Form C.

20. The Registrar shall upon the filing of the set of documents mentioned in Section 19 enter in the register in the form set forth in Form C in the Schedule to this Edict or in any other prescribed form, the name, residence and occupation of the person by whom the bill of sale was made or given (or in case the same was made or given by any person under or in execution of process, then the name, residence and occupation of the person against whom such process was issued and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said Schedule or to be prescribed under this Edict, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

21. Upon the registration of the bill of sale, the registrar shall issue a certificate in the prescribed form in the name of the grantor.

22. The registrar shall keep and maintain an index of names of the grantors of registered bills of sale with reference to entries in the register of bills of sale given by each grantor such index shall be arranged so as to facilitate easy reference.

23. If a bill of sale is made or given subject to any defeasance, condition or declaration of trust not contained in the body thereof such defeasance, condition or declaration shall be written on the same paper before the registration and shall be set out in the copy filed under this Edict and as part thereof; otherwise the registration shall be void.

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

25.—(1) 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.

(2) Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale and comprises all or any part of the personal chattels comprised in 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 respect 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 cognisance 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 Edict.

26.—(1) The registration of a bill of sale whether executed before or after the commencement of this Edict shall be renewed once at least every five years and if a period of five 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.

(2) The renewal of a registration shall be effected by filing with the registrar an affidavit which may be as set forth in Form B in the Schedule hereto, stating the date of the bill of sale and of the last registration thereof and the names, residence and occupations of the parties thereto as stated therein and that the bill of sale is still a subsisting security.

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

(4) Upon the registration of any affidavit of renewal the like entry shall be made in Section 20 with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

27. Any Judge of the High 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 Edict, or the omission or mis-statement of the name, residence or occupation of any person, was accidental or due to inadvertence may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence or occupation or by extending the time of 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.

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

29. Any person shall be entitled at all reasonable times to search the register on payment of the prescribed fee and subject to such regulations as may be prescribed and shall be entitled at all reasonable times to inspect, examine and make extracts from any and every bill of sale without being required to make a written application or to specify any particulars in reference thereto, upon payment of the prescribed fee for each bill of sale inspected.

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

30. Any person shall be entitled to have an office copy or extract of any bill of sale and affidavit of execution filed therewith (if any), or registered affidavit of renewal, upon payment for the same at the prescribed rate and any copy of registered bill of sale and affidavit purporting to be

an office copy thereof shall in all courts and before all arbitrators or other persons be admitted as prima facie evidence thereof and of the fact and date of registration as shown thereon.

31. Every affidavit required by or for the purposes of this Edict may be sworn before any person empowered by law to take affidavits.

PART V—GENERAL

32. The Governor shall have power to make rules for the purposes of this Edict including the power to fix fees. **33.** —(1) The Bills of Sale Law (which makes provision regarding the application in the State of the Bills of Sales Acts 1878 and 1882 and the Acts amending the same) is hereby repealed.

(2) Except as is in this Edict expressly mentioned with respect to construction and with respect to renewal of registration nothing in this Edict shall affect any bill of sale executed before the commencement of this Edict under the Law applicable at the time of such execution.

(3) Any renewal after the commencement of this Edict of a bill of sale executed before the commencement of this Edict and registered under the Law hereby repealed and the Acts mentioned therein shall be made under this Edict in the same manner as the renewal of a registration made under this Edict.

SCHEDULE

FORM A

THIS INDENTURE made the.....day of..... between A. B. of of the one part and C. D. of of the other part witnesses 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. hereby assigns unto C. D. his executor, administrators and assigns, jointly and severally the several chattels and things specifically described in the Schedule hereto annexed by way of security for the payment of the sum of, and interest thereon at the rate of..... per cent per annum (or whatever else may be the rate). And the said A. B. further agrees and declares that he will duly pay to the said C. D. the principal sum aforesaid together with the interest then due by equal.....payments of.....on the.....day of.....(or whatever else may be the stipulated time or times of payment). And the said A. B. also agrees with the said C. D. that he will (here insert terms as to insurance, payment of rent, or otherwise which the parties may agree to for the maintenance or defeasance of the security). Provided always that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. for any cause other than those specified in Section 13 of the Bills of Sale Edict. In witness, etc. Signed and Sealed by the said A. B. in the presence of E. F. (add witness' name, address and description):

FORM B

I (A. B.)

.....
..... of
.....
..... do swear that a bill of sale bearing date
the..... day
of....., 1 9(insert the date of the bill) and made between (insert the
names and description of the parties in the original bill of sale) and which said bill of sale (or and
a copy of which
said bill of sale as the case may be) was registered on the.....day of,
19.....(insert date of registration) is still a subsisting security.
Sworn, etc.

FORM C