

Malawi

Bills of Sale Act

Chapter 48:03

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Bills of Sale Act

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Chapter 48:03

Assented to on 6 November 1967

Commenced on 6 November 1967

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[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for Bills of Sale

1. Short title

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

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**bill of sale**” includes bills of sale, assignments, transfers, declarations of trust without transfers, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods and other assurances of personal chattels, and also powers of attorney, authorities or licences to take possession of personal chattels as security for any debt, and also any agreement whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, is conferred, but shall not include the following documents, that is to say—

- (a) assignments for the benefit of the creditors of the person making or giving them, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods, in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, warehousekeepers’ 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 authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented;
- (b) an 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 re-shipped or re-railed for export, or delivered to a purchaser not being the person giving or executing that instrument; or
- (c) for the purposes of sections 7, 8(1), 10 to 17 inclusive and 21, bills of sale or other instruments hereinbefore mentioned which may be given otherwise than by way of security for the payment of money;

“**crops**” means coffee berries, tea leaves, sisal leaves, sugar cane, tung nuts, timber, bark, cotton, tobacco, hemp, hops, wheat, maize, barley, oats and grass (whether for hay or for grain), and all cereal and root crops, fruit, nuts and all other crops grown above or below the ground;

“**executed**” means signed by the grantor or his attorney;

“**factory**” or “workshop” means any premises on which any manual labouring exercised by way of trade or for purposes of gain in or incidental to the making, altering, repairing, ornamenting, assembling, finishing or adapting for sale of any article or part of any article;

“personal chattels” means goods, furniture and other articles capable of complete transfer by delivery, and, when separately assigned or charged, fixtures and growing crops, but shall not include—

- (a) chattel interests in real estate;
- (b) fixtures, except trade machinery as hereinafter defined, when assigned or transferred together with a freehold, registered or leasehold interest in any land or building to which they are affixed;
- (c) growing crops when assigned together with any interest in the land on which they grow;
- (d) shares or interests in the stock, funds or securities of any government, or in the capital or property of incorporated or joint stock companies;
- (e) things in action;
- (f) any stock or produce upon any farm or land which, by virtue of any covenant or agreement or of the custom of the country, ought not to be removed from any farm where they are at the time of making or giving of the bill of sale;

“Registrar” means the Registrar General or the Deputy Registrar General;

“stock” includes any sheep, goats, cattle, horses, pigs, poultry, and any other living animals;

“trade machinery” means the machinery used in or attached to any factory or workshop, and machinery and plant used in connexion with the production, preparation or manufacture of agricultural products, but shall not include—

- (a) the fixed motive powers, such as the waterwheels and steam and other engines and the steam boilers, donkey engines and other fixed appurtenances of the said motive powers;
 - (b) the fixed power machinery (such as the shafts, wheels, drums and their fixed appurtenances) for transmitting the action of the motive powers to the other machinery fixed and loose; or
 - (c) the pipes for steam, gas and water.
- (2) Nothing in subsection (1) (b) shall affect the operation of section 40 of the Bankruptcy Act in respect of goods comprised in any instrument in this section described if those goods would otherwise be “goods” within the meaning of section (40) (iii) of the said Bankruptcy Act.
- [Cap. 11:01]*
- (3) Personal chattels shall be deemed to be in the “apparent possession” of the person making or giving a bill of 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 has been taken by or given to any other person.
- (4) Trade machinery as defined in subsection (1) shall, for the purposes of this Act, be deemed to be personal chattels and any disposition of trade machinery by the owner thereof which would be a bill of sale in respect of any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act, but any machinery and effects excluded from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

3. Application of Act

This Act shall apply to every bill of sale (whether or not the same is absolute or 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.

4. Certain instruments giving power of distress to be subject to this Act

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 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 Act, 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 hereditament which the mortgagee, being in possession, has demised to the mortgagor as his tenant at a fair and reasonable rent.

5. Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument

- (1) No fixtures or growing crops shall be deemed under this Act 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, or from the land on which they grow, without otherwise taking possession of or dealing with the land or building, or land, if by the same instrument any freehold, registered or leasehold interest in the land or building to which those fixtures are affixed, or in the land on which those crops grow, is also conveyed, transferred or assigned to the same persons.
- (2) The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors or execution of any process of a court, which takes place or is issued after the commencement of this Act.

6. Avoidance of certain duplicate bills of sale

Where a subsequent bill of sale is executed within or on the expiration of fourteen clear 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 purposes of evading this Act.

7. Bills of sale to be void unless attested and registered

Every bill of sale shall be duly attested, and shall be registered within fourteen clear days after the execution thereof, or if it is executed in any place out of Malawi then within fourteen clear days after the time at which it would in the ordinary course of post arrive in Malawi if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

8. Mode of attesting and registering bills of sale

- (1) A bill of sale shall be attested and registered in the following manner—
 - (a) such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the

residence and occupation of the person making or giving the same (or in case the same 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 issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the Registrar within the period prescribed under [section 7](#);

- (b) 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, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void;
 - (c) the execution by the grantor of every bill of sale shall be attested by a commissioner for oaths, not being the legal practitioner of the grantee, who shall personally explain to the grantor the effect thereof, and attestation shall state that before the execution of the bill of sale the effect thereof was so explained as aforesaid.
- (2) 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 time and date of their registration respectively as regards such chattels.
 - (3) A transfer or assignment of a registered bill of sale need not be registered.

9. Renewal of registration

- (1) The registration of a bill of sale must 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 bill of sale shall become void.
- (2) The renewal of a registration shall be effected by filing with the Registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.
- (3) Every such affidavit shall be in Form No. 1 in the Schedule.
- (4) A renewal of registration shall not become necessary by reason only of transfer or assignment of a bill of sale.

10. Bill of sale to have schedule of property attached

Every bill of sale shall have annexed thereto or written thereunder 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.

11. Bill of sale to have schedule of property attached

Save as hereinafter in this Act 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.

12. Exception as to certain things

Nothing hereinbefore in this Act contained shall render a bill of sale void in respect of any of the following things—

- (a) any growing crops separately assigned or charged where such crops were actually growing at the time when the 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 or is used in, attached to, or brought upon any land, farm, factory, 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. Limitation of causes of seizure

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

- (a) 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 bill of sale and necessary for maintaining the security; or
- (b) if the grantor becomes a bankrupt or suffers the said goods or any of them to be distrained for rent, rates, or taxes; or
- (c) if the grantor fraudulently either removes or suffers the said goods or any of them to be removed from the premises; or
- (d) if the grantor does not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes; or
- (e) if execution has been levied against the goods of the grantor under any judgment at law:

Provided that the grantor may, within five clear days from the seizure or taking possession of any chattels on account of any of the abovementioned causes, apply to the High Court and the Court may, if satisfied that, by payment of money or otherwise, the said cause of seizure no longer exists, restrain the grantee from removing or selling the said chattels or may make such other order as may seem just.

14. Form of bill of sale

A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with Form No. 2 in the Schedule.

15. Avoidance of bill of sale under £30

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

16. Rules as to situation and sale of chattels

All personal chattels seized or of which possession is taken under or by virtue of any 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.

17. Bill of sale not to protect chattels against rates, duties and taxes

A bill of sale to which this Act 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 under a warrant or order for the recovery of rates, duties and taxes imposed by law.

18. Form of register

- (1) The Registrar shall keep a book (in this act referred to as “the register”) for the purposes of this Act, and shall, on the filing of any bill of sale or copy under this Act, enter therein the name, residence and occupation of the person by whom the bill was made or given, or, in case the same was made or given by any person under or in the 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 to whom or in whose favour the bill was given, and any other particulars prescribed under this Act, and shall

number all such bills registered in each year consecutively, according to the respective dates and times of their registration.

- (2) On the registration of any affidavit of renewal, the like entry shall be made, 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.
- (3) The Registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each grantor.
- (4) The index referred to in subsection (3) shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be alphabetical.

19. Rectification of register

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 Act, or the omission or mis-statement of the name, residence or occupation of any person, was accidental or due to inadvertence, may 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 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 it thinks fit to direct.

20. Entry of satisfaction

Subject to and in accordance with any rules made under this Act, the Registrar may order a memorandum of satisfaction to be written upon any registered copy of a 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.

21. Right of search and to have copies

- (1) Any person shall be entitled to have an office copy or extract of any registered bill of sale and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, or registered affidavit of renewal, on paying for the same at the like rate as for office copies of judgments of the High Court.
- (2) Any copy of a 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.
- (3) Any person shall be entitled at all reasonable times to search the register, on payment of such fee as may be prescribed, and subject to such rules as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of ten tambala 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.

22. Time of registration

When the time for registering a bill of sale expires on a Sunday or other day on which the offices of the Registrar are closed, such registration shall be valid if made on the next following day on which the offices are open.

23. Exclusion of certain debentures

Nothing in this Act shall apply to any debenture issued or charge created by a body incorporated by or under any law, and secured upon the capital, stock, goods, chattels, effects or other assets of such incorporated body, which debenture or charge is required to be registered under any written law relating to incorporated bodies.

24. Affidavits

Every affidavit required for the purposes of this Act may be made before any commissioner for oaths or the Registrar. Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of perjury, and shall be liable to the penalties therefor.

25. Rules, fees

The High Court may make rules for the better carrying into effect of the purposes of this Act, including the prescribing of fees payable in respect of matters or things done or which may be done under this Act.

26. Savings

Notwithstanding the repeal of the Bills of Sale Registration Ordinance and the Bills of Sale (Amendment) Act, 1965, and, in so far as they had effect in Malawi, the Bills of Sale Act, 1878, and the Bills of Sale Act, 1882, of the United Kingdom, nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and in respect of any such bill of sale any renewal of the registration of a bill of sale executed before the commencement of this Act, and registered under the repealed Ordinance and Acts, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

[7 of 1916]

[21 of 1965]

[41 & 42 Vict. c. 31]

[45 & 46 Vict. c. 43]

Schedule (Section 9)**Form No. 1*****Affidavit of renewal***

I, _____ of _____ do swear that a bill of sale bearing date the _____ day of _____ 19 _____, and made between _____ and which said bill of sale (or a copy of which said bill of sale), was registered on the _____ day of _____ 19 _____, is still a subsisting security. Sworn this _____ day of _____, 19 _____

Form No. 2 (Section 14)***Bill of sale***

This bill of sale made the _____ day of _____ 19 _____, between _____ of _____ of the one part, and

_____ of _____ of the other part, witnesseth that, in consideration of the sum of K _____, now paid to _____ by _____ the receipt of which sum the said _____ hereby acknowledges (or whatever else the consideration may be), he, the said _____ doth hereby assign unto _____ his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of K _____ and interest thereon at the rate of _____ per cent. per annum. And the said _____ doth further agree and declare that he will duly pay to the said _____ the principal sum aforesaid, together with the interest then due, by _____ payments of K _____ by the _____ day of _____ 19 _____. And the said _____ doth also agree with the said _____ 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 _____ for any cause other than those specified in section 13 of this Act.

In witness whereof the parties hereto have hereunto signed their names the day and year first above written.

Signed by the said _____

in the presence of me, _____

(add witness's name, address and description).

(add witness's name, address and description) after I had fully explained to him the nature and effect thereof.

Annexure to bill of sale

Schedule

Particulars of goods