CHAPTER 28
CHATTELS TRANSFER ACT

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CHAPTER 28

CHATTELS TRANSFER ACT

[Date of commencement: 13th June, 1930.]

An Act of Parliament to make provision relating to chattel securities and the transfer of chattels


PART I – PRELIMINARY

1. Short title

This Act may be cited as the Chattels Transfer Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“chattels” means any movable property that can be completely transferred by delivery, and includes machinery, stock and the natural increase of stock as hereinafter mentioned, crops and wool, but does not include—

(a) title deeds, choses in action or negotiable instruments;
(b) shares and interests in the stock, funds or securities of any government or local authority;
(c) shares and interests in the capital or property of any company or other corporate body; or
(d) debentures and interest coupons issued by any government, or local authority, or company, or other corporate body;

“crops” means coffee berries, tea leaves, sisal leaves, sugar cane, cotton, hemp, hop, wheat, maize, wattle, barley, oat and grass (whether for hay or for grain), and all cereal and root crops, fruit, 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 labour is exercised by way of trade or for purposes of gain in or about the making, altering, repairing, ornamenting, finishing or adapting for sale of any article or part of any article;

“grantee” means the party to an instrument to whom chattels therein referred to, or any interest therein, are thereby granted or assigned, or agreed so to be, and includes his executors, administrators and assigns, and in the case of a company or corporation includes the successors and assigns of that company or corporation;

“grantor” means the party to an instrument who thereby grants or assigns, or agrees to grant or assign, chattels therein referred to, or any
interest therein, and includes his executors, administrators and assigns, and in the case of a company or corporation includes the successors and assigns of that company or corporation;

“instrument” means any instrument given to secure the payment of money or the performance of some obligation and includes any bill of sale, mortgage, lien or any other document that transfers or purports to transfer the property in or right to the possession of chattels, whether permanently or temporarily, whether absolutely or conditionally, and whether by way of sale, security, pledge, gift, settlement or lease, and also the following—

(a) inventories of chattels with receipt thereto attached;
(b) receipts for purchase-money of chattels;
(c) other assurances of chattels;
(d) declarations of trust without transfer;
(e) powers of attorney, authorities or licences to take possession of chattels as security for any debt;
(f) any agreement, whether intended to be followed by the execution of any other instrument or not, by which a right in equity to any chattels, or to any charge or security thereon or thereover, is conferred,

but does not include the following—

(a) securities over, or leases of, fixtures (except trade machinery as hereinafter defined, when mortgaged or charged apart from the land to which it is attached) when mortgaged, charged or leased in any mortgage, charge or lease of any freehold or leasehold interest in any land or building to which they are affixed, and whether or not those fixtures are specifically included in the mortgage, charge or lease by mention thereof in separate words;
(b) assignments for the benefit of the creditors of the person making them;
(c) transfers of or agreements to transfer instruments by way of security;
(d) transfers or assignments of any ship or vessel or any share thereof;
(e) transfers of chattels in the ordinary course of business of any trade or calling;
(f) debentures and interest coupons issued by any government or local authority;
(g) bills of sale of chattels in any foreign parts, or at sea;
(h) bills of lading, warehouse-keepers’ certificates, warrants or orders for the delivery of chattels, entries in auctioneers’ books or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorising or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive the chattels thereby represented;
(i) debentures and interest coupons issued by any company or other corporate body and secured upon the capital stock or chattels of that company or other corporate body;
(j) mortgages or charges granted or created by a company incorporated or registered under the Companies Act (Cap. 486) or by a co-operative society registered under the Co-operative Societies Act (Cap. 490);

(k) hire-purchase agreements;

“Registrar” means the Registrar-General;

“registration” means the filing of an instrument with schedule or inventories, or a true copy thereof, with the affidavit hereinafter mentioned;

“schedule” includes inventory;

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

“trade machinery” means the machinery used in or attached to any factory or workshop as defined in this section and machinery and plant used in connection with the production, preparation or manufacture of agricultural products, but does 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 those 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.

3. Attornment or agreement giving power of distress by way of security to be instrument within meaning of Act

An attornment or agreement (not being a mining lease) whereby a power of distress is given or agreed to be given by one person to another by way of security for any present, future or contingent debt or advance, and whereby any rent is reserved or made payable as a means of providing for the payment of interest on the debt or advance, or otherwise for the purpose of the security only, shall be deemed to be an instrument within the meaning of this Act so far as regards any chattels seized or taken under the power of distress:

Provided that where a mortgagee of any interest in land, after entering (under the powers contained or implied in the mortgage) into possession of the mortgaged land, or into receipt of rents and profits thereof, demises that land or any part thereof to the mortgagor at a fair and reasonable rent, the instrument whereby the demise is effected shall not be deemed to be an instrument within the meaning of this Act.

PART II – REGISTRATION

4. Registration of instrument to be notice

All persons shall be deemed to have notice of an instrument and of the contents thereof when that instrument has been registered as provided by this Act:

Provided that if registration of the instrument is not renewed pursuant to the provisions of this Act, prior registration shall not be deemed to operate as notice after the lapse of the period within which renewal is required by this Act.
5. Mode of registration

Registration of an instrument shall be effected by filing it and all schedules endorsed thereon, annexed thereto or referred to therein, or a true copy of the instrument and the schedules, and an affidavit in Form 1 in the First Schedule or to the same effect, in the office of the Registrar.

6. Limitation of time for registration

(1) The period within which an instrument may be registered is twenty-one days from the day on which it was executed:

Provided that when the time for registering an instrument expires on a day whereon the Registrar’s office is closed, the registration shall be on the next following day on which the office is open.

(2) If there are more grantors than one, the date of execution of the instrument shall be deemed to be the date of the execution by the grantor who last executes the instrument.

(3) The day on which the instrument is executed shall not be included in the period for registration; but the instrument may be registered on that day.

7. Register book and index to be kept

(1) The Registrar shall cause every instrument registered in his office under this Act to be numbered, and shall mark on each such instrument, or on the filed copy thereof, the date of registration and the number, and shall at the time of registration enter in a register to be kept for the purpose in his office the particulars of the instrument registered according to Form 2 in the First Schedule.

(2) The Registrar shall also keep an index of the names of grantors and grantees of instruments, and shall refer therein to the entries in the register book of the instruments given by each grantor.

(3) The index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors and grantees 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 strictly alphabetical.

(4) Where the instrument describes the residence of the person making or giving it to be in some place outside the province in which the registry is situated, or where the instrument describes the chattels enumerated therein as being in some place outside that province, the Registrar shall forthwith and within three clear days after registration in the registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of the instrument to the Provincial Commissioner in whose province the places are situated, and if the places are in more provinces than one to each such Provincial Commissioner.

(5) Every abstract so transmitted shall be filed, kept and indexed by the Provincial Commissioner, and any person may search, inspect, make extracts from and obtain copies of the abstract so registered in the same manner and upon the same terms as to payment or otherwise as near as may be as in the case of instruments registered by the Registrar.

8. *Deleted by to Act No. 7 of 2007 Sch.*

[Act No. 36 of 1955, s. 2, Act No. 10 of 1988, s. 45, Act No. 7 of 2007, Sch.]

9. **Time for registration may be extended, and mistakes in register corrected**

The High Court, on being satisfied that the omission to register an instrument or an affidavit of renewal thereof within the time prescribed by this Act, or according to the form or effect required by this Act, or that the omission or misstatement in the register or in any affidavit of the name, residence or occupation of any person, or of any other matter, was accidental or due to inadvertence, may order the omission or misstatement to be rectified by extending the time for registration, or by the filing of a supplementary affidavit, or by the insertion in the register of the true name, residence or occupation, on such terms and conditions as it thinks fit.

10. **Renewal of registration**

   (1) The registration of an instrument, whether executed before or after the commencement of this Act, shall, during the subsistence of the instrument, be renewed as provided in this section once in every period of five years, commencing from the day of the registration.

   (2) If not so renewed, the registration shall cease to be of any effect at the expiration of any period of five years during which a renewal has not been made as required under this section.

   (3) The registration of an instrument shall be renewed by filing in the office of the Registrar an affidavit in Form 3 in the First Schedule or to the same effect.

   (4) The Registrar shall thereupon number the affidavit as if it were an instrument presented for registration, and renumber the instrument originally registered or the filed copy thereof, with a similar number, and mark thereon the date of renewal of registration, and shall enter particulars of the instrument in the register book in the same manner as on an original registration, and shall, also enter the date of renewal of registration in the column provided therefor in the register book.

   (5) *Deleted by Act No. 7 of 2007, Sch.*

   (6) The provisions of subsections (4) and (5) of section 7 shall apply *mutatis mutandis* to the renewal of the registration of an instrument.

[Act No. 36 of 1955, s. 2, Act No. 7 of 2007, Sch.]

11. **Register book and instruments may be searched and viewed**

The register books and indices provided for, and every instrument registered, under this Part, or the filed copy thereof, may be searched and viewed by any person during the office hours of the Registrar upon payment of a fee of five shillings for every search against any one person.

[Act No. 7 of 1975, Sch.]

12. **Office copies may be had**

Any person shall be entitled to have an office copy or an extract of or from any instrument with the schedules filed therewith, or of or from the copy thereof registered under this Part and an office copy of any affidavit filed under this Act,
on paying for it at the rate of one shilling for every folio of one hundred words contained in the copy or extract; or if he makes the copy or extract himself the Registrar shall, upon satisfying himself that the copy or extract is correctly made, certify it upon payment of a fee of ten shillings for each instrument or extract therefrom, and of fifty cents for every folio of one hundred words after the first ten folios.

13. Unregistered instruments to be void in certain cases

(1) Every instrument, unless registered in the manner provided under this Part, shall, upon the expiration of the time for registration or, if the time for registration is extended by the High Court, upon the expiration of the extended time, be deemed fraudulent and void as against—

(a) the official receiver or trustee in bankruptcy of the estate of the person whose chattels or any of them are comprised in the instrument;

(b) the assignee or trustee acting under any assignment for the benefit of the creditors of that person;

(c) any person seizing the chattels or any part thereof comprised in the instrument, in execution of the process of any court authorising the seizure of the chattels of the person by whom or concerning whose chattels the instrument was made, and against every person on whose behalf the process was issued,

so far as regards the property in or right to the possession of any chattels comprised in or affected by the instrument which, at or after the time of bankruptcy, or of the execution by the grantor of the assignment for the benefit of his creditors, or of the execution of process (as the case may be), and after the expiration of the period within which the instrument is required to be registered, are in the possession or apparent possession of the person making or giving the instrument, or of any person against whom the process was issued under or in the execution of which the instrument was made or given, as the case may be.

(2) So long as an instrument continues to be registered hereunder, the chattels comprised in that instrument shall not be deemed to be in the possession, order or disposition of the grantor, within the meaning of the Bankruptcy Act (Cap. 53).

14. Instrument not registered within time limited not to affect bona fide purchaser for value without notice

No unregistered instrument comprising any chattels whatsoever shall, without express notice, be valid and effectual as against any bona fide purchaser or mortgagee for valuable consideration, or as against any person bona fide selling or dealing with those chattels as auctioneer or dealer or agent in the ordinary course of his business.

14A. Fee on registration

There shall be paid to the Registrar, upon the registration or renewal of registration of every instrument under this Act, such fees as the Minister may prescribe through regulations.

[Act No. 7 of 2007, Sch.]
PART III – PROVISIONS RELATING TO INSTRUMENTS GENERALLY

15. Instrument to be attested

Sealing shall not be essential to the validity of an instrument; but execution of an instrument shall be attested by at least one witness, who shall add to his signature his residence and occupation.

16. Instrument to take effect from registration

An instrument shall be deemed to be made on the day on which it is executed, and shall take effect from the time of its registration.

17. Instrument to have inventory of chattels

An instrument shall contain or shall have endorsed thereon or annexed thereto a schedule of the chattels comprised therein, and, save as is otherwise expressly provided by this Act, shall give a good title only to the chattels described in that schedule, and shall be void as against the persons mentioned in sections 13 and 14 in respect of any chattels not so described.

18. Instrument void where grantor not owner of chattels

Save as is otherwise expressly provided by this Act, an instrument shall be void as against the persons mentioned in sections 13 and 14 in respect of any chattels which the grantor acquires or becomes entitled to after the time of the execution of the instrument.

19. Instrument subject to defeasance, etc., void in certain cases

(1) If an instrument is made or given subject to any defeasance, condition or declaration of trust not contained in the body thereof, that defeasance, condition or declaration of trust shall for the purposes of this Act be taken as part of the instrument, and shall be written on the same paper or parchment on which the instrument is written, otherwise the instrument shall be void as against the persons mentioned in sections 13 and 14 so far as regards the property in or right to the possession of any chattels comprised in or affected by the instrument.

(2) In the case of a document securing the payment of the moneys or of any part thereof payable by virtue of an instrument, it shall not be necessary for the purposes of this section to write that document on the same paper or parchment so long as the date, the names of the parties thereto and the nature of the security are set out in the instrument or in some schedule thereto.

20. Saving

Nothing in sections 17, 18 and 19 shall render an instrument void in respect of any of the following chattels—

(a) stock, wool and crops;

(b) fixtures, plant or trade machinery where they are used in, attached to or brought upon any place in substitution for any things of the same nature described in, or on the schedule to, the instrument.
21. Saving of laws prescribing formalities as to execution of instruments or securing rights thereunder

Nothing in this Act shall be deemed to affect any law for the time being in force—

(a) prescribing any formalities to be observed on or about the execution of instruments within the meaning of this Act; or

(b) conferring or securing any rights or claims under or in respect of any such instrument.

22. Form of instrument by way of security

(1) An instrument under this Act may be in Form 4 in the First Schedule or to the same effect with such variations or modifications thereof and additions thereto as are expressed in the instrument.

(2) An instrument securing an account current continues in full force and effect notwithstanding that the grantor may from time to time be in credit on that account.

23. Where successive securities are given over same chattels

Where an instrument is executed after the execution of a prior instrument which has never been registered, and comprises all or any of the chattels comprised in the prior instrument, then if the subsequent instrument is given as a security for the same debt as is secured by the prior instrument, or for any part of that 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 chattels comprised in the prior instrument, be void as against the persons mentioned in sections 13 and 14, unless it is proved to the court hearing the case that the subsequent instrument was bona fide given for the purpose of correcting some material error in the prior instrument, and not for the purpose of evading this Act.

PART IV – PROVISIONS RELATING TO CERTAIN SPECIFIC INSTRUMENTS

24. How stock to be described

Where stock are comprised in an instrument, they shall be described or referred to therein or in the schedule thereto by some brand or brands, earmark or earmarks, or other mark or marks upon them or shall be so described or referred to by sex, age, name, colour or other mode of description as to be reasonably capable of identification, otherwise the instrument shall be void as against the persons mentioned in sections 13 and 14, so far as regards such or so much of such stock as are not so described or referred to or are not reasonably capable of identification; and the land or premises on which the stock are or are intended to be depastured or kept shall be described or mentioned in the instrument or schedule.

25. Stock to include increase of stock, etc.

(1) An instrument comprising stock shall, unless the contrary be expressed therein, be deemed to include not only the stock comprised therein as provided
by section 24, but also the natural increase of that stock, and all stock of the
class or classes described in the instrument, the property of the grantor, branded,
earmarked, or marked as specified in the instrument; or which the grantor has
covenanted or agreed by the instrument to so brand, earmark or mark, and which
after the execution of the instrument are depasturing or are at, in, or upon any
lands or premises mentioned therein or in the schedule thereto, or any land and
premises used and worked as part of the first-mentioned land and premises,
whether or not the stock be removed therefrom.

(2) The grantee shall have the same legal property and right in all stock
which by virtue of subsection (1) are deemed to be included in the instrument as
he has in the stock described in the instrument or in the schedule thereto.

26. Instrument may comprise book debts

(1) Book or other debts shall be deemed to be chattels situated in the place
where the grantor of the instrument comprising them longest resided or carried
on business during the period of six months immediately before the execution of
the instrument.

(2) In every instrument comprising book or other debts each debt shall be
deemed to be a separate chattel, and shall be described in the schedule thereto
by setting forth the name of the debtor or firm of debtors and the amount of the
debt, so far as is reasonably necessary to show by whom the debts are owing,
and every such instrument shall be void as against the persons mentioned in
sections 13 and 14 in respect of any debt not so described.

(3) Nothing in this section shall apply to any debt secured or charged on land.

(4) Nothing in this section shall apply to any floating security granted by a
company registered under the Companies Act (Cap. 486), over the assets of that
company, where the security is registered in the manner required by that Act.

27. Assignments of moneys payable to suppliers of dairy produce

Nothing in section 26 shall apply to any deed or agreement in writing
purporting to assign to or to authorize the grantee to receive any moneys due at
the date thereof or thereafter from time to time to become due to the grantor for
or in respect of any milk, cream or butterfat supplied by the grantor to any butter,
cheese or other factory for the manufacture of dairy products; and such a deed or
agreement is not an instrument to which this Act applies.

28. Security may be given over crops

An instrument may be granted over the crops described or referred to therein
or in the schedule thereto then actually sown or growing or planted or to be sown
or grown or planted in or upon the lands mentioned in the instrument, and shall
entitle the grantee thereof to the whole of the crops therein mentioned, not only
while growing but afterwards when cut or separated from the soil, and whether
stacked or stored on the land where they were grown or on any other land or
premises, or whether the nature of the crop has been altered by a process of
curing or manufacture.
29. Saving of rights of landlord or mortgagee

No instrument referred to in section 28 shall prejudicially affect the rights of any landlord or mortgagee of any land whereon the crops are growing, unless and so far as the landlord or mortgagee has consented in writing to the instrument:

Provided that no such instrument being duly registered shall be extinguished or prejudicially affected by any subsequent sale, lease, mortgage or other encumbrance of or upon the land described or referred to in the instrument or in any schedule thereto.

30. Security may be given over wool

An instrument may be granted over the wool of the next ensuing clip to be shorn from the sheep described or referred to therein, or in the schedule thereto, then depasturing upon the lands mentioned therein or in the schedule, and shall entitle the grantee thereof to the wool of those sheep, not only while growing but afterwards when shorn from the sheep, and wherever that wool may be.

31. Wool securities not affected by sale, etc., of sheep

No subsequent sale, mortgage or other encumbrance of or affecting the sheep mentioned in an instrument referred to in section 30 shall extinguish, suspend, impair or prejudicially affect that instrument if duly registered, or the rights of the grantee thereof to the wool specified or referred to therein.

32. Security may be given over wool of mortgaged sheep

The grantor of any instrument over sheep may, with the consent in writing of the grantee thereof, and so far as is authorized by that consent, but not otherwise, give to some third person a valid security on the next ensuing clip of the wool of those sheep.

33. Further provision as to security given over wool

(1) If under any instrument comprising sheep, whether the instrument has been executed before or after the commencement of this Act, the grantee thereof shall from time to time be entitled to require the grantor to execute and give to the grantee an instrument over the wool growing, or to grow, upon the sheep for the time being subject to the instrument, or be entitled to require the grantor to deliver to the grantee the wool shorn from those sheep in each year during the continuance of the instrument, then the grantee shall, during the subsistence of the registration of the first-mentioned instrument, be deemed, notwithstanding the provisions of section 30, to possess a lien or security over each clip in the same degree and manner as if an instrument in respect of the wool had been actually executed by the grantor and registered under this Act, and that lien or security shall have the consequences mentioned in section 31.

(2) In every instrument comprising sheep, executed after the commencement of this Act, there shall be implied (unless that implication is expressly negativad) a covenant by the grantor to deliver to the grantee the wool shorn from those sheep in each year during the continuance of the instrument.
PART V – ENTRY OF SATISFACTION

34. Memorandum of satisfaction may be filed

(1) In the case of an instrument, upon the production to the Registrar of a memorandum of satisfaction in Form 5 in the First Schedule or to the same effect, signed by the grantee thereof or his attorney, discharging the chattels comprised in the instrument or any specified part thereof from the moneys secured thereby or any specified part thereof, or from the performance of the obligation thereby secured or any specified part thereof, and on production of the instrument and payment of a fee of thirty shillings, the Registrar shall file the memorandum and make an entry thereof in the register book on the page where the instrument is registered.

(2) The execution of the memorandum shall be attested by at least one witness, who shall add to his signature his residence and occupation, and shall be verified by the affidavit of that witness.

(3) The Registrar may dispense with the production of the instrument on proof by affidavit to his satisfaction that the instrument has been destroyed or cannot be found or cannot be produced.

[Act No. 10 of 1988, s. 45.]

35. Effect of filing memorandum

From and after the filing of a memorandum of satisfaction the debt or charge created by the instrument shall be vacated to the extent specified in the memorandum, and the interest of the grantee of the chattels expressed to be discharged shall vest in the person for the time being entitled to the equity of redemption therein, but so far only as that interest is expressed by the memorandum to be determined, and subject to any lien or equity affecting the chattels.

36. Public Trustee may sign memorandum in certain cases

Where the grantee of an instrument by way of security is absent from Kenya, and there is no person in Kenya authorized to discharge it on his behalf at or after the date appointed for the payment of the moneys secured by the instrument, the Public Trustee may receive those moneys in trust for the person entitled thereto, and may sign a memorandum of satisfaction in lieu of that person, and upon the filing thereof that memorandum, signed by the Public Trustee, shall be as effectual as a memorandum signed by the person entitled to those moneys.

37. Court may order memorandum to be filed

The High Court may, upon application made for that purpose, order a memorandum of satisfaction to be filed in respect of any instrument if it appears that the debt (if any) for which the instrument was given as security has been satisfied or discharged, or that the obligation for securing the performance of which the instrument was given has been performed; and thereupon that order may be filed by the Registrar and entered in his book as if it were a memorandum within the meaning of section 34.
PART VI – SALE OF CHATTELS AND GRANTOR’S INTEREST THEREIN

38. Sale together with land

Chattels under this Act or any part thereof may be sold along with or separately from land (if any) mortgaged to secure payment of the same moneys as are secured by any instrument under this Act.

39. Grantor’s interest in chattels may be sold in execution of judgment against him

(1) Where legal process issues against the chattels of a judgment-debtor for the execution of a judgment of any court, and those chattels, or any of them, are comprised in an instrument under this Act, the officer charged with the execution of the process may, in lieu of seizing and selling the chattels so comprised, sell the right, title and interest of the judgment-debtor therein.

(2) The grantee of the instrument, on receiving notice of the purchase of that right, title and interest, may take possession of the chattels comprised in the instrument.

(3) A grantee so taking possession shall be deemed to hold the chattels in trust for the purchaser of the right, title and interest, subject to payment of all moneys due under the instrument.

(4) If the chattels are afterwards sold under the power of sale expressed or implied in the instrument, and any surplus remains out of the proceeds of the sale after payment of all moneys due under the instrument, the grantee shall on demand pay over that surplus to the purchaser of the right, title and interest.

(5) If the grantee makes default herein, the purchaser may bring an action against him to recover the surplus as money received to the use of the purchaser.

40. Saving in respect of interpleader process

Nothing in section 39 shall be deemed to affect the right of an execution creditor to test the validity of any instrument by interpleader process.

PART VII – IMPLIED COVENANTS, ETC

41. Covenants for title

There shall be implied in every instrument the covenants for title on the part of the grantor set out in the Second Schedule and those implied covenants shall have the same effect as if they were respectively set out at length in the instrument.

42. Covenants, etc., implied in instruments

There shall be implied in every instrument the covenants, provisos, agreements and powers set out in the Third Schedule or such of them as are applicable; and those implied covenants, provisos, agreements and powers shall, subject to any modifications thereof expressed in the instrument, have the same effect as if they were respectively set out therein at length.
43. Meaning of abbreviated expressions

Such of the expressions defined in section 2 or in the Fourth Schedule as are used in any instrument, or in any of the covenants, provisos, agreements or powers implied therein by this Act, shall, unless the contrary is expressed in the instrument, or unless manifestly inconsistent with the context, have the meanings given to them in section 2 or the Fourth Schedule, and those meanings shall be implied in the instrument as fully and effectually as if they were set out therein.

44. Covenants to be several as well as joint

Where there are two or more grantors or two or more grantees of any instrument, then any covenants, conditions, provisos, agreements and powers expressed in the instrument, or implied therein by this Act, and imposing an obligation on the grantors or grantees, or ensuring for the benefit of the grantors or grantees, shall, except in so far as a contrary intention appears, be deemed to impose that obligation, or confer that benefit, as the case may be, severally as well as jointly.

45. Covenants to bind executors

Except in so far as the contrary intention appears, all covenants, conditions, provisos, agreements and powers expressed in any instrument, or implied therein by this Act, shall bind the executors, administrators and assigns of the person, or the successors and assigns of a company or corporation, upon whom the covenants, conditions, provisos, agreements and powers impose an obligation, and shall operate for the benefit of the executors, administrators and assigns of the person, or the successors and assigns of the company or corporation, for whose benefit they ensure.

46. Covenants may be negatived or varied

All or any of the covenants, provisos, conditions, agreements or powers set out in the Second, Third and Fourth Schedules may be negatived, modified or altered, or others may be added to them, by express words in the instrument.

PART VIII – TRANSFER OF INSTRUMENTS

47. Form of transfer of instrument

An instrument may be transferred by a document in the form in the Fifth Schedule or to the same effect, and every transferee, his executors, administrators and assigns shall, in respect of the instrument transferred, have the same rights, powers and remedies, and be subject to the same obligations, as the transferor.

48. Registration of transfers

Transfers of instruments may be registered at any time after the execution thereof in the same manner as instruments are registered; and, in case two or more transfers of any one instrument are executed, a registered transfer shall have priority over an unregistered transfer; and, in case two or more transfers of any one instrument are registered, priority shall be given to those transfers in the order of their time of registration.
PART IX – OFFENCES AND PENALTIES

49. Repealed by Act No. 31 of 1958, s. 121.

FIRST SCHEDULE

[Sections 5, 7, 10, 22 and 34.]

FORM 1

AFFIDAVIT ON REGISTRATION OF INSTRUMENT

In the High Court of Kenya. In the matter of the Chattels Transfer Act.

I, [full name of deponent], of [place of residence or business], Kenya, [occupation], make oath and say as follows:—

1. The paper writing hereto annexed and marked “A” is a true copy of an instrument under the above-mentioned Act, and of every schedule or inventory thereon endorsed or thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by [full name of grantor].

2. The said instrument was made and given by the said [full name of grantor] on the ..............................................................................................................

3. I was present, and saw [full name of grantor] duly execute the said instrument on the ............................................................................................

4. The said [full name of grantor] resides at [place of residence], and is [occupation].

5. The name subscribed to the said instrument as that of the witness attesting the due execution thereof by the said [name of grantor] is in the proper handwriting of me, this deponent.

6. I am [occupation] and reside at [place of residence].

.......................................................

E.F.

Sworn at .......................... the ............................ day of .................., 20 ..........

Before me ..............................................

G.H.

N.B.—If the grantor is absent from Kenya and executes the instrument by attorney, it shall be sufficient if the deponent states his belief as to the present address of the grantor. In the case of a company the registered office should be stated instead of the place of residence.

Where the original instrument is filed, the first paragraph of this affidavit should be struck out, and the second and third paragraphs will require some alterations.
**FORM 2**

<table>
<thead>
<tr>
<th>No.</th>
<th>By whom given</th>
<th>To whom given</th>
<th>Name</th>
<th>Residence</th>
<th>Occupation</th>
<th>Nature and date of instrument</th>
<th>Date of registration</th>
<th>Date and time of registration</th>
<th>Date and time of renewal</th>
<th>Satisfaction entered</th>
</tr>
</thead>
</table>
FIRST SCHEDULE—continued

FORM 3

AFFIDAVIT ON RENEWAL OF REGISTRATION OF INSTRUMENT

In the High Court of Kenya. In the matter of the Chattels Transfer Act.

I, [full name of deponent] of [place of residence or business], Kenya, [occupation], make oath and say as follows:—

1. I am the grantee of the instrument registered under the above Act, as No. ...., ........................................... and made between [state names of parties to instrument, their residences and occupations, as appearing therein; also names of the parties to the instrument, their residences and occupations at the time of the making of the affidavit].

[If the affidavit is made by an agent, clerk or servant of the grantee or grantor, state that fact, and also state briefly how deponent has become acquainted with the facts deposed to.]

2. The said instrument was registered on the ..................... day of .................., 20 ..........

3. The registration of the said instrument was last renewed on the ..................... day of ..........................., 20 .........

[This paragraph is inapplicable where registration of the instrument is being renewed for the first time.]

4. The said instrument is still subsisting, and in full force and effect.

...................................................... C.D.

Sworn at ......................... this ............................ day of .................., 20 ..........

Before me .................................... G.H.

FORM 4

INSTRUMENT

A.B., of [state residence and occupation], being owner of the chattels mentioned in the schedule hereto [where a schedule is necessary], in consideration of the sum of Sh. ............................................................... lent and advanced to him by C.D., of [state residence and occupation] [or, if consideration not an advance of money, state any other consideration for which mortgage given], does hereby assign and transfer them to the said C.D. by way of mortgage to secure the payment of the said sum of Sh. ................................... on the .......................... day of ........................ , 20 ........, with interest thereon in the meantime, and so long as that sum or any part thereof remains unpaid, at the rate of £ ...........................................................................................................

per centum per annum by ................. payments on the ................. day of
FIRST SCHEDULE, FORM 4—continued

the months of ........................................ and ........................................ in each year.

[Implied covenants, powers and provisions may be varied or negatived.]

In witness whereof A.B. has hereunto subscribed his name, this ........... day of ........................................, 20 ...........

[Schedule]

.......................................................

Signed by the above-named A.B. in the presence of

.......................................................

[Residence and occupation]

FORM 5

MEMORANDUM OF SATISFACTION

I, C.D., hereby consent to a memorandum of satisfaction being written upon the instrument [or registered copy of the instrument] given for securing the sum of Sh. ................................................................................................., bearing the date the ................. day of ................................, 20.............., and made between ....................................... and .................................... and registered on the ................. day of ................., 20...., as No. ....................... under the Chattels Transfer Act, the moneys for which the instrument was given as a security having been satisfied.

Dated this ......................... day of .................................., 20 ..........

.......................................................

(Grantee or Assignee)

Witness .......................................................

[Residence and occupation.]

SECOND SCHEDULE

[Section 41.]

COVENANTS FOR TITLE

1. That the grantor has good right and full power to assign to the grantee the chattels purporting to be hereby assigned; and that they are free and clear from encumbrances other than those herein mentioned.
SECOND SCHEDULE—continued

2. That the grantor will, at his own cost, do and execute all such acts, deeds, matters and things for the better assigning the chattels hereby assigned, or intended so to be, as by the grantee may from time to time be reasonably required.

THIRD SCHEDULE

[Section 42.]

COVENANTS, PROVISOS AND POWERS IMPLIED IN INSTRUMENT

1. That the grantor will pay to the grantee the principal money and interest hereby secured, after the rate and at the time herein mentioned, without any deduction whatever.

2. That the grantor will also pay interest on any further advances that may be secured by this instrument, computed from the time of making them respectively, at the rate and on the dates mentioned for the payment of interest in this instrument.

3. That the grantor will not, at any time while any moneys remain owing on his security, do or allow any act or deed whereby the chattels hereby assigned shall or may become prejudicially affected, and will at all times, while any moneys remain owing on this security, duly pay all rents from time to time coming due in respect of any lands or premises on which any of the chattels hereby assigned are for the time being situated.

4. That the grantor will at all times, while any moneys remain owing on this security, keep and maintain all and singular the chattels hereby assigned in the same good order and condition in which they are at the date hereof; and, if any of them are damaged or destroyed, or cease to exist, will repair the damage, or replace the chattels so destroyed or ceasing to exist, with other chattels of the same nature; and further will, if required so to do by the grantee, execute any instrument that may be necessary to give to the grantee security over chattels replacing the chattels which have been destroyed or have ceased to exist.

Provisos and Agreements Implied in Instruments

5. Provided always, and it is hereby declared and agreed, that until the grantor makes default in the payment of any of the moneys hereby secured, or in the observance or performance of any covenant, condition or agreement herein expressed or implied, and on his part to be observed and performed, or until the grantor becomes bankrupt, or until execution is levied against the goods of the grantor and execution is not stayed or satisfied within ten days, the grantor may retain possession and use of the chattels hereby assigned.

6. Provided further that the giving by the grantor to the grantee of any bill of exchange or promissory note for the whole or any part of the money hereby secured shall not, until that bill or note is honoured or met, be considered as
THIRD SCHEDULE—continued

payment of or on account of the moneys secured by this instrument, or in any way affect or alter the rights or powers of the grantee by virtue of this instrument; and no promissory note or bill of exchange which before, at, or at any time after the execution of this instrument may be given by the grantor to the grantee for the whole or any portion of the moneys hereby secured, or the remedy thereon of the grantee or of the holder thereof, shall merge in the covenants herein expressed or implied.

Powers Implied in Instruments

7. Provided always, and it is hereby declared and agreed, that if default is made by the grantor in payment of any of the principal or interest moneys hereby covenant to be paid on the day on which they ought to be paid according to the terms hereof, or in the observance or performance of any of the covenants, conditions or agreements herein expressed or implied, and on the grantor’s part to be observed and performed, or if the grantor becomes bankrupt, or if at any time execution is levied against the goods of the grantor that execution is not stayed or satisfied within ten days, then and in that case the grantee, either personally or by his agent or servants may immediately thereupon or at any time thereafter, without any further consent by the grantor, and without giving to the grantor any notice, or waiting any time, and notwithstanding any subsequent acceptance of any payment of any money due on this security, enter upon any lands or premises whereon the chattels for the time being subject to this security may be, and take possession thereof, and sell or dispose of them or any part thereof by private sale or public auction, separately or together, in such lots and generally in such manner in every respect as the grantee deems expedient, with power to allow time for payment of purchase-money, or to buy in the chattels or any part thereof at the auction, and to rescind or vary the terms of any contract or sale, and to resell without being answerable for any loss or expense occasioned thereby, and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper; and the receipt of the grantee or his agent shall be a sufficient discharge to any purchaser at the sale for any of the purchase-money; and upon any sale purporting to be made in exercise of the powers herein expressed or implied no purchaser shall be bound to inquire as to the propriety or regularity of any such sale, or be affected by notice express or constructive that any such sale is improper or irregular.

And it is hereby declared and agreed that the grantee shall stand possessed of the proceeds of any such sale upon trust, after paying thereout the costs, charges and expenses of and incidental to taking possession, sale, and the preparation and registration of this instrument, to apply them in reduction of the moneys then owing on the security of this instrument, including all moneys herein covenant to be paid, notwithstanding that they may not then have become due, or that any promissory notes or bills of exchange may then be current for them, and to pay the balance to the grantor.

Powers, Covenants and Provisions to be Implied in Instruments over Stock

8. That during the continuance of this security, the grantee, his agents or servants, may from time to time, and at reasonable times for that purpose, enter into and upon the said lands or premises, or any other lands or premises
THIRD SCHEDULE—continued

whereon the stock for the time being subject to this security are depasturing, for the purpose of viewing their state and condition; and that the grantor will, upon receiving seven days’ previous notice in writing delivered to him personally or addressed to him through the ordinary course of post or otherwise at his last-known place of abode in Kenya, give and afford to the grantee, his agents or servants, all reasonable assistance to enable the grantee, his agents or servants to view them accordingly.

9. That there are now depasturing upon the said lands and premises all the stock herein respectively mentioned as depasturing thereon. And that the grantor will not, during the continuance of this security, without first obtaining the grantee’s consent in writing, further encumber the stock for the time being subject to this security, or change the general quality, character or description thereof or remove them or any part thereof from the said lands or premises, or sell them or any part thereof except in the ordinary course of business, but no sale shall be made so as to reduce the number of the stock stated in this security.

And that the grantor will, during the continuance of this security, at the usual and convenient season for so doing, well and properly brand, earmark and mark with the brand, earmark and mark herein specified, all stock for the time being subject to this security, so that all such stock shall bear and continue to bear the brands, earmarks and marks herein specified.

And will not, without the leave in writing of the grantee, brand, earmark or mark, or permit to be branded, earmarked or marked any stock for the time being subject to this security with any brands, earmarks or marks, other than the brands, earmarks or marks herein specified.

And will at all times during the continuance of this security take, use and adopt all due and proper means for keeping and maintaining all stock now depasturing or that may during the continuance of this security be brought upon the said lands or premises or any part thereof, free from disease, and in clean and healthy condition: And will at all times during the continuance of this security pay and defray all expenses in and about the good and proper conduct and management of the said lands, stock and premises, and employ and maintain on the said lands or premises efficient and proper assistance to assist in that conduct and management: And will every year, on demand by the grantee, render and deliver to him a return or account in writing setting forth the number, ages and sexes of the stock for the time being subject to this security and the places where they are depasturing or kept.

10. That all stock belonging to the grantor, branded, earmarked or marked as aforesaid, or covenanted so to be, of which possession has been taken, under the power in that behalf herein contained, shall be subject to the same powers, provisions, declarations and agreements as are herein expressed or implied of and concerning the stock and increase of stock herein expressed to be assigned, and may be dealt with in the same manner in all respects as if the stock of which possession is taken as aforesaid had formed part of the stock hereby assigned: And that the grantor will, at his own cost and charges, do and execute all such deeds, matters and things as may be necessary, or as the grantee may think proper, for the further, better and more perfectly assigning and assuring to the
THIRD SCHEDULE—continued

grantee the stock, and increase of stock, and all and singular other the premises hereby assigned or intended so to be, or the stock for the time being on the said lands or premises, and any stock, branded, earmarked or marked as aforesaid, or covenanted so to be, of which possession has been taken as aforesaid, so that they may be held by the grantee upon and for the same ends, intents and purposes, and with, under, and subject to the same powers, provisos, agreements and declarations as are herein expressed or implied of and concerning the stock and premises herein expressed to be assigned: And will from time to time, and at all times during the continuance of this security, pay all and singular the fees and other outgoings and payments, and perform and observe all rules and regulations, and conditions which by the owner for the time being of the said stock or premises respectively now are or shall become at any time hereafter due, payable, observable or performable respectively: And that in case the grantor fails or neglects to pay the fees and other outgoings and payments as aforesaid, or any of them, or any part thereof, the grantee may make the payments respectively: And that the grantor will from time to time and at all times hereafter, on demand, pay or cause to be paid to the grantee all sums of money paid or advanced by the grantee in or towards payment as aforesaid, with interest at the rate of eight pounds per centum per annum from the time or respective times when the sums were advanced or paid: And that in the meantime, and until those sums of money have been repaid with interest as aforesaid, the stock for the time being subject to this security shall stand charged and chargeable with the payment of those sums as if they had been principal moneys secured by this instrument. That in case the grantee exercises any power of entry or taking possession vested in him hereunder, then he, or any person or persons appointed by him for the purpose, may continue in possession of the said stock and of the lands or premises whereon the same are depasturing or kept until the sale thereof, and manage, conduct and carry on the said lands and stock, and employ servants and assistants, and provide all necessary stores in that behalf in all respects as the grantor could do if that power had not been exercised; and the grantee for any such purpose shall be entitled without any interference by the grantor to use all branding, earmarking, marking and other implements and plant on or used in connection with the said lands or premises; and, further, that the costs, charges, and expenses of so doing, from the time of entry and taking possession until the sale and delivery of the said stock and premises to any purchaser thereof, shall, together with interest thereon at the rate aforesaid, until payment, be a charge upon the stock for the time being subject to this security.

Power to be Implied in Instruments over Crops

11. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment the crops hereby assigned shall be gathered, carried away, and made marketable either by the grantor or by the grantee at the option of the grantee, but in either case at the expense of the grantor, and shall (if gathered by the grantor) be delivered by the grantor to the grantee or his order at the place of delivery herein mentioned (or, if no such place is mentioned in the instrument, at such place as the grantee directs); and the grantee may either sell them in Kenya, in one or more lots, by public auction or private contract, or partly in the one way and partly in the other, and upon such terms and conditions as to
THIRD SCHEDULE—continued

credit and otherwise as he thinks fit, or may cause them to be shipped or exported to any place or places out of Kenya, to be sold by his agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the crops or by any sale or sales thereof, whether in Kenya or elsewhere, or by the act, neglect or default of any agent, broker or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that he may be compelled to pay in order to protect his security over the crops, and all costs, mercantile and other charges and expenses incurred in and about the harvesting sale, shipment and carrying away of the crops, and the storage and freight thereof, or on any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

12. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment of the same, the flock of sheep mentioned in this instrument, and the increase thereof, and all other sheep which if this instrument were an instrument by way of security over sheep would be included therein, shall be shorn either by the grantor, or by the grantee, at the option of the grantee, but in either case at the expense of the grantor, at the usual and proper season for so doing; and the wool of such sheep shall with all convenient speed be properly sorted and packed in good bales, marked with the proper brand of such wool, and shall be delivered by the grantor to the grantee or his order at the place of delivery herein mentioned (or, if no such place is mentioned in the instrument, at such place as the grantee directs; and the grantee may either sell it in Kenya, in one or more lots, by public auction or private contract, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he thinks fit, or may cause it to be shipped or exported to any place or places out of Kenya, to be sold by his agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the wool or by any sale or sales thereof, whether in Kenya or elsewhere, or by the act, neglect or default of any agent, broker or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that he may be compelled to pay in order to protect his security over the wool, and all costs, mercantile and other charges and expenses incurred in and about the shearing of the sheep, and the packing, carrying away, sale and shipment of the said wool, or on any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

FOURTH SCHEDULE

[Section 43.]

MEANING OF ABBREVIATED EXPRESSIONS

1. The words “upon demand” mean upon demand being made by notice in writing, signed by the person entitled to make the demand, or any agent or clerk
FOURTH SCHEDULE—continued

or servant of that person, served upon the person upon whom the demand is to be made, either personally or by posting the notice in a registered letter addressed to him at his usual or last-known place of abode in Kenya.

2. The words “further advances” mean such further sum or sums of money as may be advanced or paid by the grantee to the grantor after the execution of this instrument, and include also such sums as may become owing by the grantor to the grantee during the continuance of this security for goods supplied, for bills and notes discounted and paid, and for other loans, credits and advances that may during the continuance of this security be made by the grantee to or for the accommodation or at the request of the grantor.

3. The words “will, upon demand, pay the balance due upon the account current between them” mean that the grantor will, on demand, pay to the grantee the balance on the account current of the grantor with the grantee for the time being owing for and on account of the moneys advanced on the execution hereof, or intended to be hereby secured, and for further advances as defined by the Chattels Transfer Act, and for interest, commission, and other lawful charges from the day of the demand being made till the actual payment thereof at the rate mentioned in this instrument without any deduction; and it is hereby declared and agreed that the account current shall be made up with half-yearly rests on the half-yearly days mentioned for that purpose in this instrument, in each year (or, if no such days are mentioned in the instrument then on the 31st March and the 30th September in each year), until the final balance of account is fully paid; and that this instrument shall be a continuing security for all moneys for the time being owing by the grantor to the grantee, notwithstanding that the current account between them may have at any time theretofore been in credit by payments, settlement of account, or otherwise; and also that upon every such half-yearly day interest shall be considered as converted into principal, and the balance shall be chargeable with interest as upon further advances, and also that in making up the account interest at the rates specified in this instrument shall be calculated on the daily debtor balances; and also that, upon any such demand, all bills of exchange or promissory notes given by the grantor to the grantee and then current may, at the option of the grantee, and shall, in case of entry into possession or sale by the grantee, be considered as matured or become due, subject to a rebate of interest upon the amount thereof for the time during which they have to run, to be calculated at the rate at which interest is payable under this instrument, and that the amount of those bills or promissory notes, subject to that rebate, may be charged to the grantor in such account at the time of making the demand.

4. The words “will insure” mean that the party liable to insure will insure and at all times while this instrument remains in force will keep insured against loss or damage by fire all chattels comprised herein of a nature or kind capable of being insured against loss or damage by fire, such insurance to be effected in the name of the other party to this instrument and in some public insurance office to be approved of by him, and to be for the full amount herein specified (or, if no amount is specified then for the full insurable value of the chattels); and will, at the request of the other party, hand over to and deposit with him the policy of every such insurance, and produce and deliver to him the receipt or receipts for the annual or other premiums payable on account thereof; and also that all moneys received under any such insurance shall, in the event of loss or damage
FOURTH SCHEDULE—continued

by fire, be laid out and expended, so far as they extend, in making good the loss or damage (or, if the instrument is given by way of security, in discharging the moneys hereby secured, if the other party so elects):

Provided that, if default be made in the observance or performance of this covenant, the other party may, without prejudice to and concurrently with the powers granted him by this instrument or otherwise by law, insure the chattels, and may forthwith recover the costs and charges of insurance from the party liable to insure in the same manner as if they had been advanced by way of loan on the security of this instrument.

5. The words “will brand, earmark and mark” mean that the party liable to brand, earmark and mark will keep all the stock subject to this security at all times while this instrument remains in force distinctly branded, earmarked and marked with the brands, earmarks and marks specified in this instrument, failing which it shall be lawful for, but not imperative on, the other party hereto to enter upon any lands or premises where any stock subject to this security are and to take possession thereof, and brand, earmark and mark them with the brands, earmarks and marks specified in this instrument, with the right to use all branding, earmarking, marking and other implements and plant requisite therefor, and all costs, charges and expenses occasioned to him by so doing shall be recoverable from the party liable to brand, earmark and mark as if they had been advanced by way of loan as a further advance on the security of this instrument.

FIFTH SCHEDULE
[Section 47.]

TRANSFER OF INSTRUMENT

I, C.D., of [state residence and occupation of transferor], the grantee of the instrument registered in the office of the Registrar-General .................................. as No. ......................................, under the Chattels Transfer Act, do in consideration of [state consideration], hereby transfer to X.Y., of [state residence and occupation of transferee] all my rights, title, estate and interest in and to the chattels comprised in the said instrument.

As witness my hand this ............... day of ......................................, 20 ..........

...................................................... C.D.

Signed by the said C.D. in the presence of

...................................................... E.F

[Residence and occupation]