

No. 24 OF 1930.

[13TH JUNE, 1930.] Date of assent.

**An Ordinance to make Provision Relating to Chattel Securities and the Transfer of Chattels.**

13th June, 1930.

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as “ the Chattels Short title. Transfer Ordinance, 1930.”

2. In this Ordinance unless the context otherwise requires :— Interpretation.

“ 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, 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 such 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 such 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.

“ Instrument ” does not include the following :—

- (a) Securities over, or leases of, fixtures (except “ trade machinery ” as hereinafter defined), when mortgaged

or leased in any mortgage or lease of any freehold or leasehold interest in any land or building to which they are affixed, and whether or not such fixtures are separately mortgaged or leased by mention thereof in separate words, and whether or not power is given by such mortgage or lease to sever such fixtures from the land or building to which they are affixed without otherwise taking possession of or dealing with such land or building.

- (b) Assignments for the benefit of the creditors of the person making the same.
- (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 authorise, either by indorsement or delivery, the possessor of such 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 such company or other corporate body.
- (j) Mortgages or charges granted or created by a company incorporated or registered under the Companies Ordinance.
- (k) Hire-purchase agreements.

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" 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 hereinbefore defined, 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 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.

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

**3.** (1) 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 such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be an instrument within the meaning of this Ordinance 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 the rents and profits thereof, demises the said land or any part thereof to the mortgagor at a fair and reasonable rent; the instrument whereby such demise is effected shall not be deemed to be an instrument within the meaning of this Ordinance.

(2) Machinery and plant used in connexion with the production, preparation or manufacture of agricultural products shall not by reason of being attached to buildings or land become part of the land, nor shall any estate or interest therein pass by virtue of such attachment.

#### REGISTRATION.

4. All persons shall be deemed to have notice of an instrument and of the contents thereof when and so soon as such instrument has been registered as provided by this Ordinance :

Registration of instrument to be notice.

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

5. Registration of an instrument shall be effected by filing the same and all schedules indorsed thereon, annexed thereto, or referred to therein, or a true copy of such instrument and the schedules, and an affidavit in the form numbered (1) in the First Schedule hereto or to the like effect, in the office of the Registrar.

Mode of registration.

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

Limitation of time for registration.

Provided that when the time for registering an instrument expires on a day whereon the Registrar-General's office is closed, the registration shall be valid if made on the next following day on which such 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.

Register book  
and index to be  
kept

7. (1) The Registrar shall cause every instrument registered in his office under this Ordinance 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 the form numbered (2) in the First Schedule hereto.

(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 such grantor.

(3) Such 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.

Local  
registration of  
abstracts of  
instruments.

(4) Where the instrument describes the residence of the person making or giving the same to be in some place outside the province in which the registry is situate or where the instrument describes the chattels enumerated therein as being in some place outside such 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 such instrument to the provincial commissioner in whose province such places are situate, and if such places are in more provinces than one to each such provincial commissioner. 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 like manner and upon the like terms as to payment or otherwise as near as may be as in the case of instruments registered by the Registrar.

Fee on  
registration.

8. There shall be paid to the Registrar upon the registration of every instrument the fee of five shillings.

9. The Supreme Court, on being satisfied that the omission to register an instrument or an affidavit of renewal thereof within the time prescribed by this Ordinance, or according to the form or effect required by this Ordinance 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 such omission or misstatement to be rectified by extending the time for such 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.

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

#### RENEWAL OF REGISTRATION.

10. (1) The registration of an instrument, whether executed before or after the coming into operation of this Ordinance shall, during the subsistence of such instrument, be renewed in manner hereinafter mentioned once in every period of five years, commencing from the day of the registration.

Registration to be renewed every five years.

(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 hereby required.

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

Mode of renewal.

(4) The Registrar shall thereupon number such affidavit as if the same were an instrument presented for registration, and renumber the instrument originally registered in the said office, 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 like 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) There shall be paid to the Registrar upon the renewal of registration of any instrument the fee of five shillings.

Fee on renewal.

(6) The provisions of sub-section (4) of section 7 of this Ordinance shall apply *mutatis mutandis* to the renewal of the registration of any instrument.

## SEARCHES AND OFFICE COPIES.

Register book  
and instruments  
may be searched  
and viewed.

**11.** The register books and indices hereinbefore provided for, and every instrument registered as aforesaid, or the filed copy thereof, may be searched and viewed by all persons during the office hours of the Registrar upon payment of a fee of two shillings for every search against any one person.

Office copies  
may be had.

**12.** 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 as aforesaid, and an office copy of any affidavit filed under this Ordinance, on paying for the same at the rate of one shilling for every folio of one hundred words contained in such copy or extract; or if he makes such copy or extract himself the Registrar shall, upon satisfying himself that such copy or extract is correctly made, certify the same 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.

## EFFECT OF NON-REGISTRATION.

Unregistered  
instruments to  
be void in  
certain cases.

**13.** (1) Every instrument, unless registered in the manner hereinbefore provided, shall, upon the expiration of the time for registration, or if the time for registration is extended by the Supreme Court, then upon the expiration of such 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 any such instrument;
- (b) the assignee or trustee acting under any assignment for the benefit of the creditors of such person;
- (c) any person seizing the chattels or any part thereof comprised in any such instrument, in execution of the process of any Court authorising the seizure of the chattels of the person by whom or concerning whose chattels such instrument was made, and against every person on whose behalf such 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 such bankruptcy, or of the execution by

the grantor of such assignment for the benefit of his creditors, or of the execution of such 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 Ordinance, 1925.

No. 1 of 1926.

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

Instrument not registered within time limited not to affect *bonâ fide* purchaser for value without notice.

#### AS TO INSTRUMENTS GENERALLY.

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

Instrument to be attested.

**16.** Every 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.

Instrument to take effect from execution.

**17.** Every 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 Ordinance, shall give a good title only to the chattels described in the said schedule, and shall be void as against the persons mentioned in sections 13 and 14 hereof in respect of any chattels not so described.

Instrument to have inventory of chattels.

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

Instrument void where grantor not owner of chattels.

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

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

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

Saving.

**20.** Nothing in the three last preceding sections shall render an instrument void in respect of any of the following chattels, that is to say:—

- (a) Stock, wool, and crops.
- (b) Fixtures, plant, or trade machinery where the same are used in, attached to, or brought upon any place in substitution for any of the like nature described in, or on the schedule to, such instrument.

Saving of laws  
prescribing  
formalities as  
to execution of  
instruments or  
securing rights  
thereunder.

**21.** Nothing in this Ordinance 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 Ordinance; or
- (b) conferring or securing any rights or claims under or in respect of any such instrument.

#### FORM OF INSTRUMENTS.

Form of  
instrument by  
way of security.

**22.** (1) Every instrument under this Ordinance may be in the form number (4) in the First Schedule hereto or to the like 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 such account.

23. 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 such prior instrument, then if such subsequent instrument is given as a security for the same debt as is secured by the prior instrument, 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 chattels comprised in the prior instrument, be void as against the persons mentioned in sections 13 and 14 hereof, unless it is proved to the Court having cognizance of the case that the subsequent instrument was *bonâ fide* given for the purpose of correcting some material error in the prior instrument, and not for the purpose of evading this Ordinance.

Where successive securities are given over same chattels.

#### INSTRUMENTS COMPRISING STOCK.

24. Where stock are comprised in any 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 hereof, 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 such stock are or are intended to be depastured or kept shall be described or mentioned in such instrument or schedule.

How stock to be described.

25. An instrument comprising stock shall, unless the contrary be expressed therein, be deemed to include not only the stock comprised therein as provided by the last preceding section, but also the natural increase of such 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 such instrument to so brand, earmark, or mark, and which after the execution of such instrument are depasturing or are at, in, or upon any lands or premises mentioned in such instrument 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 such stock be

Stock to include increase of stock, etc.

removed therefrom. The grantee shall have the same legal property and right in all stock which by force of this section are deemed to be included in the instrument as he has in the stock described in the instrument or in the schedule thereto.

#### ASSIGNMENT OF BOOK AND OTHER DEBTS.

Instrument may comprise book debts.

**26.** (1) Book or other debts shall be deemed to be chattels situate in the place where the grantor of the instrument comprising them longest resided or carried on business during the period of six months next 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 of this Ordinance in respect of any debt not so described.

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

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

Assignments of moneys payable to suppliers of dairy produce.

**27.** (1) Nothing in the last preceding section shall apply to any deed or agreement in writing purporting to assign to or to authorise 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 such grantor to any butter, cheese or other factory for the manufacture of dairy products.

(2) Such a deed or agreement is not an instrument to which this Ordinance applies.

#### SECURITIES OVER CROPS.

Security may be given over crops.

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

Saving of rights of landlord or mortgagee.

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.

#### SECURITIES OVER WOOL.

**30.** 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 such schedule, and shall entitle the grantee thereof to the wool of such sheep, not only while growing but afterwards when shorn from the sheep, and wherever such wool may be.

Security may be given over wool.

**31.** No subsequent sale, mortgage, or other encumbrance of or affecting the sheep mentioned in any such instrument 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.

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

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

Security may be given over wool of mortgaged sheep.

**33.** (1) If under any instrument comprising sheep, whether such instrument has been executed before or after the commencement of this Ordinance, the grantee thereof shall from time to time be entitled to require the grantor to execute and give to such grantee an instrument over the wool growing, or to grow, upon the sheep for the time being subject to such instrument, or be entitled to require the grantor to deliver to

Further provision as to security given over wool.

the grantee the wool shorn from such sheep in each year during the continuance of such instrument, then and in such case the grantee shall, during the subsistence of the registration of such first-mentioned instrument, be deemed, notwithstanding the provisions of section 30 hereof, 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 Ordinance, and such lien or security shall have the consequences mentioned in section 31 hereof.

(2) In every instrument comprising sheep, executed after the commencement of this Ordinance, there shall be implied (unless such implication is expressly negatived) a covenant by the grantor to deliver to the grantee the wool shorn from such sheep in each year during the continuance of such instrument.

#### ENTRY OF SATISFACTION.

Memorandum  
of satisfaction  
may be filed.

**34.** (1) In the case of an instrument, upon the production to the Registrar of a memorandum of satisfaction in the form numbered (5) in the First Schedule hereto or to the like effect, signed by the grantee thereof or his attorney, discharging the chattels comprised in such 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 such instrument and payment of a fee of five shillings, the Registrar shall file such memorandum and make an entry thereof in the register book on the page where the instrument is registered.

(2) The execution of such 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, in his discretion, dispense with the production of the instrument on proof by affidavit to his satisfaction that the instrument has been destroyed, cannot be found, or cannot be produced.

Effect of filing  
such  
memorandum.

**35.** From and after the filing of any such memorandum 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 such interest is expressed by the memorandum to be determined, and subject to any lien or equity affecting the chattels.

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

Public Trustee  
may sign  
memorandum  
in certain cases.

**37.** The Supreme 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 such 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 such order may be filed by the Registrar and entered in his book in like manner as if the same were a memorandum within the meaning of section 34 hereof.

Judge may  
order  
memorandum  
to be filed.

#### SALES.

**38.** Chattels under this Ordinance 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 Ordinance.

Sales by  
Registrar

#### SALE OF GRANTOR'S INTEREST.

**39.** (1) Where legal process issues against the chattels of a judgment-debtor for the execution of a judgment of any Court, and the said chattels, or any of them, are comprised in any instrument under this Ordinance, 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 in the same.

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

(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 said 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 said 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.

Not to affect  
interpleader  
process.

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

#### IMPLIED COVENANTS, ETC.

Covenants for  
title.

**41.** There shall be implied in every instrument the covenants for title on the part of the grantor set forth in the Second Schedule hereto, and such implied covenants shall have the same effect as if the same were respectively set out at length in the instrument.

Covenants, etc.,  
implied in  
instruments.

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

Meaning of  
abbreviated  
expressions.

**43.** Such of the expressions defined in section 2 hereof or in the Fourth Schedule hereto as are used in any instrument, or in any of the covenants, provisos, agreements, or powers implied therein by this Ordinance, shall, unless the contrary is expressed in such instrument, or unless manifestly inconsistent with the context, have the meanings given to the same in the said section 2 or Fourth Schedule, and such meanings shall be implied in such instrument as fully and effectually as if the same were set out therein.

44. 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 such instrument, or implied therein by this Ordinance, and imposing an obligation on such grantors or grantees, or enuring for the benefit of such grantors or grantees, shall, except in so far as a contrary intention appears, be deemed to impose such obligation, or confer such benefit, as the case may be, severally as well as jointly.

Covenants to be several as well as joint.

45. 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 Ordinance, shall bind the executors, administrators, and assigns of the person, or the successors and assigns of a company or corporation, upon whom such 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 the same enure.

Covenants to bind executors.

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

Covenants may be negatived or varied.

#### TRANSFERS OF INSTRUMENTS.

47. Every instrument may be transferred by a document in the form in the Fifth Schedule hereto or to the like 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.

Form of transfer of instrument.

48. Transfers of instruments may be registered at any time after the execution thereof in like manner as instruments are registered; and, in case two or more transfers of any one such instrument are executed, a registered transfer shall have priority over an unregistered transfer; and, in case two or more transfers of any one such instrument are registered, priority shall be given to such transfers in the order of their time of registration.

Registration of transfers.

## PENAL.

Attempt to  
defraud  
grantee.

49. Every grantor of an instrument under this Ordinance who, by sale or delivery without the consent of the grantee of any chattels comprised in or affected by such instrument, or by any other means, defrauds or attempts to defraud the grantee of the same or any part thereof, and thus or by any other means directly or indirectly defeats, invalidates, or impairs the grantee's security over the same or attempts so to do, and every person who wilfully aids and abets any person in defrauding or attempting to defraud the grantee by defeating, invalidating, or impairing such instrument or in attempting to do so, is liable to six months' imprisonment or to a fine not exceeding one hundred pounds or to both such fine and imprisonment.

Repeal.

Cap. 22.

50. The Bills of Sale Act, 1878, and the Bills of Sale Act, 1882, as applied to the Colony, and the Bills of Sale Ordinance (Chapter 22 of the Revised Edition) are hereby repealed.

Schedules.

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SCHEDULES.

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FIRST SCHEDULE.

(1) AFFIDAVIT ON REGISTRATION OF INSTRUMENT.

In the Supreme Court of Kenya.

In the matter of the  
Chattels Transfer  
Ordinance, 1930.

I, [*full name of deponent*], of [*place of residence or business*], in the Colony of 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 Ordinance, 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*].





1930

*Chattels*No. **XXIV.**

assign and transfer the same to the said *C.D.* by way of mortgage to secure the payment of the said sum of £..... on the.....day of..... 19..., with interest thereon in the meantime, and so long as the same or any part thereof remains unpaid, at the rate of £..... per centum per annum by.....payments on the.....day of 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..... 19...

[*Schedule.*]

..... *A.B.*

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

..... *E.F.*

[*Residence and occupation.*]

(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 £....., bearing the date the.....day of..... 19... and made between.....and..... and registered on the.....day of.....19... as No.....under the Chattels Transfer Ordinance, 1930, the moneys for which such instrument was given as a security having been satisfied.

Dated this.....day of..... 19...

..... *C.D.*

(*Grantee or Assignee.*)

Witness .....*E.F.*

[*Residence and occupation.*]

## SECOND SCHEDULE.

## 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 such as are herein mentioned.

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.

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THIRD SCHEDULE.

## 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 the same 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 situate.

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 like good order and condition in which they are at the date hereof; and if any of the same are damaged or destroyed, or cease to exist, will repair such damage, or replace the chattels so destroyed or ceasing to exist with other chattels of a like 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 such 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 such bill or note is honoured or met, be considered as 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 covenanted to be paid on the day on which the same 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 such execution is not stayed or satisfied within ten days, then and in such 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 same 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 said chattels or any part thereof at such 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 such 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 such taking possession, sale, and the preparation and registration of this instrument, to apply the same in reduction of the moneys then owing on the security of this instrument, including all moneys herein covenanted to be paid, notwithstanding that the same may not then have become due, or that any promissory notes or bills of exchange may then be current for the same, 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 whereon the stock for the time being subject to this security are depasturing, for the purpose of viewing the state and condition of the same; 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 the Colony, give, and afford to the grantee, his agents or servants, all reasonable assistance to enable the grantee, his agents or servants, to view the same 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 of the same or remove the same or any part thereof from the said lands or premises, sell the same 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 the said 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 the same 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 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 the same 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 such fees and other outgoings and payments as aforesaid, or any of them, or any part thereof, the grantee may make such 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 such payment as aforesaid, with interest for the same after the rate of eight pounds per centum per annum from the time or respective times when the same were advanced or paid: And that in

the meantime, and until such 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 the same in like manner as if the same 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 such 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 such entry and taking possession until the sale and delivery of the said stock and premises to any purchaser thereof, shall, together with interest thereon after 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 of the same, 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 the same in the Colony, 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 the same to be shipped or exported to any place or places out of the Colony, 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 said crop or by any sale or sales thereof, whether in the Colony 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 said crops, and all costs, mercantile, and other charges, and expenses incurred in and about the harvesting, sale, shipment and carrying away of such 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.

*Power to be Implied in Instrument over Wool.*

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 the same in the Colony, 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 the same to be shipped or exported to any place or places out of the Colony, 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 said wool or by any sale or sales thereof, whether in the Colony 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 said wool, and all costs, mercantile, and other charges and expenses incurred in and about the shearing of the said 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.

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#### FOURTH SCHEDULE.

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

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 Ordinance, 1930, and for interest, commission, and other lawful charges from the day of such 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 said 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

day of March and the 30th day of 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 aforesaid as upon further advances, and also that in making up such account interest at the rate specified in this instrument shall be calculated on the daily debtor balances; and also that, upon any such demand as aforesaid, 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 the same have to run, to be calculated at the rate at which interest is payable under this instrument, and that the amount of such bills or promissory notes, subject to such rebate, may be charged to the grantor in such account at the time of making such 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 said 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 by fire, be laid out and expended, so far as the same extend, in making good such loss or damage (or, if the instrument is given by way of security, in discharging the moneys hereby secured, if such other party so elects) :

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

FIFTH SCHEDULE.

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 Ordinance, 1930, 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.....19...  
..... C.D.

Signed by the said C.D. in the presence of  
..... E.F.  
(Residence and occupation).