

1933

3059

KENYA  
C O 533 / 432

1933

3059

The Chattels Transfer Ordinance.

Previous  16248/30	R 297 Room 309 Mr. Freeman Dr. Roberts-Wray Mr. Freeman	24/11 4/12 5 18/11 id	
Subsequent  25121/34	309 297 R 297 R 297	24/12 7/2	
R 297		10/2	
R 297		14/2	
R 297		24/2	
R 297		23/2	
R 297		7/2	
R 297		14/2	
R 297		11/2	
R 297		14/2	
R 297		7/2	
R 297		14/2	
R 297		14/2	
R 297		14/2	

1. authenticated  
& 11 printed copies  
to library.

Governor Byrne 37 \_\_\_\_\_ 11<sup>th</sup> Jan 33 <sup>2</sup>  
Trans. 2 authenticated & 11 printed copies of The  
Chattels Transfer (Amend) Ordinance No 36 of 1932.

Any legal doubts?

Strom

18/2/33.

On the information given by the Governor, this Ordinance seems to be open to objection on two grounds - (1) the minor objection that the amendment introduced fundamentally departs from the model on which it is based and the corresponding English law on the same subject, and is a change which requires companies to effect a double registration of bills of sale, resulting, so far as one can see, in no legal or public advantage; and (2) the retrospective effect given to the change is open to the serious criticism that it may prejudice rights which have already accrued under the law that stood originally.

It appears that some instruments executed by companies purport to have been already registered under the Principal Ordinance. This was unnecessary, and the Registrar may possibly have been at fault in accepting them, but no legal harm could, I think, result from this superfluous registration. The only thing necessary to give the instruments due validity until the passing of this amendment, registration under section 109 of the Kenya Companies Ordinance (Cap.93). The introduction of this retrospective legislation does a great deal more than to "put right" the registrations which the companies purport already to have effected under the Chattels Transfer Ordinance. It means that persons who, understanding the principal not

now find that their instruments can be voided for want of registration (vide sections 13 and 14 of Ordinance No.24 of 1930). Instruments under this Ordinance are required to be registered within twenty-one days from the date of execution (section 6), and a change of law is not a ground on which the Court could extend the time (section 9) - even if it were, questions of priority might very well arise. There is no suggestion that the instruments erroneously registered under the Principal Ordinance have not already been registered under the Companies Ordinance. Even if this were the position, I should doubt the desirability of an alteration of the Chattels Transfer Ordinance for the sole purpose of patching up mistakes caused by a misapprehension of the law, (which the company and their legal advisers must be presumed to know) to the prejudice of persons who did all that was required to be done under the law as it stood before the enactment of this amendment. I suggest that sanction be withheld pending further explanations from Kenya.

*A. K. Home*  
11.9.33.

*Put to Sub-Comm of A. Home*  
*with K.K. 9th inst for*  
*some months waiting under 9*  
*the 23rd inst.*

*Re. any.*  
24/1/33

*CA*

2 20 Nov. 1935 (Annual) and 6 MAR 1936  
*AW*

3. Govt. Notice No 718 of 1932.

*put by H.C. Cross M.L.C.*  
1/2/33  
*at m*

*for reply to No 2 has yet been received*  
*Open in 1 month*  
*At Home, 11*  
7/10/33 at m

*Brought up vide minute above.*  
*6.9.33*  
*Reg. 27.*  
*? Re. min.*  
*At Home, 11*  
7/9/33

*Hardly moving, but l.v. when the A.D.A.*  
*Ranking report annual.*

*S. Rankin*  
8/9/33

*Re. any.*  
*24.11.33*  
*Reg. 27.*  
*Brought up vide minute above.*

546.3

H. M. Governor Moore 632 \_\_\_\_\_ 4<sup>th</sup> Nov. 33  
Trans. for common Bill to amend Chattels Transfer Ordinance  
1930 which removes objections referred to in No. 2.

<sup>Ord. 4</sup>  
The Bill forwarded under cover of No. 1  
on this file was introduced in order to permit  
locally registered companies to <sup>grant</sup> a  
chattels mortgage by registering an instrument  
under the principal Ordinance, etc., and it had  
retrospective effect. The present Bill's  
object is to prevent locally registered  
companies granting chattels mortgages in the  
future. But at the same time the validity of  
any chattel mortgage passed by virtue of the  
amendment <sup>Ord. 4</sup> Bill of 1932 is preserved.

The amendment Ordinance of 1932 which is  
repealed by virtue of this Bill has never been  
disallowed, and the question rises whether,  
now that it is to be repealed, it is necessary  
to sanction it. As, however, the repealing  
Bill validates acts done under the Bill to be  
repealed, I presume that sanction should be  
given <sup>at the same time</sup> ~~at~~ approval is given  
to the introduction of the Bill now before us.

? To Legal Advisers for observations.

McQuinn: 4/12

W. H. ...

Signifying non-disallowance has no  
substantial effect. A law remains in  
force (in Kenya) unless, until it  
is disallowed.

However, we might as well  
signify non-disallowance given good

Order in replying to 4.

I see no objection to the draft Bill.  
The intention of it is far from  
clear - the legal effect does not  
adequately appear, but I think  
this is a matter we can leave to  
them.

To Governor Moore

18/12/33

Dft. comm

W. H. ...

*[Handwritten scribbles and notes]*  
To Kenya 970 (4 answers) 28 Dec 1933

To Kenya 970 (4 answers) 28 Dec 1933

\* It would be better to  
be preserved if legal.  
under the Companies  
Order. The purpose is  
to have inserted in  
amendment. ...

† It can not do this.

C. O.

3059/33 Kenya

55

28 December, 1933.

Mr. Keenly <sup>21/2</sup>  
 Mr. Manning <sup>21/10/33</sup>  
 Mr. Freeston <sup>ref. [initials]</sup>  
 Mr. Parkinson.  
 Mr. Tomlinson.

Sir C. Bottomley.  
 Sir J. Shuckburgh.  
 Permt. U.S. of S.  
 Parly. U.S. of S.  
 Secretary of State.

C.N.  
 R 21 DEC  
 D 27

DRAFT. Consent

Kenya  
 No. 470  
 Governor

Li. I have etc. to ack the receipt of

Mr. Moore's despatch no 632 of the  
 7th of December, and to inform you  
 that ~~that~~ His Majesty will not be advised

to exercise his power of disallowance  
 in respect of Ordinance <sup>XXXXV</sup> No. 34 of 1933  
 of the Legislature of Kenya, entitled  
 "An Ordinance to Amend the Chattels  
 Transfer Ordinance, 1930".

~~that~~ I approve the  
 introduction into the Legislative  
 Council of a Bill to Amend the  
 Chattels Transfer Ordinance, 1930,  
 in accordance with the terms  
 of the draft Bill enclosed

Harwin  
 in Mr. Moore's despatch.

stel

FURTHER ACTION.

Chase etc.

14

KENYA.

No. 639.



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

RECEIVED  
27 NOV 1933  
G. O. REGY

7<sup>2</sup> November, 1933.

Sir,

No 2

Amend (5)

With reference to your despatch No.155 of the 6th March, I have the honour to transmit, for your consideration, the accompanying Bill to Amend the Chattels Transfer Ordinance, 1930.

2. A statement of the Objects and Reasons for the Bill is also enclosed.

3. It will be observed that Clause 3 of the Bill removes the objections referred to in your despatch.

I have the honour to be,  
Sir,

Your most obedient, humble servant,

*W. L. M. M. M.*

ACTING GOVERNOR.

THE RIGHT HONOURABLE

MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W. 1

A BILL TO AMEND THE CHATTELS TRANSFER ORDINANCE  
1930.

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

Short title.

1. This Ordinance may be cited as "the Chattels Transfer (Amendment) Ordinance, 1933," and shall be read as one with the Chattels Transfer Ordinance, 1930, hereinafter referred to as "the Principal Ordinance".

No. 24 of 1930.

Amendment of Section 2 of the Principal Ordinance.

2. Section 2 of the Principal Ordinance is hereby amended by deleting the second paragraph lettered (a) in the definition of "instrument" (which paragraph immediately succeeds the line reading "instrument" does not include the following:-") and substituting therefor, the following paragraph:-

"(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 such fixtures are specifically included in such mortgage, charge or lease by mention thereof in separate words"

*added*  
*omitted personally*  
*as it is the same*  
*from a previous Ordinance to cover all fixtures etc.*

and by adding the following at the end of the definition of "trade machinery":-

"machinery and plant used in connection with the production, preparation or manufacture of agricultural products shall for the purpose of this Ordinance be deemed to be trade machinery".

Repeal of Ordinance No. 36 of 1932 and revival of provisions repealed by that Ordinance.

3. The Chattels Transfer (Amendment) Ordinance, 1932, is hereby repealed, and the provisions of the Principal Ordinance repealed by the said amending Ordinance are hereby revived, and shall be deemed to have been of full force and effect as from the date of commencement of the Principal Ordinance: Provided that nothing in this section contained shall be deemed to invalidate or render void any mortgage or charge granted or created by a company incorporated or registered under the Companies Ordinance and registered as a chattels mortgage prior to the commencement of this Ordinance.

Cap. 93.

OBJECTS AND REASONS.

The provisions of a Bill to amend the Registration of Titles Ordinance which was published in the Gazette of October 10th, 1933, made it clear that fixtures attached to land the subject of a charge under that Ordinance will be available as security for the holder of such charge as if the transaction had been effected by a legal mortgage.

It is in consequence necessary to amend the Chattels Transfer Ordinance, 1930, to obviate the possibility of fixtures attached to land, which will now form part of a charge's security, being also security for money advanced on Chattels mortgage.

90d.??

This is effected by Clause 2 of this Bill.

Clause 3 is necessitated by the fact that in 1932 an Ordinance was passed to provide for the creation of chattels mortgages by companies. That Ordinance was enacted because certain chattels mortgages granted by companies had been registered in error, but the fact was overlooked that other companies which, with a proper appreciation of the law, had registered such charges under Section 109 of the Companies Ordinance might be adversely affected by their failure to register chattels mortgages as well.

Clause 3 provides that a company cannot grant or create a chattels mortgage, but at the same time preserves the validity of such chattels mortgages which have been accepted for registration.

No expenditure of public moneys will be involved if the provisions of this Bill become law.

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3059/33

9

GOVERNMENT NOTICE No. 718

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council.

G. BERESFORD STOOKE,  
*Acting Clerk of the Legislative Council*

**A Bill to Amend the Chattels Transfer Ordinance, 1930.**

BE IT 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 Transfer (Amendment) Ordinance, 1932," and shall be read as one with the Chattels Transfer Ordinance, 1930, hereinafter referred to as "the Principal Ordinance."

Short title.

No. 24 of 1930.

2. Section 2 of the Principal Ordinance is hereby amended by deleting paragraph (j) of the definition of the term "Instrument", and by renumbering paragraph (k) as paragraph (j).

Amendment of section 2 of the Principal Ordinance.

- (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.

8. This Ordinance shall have retrospective effect and Date of shall be deemed to have come into force on the 13th day of operation, June, 1930.

#### OBJECTS AND REASONS.

The definition of "Instrument" in the Chattels Transfer Ordinance, 1930, definitely excludes mortgages or charges granted or created by a company incorporated or registered under the Companies Ordinance (Chapter 93).

In spite of this exclusion, certain local companies have in good faith borrowed money on the security of chattel mortgages, and these mortgages have been duly registered as instruments under the Ordinance.

As these transactions were entered into by both parties in good faith, it is only reasonable to give the lender the security which he imagined he had, and this Bill achieves that object with retrospective effect to the date of operation of the Principal Ordinance.

Locally incorporated and registered companies will now be enabled to give a chattels mortgage by registering an instrument under the Ordinance, but they must also comply with the provisions of section 109 of the Companies Ordinance.

No expenditure of public moneys will be involved if the provisions of this Bill become law.

Section 52 (34) of the Principal Ordinance which is mentioned in Clause 2 of the Bill—

52. The Council shall have power to do all or any of the following things, namely:—

Omnibus  
services.

- (34) To establish, acquire, maintain and carry on within the municipality a service of motor omnibuses or other vehicles drawn or propelled by animal, mechanical or electrical power for the carriage of passengers and parcels and, in connection with any such service, to enter into agreements with any person or corporation for the establishment, acquisition, construction, laying down, equipment, maintenance, working and guaranteeing of the capital cost and interest on the capital cost thereof, and to exercise such powers either alone or in conjunction with other persons, corporations or authorities:—

Provided that—

- (a) this sub-section shall not apply to tramways;
- (b) the Council may exercise such powers in any area beyond the municipality with the consent of the local authority, if any, of such area, or, if there be no local authority in such area, then with the consent of the Governor;

C.O.

PC  
C. 17  
H - 21 MAR  
D - 37

Mr. Priestman 25/2/33

Mr. Home 27/2

Mr. Driscoll 2/3/33

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Perly. U.S. of S.

Secretary of State.

Answered by NOH  
4

Downing Street,

6 March  
February, 1933.

Sir,

I have etc. to acknow-  
ledge the receipt of your despatch

No. 37 of the 11th January, forwarding

authenticated copies of an Ordinance

to Amend the Chattels Transfer

Ordinance, 1930.

2. I am advised that this  
Ordinance appears to be open to ob-  
jection on two grounds :-

(1) the minor objection that  
the amendment introduced departs  
fundamentally from the model on  
which it is based, and the corres-  
ponding English Law on the same sub-  
ject, and is a change which requires

Companies to effect a double regis-  
tration of Bills of Sale resulting,

DRAFT. *Commonwealth*

(1)

KENYA

No. / 86

Govr.

*The Revised Edition of the Laws, 1926*

far as can be seen, in no legal or public advantage; and

(11) the second that the retrospective effect given to the change is open to the serious criticism that it may prejudice rights which have already accrued under the law as it originally stood.

3. It appears that some instruments executed by Companies purport to have been already registered under the Principal Ordinance. This was unnecessary, and the Registrar may possibly have been at fault in accepting them, but no legal harm could presumably result from this superfluous registration. The only section necessary to give the instruments due validity was <sup>until</sup> the passing of this Amending Ordinance, registration under Section 109 of the Kenya Companies Ordinance

C. O.

- Mr.
- Mr.
- Mr.
- Mr. Parkinson.
- Mr. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

Ordinance (Chapter 93). The introduction of this retrospective legislative does a great deal more than to legalise the registrations which the Companies purport already to have effected under the Chattels Transfer Ordinance. It means that persons who understanding the Principal Law correctly, did not register under the Ordinance, may now find that their instruments can be void for want of registration (vide Sections 13 and 14 of Ordinance No. 24 of 1930). Instruments under the Ordinance are required to be registered within twenty-one days from the date of execution (Section 6), and a change of law is not a <sup>ground</sup> ~~ground~~ on which the Court could extend the time (Section 9), and even if it were, questions of priority might very well arise. There is no suggestion that the instruments

erroneously

erroneously registered under the Principal Ordinance have not already been registered under the Companies Ordinance. Even if this were the position, it is of doubtful desirability to amend the Chattels Transfer Ordinance for the sole purpose of rectifying mistakes caused by a misapprehension of the law (which the Companies and their Legal Advisers must be presumed to know), ~~and~~ <sup>possibly</sup> to the prejudice of persons who did all that was required to be done under the Law as it stood before the enactment of this Amendment.

4. I shall be glad to be furnished with an expression of your views on the subject in the light of the foregoing comments, and, in the meantime, I do not propose to tender any advice to His Majesty ~~in~~ <sup>in</sup> regard ~~to~~ <sup>to</sup> ~~the non-disallowance of the Ordinance~~ ~~in question~~

N<sup>o</sup> 36 of 1932

I have, etc.

CONFEE-LISTEN.

113



KENYA.

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

No. 37

RECEIVED  
- 4 FEB 1933  
COL. OFFICE

January, 1933.

*inwd (2)  
The amsol. (Bible number) (5)*

Sir,

I have the honour to transmit herewith two authenticated copies of "An Ordinance to Amend the Chattels Transfer Ordinance, 1930", No. XXXVI of 1932, together with two copies of the Legal Report by the Attorney General.

2. This Ordinance passed its third reading in the Legislative Council on the 17th December, 1932, and I assented to it in the name of His Majesty on the 30th December, 1932.

3. Twelve printed copies of the Ordinance are also enclosed.

I have the honour to be,

Sir,

Your most obedient humble servant,

BRIGADIER-GENERAL.  
GOVERNOR.

THE RIGHT HONOURABLE  
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W.1.



**Colony and Protectorate of Kenya.**

IN THE TWENTY-THIRD YEAR OF THE REIGN OF  
**HIS MAJESTY KING GEORGE V.**  
**JOSEPH ALOYSIUS BYRNE, K.C.M.G., K.B.E., C.B.,**  
*Governor.*

Assented to in His Majesty's  
name this 30 day of December, 1932.

**J. BYRNE**

*Governor.*

**AN ORDINANCE TO AMEND THE CHATTELS  
TRANSFER ORDINANCE, 1930**

No. XXXVI of 1932

An Ordinance to Amend the Chattels Transfer Ordinance, 1930.

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 Transfer (Amendment) Ordinance, 1932," and shall be read as one with the Chattels Transfer Ordinance, 1930, hereinafter referred to as "the Principal Ordinance." Short title.  
No. 24 of 1930.

2. Section 2 of the Principal Ordinance is hereby amended by deleting paragraph (j) of the definition of the term "Instrument", and by renumbering paragraph (k) as paragraph (j). Amendment of section 2 of the Principal Ordinance.

3. This Ordinance shall have retrospective effect and shall be deemed to have come into force on the 13th day of June, 1930. Date of operation.

Passed in the Legislative Council the seventeenth day of December, in the year of Our Lord one thousand nine hundred and thirty-two.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

G. BERESFORD STOOKE,

Acting Clerk of the Legislative Council.

LEGAL REPORT

THE CHATTELS TRANSFER (AMENDMENT) BILL, 1932.

The definition of "Instrument" in the Chattels Transfer Ordinance, 1930, definitely excludes mortgages or charges granted or created by a company incorporated or registered under the Companies Ordinance (Chapter 93 of the Revised Edition).

2. In spite of this exclusion certain local companies have in good faith borrowed money on the security of chattel mortgages, and these mortgages have been duly registered as instruments under the Ordinance.

3. The amendment effected by this Bill will enable locally incorporated and registered companies to give a chattels mortgage by registering an instrument under the Ordinance and complying with the provisions of section 109 of the Companies Ordinance.

4. Clause 3 provides that the Ordinance shall have retrospective effect to the 13th June, 1930.

5. In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,  
19th December, 1932.

*James F. ...*  
ATTORNEY GENERAL.

## THE CHATTELS TRANSFER (AMENDMENT) BILL, 1932.

The definition of "Instrument" in the Chattels Transfer Ordinance, 1930, definitely excludes mortgages or charges granted or created by a company incorporated or registered under the Companies Ordinance (Chapter 93 of the Revised Edition).

2. In spite of this exclusion certain local companies have in good faith borrowed money on the security of chattel mortgages, and these mortgages have been duly registered as instruments under the Ordinance.

3. The amendment effected by this Bill will enable locally incorporated and registered companies to give a chattel mortgage by registering an instrument under the Ordinance and complying with the provisions of section 109 of the Companies Ordinance.

4. Clause 3 provides that the Ordinance shall have retrospective effect to the 13th June, 1930.

5. In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

(Sd.) A. D. A. MacGregor,

Nairobi,

19th December, 1932.

ATTORNEY GENERAL.