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### Stuck in a time warp: security interests in chattel mortgages and the Bills of Sale legislation in Nigeria

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#### Legislation:

Lagos Bills of Sale Law 2003 (Nigeria) s.3, s.8, s.10

Bills of Sale Act 1882

Bills of Sale Act 1878 (c.31)

Bankruptcy Act 1979 (Nigeria) s.41, s.45

**\*I.C.C.L.R. 345** "[H]ave as little to do with second mortgages as possible, for think of the possibility that a charge later than yours may be tacked to the legal estate and that you may be squeezed out." <sup>1</sup>

#### Introduction

Before the enactment of the bills of sale legislation in Nigeria, encumbered personal properties which remained with the borrower throughout the duration of the loan period were unknown. Until the early 20th century, the pledge was the primary way of taking personal property as security in Nigeria.<sup>2</sup> The pledge being a possessory security device, the lender usually takes possession of the property while ownership remains with the borrower, who often has the right to redeem the pledged property so long as consideration has been furnished even though the redemption date has lapsed.<sup>3</sup> The pledge of personal properties was a suitable means of taking security as it provided petty merchants and peasant farmers with an opportunity to raise capital for their businesses. However, owing to the economic advancements of modern times, the pledge of personal property has become less significant.<sup>4</sup> This is because, when possession is transferred to the lender, it often limits the borrower's use of the property, which in practice tends to restrict the ability of the borrower to raise capital.<sup>5</sup> Hence the need to have a system where a borrower could remain in possession of their encumbered personal property became important.<sup>6</sup>

At common law, collateral in the possession of a borrower was detested as being a fraudulent conveyance, and ineffective as security against creditors and assignees without notice of the existing interest.<sup>7</sup> This was a common law principle established in *Twyne's Case*.<sup>8</sup> Because of this principle, borrowers often faced difficulties in "pledging" their personal property as collateral, especially when the property available was working equipment and inventories commonly used during the course of business. As a result, it became increasingly important that a feasible system of granting security be devised which enabled encumbered personal properties to remain with the borrower throughout the duration of the loan.<sup>9</sup> The bill of sale was later introduced, which led to the facilitation of non-possessory security interests that took the form of a chattel mortgage.<sup>10</sup>

Basically, the bill of sale is a contractual instrument through which personal property can be transferred from one person to another. Actually, they are of two different types—the security bill of sale and the absolute bill of sale. The latter is the outright assignment of personal property, for example by sale or gift,<sup>11</sup> whereas a security bill of sale, sometimes called a "conditional bill", is a contractual instrument which confirms security for a debt by encumbering the personal property of the borrower (grantor) without the lender (grantee) taking possession of the property.<sup>12</sup> A security bill of sale transaction is consensual as there is an express intention to secure a loan over specific goods, affirmed by contractual obligations, although the goods remain in the possession of the grantor. If the grantee takes possession of the goods at the commencement of the agreement, it is a pledge since possessory rights in the property are transferred to **\*I.C.C.L.R. 346** the lender.<sup>13</sup> A pledgor only intends to transfer possession without the grant of ownership rights to the pledgee for a temporary or limited period until the loan has been repaid.<sup>14</sup> On the contrary, a security interest in a bill of sale is

predicated on title and not possession of property. However, the position of a grantee-in-possession is somewhat synonymous with a pledgee mostly because of accountability for contractual breach, as the same consequences will follow if it turns out that there is a breach of a security agreement.<sup>15</sup> However, the scope of this article is limited to security interests in chattel mortgages through analysing the use of the bill of sale as a security device. The rationale for this article is to explore the relevance of the bill of sale as a non-possessory security device, which has so far gained very little recognition in Nigeria. The history and function of the bill of sale will be considered, with a detailed analysis of the mode of registration, determination of priority, the problems associated with granting after-acquired properties, the effect of the Bankruptcy Act 1979, the significance of the Central Bank of Nigeria (CBN) Collateral Registry Regulation 2014, and finally a recommendation for reform.

## The bills of sale legislation in Nigeria

The security bill of sale (chattel mortgage) is one of the earliest security devices introduced into Nigeria from the UK. In the UK, the first legislation to regulate chattel mortgages was the Bills of Sale Act 1854. Its main purpose was to make registration of security bills of sale mandatory by combating fraudulent transactions such as those that allow the borrower to remain in possession.<sup>16</sup> This Act was far from perfect. There was an apparent possibility that lenders would rely on the classical contract law principle of *pacta sunt servanda*, which was capable of operating harshly against debtors as they would be unable to redeem their mortgages, thus forfeiting their property for failure to meet unconscionable terms. Also, an unregistered bill of sale was not avoided against a subsequently registered bill of sale, and there were also no statutory priority rules for competing claims.<sup>17</sup> Fortunately, the UK Bills of Sale Act 1854 was never implemented in Nigeria.

Currently, the Bills of Sale Acts of 1878<sup>18</sup> and 1882<sup>19</sup> as amended by the Bills of Sale Acts 1890<sup>20</sup> and 1891<sup>21</sup> govern bills of sale transactions in the UK. They once formed a substantial part of the received English law (statute of general application in Nigeria). These statutes were implemented in Nigeria by virtue of s.1 of the Nigerian Bills of Sale Ordinance 1923, which states:

"This Ordinance may be cited as the Bills of Sale Ordinance and shall be read as one with the Bills of Sale Acts 1878 and 1882 as amended by the Bills of Sale Acts 1890 and 1891. Provided that, whenever the provisions of the said Acts shall be inconsistent with the provisions of this Ordinance, this Ordinance shall prevail."<sup>22</sup>

The Bills of Sale Ordinance was a federal law that governed the transfer and registration of personal chattels as security for debt.<sup>23</sup> It applied to every bill of sale executed on behalf of the grantee where a right to take possession is granted over personal chattels made subject to such security bill of sale.<sup>24</sup> This legislation applied to all parts of Nigeria except for those states created from the old Western Region, including Lagos State.<sup>25</sup> The old Western Region remained under the governance of the received English Bills of Sale legislation until after the enactment of a Bills of Sale Law 1958, which became applicable to the western part of Nigeria.<sup>26</sup> Presently, various states in Nigeria have adopted the provisions of the Bills of Sale Acts 1878 and 1882 as amended, and re-enacted the same as state laws, thereby repealing the indigenous bills of sale legislation of 1923 and 1958. However, the provisions of these state laws remain substantially similar to the UK Bills of Sale Acts.<sup>27</sup>

The bills of sale laws in Nigeria fall within the legislative jurisdiction of the state government and not federal government, and the laws are only applicable to **\*I.C.C.L.R. 347** the extent that the states choose to adopt them.<sup>28</sup> The various state bills of sale laws in Nigeria are *in pari materia* in form and content. However, for the purpose of this article, the Bills of Sale Law of Lagos State shall be the point of reference.<sup>29</sup> This is because Lagos State is the most economically important state of the country, and the headquarters of many regional and national industrial and financial corporations. Lagos has been internationally recognised as the seat of business in Nigeria as it often represents the country in the annual *Doing Business* reports prepared by the World Bank which compares economies globally.<sup>30</sup> A bill of sale registry currently exists in Lagos. The registry is a creation of statute under the Bills of Sale Law, Laws of Lagos State 2003 (BSL). This registry operates through the Directorate of Commercial Law created in 1987 from the Directorate of Civil Litigation and Advisory Services to deal with commercial transactions of the Lagos State Government and its ministries, departments and agencies.<sup>31</sup>

## General scope of the Bills of Sale Law

Section 3 BSL defines "personal chattels" to mean furniture, goods and articles capable of being

assigned by way of delivery, growing crops and fixtures (when separately assigned or charged) and trade machinery.<sup>32</sup> The real meaning of the word "goods" is unclear, as stated in the above section, but following the dictum of Atkin LJ in *Stephenson v Thompson*, "personal chattels" and "goods" could mean the same thing.<sup>33</sup> Therefore, both will be used interchangeably in this article. The scope of the definition of personal chattels also includes crops attached to land irrespective of whether they are natural crops or industrial crops growing at the time the bill of sale is executed.<sup>34</sup> The BSL also includes a comprehensive list of documents which can be interpreted as valid or invalid bills of sale, many of which are now devoid of modern usefulness in commercial transactions.<sup>35</sup> Concurrently, any document listed under s.3 will be valid insofar as it serves a security function. Under s.3, the phrase "and other assurances of personal chattels" is listed as inclusive of a bill of sale. What this encompasses remains a mystery. However, it could be construed *ejusdem generis* as prescribed by the other items listed in s.3. For example, this section does not include an equitable lien arising by operation of law as it is difficult to estimate the extent of its encumbrance over personal chattels,<sup>36</sup> save for an unpaid seller's lien arising by a contractual agreement where the chattel has been ascertained, which could then be deemed as an "assurance" for the purpose of the BSL.<sup>37</sup>

The BSL goes further to describe "trade machinery" as personal chattels even though it is not charged or assigned separately.<sup>38</sup> It states that trade machinery means machinery used in or attached to any factory or workshop, exclusive of fixed motor powers, fixed power machinery, pipes for steam, gas or water, and the wiring and other fittings for transmitting electricity in a factory or workshop.<sup>39</sup> Where fixtures are separately assigned or charged, they are categorised as personal chattels for all other purposes, except for trade machinery, which is also interpreted as a personal chattel even though it is attached to a factory or workshop. An instrument will not be treated as a bill of sale transferring trade machinery unless it contains a provision showing an intention purporting to deal with the trade machinery as a separable personal chattel.<sup>40</sup>

### ***Exclusions and exemptions from definition of personal chattels***

The BSL excludes the following from its scope: interests in real estate, fixtures when assigned together with a leasehold or freehold interest in land or building to which they are fixed permanently, assignment of growing crops on land, shares or interest in stock or funds belonging to any government, property or capital of incorporated or joint stock companies, choses in action, stock or produce forming part of farm or lands pursuant to the customs of the particular country which ought not be removed from a farm or land as at when the bill of sale is being executed.<sup>41</sup>

In order to allow the free flow of commerce and business dealings, not all deemed mortgages of personal chattels require registration; hence they are exempted from the operation of the BSL.<sup>42</sup> Examples include transfer **\*I.C.C.L.R. 348** or assignment in ships and vessels or any share thereof, foreign bills of sale of goods, bills of lading, transfer of goods during the ordinary course of business of the borrower, warehouse keepers' certificates, warrants and orders for the delivery of goods, any document evidencing possession or control of goods used in the ordinary course of business, marriage settlement.<sup>43</sup>

### ***Formal requirements of the security bill of sale***

The purposes behind the UK Bills of Sale Acts 1878 and 1882 are different. The 1878 Act was formulated to protect lenders against secret assignments by borrowers who remained in possession of the property. Conversely, the 1882 Act was enacted to prevent borrowers from being entrapped into an unfavourable agreement which they could not understand, thus indirectly exposing them to harsh and rigid provisions.<sup>44</sup> Nevertheless, the overriding objective of the BSL is to protect innocent parties, particularly the grantor, from the complexities associated with the bill of sale document, while also protecting the grantee and other assignees from secret dispositions. Strict compliance with the formal provisions of the law is paramount, as failure to comply could lead to serious consequences.<sup>45</sup> Section 8 of the BSL clearly states:

"A bill of sale given or made by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the Schedule hereto."<sup>46</sup>

This requirement seems unattainable because many Nigerians are not literate and their ability to comprehend the labyrinthine nature of the bill of sale will obviously pose a problem. In a Draft Bill, the Nigerian National Assembly envisaged the need to enact a federal legislation to regulate unfair terms

in consumer contracts similar to the UK Consumer Rights Act (CRA) 2015.<sup>47</sup> Regulation 7 of the Bill provides that written terms of a contract should be expressed in plain, readable and intelligible language for the benefit of illiterates.<sup>48</sup> It has already been reiterated that the purpose of the BSL is to protect debtors from signing complex documents, hence there is the need for parties to maintain its prescribed form already annexed to the Schedule.<sup>49</sup> If that is the case, to what end would this purpose be achieved if a bill of sale instrument is incapable of being understood by the contracting parties? Surely there must be a way around this conundrum? The protection of illiterates in Nigeria is regulated by the Illiterate Protection Act 1958, which aims to ensure that documents that record transactions involving an illiterate party mirror the intention of the illiterate person when being executed by the illiterate person with adequate comprehension of its terms and requirements.<sup>50</sup> However, s.69(1) CRA 2015 states that the interpretation most favourable to the consumer should prevail where there is ambiguity in the meaning of a word. In light of this problem, it is suggested that a similar provision to s.69(1) CRA 2015 should be considered if the bill of sale is to be an effective security device. Nevertheless, even with the availability of this remedy in a separate statute, a grantor of a security bill is unlikely to be aware of it or may not even understand to what extent it would sufficiently warrant the contract to be set aside.

### ***Execution and registration of a security bill of sale***

The UK Bills of Sale Act 1882 provides that every security bill of sale should be attested by one or more credible witnesses, thereby repealing the provision of the principal Act (UK Bills of Sale Act 1878), which required attestation to be executed by a solicitor of the Supreme Court.<sup>51</sup> Similarly, it is a requirement in Nigeria that a security bill of sale should be attested by one or more credible witnesses.<sup>52</sup> The attesting witness must swear an affidavit of due execution, after which the affidavit and an original copy of the bill must be filed within seven days, with the original copy tendered at the bill of sale registry.<sup>53</sup> The bill of sale must state the consideration for which it was advanced, as well as a description of the residence and occupation of the parties, and the type of goods encumbered.<sup>54</sup> These strict requirements show that the process of taking security by bill of sale is not transaction-friendly. For instance, if a security bill is granted to secure an advancement and it fails to include a written acknowledgement of receipt of the advancement, the bill of sale is most likely to be void. **\*I.C.C.L.R. 349**

The risk associated with presenting a notion of false wealth and the absence of a method of showing the existence of encumbered property in the possession of the grantor resulted in the introduction of the mandatory requirement to register the existence of a security bill of sale. A system whereby a bill of sale can be registered provides creditors and third parties with certainty in investigating whether there is an already existing security interest over the grantor's property. Where there is no designated bills of sale registry, the Registrar of the High Court will be responsible for the registration of bills of sale at the State High Court.<sup>55</sup> A security bill of sale needs to be executed and registered with its prescribed form.<sup>56</sup> The registrar is mandated to enter the particulars of registration such as the date of registration of the bill of sale, affidavit of renewal where applicable in addition to including the name, residence and description of the witnesses, grantor and grantee.<sup>57</sup> Registration remains valid for a duration of five years and will thereafter become void unless an affidavit has been sworn for renewal with the registrar, stating the date of the bill of sale and its last renewal, including the particulars of the parties thereto and that the bill of sale remains subsisting.<sup>58</sup> The bill of sale will not be void for late registration if the delay was due to the fault of the registry after the particulars of registration had been submitted within seven days. In *International Bank for West Africa v Azubuike*<sup>59</sup> it was held that if the mortgagor has submitted all required documents to register the bill of sale and the required registration fee has been paid in full within the stipulated time, being seven days, the bill of sale shall be taken as having been duly registered on time and will not be voidable for delayed registration if such delay was due to the default of the registry.

Where two or more bills of sale are granted in respect of the same personal chattel, priority is determined by the order of their registration dates.<sup>60</sup> A registered security bill usually takes priority over an earlier executed but unregistered security bill.<sup>61</sup> An unregistered absolute bill of sale takes priority over a subsequent security bill of sale which has been perfected, in that an absolute bill of sale transfers ownership title to the assignee.<sup>62</sup> In this situation, the grantor will have no ownership title for the purpose of granting a security bill of sale since reversionary interests in the property will be extinguished by the prior unregistered assignment. It is worth noting that the rules of registration differ significantly depending on the legal personality of the grantor. If granted by a company, it is registrable at the Corporate Affairs Commission (CAC) as an enterprise charge pursuant to s.197 of

the Companies and Allied Matters Act (CAMA) 1990 as amended.<sup>63</sup>

Having multiple bills of sale registries operating in one country is most likely to produce one end result: catastrophe! For example, security interests in personal properties in Lagos State and Delta State might not be discovered by an unsuspecting assignee who searches the bill of sale registry in Lagos or Delta, even though the grantor might have executed and registered the bill of sale in Abuja if that is his place of residence as required under the BSL.<sup>64</sup> Basically, the BSL stipulates that a registrar must transmit a copy of the bill of sale to a magistrate in another place where the collateral is located within three clear days after registration.<sup>65</sup> If that is the case, the registrar in Abuja would need to transmit a copy of the bill of sale to the registries in Lagos State and Delta State within three clear days. If the properties are located in 20 states, then the registrar in Abuja would need to transmit a copy to 20 registries within three clear days. It is impossible to determine when the copies will arrive at their destination or whether they will even arrive at all. Sadly, this is the current situation with the bills of sale registration system in Nigeria. The foregoing argument clearly shows that the system of registration is in dire need of a complete overhaul. A well-drafted law harmonising all bills of sale registries which can be used on a national scale will make this security device safer for lenders and third-party assignees. So far, the purpose of having different bills of sale registries is yet to be justified.

### **The grantee's remedy and the mirage of a "grantee in possession"**

There are feasible remedies available to the grantee which can be enforced when there has been a statutory breach of agreement.<sup>66</sup> A breach could be in the form of the grantor's default in periodic payment or in the performance of an obligation or covenant.<sup>67</sup> The grantee may also enforce his rights where the grantor suffers bankruptcy; removal of goods from the premises without permission, thereby making it inaccessible to the grantee; failure to remit to the grantee the receipts and rates regarding the goods without reasonable excuse; and *\*I.C.C.L.R. 350* execution levied against the goods of the grantor under any court judgment.<sup>68</sup> The grantee must ask the court for an order allowing the removal of the property in the grantor's possession before any property can be taken away.<sup>69</sup> The collateral cannot be sold or removed from the premises where they were so seized until after the expiration of five days, pending which the grantor is given a leeway to redeem the chattel by paying the agreed sum with additional cost and interests if applicable.<sup>70</sup> This presents a window of opportunity for a grantor to redeem the collateral even after the initial lapse of time as earlier agreed. In truth, it is highly unlikely that the grantor will be aware of this salient protection afforded by this statutory provision.

As the grantor remains in possession of the *res* for the duration of the five days, the grantee will need to advertise his title by notice, publicise his interest or take controlling possession immediately after the chattels have being seized.<sup>71</sup> It is important that this is done in the event that the grantor becomes insolvent or else his security interest may be defeated by the trustees in bankruptcy and other assignees.<sup>72</sup> For the most part, the rule in the controversial case of *Dearle v Hall*<sup>73</sup> supports this argument, especially when there is a possibility that the grantor will abuse his possessory rights. This case relates to competing claims between two equitable assignees of the benefit of a trust fund.<sup>74</sup> It was decided that a trustee who has no notice of an assignment will be postponed to a subsequent assignee who gives notice, provided that the assignee giving notice was unaware at the time of the assignment (and not when notice was given) of any competing claims.<sup>75</sup> Thus, this rule may be applied in this circumstance since notice is required to gain priority to prevent the grantor from making an unlawful transfer which could mislead innocent assignees.<sup>76</sup> If the grantee fails to provide notice of his interest during this period, a third-party assignee could take the property free from the mortgage. Additionally, it may as well happen that the collateral has already been temporarily transferred to the grantee by way of constructive possession, and the collateral is not within the premises where they were seized.<sup>77</sup> If there is a fundamental breach of agreement while the grantee remains in constructive possession of the property, the five-day redemption rule is unlikely to be relevant, at least regarding the taking of the property. An assignment or sale of the chattel by the grantee in constructive possession before the expiration of five days as required under s.13 of the BSL will most likely render the assignment or sale void *ab initio*.<sup>78</sup>

### **After-acquired goods and the unincorporated business**

It is trite law that mortgages of after-acquired properties are void at common law,<sup>79</sup> and a chattel mortgage can only be created when the actual existence of the property has been ascertained during



the execution of the bill of sale transaction.<sup>80</sup> Nevertheless, a security assignment of growing crops is lawful if they are not transferred together with any interest in land.<sup>81</sup> Specifically, the crops must be growing at the time the bill of sale is executed.<sup>82</sup> This is an indirect deviation from the common law principle which intends to vitiate assignable "potential possession of goods" where a farmer wishes to mortgage after-acquired properties. Nigeria being an agrarian society, small and medium-scale enterprises, especially those in the business of agriculture, will most likely possess crops and livestock which may be their only type of collateral. Unfortunately, after-acquired goods cannot be encumbered in view of getting credit under the BSL as stated in s.10:

"Save as hereinafter mentioned, a security bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale."<sup>83</sup>

The above provision seems inconclusive. For instance, it is not confirmed how this provision will apply to an unborn offspring of livestock. A grantee's equitable lien over an unborn offspring should at least operate in the same way as that of growing crops under the BSL, that is, if the grantor was the owner of the livestock bearing the offspring as at the time of executing the agreement. Again, will the principle of *partus sequitur ventrem*—"a lien over an animal will automatically apply to its offspring"<sup>84</sup>—be applicable for the purpose of attachment? **\*I.C.C.L.R. 351** Arguably, this could be answered in the affirmative so long as the unborn offspring has been recorded as a personal chattel during the execution and registration of the security bill of sale.<sup>85</sup>

The limitation stated under s.10 is equivalent to a rejection of fluctuating goods as a valid form of collateral. The bizarre nature of this provision could make it almost impossible for unincorporated businesses to borrow using their after-acquired goods as collateral. This contravenes modern commercial lending practices. Unincorporated business will then need to become incorporated before a security can be taken over their after-acquired goods. As it stands, only corporate enterprises will be spared the inconvenience of s.10 BSL.

### **The relationship between the Bankruptcy Act 1979 and security bills of sale**

One of the reasons for the enactment of the UK Bills of Sale legislation in the first place was the fact that a borrower could dispose of assets to another and still remain in possession of them.<sup>86</sup> Where the borrower suffers bankruptcy and judgment creditors try to levy execution on the property, they would find that the property actually belonged to another person.<sup>87</sup> The UK Bankruptcy Act 1623 provided that in the event of bankruptcy, any goods or chattels in the possession of the bankrupt, with the consent of the true owner such that the bankrupt would appear to be the reputed owner of the goods in the bankrupt's possession, will be deemed to be part of the bankrupt's estate divisible among creditors.<sup>88</sup> It was only after the enactment of the UK Bills of Sale Acts, which provided for the registration of assignments over personal chattels, that the stronghold of this reputed ownership rule significantly diminished.<sup>89</sup> Section 20 of the UK Bills of Sale Act 1878 provided that personal chattels comprised in a security bill of sale having been duly registered should not "be deemed to be in the possession, order or disposition of the grantor" within the meaning of the UK Bankruptcy Act 1869. Clearly, this provision was aimed at softening the hardship of the reputed ownership rule.

In Nigeria, the Companies and Allied Matters Act (CAMA) 1990<sup>90</sup> regulates the insolvency and liquidation of companies, while the Bankruptcy Act (BA) 1979 "as amended"<sup>91</sup> governs bankruptcy proceedings. The BA 1979 introduced the concept of reputed ownership into Nigerian bankruptcy law.<sup>92</sup> Surprisingly, there is no provision in the BSL to protect a holder of a perfected security bill of sale against the harsh operation of the reputed ownership rule as seen in s.20 of the UK Bills of Sale Act 1878. Section 41(1)(c) BA 1979 provides that all goods divisible among the bankrupt's creditors shall be

"all goods being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof".<sup>93</sup>

Actually, the motive behind this provision is to protect creditors against secret transfers and hidden liens. This provision only operates when the debtor suffers bankruptcy. It does not protect assignees who are victims of false representations made by a fraudulent debtor, and it cannot be used when an assignee has simply been misled. Be that as it may, it has been reiterated that bills of sale laws in Nigeria serve to prevent fraudulent assignments, it being an obvious possibility that non-possessory security interests in personal chattels could be a badge of fraud where there is an inefficient

registration system. Curiously, the reputed ownership rule indirectly extends to book debts due to the bankrupt in the course of his trade or business.<sup>94</sup> Section 45(1) BA 1979 states:

"Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered with the Registrar in a register to be kept by him for that purpose ...."

Section 45(2) also states that s.45(1) pertains to assignments by way of security and other charges on book debts. Initially, s.45(1) did not specify which registry it applies to, but this critical omission was later amended by s.5 of the Bankruptcy Amendment Decree 1992.<sup>95</sup> This section substituted the words "with the Registrar in a register to be kept by him for that purpose" with "and in accordance with the provisions of the Bills of Sale Law".<sup>96</sup> By the combined force of both provisions, it seems that the scope of the BSL has been widened to accommodate security interests in certain assignments of existing and *\*I.C.C.L.R. 352* future book debts which may come into existence during the course of the grantor's business before bankruptcy proceedings have been initiated. If that is the case, then s.10 BSL is at variance with s.45(1) BA 1979, pertaining to the type of property acceptable as security under the BSL. At this point, it is difficult to verify the underlying intention of the draftsmen of the Amendment Decree provision as to how it would affect the types of properties deemed registrable as a security bill of sale under the BSL.

Nowadays, lenders rarely advance credit without inquiring about the possibility of secret liens attached to a borrower's asset. With a more efficient property registration system in Nigeria, coupled with the collateral registry currently being established by the Central Bank of Nigeria (CBN), lenders would rarely extend credit on the basis of a property in a borrower's possession without a thorough investigation as to its true ownership. The English bankruptcy law from which this principle was copied has since been repealed by the UK Insolvency Act 1986, and the reputed ownership rule is no longer recognised under the new insolvency statutory regime.<sup>97</sup> The principle of reputed ownership as seen under the BA 1979 serves no useful purpose and should be abolished.

### **CBN Regulation 2014 and its effect on bills of sale laws**

In a bid to stimulate access to credit for small and medium-scale enterprises, the CBN introduced the Collateral Registry Regulation in September 2014 (the CBN Regulation).<sup>98</sup> This law serves to regulate the creation, enforcement and protection of security interests in moveable property. The CBN Regulation is expected to promote responsible and prudent lending to small and medium-scale businesses, encourage financial institutions to accept a wider range of moveable assets as security for loans, establish an efficient registration scheme and a transparent realisation of security interests, and also create a defined framework for the establishment of a central collateral registry. The crux of the matter is that the CBN Regulation, which is set to become operational in the latter part of 2015, would create a wider pool of assets such as account receivables and farm products that can be used as collateral, and are also capable of being granted by natural and legal persons.

The general scope of the CBN Regulation states that it shall apply to all security interests in moveable property created by an agreement so long as it secures payment or performance of an obligation, regardless of its form, the type of movable, or nature of the secured obligation.<sup>99</sup> Interestingly, reg.3(4)(c)(iii) states that any interest created by an assignment, transfer or mortgage in moveable property governed by a law "for which a registry has been established" shall not be subject to this Regulation.<sup>100</sup> Literally, for the purpose of this sub-paragraph, this Regulation will not apply to security interests that have an established registry. Unfortunately, this provision does not aid cogent interpretation by failing to elaborate on the types of registry which it aims to exclude.<sup>101</sup>

Failure to specify whether the bill of sale registry will be excluded has no doubt created a needless uncertainty. Clearly, if there were no established bills of sale registries in existence, all bills of sale by way of security would be subject to the CBN Regulation and our argument here would have been settled. But this is not the case, as there are few operational bill of sale registries in some states in Nigeria. Whether the BSL will fall outside the scope of the CBN Regulation with regard to registration and enforcement remains a mystery. The apparent failure to draft a proper transitional provision for the scope of the CBN Regulation is quite distressing. Perhaps the impact of this omission may be curtailed via an administrative fiat to allow the continuous usage of the BSL for now, owing to its concurrent statutory authority as opposed to the CBN Regulation, which has no statutory force yet.

Until the collateral registry becomes fully operational, one cannot ascertain the extent of business uncertainty that financiers and debtors may face in the long run. This could be a missed opportunity, and as a result chattel mortgages in Nigeria will continue to be governed by the rigid procedures of the bills of sale laws instead of the CBN Regulation.

### Further criticisms of the Bills of Sale Law

In light of the preceding arguments, it is quite obvious that taking security by chattel mortgage is more or less akin to buying a lawsuit writ large. The strict formal requirements of the bill of sale have rendered it somewhat inappropriate for lending in the 21st century.<sup>102</sup> There has been judicial criticism in the UK aimed at the abolition of this legislation,<sup>103</sup> reaffirmed also in the *Crowther Report 1971*<sup>104</sup> and *Diamond Report 1989*<sup>105</sup> respectively. At the same time, the situation in the UK is no worse than it is in Nigeria. Actually, the security bill of sale is rarely used in practice in Nigeria because granting a bill of sale **\*I.C.C.L.R. 353** is generally associated with financial distress. Borrowers can utilise other "quasi-security" devices such as hire purchase agreements to finance their businesses since these transactions do not come within the definition of the bills of sale legislation.<sup>106</sup> By the use of these quasi-security devices, the need to record security interests in the bills of sale registry is avoided altogether, thus escaping the strict legal requirements of the BSL. Also, verbal agreements intended to be regulated under the BSL will most likely be defective. Strangely, the BSL only applies to the document itself (the bill of sale) and not the transaction (chattel mortgage). This means that if a verbal agreement has been concluded and it is later drafted in writing, and the drafted document does not comply with BSL, the verbal agreement will be inadmissible.<sup>107</sup>

In practice, borrowers are unable to identify the types of properties that can be assigned, especially with the BA 1979 as amended indirectly providing for the possibility of assigning and registering after-acquired intangibles as security in the bills of sale registry.<sup>108</sup> Again, the definition of a bill of sale only applies to personal chattels as defined by the BSL. The definition under the BSL does not cover certain moveable properties such as aircrafts and ships. Additionally, the CBN Regulation 2014 has already provided for the registration of moveable property as security, but does not include the registration of aircrafts and ships,<sup>109</sup> most likely because Nigeria has ratified the Convention on International Interest in Mobile Equipment 2001.<sup>110</sup> However, this omission should not be classified as a discrepancy as these types of properties have their specialised registries to record mortgages and other special types of security interests.<sup>111</sup>

### Recommendations and conclusions

Globally, Nigeria currently stands at 52 in the world ranking of 189 economies on the ease of doing business, which shows that Nigeria supports secured lending practices.<sup>112</sup> A reformed secured credit system will only help to improve private investment and economic growth. The United Nations Commission on International Trade Law (UNCITRAL) has designed a Legislative Guide on Secured Transactions for the benefit of countries with a deficient regulatory framework on security interests.<sup>113</sup> The European Bank for Reconstruction and Development (EBRD)<sup>114</sup> and World Bank<sup>115</sup> have also formulated draft laws in view of reforming secured lending systems in Europe and across the globe. Previously, the Nigerian Government had consulted the International Finance Corporation (IFC) and Centre for the Economic Analysis of Law (CEAL) in view of enacting a federal legislation to govern all security interests in personal property, but so far no law has been enacted.<sup>116</sup> Consequently, Nigeria remains stuck with obsolete security devices such as the bill of sale, which are yet to be modernised.

The drafting of the current bills of sale legislation in Nigeria is in a most archaic state, and anyone claiming to comprehend all of it must either be an intellectual genius or a dishonest charlatan. To say the least, the bills of sale legislation is a poorly drafted law that unsurprisingly happens to be among one of the less-used commercial laws in Nigeria. If the bill of sale is not abolished for efficient credit lending owing to its commercial restrictions, the BSL should be reformed to improve its current situation. First, the language needs to be modified. Antiquated terminology such as "personal chattels" should be replaced with modern language, for example, "commodities" or "merchandise". This would help to make the law more understandable, thereby making it attractive and appropriate for lending.

There should be an adequate level of training, particularly for those in the mercantile industry, to equip them with a proper understanding of the bill of sale transaction. This could be achieved through a national sensitisation programme to raise public awareness of the intricacies associated with the bill



of sale transaction and its registration procedures. This would provide businesses and creditors with better information about the risk associated upon default.

Without doubt, the security bill of sale remains an important security device in the lending industry. It is still being used in the UK, but reform has already been considered.<sup>117</sup> The CBN Regulation provides a regulatory framework for taking security, which, as a matter of fact, should not exclude the security bill of sale as it did with the enterprise charge.<sup>118</sup> The continued use of the security bill of sale could be persisting merely on borrowed time, which is likely to come to an abrupt end once the CBN **\*I.C.C.L.R. 354** Regulation becomes fully operational in the near future. Unless a piecemeal reform is undertaken, a repeal of the operation of chattel mortgages in Nigeria should not be contested.

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- 1. *Frederic W. Maitland, Equity, 2nd edn (Cambridge: Cambridge University Press, 1936), p.140.* However, this was expressed within a different context based on the nature of equitable interests in that a later charge may be "tacked on" to a property, thereby having an effect on holders of second mortgages; see UK Law of Property Act 1925 s.94; UK Land Registration Act 2002 s.49.
- 2. The modern pledge law in Nigeria can be traced far back to its indigenous Pawnbrokers Act 1917. Section 2 of the Act defines a pawnbroker as "every person who carries on the business of taking goods in pawn. A pawnbroker is a person whose business is to lend money usually in small sums on security of personal property deposited with him or left in pawn." This Act re-enacted the UK Pawnbrokers Act 1877.
- 3. *Goode on Legal Problems of Credit and Security, edited by Louise Gullifer, 5th edn (London: Sweet & Maxwell, 2013), para.1.47.*
- 4. The Pawnbrokers Act 1917 will be inapplicable whenever a pledge is above the sum of 40 naira, equivalent to about 17p. Common law will become applicable and the transaction will then be classified as an English pledge if the pledge exceeds the above amount. See *Imran Oluwale Smith, Nigerian Law of Secured Credit (Lagos: Ecowatch Publications, 2001), p. 178.*
- 5. *Richard Calnan, Taking Security (Bristol: Jordan Publishing Ltd, 2006), p.35.*
- 6. Grant Gilmore, "The Secured Transactions Article of the Commercial Code" (1951) 16 Law & Cont. Prob. 27, 29.
- 7. *Grant Gilmore, Security Interests in Personal Property (New Jersey: Law Book Exchange Ltd, reprinted 1999), Vol.1, p.24.*
- 8. *Twyne's Case 76 E.R. 809; (1601) 3 Co. Rep. 80.* In this case, Pierce was indebted to Twyne and another creditor who had instituted a court action against Pierce, who secretly deeded sheep and goods to Twyne as collateral in payment of debt. Pierce remained in possession for the duration of the transaction and continued to deal with the property as if it were unencumbered. Although the amount of the debt outweighed the goods that were deeded to Twyne, the court held that the transaction was a sham, and void against the other creditors because of Pierce's continued possession of the said goods. See also *Mace v Cammel 98 E.R. 917; (1831) Lofft 782 at 783.* "... at common law a secret transfer ... was always a badge of fraud."
- 9. A mortgage over chattel was void against other creditors if it was not registered at the appropriate registry. Registration of chattel mortgages will be discussed subsequently.
- 10. Aubrey Diamond, "Hire-Purchase Agreements as Bills of Sale" (1960) 23 M.L.R. 399, 404–405. In *Allsopp v Day 158 E.R. 552; (1861) 7 Hurl. & N. 457* at 465, per Wilde B, "a bill of sale means an instrument by which the property passes".
- 11. Diamond, "Hire-Purchase Agreements as Bills of Sale" (1960) 23 M.L.R. 399, 404–405.
- 12. Duncan Sheehan, "The Abolition of Bills of Sale in Consumer Lending" (2010) 126 L.Q.R. 356, 357.
- 13. *Cortelyou v Lansing (1805) 2 Caines Cas. Err. 200* at 201, per Chancellor Kent: "delivery is essential to a pledge, but a mortgage of goods is, in certain cases valid without delivery."

14. John W. Wigmore, "I. — The Pledge-Idea: A Study in Comparative Legal Ideas" (1897) 10 Harv. L. Rev. 321.
15. Erle CJ, while citing *Brierly v Kendall* 117 E.R. 1540; (1852) 17 Q.B. 937 in the case of *Johnson v Stear* 143 E.R. 812; (1863) 15 C.B. N.S. 330 at 336, gave a broad explanation of the measurement of accountability when a grantee defaults: "There was a loan by the defendant to the plaintiff, secured by a bill of sale of the plaintiff's goods, in which was a reservation to the plaintiff of a right to the possession of the goods till he should make default in some payment. Before any default, the defendant took the goods from the plaintiff, and sold them. For this wrong he was liable in trespass: but the measure of damages was held to be, not the value of the goods, but the loss which the plaintiff had really sustained by being deprived of the possession. The wrongful act of the defendant did not limit his interest in the goods under the bill of sale; and such interest was to be considered in measuring the extent of the plaintiff's right to damages."
16. *Cookson v Swire* (1884) 9 App. Cas. 653 HL at 664–666, per Lord Blackburn. See also appeal judgment of Cockburn CJ in *Brantom v Griffiths* (1877) 2 C.P.D. 212 CA at 214.
17. John de Lacy, "The Evolution and Regulation of Security Interests over Personal Property" in John de Lacy (ed.), *The Reform of UK Personal Property Security Law: Comparative Perspectives* (Abingdon: Routledge-Cavendish, 2010), p.17.
18. UK Bills of Sale Act 1878 (41 & 42 Vict., c.31).
19. UK Bills of Sale Act 1882 (45 & 46 Vict., c.43).
20. UK Bills of Sale Act 1890 (53 & 54 Vict., c.53). This statute was promulgated to exempt certain types of hypothecation letters from the ambit of the Bills of Sale Act 1882.
21. UK Bills of Sale Act 1891 (54 & 55 Vict., c.35) (An Act to amend the Bills of Sale Act 1890).
22. Bills of Sale Ordinance 1923, Cap.27 Laws of Nigeria 1958. This law is not included as part of the Laws of the Federation of Nigeria (LFN) 2004 pursuant to the Revised Edition Authorised Omission Order 1990. The reason for this omission is because the bills of sale come within the concurrent legislative list and are not deemed to be applicable uniformly across Nigeria but are instead to be adopted as state law. The Bills of Sale Act 1923 re-enacted the UK Bills of Sale Acts 1878 and 1882.
23. Bills of Sale Ordinance 1923.
24. Bills of Sale Ordinance 1923 s.1(2).
25. The old Western Region of Nigeria now includes the states Oyo, Kwara, Ogun, Lagos, Ondo, Osun, Ekiti, Edo and Delta.
26. Western Region Bills of Sale Law 1958, 1 Laws of the Western Region of Nigeria (LWRN) Ch.11 1959.
27. See for example Cap.12 Laws of Lagos State 1994; Cap.1 Laws of Ogun State 1976; Cap.13 Laws of Northern Nigeria 1963; Cap.1 Laws of Ondo State 1978 (applicable in Ondo and Ekiti State); Cap.12 Laws of Oyo State 1978 (applicable in Oyo and Ogun State).
28. Some states have yet to enact a bills of sale law with an established registry.
29. Bills of Sale Law, Cap.B2 Vol.1, Laws of Lagos State 2003.
30. World Bank, *Doing Business in Nigeria 2014: Understanding Regulations for Small and Medium-Size Enterprises* (Washington, DC: International Bank for Reconstruction and Development/The World Bank, 2014), p.1.
31. See <http://www.lagosstate.gov.ng/pagemenu.php?p=407&k=31> [Accessed September 1, 2015].
32. BSL s.3. See also UK Bills of Sale Act 1878 s.4.
33. See *Stephenson v Thompson* [1924] 2 K.B. 240 at 249: "In connection with the word 'chattels' — goods and chattels — I think it is admitted that it covers in substance the whole of personal property as far as I know, nobody has been able to draw a real distinction between goods and chattels: they are over and over again stated as synonymous"—per Atkin LJ.
34. BSL s.11(a). *Re Phillips* (1880) 16 Ch. D. 104 CA —regardless of whether the crops are assigned or charged with other goods, they must be separate from land if they are to be considered as a personal chattel. See *Roberts v Roberts* (1884) 13 Q.B.D. 794 CA.
35. BSL s.3; UK Bills of Sale Act 1878 s.4. The Act includes bills of sale, transfers, declaration of trust without transfer, inventory of goods with receipt thereto attached, assignment, receipts for purchase moneys of goods, powers of attorney, authorities or licences to take possession of personal chattel as security to offset a debt, and other assurances, etc.
36. *Transport and General Credit Corp v Morgan* [1939] Ch. 531; [1939] 2 All E.R. 17 Ch D.
37. *Coburn v Collins* (1887) 35 Ch. D. 373 Ch D at 382; *Re Vulcan Ironworks Co Ltd* (1888) 4 T.L.R. 312; *Newlove v*

- Shrewsbury (1888) 21 Q.B.D. 41 CA* at 45, per Lindley LJ.
38. BSL s.3.
  39. BSL s.3.
  40. Graham S. McBain, "Repealing the Bills of Sale Acts" [2011] J.B.L. 475, 498.
  41. BSL s.3.
  42. Certain forms of short-term securities, such as those used in international sale of goods, for example, letters of hypothecation and declaration of trusts, were expressly exempted from the provisions of the UK Bills of Sale Act 1890. This provision is absent from the BSL.
  43. BSL s.3
  44. *Manchester, Sheffield and Lincolnshire Railway v North Central Wagon Co (1888) 13 App. Cas. 554 HL* at 559.
  45. Louise Gullifer and Sophia Hurst, "Bills of Sale Acts: Ripe for Reform" (2013) 28 B.J.I.B. & F.L. 685.
  46. UK Bill of Sale Act 1882 s.9; Bills of Sale Law s.8. Occasionally, even qualified legal practitioners have fallen short, as was demonstrated in *Chapman v Wilson [2010] EWHC 1746 (Ch)*, where a purported bill of sale having being drawn up by a solicitor was rendered defective for lack of compliance with the laid-down requirements.
  47. Consumer Contract (Unfair Terms) Bill 2010. A Bill for an Act to provide for the regulation of unfair terms and transactions, assessment of unfair terms, prevention of continued use of unfair terms in consumer contracts in the Federal Republic of Nigeria and for other related matters. See UK Consumer Rights Act 2015 (CRA 2015).
  48. Consumer Contract (Unfair Terms) Bill 2010, Group 19, reg.7, Analysis of Terms Breaching Regulation 7.
  49. BSL Pt 5, Form A.
  50. Cap.83 Laws of the Federation 1958. An illiterate person was defined as "a person who is unable to read with understanding and express his thoughts by writing in the language used in the document made or prepared on his behalf"—per Charles J in *Ntiashagwo v Amadu [1959] W.R.N.L.R. 273*.
  51. UK Bills of Sale Act 1878 s.10(1).
  52. BSL s.14. In *Adetoyin v Bank of the North Ltd [1976] 2 F.N.L.R. 238*, a charge held by the bank over the grantor's goods was declared to be a bill of sale, and because it was neither registered nor attested, it was declared void. See also *Amiru v Nzeribe [1989] 4 N.W.L.R. 755*, where failure to insert a name or address by the legal practitioner was held not to vitiate the document *sensu stricto* because the mere fact of its absence does not conclusively mean that the document was not read to the illiterate person. The need for affixing the name of the document preparer was basically to trace the whereabouts of the preparer, especially in the old days when there were a vast number of itinerant letter writers. See *P.Z. Ltd v Gusau [1961] 1 All N.L.R. 242* at 244, per Taylor FJ. See also UK Bills of Sale Act 1882 s.10.
  53. BSL s.18(1)(a).
  54. BSL s.18(1)(a).
  55. A Bills of Sale Registry now exists in Lagos State.
  56. BSL s.14. See UK Bills of Sale Act 1882 s.8. Registration is to be effected after attestation. This section is to be construed along with s.10 of the Principal Act (UK Bills of Sale Act 1878).
  57. Bills of Sale Law s.21. See generally Schedule Form annexed to the Bills of Sale Act 1882; Schedule Form B of the Bills of Sale Law.
  58. BSL s.20.
  59. *International Bank for West Africa v Azubuike [1972] N.C.L.R 37*.
  60. BSL s.18 (2); UK Bills of Sale Act 1878 s.10.
  61. *Edwards v Edwards (1876) 2 Ch. D. 291 CA; (1876) 45 L.J. Ch. 391*.
  62. UK Bills of Sale Act 1882 s.5; *Tuck v Southern Counties Deposit Bank (1889) 42 Ch. D. 471 CA*.
  63. Companies and Allied Matters Act (CAMA) 1990, Laws of the Federation of Nigeria (LFN) 2004 as amended.
  64. BSL s.19.
  65. BSL s.19.

66. BSL s.13.
67. BSL s.13.
68. BSL s.13.
69. BSL s.12; UK Bills of Sale Act 1882 s.7.
70. BSL s.12; *Adetoyin v Bank of the North Ltd* [1976] 2 F.N.L.R. 238; *Johnson v Diprose* [1893] 1 Q.B. 512 CA.
71. *National Mercantile Bank Ltd v Hampson* (1880) 5 Q.B.D. 177 QBD, per Lush J. Thus, a third-party purchaser for full value may obtain good title against the grantee notwithstanding that the bill of sale contains an express prohibition against disposing of the chattel without the grantee's consent.
72. *Ginger Ex p. London and Universal Bank, Re* [1897] 2 Q.B. 461 QBD at 466, per Vaughan Williams J: "if the surrounding circumstances are such as to raise the reputation of ownership on the part of the grantor, then the grantee must go further, and take such steps as are necessary to negative the [mortgagor's] reputation of ownership."
73. *Dearle v Hall* 38 E.R. 475; (1828) 3 Russ. 1 Ch D.
74. The rule in *Dearle v Hall* also applies to statutory and equitable assignments—*Pfeiffer Weinkellerei-Weineinkauf GmbH & Co v Arbuthnot Factors Ltd* [1988] 1 W.L.R. 150 QBD at 162; (1987) 3 B.C.C. 608.
75. *Duncan Sheehan, The Principles of Personal Property Law* (Oxford: Hart Publishing Ltd, 2011), Ch.4.
76. John de Lacy, "The Priority Rule of *Dearle v Hall* Restated" [1999] Conveyancer 311, 312.
77. *Official Assignee of Madras v Mercantile Bank of India* [1935] A.C. 53 PC (India) 58.
78. UK Bills of Sale Act 1882 s.13.
79. See "Mortgages on Future Crops as Security for Government Loans" (1937) 47 Yale Law Journal 98, 99.
80. Edmund E. Mietus, "Chattel Mortgages on After-acquired Property" (1939) 23 Marq. L. Rev. 80, 81.
81. BSL s.4.
82. BSL s.4; UK Bills of Sale Act 1882 s.6. Regardless of whether the crops are assigned or charged with other goods, they must be charged separately from land if they are to be considered as a personal chattel. See *Roberts v Roberts* (1884) 13 Q.B.D. 794 CA.
83. BSL s.10; Bills of Sale Law, Rivers State Cap.15 1999 s.8. This provision is derived from the UK Bills of Sale Act 1882 s.5.
84. Anthony G. Guest, "Hire-Purchase, Lambs and the Dying Swans" (1966) 29 Modern L. Rev. 695, 696. See generally *Case of Swans* (1592) 7 Co. Rep. 17a.
85. BSL ss.14 and 18.
86. David W. McLauchlan, "Securities over Future Goods" (1973–75) 7 Victoria U. Wellington L. Rev. 122, 129.
87. UK Bankruptcy Act 1623 s.11. This provision can also be found in the now repealed UK Bankruptcy Act 1914 s38(c).
88. UK Bankruptcy Act 1623 s.11.
89. *De Lacy, "The Evolution and Regulation of Security Interests over Personal Property" in The Reform of UK Personal Property Security Law* (2010), p.15.
90. Companies and Allied Matters Act 1990, Laws of the Federation of Nigeria (LFN) 2004 "as amended" Pt XV.
91. Bankruptcy Act 1979. Some provisions of this Act were amended by Bankruptcy (Amendment) Decree No.109 of 1992, and included under Cap. B 2, Vol.1 Laws of the Federation of Nigeria 2004.
92. Bankruptcy Act 1979 s.41(1)(c).
93. Subject to s.41(2) Bankruptcy Act 1979, which excludes properties held by the bankrupt in the capacity of a trustee for another person, and tools in his trade or wearing apparel and bedding for himself and family not exceeding 1,000 naira as a whole.
94. Bankruptcy Act 1979 as amended, s.45(1).
95. Bankruptcy (Amendment) Decree 1992.



96. Bankruptcy (Amendment) Decree 1992 s.5.
97. *De Lacy, "The Evolution and Regulation of Security Interests over Personal Property" in The Reform of UK Personal Property Security Law (2010), p.14.*
98. Collateral Registry Regulation 2014, Issued by the Governor of Central Bank of Nigeria (CBN), September 2014.
99. CBN Regulation 2014 reg.3(1).
100. CBN Regulation 2014 reg.3(4)(c)(iii).
101. It expressly states, however, that it excludes registrable charges under the Companies and Allied Matters Act—CBN Regulation 2014 reg.3(4)(b).
102. *Department for Business, Innovation and Skills (BIS), A Better Deal for Consumers: Consultation on Proposal to Ban the Use of Bills of Sale for Consumer Lending (December 2009), paras 35–38.*
103. *Thomas v Kelly (1888) 13 App. Cas. 506 HL at 517, per Lord Macnaghten: "My Lords, to say that 'the Bills of Sale Act (1878) Amendment Act (1882)' is well-drawn, or that its meaning is reasonably clear, would be to affirm a proposition to which I think few lawyers would subscribe, and which seems to be contradicted by the mass of litigation which the Act has produced and is producing every day. For my own part, the more I have occasion to study the Act the more convinced I am that it is beset with difficulties which can only be removed by legislation."*
104. *Lord Crowther, Report of the Committee on Consumer Credit (1971), Cmnd 4596, Vol.1, para.4.2.12: "It is difficult to imagine any legislation possessing more technical pitfalls than the Bills of Sale Act, particularly in relation to security bills of sale."*
105. *Aubrey L. Diamond, A Review of Security Interests in Property (London: HMSO, 1989), para. 18.1.8: "the time has come to repeal the Bills of Sale Acts."*
106. *McEntire v Crossley Brothers Ltd [1895] A.C. 457 HL.*
107. *Michael Bridge, Personal Property Law, 3rd edn (New York: Oxford University Press, 2002), pp.192–193.*
108. Bankruptcy Act 1979 (as amended) s.45(1) and (2).
109. CBN Regulation 2014 reg.3(4)(c)(iii).
110. In 2001, a diplomatic conference held in Cape Town, South Africa, organised by the International Institute for the Unification of Private International Law and the International Civil Aviation Organisation, adopted this convention. The convention aims to provide an international secured financing regime with an international registry system and an integrated set of priority and enforcement rules for security interests and leases of large equipment capable of being moved from one country to another.
111. Nigerian Merchant Shipping Act 2007.
112. *World Bank, Doing Business 2015: Economic Profile Nigeria (Washington, DC: International Bank for Reconstruction and Development/The World Bank, 2015), p.64.*
113. *United Nations Commission on International Trade Law (UNCITRAL), Legislative Guide on Secured Transactions (New York: United Nations Publication, 2010).*
114. *European Bank for Reconstruction and Development (EBRD), Model Law on Secured Transactions (EBRD Publications, 2004).*
115. *World Bank, Principles and Guidelines for Effective Insolvency and Creditor Rights Systems (World Bank, April 2001).*
116. *Ronald C.C. Cuming and Yair Baranes, "A Modern Secured Financing System involving Personal Property Collateral for The Federal Republic of Nigeria", International Finance Corporation (January 17, 2004); Nuria de la Peña, Heywood Fleisig and Peter Winship, "Nigeria: First Draft Law on Security Interests in Movable Property" (Washington DC: CEAL, October 2009); Heywood Fleisig, Nuria de la Peña and Corey Loney, "Registry Assessment for Filing Security Interests in Movable Property, Prepared for Nigeria: Secured Finance for Movable Assets — Collateral Reform and Leasing Development", Second Progress Report (Washington DC: CEAL, March 2010).*
117. *Department for Business, Innovation and Skills (BIS), A Better Deal for Consumers (December 2009); see also Department for Business, Innovation and Skills (BIS), Government Response to the Consultation on Proposal to Ban the Use of the Bills of Sale for Consumer Lending (January 2011).*
118. CBN Regulation 2014 reg.3(4)(b).

