A CRITICAL EXAMINATION OF THE BILL OF SALE LAW OF LAGOS STATE

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ABSTRACT

This article underscores the necessity for a transformation in Nigeria's secured credit system, particularly concerning bills of sale legislation. The current bills of sale legislation in Nigeria is criticized for being outdated, poorly constructed, and one of the less-utilized commercial laws in the nation. Through the use of the doctrinal form of research, this article advocates for either the elimination of the bill of sale or its overhaul to enhance effectiveness. Key suggestions include updating language by replacing obsolete terms like 'personal chattels' with more contemporary terms such as 'commodities' or 'merchandise'. Furthermore, this article recommends for training programs, especially for individuals in the mercantile industry, to improve comprehension of bill of sale transactions. A national awareness initiative is also recommended to inform the public about the intricacies and registration procedures associated with bill of sale transactions.

Key words: Bill of sale, security, chattel mortgage, bankruptcy.

INTRODUCTION

Prior to Nigeria's bills of sale legislation being passed, it was unknown what encumbered personal property stayed in the possession of the borrower for the length of the loan period. In Nigeria, the pledge was the main method of obtaining personal property as security up to the early 20th century.[1] Because the pledge is a possessory security device, the lender typically assumes ownership of the asset while the borrower retains ownership. The borrower frequently retains the right to redeem the pledged asset as long as payment is made, even after the redemption period has passed[2]. Since it allowed small

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[1]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.

[2] *Goode on Legal Problems of Credit and Security,* edited by Louise Gullifer, (5th edn Sweet & Maxwell, 2013), para.1.47.

company owners and farmers to secure finance for their operations, the promise of personal property was an appropriate way to obtain security. However, the value of personal property pledges has decreased due to modern economic improvements.[3] This is due to the fact that when ownership is passed to the lender, the borrower's use of the property is frequently restricted, which in turn tends to limit the borrower's capacity to raise funds.[4] Thus, it became crucial to establish a structure that would allow a borrower to keep their encumbered personal belongings.[5]

In common law, the possession of collateral by a borrower was condemned as a fraudulent transfer and deemed ineffective as security against creditors and assignees unaware of the existing interest.[6] This principle, rooted in *Twyne's Case,*[7] posed challenges for borrowers looking to use personal property, especially business equipment and inventories, as collateral. Consequently, there arose a need for a practical security system allowing borrowers to retain encumbered personal properties during loans.[8] The bill of sale emerged as a solution, facilitating non-possessory security interests, notably in the form of a chattel mortgage.[9]

The bill of sale serves as a contractual tool for transferring personal property between parties. Two main types exist—the security bill of sale and the absolute bill of sale. The absolute bill of sale involves the outright transfer of personal property through sale or gift,[10] while the security bill of sale, also known as a 'conditional bill', serves as a contractual instrument securing a debt by encumbering the borrower's personal property without the lender taking physical possession.[11] In a security bill of sale transaction, there is a consensual agreement, explicitly intending to secure a loan against specific goods, yet the goods remain in the possession of the borrower.

[3] 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 Oluwole Smith, *Nigerian Law of Secured Credit* (Ecowatch Publications, 2001) 178.
[4] Richard Calnan, *Taking Security* (Jordan Publishing Ltd, 2006) *35*.
[5] Grant Gilmore, 'The Secured Transactions Article of the Commercial Code' (1951) 16 Law & Cont. Prob. 27, 29.
[6] *Grant Gilmore, Security Interests in Personal Property* (Law Book Exchange Ltd, reprinted 1999), Vol.1, 24.
[7] *Twyne's Case 76 E.R. 809; (1601) 3 Co. Rep. 80*.
[8] 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.
[9] 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.'
[10] Diamond, 'Hire-Purchase Agreements as Bills of Sale' (1960) 23 M.L.R. 399, 404–405.
[11] Duncan Sheehan, 'The Abolition of Bills of Sale in Consumer Lending' (2010) 126 L.Q.R. 356, 357.

If the lender takes possession at the agreement's start, it becomes a pledge, transferring possessory rights to the lender.[12] A pledgor only intends to transfer possession without granting ownership rights temporarily until the loan is repaid.[13] In contrast, a security interest in a bill of sale is based on title rather than possession. However, the position of a grantee-in-possession is akin to a pledgee, particularly regarding accountability for contractual breaches.[14]

This article focuses on security interests in chattel mortgages, specifically examining the bill of sale as a security device. The exploration considers the bill of sale's history and function, analyzes registration processes, prioritization determination, challenges related to after-acquired properties, the impact of the Bankruptcy Act 1979, the significance of the Central Bank of Nigeria (CBN) Collateral Registry Regulation 2014, and concludes with a reform recommendation.

THE BILLS OF SALE LEGISLATION IN NIGERIA

The chattel mortgage, also known as the security bill of sale, was among the earliest security instruments imported to Nigeria from the UK. In the UK, the Bills of Sale Act 1854 was the initial legislation regulating chattel mortgages, with its primary objective being the mandatory registration of security bills of sale to prevent fraudulent transactions, specifically those allowing borrowers to retain possession.[15] However, the Act had flaws. Lenders might rely on the contract law principle of *pacta sunt servanda*, potentially harsh on debtors unable to meet unconscionable terms. Unregistered bills of sale were not voided against subsequently registered ones, and there were no statutory rules for prioritizing competing claims.[16]

Interestingly, the UK Bills of Sale Act 1854 was never implemented in Nigeria. Instead, the Bills of Sale Acts of 1878 and 1882, amended by the Acts of 1890 and 1891, became the governing statutes in the UK. These statutes, originally part of the received English law, were adopted in Nigeria through the Nigerian Bills of Sale Ordinance 1923. This federal law regulated the transfer and

[12] *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.'
[13] John W. Wigmore, 'I. — The Pledge-Idea: A Study in Comparative Legal Ideas' (1897) 10 *Harv. L. Rev*. 321.
[14] *Brierly v Kendall* 117 *E.R.* 1540; (1852) 17 Q.B. 937
[15] *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 Griffits (1877) 2 C.P.D. 212 CA* at 214.
[16] *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* (Routledge-Cavendish, 2010.17.

registration of personal chattels as security for debt, applying to all of Nigeria except states created from the old Western Region.

The Bills of Sale Ordinance applied until the Bills of Sale Law 1958, specific to the Western part of Nigeria, was enacted. Presently, many states in Nigeria have re-enacted provisions of the UK Bills of Sale Acts as state laws, repealing the indigenous bills of sale legislation of 1923 and 1958. These state laws fall under the jurisdiction of state governments, and their adoption is at the discretion of each state. Despite variations among states, the laws share similarities.

For the purpose of this article, the Bills of Sale Law of Lagos State is the focal point, considering Lagos's economic significance in Nigeria.[17] Lagos State has a bill of sale registry, established under the Bills of Sale Law, Laws of Lagos State 2003, operating through the Directorate of Commercial Law, created in 1987 to handle commercial transactions for the Lagos State Government and its entities.[18]

GENERAL SCOPE OF THE BILLS OF SALE LAW

Section 3 of the Bills of Sale Law (BSL) defines 'personal chattels' to encompass furniture, goods, articles assignable through delivery, growing crops, fixtures (when separately assigned or charged), and trade machinery.[19] The term 'goods' lacks a precise definition in the section, but following Atkin LJ's dictum in *Stephenson v Thompson*, 'personal chattels' and 'goods' may be considered synonymous.[20] As a result, both terms will be used interchangeably in this article. The definition of personal chattels extends to crops attached to land, regardless of whether they are natural or industrial crops at the time of executing the bill of sale.

The BSL includes a detailed list of documents deemed valid or invalid bills of sale, some of which have lost relevance in modern commercial transactions. Any document listed under Section 3 is valid as long as it serves a security function. The phrase 'and other assurances of personal chattels' in Section 3 is inclusive of a bill of sale, but its exact scope remains unclear. It could be construed *ejusdem generis*, considering the other items listed in Section 3. Notably, an equitable lien arising by operation

[17] Bills of Sale Law, Cap.B2 Vol.1, Laws of Lagos State 2003.
[18] *World Bank, Doing Business in Nigeria 2014: Understanding Regulations for Small and Medium-Size Enterprises* (International Bank for Reconstruction and Development/The World Bank, 2014) 1.
[19] http://www.lagosstate.gov.ng/pagemenus.php?p=407&k=31 [Accessed December 11, 2023].
[20] BSL s.3. See also UK Bills of Sale Act 1878 s.4.

of law is not included in this section, except for an unpaid seller's lien, arising by contractual agreement when the chattel has been ascertained, which could be considered an 'assurance' under the BSL.[21]

The BSL further defines 'trade machinery' as personal chattels, even without a separate charge or assignment.[22] Trade machinery refers to machinery used in or attached to a factory or workshop, excluding fixed motor powers, fixed power machinery, pipes for steam, gas, or water, and the wiring and fittings for transmitting electricity in a factory or workshop. Fixtures, when separately assigned or charged, are categorized as personal chattels for all purposes except trade machinery, which is also considered a personal chattel despite being attached to a factory or workshop.[23] An instrument will not be treated as a bill of sale, transferring trade machinery unless it explicitly indicates an intention to deal with the trade machinery as a separable personal chattel.[24]

Exclusions and exemptions from definition of personal chattels

The Bills of Sale Law (BSL) explicitly excludes certain categories from its scope. These exclusions encompass interests in real estate, fixtures when assigned alongside a leasehold or freehold interest in the permanently attached land or building, assignment of growing crops on land, shares or interests in government stocks or funds, property or capital of incorporated or joint-stock companies, choses in action, and stock or produce forming part of a farm or lands following the customs of the particular country, which should not be removed from the farm or land at the time of executing the bill of sale.[25]

To facilitate unimpeded commerce and business transactions, the BSL exempts certain transactions involving personal chattels from registration requirements.[26] Examples of such exempted transactions include the transfer or assignment of ships and vessels, or any share thereof; foreign bills of sale of goods; bills of lading; transfer of goods during the ordinary course of the borrower's business; warehouse keepers' certificates; warrants and orders for the delivery of goods; and any document providing evidence of possession or control of goods used in the regular course of business.

[21] *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.
[22] BSL s.3.
[23] Ibid.
[24] Graham S. McBain, 'Repealing the Bills of Sale Acts' [2011] J.B.L. 475, 498.
[25] (n 22).
[26] 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.

Additionally, marriage settlements are exempted from the registration requirements outlined in the BSL.[27]

Formal requirements of the security bill of sale

The UK Bills of Sale Acts of 1878 and 1882 serve different purposes. The 1878 Act aims to protect lenders from secret assignments by borrowers who retain possession of the property. In contrast, the 1882 Act is designed to prevent borrowers from entering into agreements they cannot comprehend, safeguarding them from harsh and rigid provisions indirectly. Despite their distinct objectives, the overarching goal of the Bills of Sale Law (BSL) is to protect innocent parties, especially grantors, from the complexities of bill of sale documents, while also shielding grantees and other assignees from undisclosed dispositions.

Adherence to the formal provisions of the law is crucial, as non-compliance can result in serious consequences. Section 8 of the BSL explicitly states that a bill of sale given as security for payment shall be void unless it conforms to the prescribed form in the Schedule. This requirement poses a challenge, particularly for illiterate individuals in Nigeria who may struggle to comprehend the intricate nature of bill of sale documents. The National Assembly in Nigeria has contemplated federal legislation similar to the UK Consumer Rights Act (CRA) 2015 to regulate unfair terms in consumer contracts. Regulation 7 of the proposed bill emphasizes that contract terms should be expressed in plain, readable, and intelligible language for the benefit of illiterates.

Given the BSL's purpose to protect debtors from signing complex documents, it is essential for parties to adhere to the prescribed form in the Schedule. However, this raises a dilemma: how can the objective of protecting illiterates be achieved if a bill of sale instrument is incomprehensible to the contracting parties? To address this issue, it is suggested that a provision similar to Section 69(1) of the CRA 2015 should be considered. This provision states that, in case of ambiguity, the interpretation most favorable to the consumer prevails. Implementing a comparable provision could enhance the effectiveness of the bill of sale as a security device. Nonetheless, awareness and understanding of such remedies by a grantor remain challenges, even if provided in a separate statute.

[27] (n 22).

Execution and registration of a security bill of sale

The UK Bills of Sale Act 1882 stipulates that every security bill of sale should be attested by one or more credible witnesses, repealing the previous requirement in the principal Act (UK Bills of Sale Act 1878), which mandated attestation by a solicitor of the Supreme Court.[28] Similarly, in Nigeria, a security bill of sale must be attested to by one or more credible witnesses.[29] The attesting witness is then required to swear an affidavit of due execution. This affidavit, along with an original copy of the bill, must be filed within seven days, and the original copy should be submitted to the bill of sale registry.[30] The bill of sale must detail the consideration for which it was advanced, describe the residence and occupation of the parties, and specify the type of goods encumbered.[31] These stringent requirements reflect that the process of securing a loan through a bill of sale is not transaction-friendly.

To address the risk of presenting false wealth and the absence of a method for confirming the existence of encumbered property, registration of a security bill of sale has become mandatory. Registration provides creditors and third parties with certainty regarding existing security interests. In the absence of a designated bills of sale registry, the Registrar of the High Court is responsible for registering bills of sale at the State High Court.[32] The security bill of sale needs to be executed and registered using its prescribed form. The registrar enters registration particulars, including the date of registration, affidavit of renewal when applicable, and the names, residences, and descriptions of the witnesses, grantor, and grantee.[33] Registration is valid for five years and becomes void unless renewed through an affidavit with the registrar. A bill of sale won't be void for late registration if the delay is due to the registry's fault after submitting registration particulars within seven days.

In the case of multiple bills of sale for the same personal chattel, priority is determined by their registration dates. A registered security bill takes precedence over an earlier unregistered one. An unregistered absolute bill of sale takes priority over a subsequent security bill, as it transfers ownership

[28] UK Bills of Sale Act 1878 s.10(1).

[29] BSL s.14. In *Adetoyin v Bank of the North Ltd [1976] 2 F.N.L.R. 238*

[30] BSL s.18(1)(a).

[31] ibid

[32] A Bills of Sale Registry now exists in Lagos State.

[33] 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).

title. Registration rules vary based on the grantor's legal personality; if granted by a company, registration occurs at the Corporate Affairs Commission (CAC) as an enterprise charge under the Companies and Allied Matters Act (CAMA) 1990.

However, the existence of multiple bills of sale registries in one country, as in Nigeria, poses challenges. For instance, properties in different states might not be discovered if the assignee searches only in one state's registry. The Bills of Sale Law (BSL) mandates the registrar to transmit a copy of the bill of sale to a magistrate in another location where the collateral is situated. The current system faces significant challenges, emphasizing the need for a national law to harmonize all bills of sale registries and enhance the security device for lenders and third-party assignees. The current situation with different bills of sale registries in Nigeria lacks justification and requires a comprehensive overhaul.

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

In cases of statutory breaches, there are viable remedies available to the grantee that can be enforced.[34] Breaches may take the form of the grantor's default in periodic payments or the failure to perform an obligation or covenant.[35] The grantee has the right to enforce remedies in various situations, such as the grantor's bankruptcy, unauthorized removal of goods, failure to remit receipts and rates, and execution levied against the goods under a court judgment.[36] To take possession of the property, the grantee must seek a court order allowing removal of the property in the grantor's possession.

Once the collateral is seized, it cannot be sold or removed from the premises until after five days. During this period, the grantor has the opportunity to redeem the chattel by paying the agreed sum along with any additional costs and applicable interest. This provision allows the grantor a window of opportunity to redeem the collateral even after the initial agreed time has lapsed, a protection that the grantor may be unaware of.

As the grantor remains in possession during these five days, the grantee must take steps to advertise their title, publicize their interest, or take controlling possession immediately after the chattels have been seized. This is crucial to protect the grantee's interest in case the grantor becomes insolvent.

[34] 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.
[35] (n 22).
[36] (n 22).

The rule in the case of *Dearle v Hall*[37] supports this argument, stating that a trustee with no notice of an assignment will be postponed to a subsequent assignee who provides notice, provided the assignee giving notice was unaware of any competing claims at the time of the assignment. Failure to provide notice during this period could allow a third-party assignee to take the property free from the mortgage.

If the collateral has been temporarily transferred to the grantee in constructive possession and is not within the seized premises, the five-day redemption rule may not be relevant for taking possession. In such cases, a fundamental breach of agreement while the grantee remains in constructive possession may render the assignment or sale void *ab initio* if done before the expiration of five days, as required under section 13 of the Bills of Sale Law (BSL).

After-acquired goods and the unincorporated business

It is well-established in legal principles that mortgages of after-acquired properties are void at common law.[38] 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.[39] However, a security assignment of growing crops is lawful if they are not transferred together with any interest in land,[40] and the crops must be growing at the time the bill of sale is executed. This represents a departure from the common law principle that aims to invalidate the encumbrance of 'potential possession of goods' when a farmer seeks to mortgage after-acquired properties.

Given Nigeria's status as an agrarian society, many small and medium-scale enterprises, particularly those in agriculture, may rely on crops and livestock as their primary collateral. Unfortunately, the Bills of Sale Law (BSL) prohibits the encumbrance of after-acquired goods under Section 10. The provision states that a security bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule that the grantor was not the true owner of at the time of executing the bill of sale.

However, Section 10's wording leaves certain aspects inconclusive. For example, it doesn't clarify how the provision applies to unborn offspring of livestock. It would make sense for a grantee's equitable lien over an unborn offspring to operate similarly to that of growing crops under the BSL, as

[37] (n 22).
[38] *Dearle v Hall* 38 E.R. 475; (1828) *3 Russ.* 1 *Ch D.*
[39] 'Mortgages on Future Crops as Security for Government Loans' (1937) 47 *Yale Law Journal* 98, 99.
[40] Edmund E. Mietus, 'Chattel Mortgages on After-acquired Property' (1939) 23 *Marq. L. Rev*. 80, 81.

long as the grantor was the owner of the livestock bearing the offspring at the time of executing the agreement. The principle of '*partus sequitur ventrem*' — a lien over an animal automatically applying to its offspring — could potentially be applicable for attachment purposes, provided the unborn offspring is recorded as a personal chattel during the execution and registration of the security bill of sale.

The limitation outlined in Section 10 essentially rejects fluctuating goods as a valid form of collateral. This peculiar nature of the provision could pose challenges for unincorporated businesses looking to borrow using after-acquired goods as collateral, potentially conflicting with modern commercial lending practices. To avoid such challenges, unincorporated businesses may need to become incorporated before a security interest can be taken over their after-acquired goods. Currently, corporate enterprises seem to be spared from the inconvenience imposed by Section 10 of the BSL.

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

The enactment of the UK Bills of Sale legislation was prompted by concerns that a borrower could dispose of assets to another party while still retaining possession of those assets.[41] This situation could create complications, particularly when the borrower faces bankruptcy, and judgment creditors attempt to levy execution on the property, only to discover that it belongs to another person.[42] The UK Bills of Sale Acts, starting with the 1878 Act, aimed to address this issue by introducing the registration of assignments over personal chattels, reducing the impact of the reputed ownership rule.

In Nigeria, insolvency and liquidation of companies are regulated by the Companies and Allied Matters Act (CAMA) 1990, while bankruptcy proceedings are governed by the Bankruptcy Act (BA) 1979. Surprisingly, the Bills of Sale Law (BSL) in Nigeria lacks a provision similar to Section 20 of the UK Bills of Sale Act 1878, which protects a holder of a perfected security bill of sale against the reputed ownership rule.

Section 41(1)(c) of the BA 1979 introduces the concept of reputed ownership into Nigerian bankruptcy law. This provision protects creditors against secret transfers and hidden liens, operating when the debtor undergoes bankruptcy. Notably, the BSL does not offer protection against the reputed ownership rule as seen in the UK legislation.

[41] BSL s.4.
[42] David W. McLauchlan, 'Securities over Future Goods' (1973–75) 7 *Victoria U. Wellington L. Rev*. 122, 129.

Section 45(1) of the BA 1979 extends the reputed ownership rule to book debts due to the bankrupt in the course of their trade or business. The section deems assignments of book debts void against the trustee if not registered, emphasizing the need for registration to prevent secret transfers. The 1992 amendment to Section 45(1) introduced a connection to the Bills of Sale Law, potentially widening the scope of properties deemed registrable as a security bill of sale.

While the BSL and BA 1979 seem to align in certain aspects, there may be inconsistencies, particularly concerning the types of property acceptable as security. With the establishment of a collateral registry by the Central Bank of Nigeria (CBN) and an improved property registration system, lenders are less likely to extend credit without thoroughly investigating the true ownership of a borrower's assets. The principle of reputed ownership, borrowed from English bankruptcy law, may be considered obsolete and in need of abolition.

CBN REGULATION 2014 AND ITS EFFECT ON BILLS OF SALE LAWS

The Central Bank of Nigeria (CBN) introduced the Collateral Registry Regulation in 2014 to stimulate access to credit for small and medium-scale enterprises (SMEs).[43] The regulation aims to regulate the creation, enforcement, and protection of security interests in movable property. It is designed to encourage financial institutions to accept a broader range of movable assets as collateral, establish an efficient registration scheme, and ensure transparent realization of security interests.

The Collateral Registry Regulation, expected to become operational in 2015, broadens the pool of assets that can be used as collateral for loans, including account receivables and farm products. It applies to all security interests in movable property created by an agreement, securing payment or performance of an obligation, regardless of the form, type of movable, or nature of the secured obligation.[44] However, there is a provision in the regulation, specifically reg.3(4)(c)(iii), which states that any interest created by an assignment, transfer, or mortgage in movable property governed by a law 'for which a registry has been established' shall not be subject to this regulation.[45] Unfortunately, this provision lacks clarity on the types of registries it aims to exclude, leading to uncertainty.[46]

The uncertainty arises because there are operational bill of sale registries in some states in Nigeria. The question remains whether the Bills of Sale Law (BSL) will fall outside the scope of the Collateral

[43] UK Bankruptcy Act 1623 s.11. This provision can also be found in the now repealed UK Bankruptcy Act 1914 s38(c).
[44] Collateral Registry Regulation 2014, Issued by the Governor of Central Bank of Nigeria (CBN), September 2014.
[45] CBN Regulation 2014 reg.3(1).
[46] CBN Regulation 2014 reg.3(4)(c)(iii).

Registry Regulation concerning registration and enforcement. The lack of a proper transitional provision for the scope of the CBN Regulation is seen as a drawback, and it is suggested that an administrative fiat may be needed to allow the continued use of the BSL until the collateral registry becomes fully operational.

This uncertainty could lead to challenges and missed opportunities, and chattel mortgages in Nigeria may continue to be governed by the rigid procedures of the Bills of Sale Laws instead of the potentially more flexible CBN Regulation. The impact of this situation on financiers and debtors will only become clear once the collateral registry is fully operational.

Further criticisms of the Bills of Sale Law

The argument presented underscores the challenges and limitations associated with taking security through chattel mortgages, particularly bills of sale, in both the United Kingdom and Nigeria. The strict formal requirements and complexities of the bill of sale have raised concerns about its appropriateness for modern lending practices.[47]

In the UK, judicial criticism and reports like the *Crowther Report*[48] (1971) and *Diamond Report*[49] (1989) have called for the abolition of bills of sale legislation. The situation in Nigeria is similar, with the security bill of sale being rarely used in practice due to its association with financial distress. Borrowers often opt for alternative 'quasi-security' devices like hire purchase agreements, which fall outside the bills of sale legislation and do not require recording in the bills of sale registry. Moreover, there are practical challenges for borrowers in identifying the types of properties that can be assigned under the bills of sale legislation. The Bills of Sale Law (BSL) applies strictly to the document (the bill of sale) and not the transaction (chattel mortgage). Verbal agreements intended to be regulated under the BSL may be defective, and the BSL's definition of personal chattels does not cover certain moveable properties, such as aircraft and ships.

Additionally, the introduction of the Central Bank of Nigeria's Collateral Registry Regulation in 2014, aims to promote access to credit for SMEs by allowing a wider range of movable assets as

[47] It expressly states, however, that it excludes registrable charges under the Companies and Allied Matters Act—CBN Regulation 2014 reg.3(4)(b).

[48] *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*.

[49] *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."

collateral. However, there is uncertainty about the interaction between the Collateral Registry Regulation and existing bills of sale registries.

In summary, the limitations and complexities associated with bills of sale have led to their infrequent use in practice, prompting calls for reform and a shift towards more modern and flexible security arrangements.

RECOMMENDATIONS AND CONCLUSION

The argument emphasizes the need for reform in Nigeria's secured credit system, especially in the context of bills of sale legislation. The current global ranking of Nigeria at 52 out of 189 economies on ease of doing business suggests that reforms in secured lending practices could enhance private investment and economic growth.[50] Various international organizations, such as the United Nations Commission on International Trade Law (UNCITRAL), the European Bank for Reconstruction and Development (EBRD),[51] and the World Bank, have provided guidance and draft laws to support the modernization of secured lending systems globally.

The bills of sale legislation in Nigeria is criticized as archaic, poorly drafted, and among the less-used commercial laws in the country. The argument proposes either abolishing the bill of sale or reforming it to improve its efficacy. Key recommendations include modifying language to replace antiquated terms like ‘personal chattels’ with more modern terminology such as ‘commodities’ or ‘merchandise’. Additionally, a call is made for training programs, particularly for those in the mercantile industry, to enhance understanding of bill of sale transactions. A national sensitization program is suggested to raise awareness about the complexities and registration procedures associated with bill of sale transactions.

While acknowledging the continued importance of the security bill of sale in the lending industry, the argument foresees its potential obsolescence once the Central Bank of Nigeria's Collateral Registry Regulation becomes fully operational. The article concludes that, unless comprehensive reforms are undertaken, contesting the repeal of chattel mortgages in Nigeria may not be justified.

[50] Aubrey L. Diamond, *A Review of Security Interests in Property (HMSO, 1989), para.18.1.8*: ‘the time has come to repeal the Bills of Sale Acts.’

[51] *World Bank, Doing Business 2015: Economic Profile Nigeria (Washington, DC: International Bank for Reconstruction and Development/The World Bank, 2015) 64*.