

CHAPTER 53:01
TRANSFER DUTY
ARRANGEMENT OF SECTIONS

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An Act to consolidate and amend the law relating to the payment of transfer duty.

[Date of Commencement: 10th July, 1891]

PART I

Payment of Transfer Duty (ss 1-9)

1. Short title

This Act may be cited as the Transfer Duty Act.

2. Imposition of transfer duty

(1) Except as otherwise provided in this Act, a duty (hereinafter called "transfer duty") at the rate specified in subsection (4), shall be payable and paid upon the purchase price or value of any immovable property, whether freehold or held from Government upon quitrent or other leasehold tenure, sold or otherwise alienated or transferred.

(2) Transfer duty shall be payable by-

- (a) the purchaser of any such property;
- (b) every person becoming entitled to any such property by way of exchange, donation, legacy, testamentary or other inheritance or in any manner otherwise than through the medium or by means of purchase and sale;
- (c) every person into whose name any such property registered in the Deeds Registry in the name of any other person is to be registered or transferred.

(3) The amount of transfer duty payable shall be calculated at the rates specified in subsection (4) on the purchase price paid for the property or on the value of the property sold, whichever is the greater, or on the value of the property alienated or otherwise transferred.

(4) The rate of transfer duty referred to in subsection (3) shall be-

- (a) in the case of a transaction involving agricultural land-
 - (i) where the person liable to pay duty is a citizen of Botswana, P5 *per centum*;
 - (ii) where the person liable to pay duty is not a citizen of Botswana, P30 *per centum*;

and

- (b) in the case of a transaction involving property other than agricultural land, P5 *per centum*.

(5) All persons acquiring the right to the limited enjoyment of property burdened with the entail of *fidei-commissum*, and all persons acquiring a life usufruct only in any property, shall (except as is otherwise provided in this Act) be chargeable with and liable to pay the duty applicable to the species of property in question, upon the value of their estates or interest in such property, to be calculated with reference to the value of the property and the duration or extent of their interest therein, and such duty shall be recoverable whether such persons do or do not seek to have their said estates or interest registered in their names in the Deeds Registry.

(6) For the purposes of this section-

"agricultural land" means any land, other than land in a township, used or capable of being used for the purposes of agriculture or horticulture or for breeding or keeping domestic animals, poultry or bees;

"citizen of Botswana" includes a company incorporated in Botswana and of which a majority of every class of equity shares is held by citizens of Botswana.

3. Certain share dealings to constitute transactions involving agricultural land

Where the effect of the issue of any shares in any company or a change in the beneficial ownership of any of the issued shares in any company is to pass the control of or entitlement to benefit from any agricultural land from one person to another, such issue of shares or change in beneficial ownership shall constitute a transaction involving agricultural land for the purposes of section 2.

4. Costs and charges excluded from being reckoned as part of purchase price

Whenever any contract of sale of any immovable property liable to the payment of transfer duty is entered into, the purchaser of such property shall become liable to pay, over and above the sum payable to the seller, all or any of the following charges or expenses arising out of or connected with the said sale, that is to say-

- (a) the cost of any survey of the said property made prior to, and for the purposes of, the said sale, and of any survey of such property which may be made after the sale, and the cost of all diagrams and subdivisions, and of the plan of the property exhibited at the time of the sale;
- (b) the charge made by the auctioneer for the conditions of the said sale;
- (c) the commission, if any, paid by the purchaser to any auctioneer, broker or agent, by or through whom the sale of the property may have been effected, not exceeding P2,5 *per centum* upon the amount of the purchase money;
- (d) the auction duty payable upon the said sale;
- (e) the transfer duty payable thereon;
- (f) the cost of all deeds necessary for effecting transfer of such property, and of the mortgage deed, if any, and of all necessary stamps;
- (g) the charges of conveyancers, and agents, incurred in effecting the transfer of the said property;
- (h) the quitrent, if any, payable to Government upon the property sold;
- (i) the quitrent, if any, which is payable upon the property being sold to any committee, consistory or any other body for religious, educational or charitable purposes, not being rent already due and in arrear at the time of the sale,

then such charges or expenses shall not be deemed or taken to form part of the purchase money of such property, so as to be liable to the payment of transfer duty:

Provided that whenever the purchaser agrees or undertakes to pay any such quitrent as is mentioned in paragraph (i), which is, at the time of the sale to such purchaser, already due and in arrear, the amount of such arrear rent shall in the solemn declarations to be made by the

seller and the purchaser, respectively, be added to the sum paid or to be paid to the seller in stating the amount of purchase money upon which the transfer duty is to be paid.

5. Other sums payable by purchaser in addition to purchase price to be added to amount of purchase money

In case the purchaser of any such property undertakes, agrees or in any manner becomes liable for, or in respect of, or in connection with the purchase by him of the said property, to pay to any person whomsoever any sum of money over and above the sum paid or to be paid to the seller, such sum not being one or more of the items of charges or expenses mentioned in section 4, then such sum must be added to the sum paid or to be paid to the seller in stating, in the solemn declaration to be made by the seller and purchaser respectively, the amount of purchase money upon which transfer duty is to be paid.

6. When duty is payable

The transfer duty upon or in respect of every sale, exchange or donation of any such property, shall be payable within six months from the day of the date of the sale, exchange or donation, as the case may be, and after the expiration of such six months, and until payment or deposit of the amount of such duty, interest thereupon at the rate of P12 *per centum per annum* shall be payable and paid.

7. Date when duty payable in cases of deferred possession

Whenever any contract of sale of any immovable property is entered into, by which it is stipulated that possession of such property shall not be given or that the said sale shall not take effect until some further date, the date on which such contract was entered into, and not such future date, shall be the date from which the period or term of six months mentioned in section 6 shall be reckoned.

8. When duty payable in cases of conditional sale

Whenever any sale of immovable property is a conditional sale, then the said period or term of six months shall begin to be reckoned from the day on which such contract of sale was first entered into:

Provided that in case any such contract of sale is dissolved by reason of the happening of any dissolving condition after the payment of transfer duty, then upon proof given of such dissolution such duty shall be returned.

9. Liability to duty in cases of joint ownership

Whenever any such property as aforesaid is registered in the name of more than one person, as joint owners, all the said persons shall be deemed and taken, for the purpose of payment of duty upon or in respect of any sale or alienation by any of them to any other or others of them, to have equal shares and interest in the said property, unless the particular share or interest of each person is declared and set forth in the title deed or other instrument recorded in the Deeds Registry Office.

PART II

Receipts for Duty and Declarations (ss 10-13)

10. Payment of duty and effect of non-payment

(1) All duties and interest payable under the provisions of this Act shall be paid to the Registrar of Deeds who shall give a receipt for the same.

(2) The Registrar of Deeds shall not register any sale, transfer or other alienation of any immovable property or any right thereto for which transfer duty is payable under this Act unless such transfer duty has been paid to him and no such purported sale, transfer or other alienation shall be of any force or effect, nor shall any court take cognizance of any such purported sale, transfer or other alienation unless the same has been duly registered by the Registrar of Deeds.

11. Solemn declaration of sale

The Registrar of Deeds shall not grant a receipt (except as provided in this Act, and except a receipt for money deposited) for the amount of any such duty as aforesaid, payable upon or in respect of any sale and purchase of any such property as aforesaid, until the seller

has taken and subscribed the form of solemn declaration marked "A", and until the purchaser has taken and subscribed the form of solemn declaration marked "B" in the Schedule.

12. Solemn declaration of sale by agent

Whenever it appears to the Registrar of Deeds that any agent, auctioneer, broker or other person acting for or on behalf of any such seller or purchaser of any such property as aforesaid, has himself, in his said capacity, made and entered into the contract of sale or purchase, then it shall be lawful for the Registrar of Deeds to demand and receive the solemn declaration of such agent, auctioneer, broker or other person as aforesaid, either in lieu of, or in addition to, that of his principal, according as the Registrar of Deeds shall, under the circumstances of the case deem fit; and the solemn declaration to be taken as aforesaid shall, as nearly as may be, be in the form "C" in the Schedule.

13. Solemn declaration in case of death or absence of seller or purchaser

If, in any case, it appears that the seller or the purchaser of any such property has died, or departed from Botswana, without having taken and subscribed the necessary solemn declaration, the Registrar of Deeds may either dispense with such solemn declaration altogether, or receive, in lieu thereof, the solemn declaration of such other person as may, under the circumstances of the case, be in a position to testify to the particular matters to be set forth in such declaration.

PART III

Valuations for Payment of Transfer Duty (ss 14-17)

14. Valuation for purposes of computing duty

For the purposes of ascertaining the value of property changing proprietors otherwise than through the medium of, or by means of, sale and purchase, and chargeable with duty under the provisions of this Act, it shall be the duty of the Registrar of Deeds, at his discretion, either to claim duty upon the amount for which such property is valued for local council purposes, or to appoint some competent and disinterested person to ascertain, upon solemn declaration, the just and fair value of such property; and the reasonable expenses of such valuation shall be payable by the person chargeable with the payment of the duty; and the amount of such local council valuation, or the amount at which such valuator shall value the said property, as the case may be, shall be the amount on which duty shall be chargeable:

Provided that nothing contained herein shall be held or taken to prevent any person who considers himself aggrieved from bringing for review before any court having jurisdiction, the valuation upon which duty has been claimed.

15. Valuation in case in which purchase price appears to be less than true value

When in any case of sale and purchase of such property as aforesaid (not being a sale or purchase by public auction made *bona fide* and without collusion), it appears to the Registrar of Deeds that the price or purchase money of the same is considerably less than its just and fair value, and in case the Registrar of Deeds and the purchaser do not agree to accept the local council valuation of such property as representing the fair value thereof, it shall be competent for the Registrar of Deeds to cause a valuation of the said property to be made in the manner and form as mentioned in section 14; and in case the value, ascertained as aforesaid, exceeds the amount of the said price or purchase money by one-third of the amount of such price or purchase money, then the amount of such valuation shall, for the purposes of this Act, be deemed and taken to be the price or purchase money of such property; and duty thereupon, together with the reasonable expenses of such valuation, shall be paid by the purchaser, but in case such value does not exceed the said price or purchase money to the extent of one-third thereof, then duty shall be received upon such price or purchase money, and the expense of valuation shall be borne by Government:

Provided that nothing contained herein shall be held or taken to prevent any purchaser who is aggrieved by the valuation from bringing such valuation for review before any court having jurisdiction.

16. Valuation of consideration other than money

If, in any case, some additional valuable consideration, other than money, has been given or promised, or agreed to be given, by the purchaser to the seller or to any other person, for or in respect of or in connection with the alienation of any immovable property, then the seller and the purchaser shall be respectively at liberty to put, by way of solemn declaration, a value in money upon such additional consideration, and such value shall be added to the sum of money paid, or to be paid, and transfer duty shall be paid upon the conjoint amount; and in case the said seller and purchaser do not put the same value upon such additional consideration, then duty shall be paid upon the higher of the two values so put:

Provided that the provisions of sections 14 and 15 respectively shall apply to the value so put, in case it appears to the Registrar of Deeds to be considerably less than the just and fair value of such additional consideration, or in case the said seller and purchaser do not, each of them, put a value thereupon.

17. Valuation not competent after duty paid

No valuation of any property, for the purpose of payment of transfer duty, shall be capable of being made at any time after any sum of money has been received, except money received by way of deposit for securing the payment of any amount of transfer duty to be afterwards fixed and ascertained as being the transfer duty payable upon such property, and after a final receipt has been granted for such duty.

PART IV

Exemptions from, and Remission and Reduction of Transfer Duty (ss 18-24)

18. Remission of duty forbidden

No transfer duty shall be remitted upon any sales whatever, except as specially provided in this Act, and except upon sales in regard to which the transfer duty, if paid, would be paid directly from and out of the revenue of Botswana:

Provided that where a company registered with limited liability sells its undertaking to another company formed or to be formed, and the consideration for such sale consists in whole or in part of shares in the buying company which are to be delivered to the shareholders in the selling company in substitution for shares held in the selling company, and transfer duty becomes payable under this Act in respect of property situated in Botswana included in such sale, it shall be lawful for the Minister in his discretion, by writing under his hand, to remit such duty in whole or in part.

19. Return of duty when sale declared void

Whenever any contract of sale, upon which transfer duty is payable is set aside, cancelled or declared or made void by the judgment of any competent court, the transfer duty upon such sale, if unpaid, shall not be payable; and if paid, shall be returned.

20. Exemptions from obligation to pay duty

Exemptions from the obligation to pay transfer duty under the provisions of this Act shall be allowed in the cases and to the extent hereinafter set forth, that is to say-

- (a) when any person appearing upon the records of the Deeds Registry to be a joint owner of any property purchases that property, he shall not be charged with duty upon that proportion of the purchase money which represents his individual share or interest;
- (b) any person being a descendant of any deceased person, and who would be the heir, or one of the heirs, *ab intestato*, of such deceased person, who, being entitled as an heir or legatee in the estate, purchases or takes over the immovable property in the estate, or any part thereof, shall not be chargeable with duty upon so much of the purchase money or value of such property as represents his share in the property so purchased or taken over, considered as, or as if, an heir *ab intestato*; and the husband of any such heir or legatee, or the tutor, curator or trustee of any such heir or legatee, purchasing for and in the name of such heir or legatee, shall be deemed and taken to be such heir for the purpose of this exemption;

- (c) any heir or legatee of any deceased person, being such a person as has been described above under paragraph (b), who requires to have any of the immovable property inherited by him from the deceased, or by the deceased legated or pre-legated to him, removed from the name of the deceased into his own name, shall not be chargeable with duty upon the amount of his share in the property so to be transferred, in case or supposing that the deceased died intestate;
- (d) no surviving spouse who had been married to his or her deceased spouse in community of property shall be chargeable with any transfer duty upon any purchase, or other mode of taking over, from and out of the joint estate of the deceased and such surviving spouse, of the immovable property of the said estate, or of any part of such immovable property, or upon any immovable property or share in such property inherited by such surviving spouse from his or her deceased spouse as the heir or one of the heirs of such spouse; or upon any immovable property legated or pre-legated by such deceased to such surviving spouse; nor shall any such duty become payable upon any property inherited from, or legated or pre-legated by such deceased spouse, by reason that the survivor has been charged by the will or other testamentary disposition of such deceased spouse with the payment of portions to children, or others, or with the payment of some amount of money into the joint estate;
- (e) every purchase or other contract concluded by any surviving spouse with any heir or legatee of the deceased spouse, whereby such surviving spouse acquires from such heir or legatee his or her share or portion of any of the immovable property of, or which had been of, the joint estate, shall be exempt from duty, in like manner as if such purchase or contract had been concluded by such surviving spouse with the administrators of the joint estate, so long as such heir or legatee has not received transfer from or out of the joint estate of the property so sold, or otherwise disposed of, to such surviving spouse, but no longer;
- (f) when any surviving spouse has been instituted as sole and universal heir of the first dying spouse subject to the obligation of making provision at some future time for the children of the marriage out of the estate of such first dying spouse, such children shall respectively be entitled, should occasion arise, to claim the exemptions provided in paragraphs (b) and (c), precisely as if they had been, jointly with the surviving spouse, instituted heirs of the first dying spouse;
- (g) the husband of any woman to whom he has married in community of property may have any property standing in the Deeds Registry Office in her name removed into his own name without the payment of transfer duty;
- (h) whenever the owner of any immovable property, being a husband or intended husband, or being a wife or intended wife, or being the parent of a husband or wife, or of an intended husband or wife, agrees or determines to vest such property in trustees, for the purpose of thereby making a provision for the support of the marriage, transfer of such property may be made to such trustees without the payment of transfer duty:
Provided that this exemption shall only extend to cases in which no consideration in money or property is given or promised to the owner of the property proposed to be vested in trustees, upon the trusts aforesaid, or upon trusts of the like nature;
- (i) in every case in which any one person, by the records in the Deeds Registry Office, appears to be merely a trustee for any other person, whether the latter is a minor or a major, or under coverture or not, the property so held in trust may be removed from the name of the trustee to that of such other person being entitled to have it so removed, without the payment of transfer duty;
- (j) in every case of voluntary or compulsory partition between joint owners of immovable property, all changes in the records of the Deeds Registry required for the due registration of the separate shares, to be held by each in severalty, shall be made

without payment of transfer duty provided the person claiming exemption from such payment makes and deposits with the Registrar of Deeds a solemn declaration as nearly as is material in the form "D" in the Schedule, that he has not given, nor is to give, any money or other valuable consideration to his late co-proprietors or any of them for or in regard to the share assigned to him, and which he desires to have registered in his name:

Provided that if for the equalizing of partition, or for any other reason, such person has given or agreed to give to his late co-proprietors, or any of them, any money or other valuable consideration for the said share so assigned to him, he shall, by solemn declaration as aforesaid, state the amount or value given or to be given by him, and transfer duty shall be payable upon such value or amount:

Provided further that the provisions of section 16 shall apply to the value of any consideration other than money given, or to be given, in case it appears to the District Commissioner who is to receive the transfer duty that such value is considerably less than the just and fair value of such consideration;

- (k) any person, being a descendant or surviving spouse of any person who, by will or otherwise, has burdened any immovable property with the entail of *fidei-commissum* or other similar restriction, in regard to such descendant or surviving spouse, so that the latter shall be entitled only to a life or other limited interest in such property, may have his title to such limited interest recorded in the Deeds Registry Office without the payment of transfer duty;
- (l) any person claiming free property in remainder after expiration or extinction of any previous *fidei-commissum* or other similar limited interest, burdening such property, may, in a case where such person is a descendant within the fourth degree of the person imposing such *fidei-commissum* or other similar burden, have the said property registered as his own in the Deeds Registry without the payment of transfer duty;
- (m) whenever any immovable property is by the will of a deceased spouse so limited and settled that it is, upon the death of the surviving spouse who is by such will entitled to a life interest therein, to devolve to some child or other descendant of the deceased spouse, who would under or according to paragraph (c), or by any other law, be entitled in case such surviving spouse were dead, to obtain transfer of such property free of duty, then, in case such survivor during life sees fit to waive and give up his or her life interest, in favour of the child or other descendant in remainder, such child or other descendant shall be entitled to take during the life of such survivor, transfer of such property free of transfer duty;
- (n) whenever the trustee of any insolvent estate, in the exercise of the powers by law possessed by him as such trustee, refuses to fulfil any contract for the sale of fixed property made by the insolvent before sequestration, no transfer duty upon such sale shall be payable by the purchaser from such insolvent, and such duty if paid before the sequestration shall be returned; and in case of the subsequent sale of such property out of the insolvent estate the declaration of the seller may be altered so as to set forth the fact of such previous sale and of such cancellation thereof;
- (o) whenever the trustee of any insolvent estate elects to abandon any agreement which has been entered into by the insolvent for the purchase or exchange of any immovable property, no transfer duty shall be payable upon such sale:

Provided that such duty, if it has been paid by the insolvent, shall not be returned:
and

Provided further that the solemn declaration to be made by the vendor, in case he makes any second or subsequent sale, shall be as nearly as is material in the form marked "E" in the Schedule;

- (p) whenever any insolvent, by agreement with his creditors, is permitted to retain or take

over any of the immovable property which belonged to such insolvent at the date of the order of sequestration and still remaining registered in the name of such insolvent, no transfer duty shall be payable upon such transaction;

- (q) it shall be lawful for the Minister, upon proof made to his satisfaction, that any person, acting *bona fide*, has made a mistake in regard to the registration of any transfer, to permit such transfers as may be necessary for the correction, in the Deeds Registry, of the said mistake to be passed free of transfer duty;
- (r) if in any case any person who having become surety for the payment by the purchaser of the purchase money of any property has paid such purchase money, and by reason of insolvency, absence from Botswana or other cause, such surety is unable to recover the money so paid, and is willing or desirous of taking transfer of the property into his own name, the Minister may, if he sees fit, upon proof by solemn declaration of the facts, authorize the passing of transfer of the property direct from the vendor to such surety upon payment of single duty, whether paid by the purchaser or by the surety, as if the sale had been made *ab initio*, to such surety:

Provided that nothing contained herein shall affect the respective rights and remedies of such vendor and such purchaser in regard to such first or original sale;

- (s) if the Minister, in writing under his hand, waives, in respect of any particular transaction, payment of the whole or any part of the transfer duty of P5 *per centum* payable under section 2(4)(a)(i);
- (t) a citizen of Botswana shall not be charged with duty upon the first P200 000 of the purchase price or value of the immovable property concerned:
Provided that, in any case to which section 2(5) applies, a citizen of Botswana shall not be charged with duty upon the first P200 000 of the value of the estate or interest in question in the property concerned, calculated as therein provided.
- (u) where value added tax is payable on a property transaction in respect of which duty is payable at the rate referred to in section 2(4)(a)(i) or 2(4)(b), the P5 *per centum* transfer duty on that transaction shall be waived;
- (v) where value added tax is payable on a property transaction in respect of which duty is payable at the rate referred to in section 2(4)(a)(ii), the P10 *per centum* transfer duty on that transaction shall be waived;

21. Remission of duty when sale rescinded

Whenever any contract of sale upon which transfer duty is payable is cancelled and rescinded by mutual consent of the vendor and the purchaser, before transfer, without any part of the purchase money having been paid, or any valuable consideration given or promised by or on behalf of the purchaser, for the purpose of obtaining the consent of the vendor to such cancellation, the transfer duty upon such sale shall be remitted:

Provided-

- (i) that the vendor and the purchaser shall make, in reference to such cancellation, solemn declarations, which shall be, in substance, in the forms marked "F" and "G" in the Schedule;
- (ii) that the Minister may, in case any vendor or purchaser is from any cause unable to make such declaration, dispense with the declaration of such vendor or purchaser, and may, should he see fit, require or accept the declaration of any agent or person acquainted with the circumstances.

22. Partial remission when sale rescinded after part consideration has passed

Whenever any contract of sale upon which transfer duty is payable, is, by mutual consent of the vendor and purchaser, cancelled and rescinded before transfer, then, in case any part of the purchase price has been paid, or any valuable consideration has been given or promised by either party to the other for or in respect of such cancellation, transfer duty shall be payable only upon the sum so paid or the value of any consideration other than money so given,

such value to be ascertained in the manner provided in section 14; and the vendor may, on a second sale of the said property, amend the declaration to be made by him by setting forth the circumstances of such previous sale and of the cancellation thereof.

23. Inquiry by Registrar of Deeds when exemption sought

Whenever any person requiring any transfer or change of name effected in the Deeds Registry Office of Botswana claims to be exempted from the payment of transfer duty under and by virtue of any of the exemptions mentioned and contained in this Act, it shall be the duty of the Registrar of Deeds to require due proof by solemn declaration, if need be, of all facts and circumstances by reason or on account of which such exemption is demanded, and he may also require the production of any deeds or instruments connected with the case and tending to show whether or not such exemption ought by law to be allowed.

24. Hearing by a judge of dispute between Registrar of Deeds and claimant for exemption

Whenever any question arises between the Registrar of Deeds and any person claiming to be entitled to any such exemption as aforesaid regarding the right to such exemption, or the extent of such right, or, generally, any matter concerning the amount upon which any such person is justly and legally chargeable with transfer duty, any judge of the High Court, sitting in chambers, may hear the said Registrar of Deeds and the said person (or any person or persons representing each respectively) as to the matter in question, and to examine the proofs, if any, which have been offered in support of the claim to exemption, and to call for such further proofs as may be necessary, and, in a summary manner, to make, if he thinks fit, such order in the premises as he considers just:

Provided that such judge may direct any such question to be brought, by way of motion, before any court having jurisdiction, in order that the same may be heard and determined by such court.

PART V

Sales to Agent for Alleged Principals (ss 25-31)

25. Person bidding as an agent to disclose name of principal

Whenever any immovable property is sold by public sale, the auctioneer shall, before or at, or forthwith after, the closing of the bidding, ascertain from the bidder for whom he purchases and, if such bidder professes to purchase for some person other than himself, then the auctioneer or his assistant shall, in case the purchaser so disclosed shall be approved of, take down, in writing, the name of such bidder and of the purchaser for whom he purchases, and until the name of the purchaser, whether the bidder himself or someone else for whom he purchases, has been taken down in writing, there shall be no sale to any person; and the property may be again put up to competition:

Provided that it shall not be necessary that the name of the person for whom any bidder is purchasing should be announced publicly to the bystanders, if it is made known to the auctioneer, and is by him or his assistant taken down in writing as aforesaid.

26. Proceeding where bidder refuses to disclose name of principal

If any bidder, whose bid has been accepted by the auctioneer, refuses to declare, when called upon to do so by the auctioneer, for whom such bidder purchases, it shall be lawful for the auctioneer to treat and consider such bidder as being himself the purchaser, and such bidder shall, in such case, be deemed and taken to be, to all intents and purposes, the purchaser; or the auctioneer, at his election, may treat such bidding as void, and proceed afresh as if it had never been made:

Provided that the auctioneer, having once made his election either to treat such bidder as the purchaser, or proceed to sell afresh, shall not be at liberty afterwards to alter such election.

27. Proceeding where principal repudiates purchase

If, in any case, any bidder declares, as aforesaid, the name of some person as his

principal, who is taken down as the purchaser, and who afterwards refuses to accept the property purchased in his name, then, unless the bidder produces sufficient authority, in writing, from such alleged principal, authorizing such bidder to make such purchase for such principal, the bidder shall himself (without prejudice to other questions between the parties) be liable to pay transfer duty:

Provided that such bidder, paying transfer duty, shall be entitled to recover the same from his principal, in case he succeeds in proving that such principal did, in fact, give him authority to make the purchase in dispute.

28. Application of section 27

The provisions of section 27 relative to purchases at public sales by agents for alleged principals shall extend and apply, *mutatis mutandis*, to purchases made by agents for alleged principals at sales not being public sales.

29. Auctioneer forbidden to sell to undisclosed principal

No auctioneer, broker or agent shall take down or receive in regard to any purchase, the name of any purchaser as purchasing in the manner commonly called or written "q.q.", or receive in any other form the name of any person as purchasing for an unnamed principal; and any auctioneer, broker or agent contravening this section shall be guilty of an offence and liable to a fine not exceeding P100.

30. Calculation of duty when property is taken over by agent bidder

If in any case the person whose name has been declared and taken down as the purchaser of any property denies that he gave authority for the making of such purchase, or if, for any other reason, such person declines to accept such purchase, and his agent, or alleged agent, is willing to take such property for his own individual account, and the vendor consents thereto, no transfer duty shall be payable upon the sale or alleged sale to the alleged principal, but only a single transfer duty, as if the sale had been made, *ab initio*, to the alleged agent, in his individual capacity; and the solemn declarations required by law to be made shall be altered in the manner indicated in the forms marked "H" and "I" in the Schedule.

31. Private sales to undisclosed principals

Every private sale, or sale made otherwise than by auction, in regard to which the purchaser does not profess to purchase for himself, in his individual capacity, shall be wholly void, unless at the time of the making and completion thereof the name of the principal for whom the purchase is made is disclosed, and inserted in the note or memorandum in writing, if any, which may be made in regard to such sale.

PART VI

Miscellaneous (ss 32-36)

32. Proceeding when fact of sale disputed

Whenever any dispute or question arises between a supposed seller and a supposed purchaser, the supposed seller alleging that a sale of immovable property by the one of them to the other of them was actually completed, and the supposed purchaser on the other hand denying the fact that such a sale took place, it shall be lawful for the Minister, at any time within six months next after such supposed sale, upon the application of such supposed seller, and upon proof made to his satisfaction that no collusion exists between the supposed seller and the supposed buyer, to authorize such supposed seller in case of a future sale of the same property to a different person, to alter the ordinary form of solemn declaration to be made in reference to such future sale by stating in such declaration that he never sold the said property to any person except the person named in such declaration as the purchaser, if not to one A. B., who, however, disputed and denied the fact of such sale, whereupon the said sale was given up and abandoned by the person making such declaration, and the Minister's authority obtained for altering the form of the said declaration so as to make it conformable to the fact.

33. Re-sale when vendor fails to enforce contract of purchase

Where it is brought to the notice of the Minister by any person who has sold any

property, upon which sale transfer duty is payable, that the purchaser of the property cannot be discovered within Botswana, or has left Botswana without taking transfer and without paying any part of the purchase money, and that such vendor is unable to obtain, or enforce, the fulfilment of the contract, it shall be lawful for the Minister to permit the vendor, in case he sells the said property again, to make the necessary alteration in the form of the solemn declaration to be made by him in reference to such second sale:

Provided that nothing contained herein shall alter or affect the law in reference to the respective rights or remedies of such vendor and such purchaser in regard to such first or original sale.

34. Form of declaration on re-sale

In case of a second or subsequent sale of any property previously sold, the solemn declaration to be made by the vendor in regard to such second or subsequent sale may, subject to the provisions of this Act, be altered in the manner indicated in the form marked "J" in the Schedule.

35. Payment of first transfer duty on second sale

In any case in which transfer duty is payable upon any contract of sale, and such contract has not been finalised, it shall be lawful for the vendor, if he makes a subsequent sale of the said property to another purchaser, to pay the amount of any such duty for which the first purchaser may have become liable by law, if such first purchaser has neglected or refused to pay the same; and such vendor shall be entitled to recover the sum so paid from the first purchaser as so much money paid for his use:

Provided that the solemn declaration to be made by the vendor, in regard to such first sale, shall be in the ordinary form of a vendor's declaration, and no declaration shall be necessary from the first purchaser.

36. Before whom declarations are to be made

The several declarations mentioned in or required by this Act shall be made before such persons respectively as are or shall by law be entitled to administer oaths, and any person who wilfully and corruptly makes and subscribes any such declaration knowing the same to be untrue in any material particular shall be guilty of an offence, and shall be liable to suffer the punishment prescribed for the offence of perjury under the Penal Code.

SCHEDULE

Form A

DECLARATION OF SELLER

I, A. B., do solemnly and sincerely declare that the sum of P..... is the full and entire purchase money for which I have sold to C.D. the following property, that is to say: (*Here describe the property.*) And I declare that I sold the same to the said C.D. on the day of, 20....., and not before; and that there is not any agreement, condition, or understanding between me and the said C.D., whereby he has paid or is to pay to me or to any other person whomsoever, for, or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of P, except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following-

1. The costs of any survey of the said property which has been made prior to, and for the purposes of, the said sale, and of any survey of such property which may be made after the sale, and the cost of all diagrams and subdivisions, and of the plan of the property exhibited at the time of sale;
2. the charge made by the auctioneer for the conditions of the said sale;
3. the commission, if any, paid by the purchaser to any auctioneer, broker, or agent, by or through whom the sale of the property may have been effected, not exceeding P5 *per centum* upon the amount of the purchase money;
4. the auction duty paid upon the said sale;
5. the transfer duty payable thereon;
6. the costs of all deeds necessary for effecting transfer of such property and of the

- 7. mortgage deed, if any, and of all necessary stamps;
- 8. the charges of conveyance and agents, incurred in effecting the transfer of the said property;
- 9. the quitrent, if any, payable to the Government upon the property sold;
- 10. the quitrent, if any, which shall be payable upon the property sold to any committee, consistory, or any other body, for religious, educational, or charitable purposes, not being rent already due and in arrear at the time of such sale.

And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of P....., except in so far as any of the charges above specified, and to be paid by the said C. D., might be held or taken to be payable for me or on my behalf.

And I further declare that the said C. D. is the only person who has ever purchased the said property from me, and that I never sold the same to any other person.

And I make this solemn declaration conscientiously believing the same to be true.

.....
 (Signed) A. B.

Declared before me at this day of, 20

.....
 Commissioner of Oaths

**Form B
 DECLARATION OF PURCHASER**

I, C. D., do solemnly and sincerely declare that the sum of P..... is the full and entire purchase money given, or to be given, by me to A. B. for the property following, bought by me from him, that is to say: (*Here describe the property.*)

And I declare that I bought the same from the said A. B. on the day of 20, and not before, and that I have not, nor has any person to my knowledge, on my account, given, nor is there by me or on my behalf, to be given, any other valuable consideration for, or in respect of, or in connection with the alienation to me of the said property, except certain charges or payments which fall under, or come within, some one or more of the heads or items of charges or payments following: (*Here set forth in order from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in Form A.*)

And I make this solemn declaration conscientiously believing the same to be true.

.....
 (Signed) C. D.

Declared before me at this day of, 20

.....
 Commissioner of Oaths.

**Form C
 DECLARATION OF SALE BY AN AGENT**

I, do solemnly and sincerely declare that I have acted as the agent (auctioneer or broker, as the case may be) in making the

sale (or purchase) of certain sold by to and that I know, of my own knowledge, the amount of the purchase money thereof;

And I do further declare that the said sale was made on the and not before; and that the sum of to be paid by the said to the said is, to the best of my knowledge and belief, the full and entire purchase money to be given and received by the said persons, respectively, in regard to the alienation of the said property by the one of them to the other of them; and that, to the best of my knowledge and belief, no further or other valuable consideration has been given or is to be given by or on behalf of the said to or on behalf of the said for or in respect of the said property, except certain charges or payments (*insert as in Form A*);

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me at this day of, 20

.....
Commissioner of Oaths.

Form D DECLARATION OF PARTITION OF LANDED PROPERTY

We, the undersigned joint proprietors of the Quit-rent Farm or Land called in extent morgen and square roods, situated in the District of, Registered Folio do severally solemnly and sincerely declare that we have mutually agreed with each other to the following partition of the said land so as to give to each party a defined portion as his separate and exclusive property, namely,

And we declare that we have not, nor has any person to our knowledge, on our account given, or received, nor is there by us, or on our behalf, to be given or received, by the one, to or from the other of us, any money or other valuable consideration for or in respect of the partition and mutual transfer of the aforesaid land.

And we make this solemn declaration conscientiously believing the same to be true.

Declared before me at this day of, 20

.....
Commissioner of Oaths.

Form E DECLARATION OF RESALE OF PROPERTY SOLD TO INSOLVENT AND ABANDONED BY TRUSTEE

I, A. B., do solemnly and sincerely declare that the sum of P is the full and entire purchase money for which I have sold to C. D., the following property, that is to say: (*Here describe the property.*)

And I declare that I sold the same to the said C. D., on the day of, 20, and not before, and that there is not any agreement, condition, or understanding between me and the said C. D., whereby he has paid or is to pay to me or to any other person whomsoever, for or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of P....., except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following: (*Here set forth in order, from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in Form A.*)

And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable

consideration besides the said sum of P....., except in so far as any of the charges above specified, and to be paid by the said C. D., might be held or taken to be payable for me or on my behalf.

And I further declare that the only person, other than the said C. D., to whom I ever sold the said property, or who at any time purchased the said property from me, was E. F., to whom I sold the same on the day of, 20, for the sum of P.....

And I further declare that since the said sale to the said E. F., he has become insolvent, and that the trustee of his insolvent estate has elected to abandon the said sale.

And I make this solemn declaration conscientiously believing the same to be true.

.....
.....
(Signed) A. B.
Declared before me at this day of
....., 20

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Commissioner of
Oaths.

Form F
DECLARATION BY SELLER OF CANCELLATION OF SALE

I, A. B., do solemnly and sincerely declare that I sold to C. D. on the day of, 20, the property following, namely: (*Here describe the property*), for the sum of P.....

And I declare that I have never received any sum of money, or other valuable consideration, on account of the said purchase.

And I further declare that I have consented and agreed with the said C. D. to cancel by mutual consent the said sale, which sale was, on the day of, 20 cancelled accordingly.

And I further declare that I have not received, nor am I to receive, from the said C. D., or any other person, any money or other valuable consideration, for or in reference to my consent to the cancellation of the said sale.

And I make this solemn declaration conscientiously believing the same to be true.

.....
.....
(Signed) A. B.
Declared before me at this day of
....., 20

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Commissioner of
Oaths.

Form G
DECLARATION BY PURCHASER OF CANCELLATION OF SALE

I, C. D., do solemnly and sincerely declare that I bought from A. B., on the day of, 20, the property

following namely: *(Here describe the property)*, for the sum of P
..... ;

And I declare that I have never given to the said A. B., any sum of money or other valuable consideration on account of the said purchase.

And I further declare that I have applied to the said A. B. to consent to cancel the said sale, which sale has accordingly been cancelled by mutual consent.

And I further declare that I have not given, nor am I to give, nor has any person, on my behalf, to my knowledge, given, nor is any person, to my knowledge, to give, any money or other valuable consideration for or in reference to the cancellation of the said sale.

And I make this solemn declaration conscientiously believing the same to be true.

.....
.....
(Signed) C. D.

Declared before me at this day of
....., 20

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*Commissioner of
Oaths.*

Form H
DECLARATION OF SALE TO AGENT OF PURCHASER WHO REFUSES TO RATIFY PURCHASE

I, A. B., do solemnly and sincerely declare that I sold to C. D., as the agent, or alleged agent, of E. F., on the day of
....., 20, and not before, the property following,
namely: *(Here describe the property)*, for the sum of P.....

And I declare that the said E. F. has declined to accept the property, and that the said C. D. has signified his willingness to take the same to and for his own individual account, for the said sum of P....., neither more nor less.

And I further declare that there is not any agreement, condition or understanding between me and the said C.D., whereby he has paid or is to pay to me or to any other person whomsoever, for or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of P....., except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following: *(Here set forth in order, from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in Form A.)*

And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of P....., except in so far as any of the charges above specified, and to be paid by the said C. D., might be held or taken to be payable for me or in my behalf.

And I further declare that the said C. D., as the agent or alleged agent of the said E. F., is the only person who has ever purchased the said property, and that I have never sold the same to any other person than, in the manner aforesaid, to the said C. D., who with my consent and by virtue of the Act in that behalf provided, takes over the property aforesaid

as his own.

And I make this solemn declaration, conscientiously believing the same to be true.

.....

.....
(Signed) A. B.

Declared before me at this day of
....., 20

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.....

..
Commissioner of
Oaths.

Form I

DECLARATION OF AGENT WHO TAKES OVER PROPERTY BOUGHT FOR HIS PRINCIPAL

I, C. D., do solemnly and sincerely declare that I did, in the name E. F., purchase from A. B., on the day of 20, and not before, the property following namely: (*Here describe the property*), for the sum of P

And I declare that the said E. F. has declined to accept the said property, and that the said A. B. has consented and agreed that I shall take over the said property as the purchaser thereof, for the sum of P..... .

And I further declare that I have not, nor has any person to my knowledge on my account given, nor is there by me, or on my behalf, to be given, any other valuable consideration of any kind whatever, for or in respect of the alienation to me of the said property, except certain charges or payments which fall under, or come within, one or more of the heads or items of charges or payments following: (*Here set forth in order, from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in Form A.*)

And I make this solemn declaration, conscientiously believing the same to be true.

.....

.....
(Signed) C. D.

Declared before me at this day of
....., 20

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Commissioner of
Oaths.

Form J

DECLARATION OF SELLER OF PROPERTY RESOLD AFTER CANCELLATION OF FIRST SALE BY MUTUAL CONSENT, ORDER OF COURT, OR OTHER CAUSE

I, A. B., do solemnly and sincerely declare that the sum of P..... is the full and entire purchase money for which I have sold to C. D. the following property, that is to say: (*Here describe the property.*)

And I declare that I sold the same to the said C. D., on the day of, 20, and not before; and that there is not any agreement, condition or understanding between me and the said C. D.,

whereby he has paid or is to pay me or to any other person whomsoever, for or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of P....., except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following: (*Here set forth in order, from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in Form A.*)

And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of P....., except in so far as any of the charges above specified, and to be paid by the said C. D., might be held or taken to be payable for me or in my behalf.

And I do further declare that the only person other than the said C. D. to whom I ever sold the said property, or who at any time purchased the said property from me, was E. F., to whom I sold the same on the day of, 20

And I further declare that the said sale to the said E. F. has been cancelled by mutual consent, and that the transfer duty thereupon has been remitted.

Or:

"And I further declare that the said sale has been set aside by a judgment of the High Court bearing date the day of, 20, pronounced in a suit wherein was the plaintiff, and was the defendant".

Or:

"And I further declare that the said E. F. has, to the best of my knowledge and belief, left Botswana, or cannot be discovered within it (as the case may be), and that he has not paid me any part of the purchase money agreed to be paid, and that I have received from the Minister the permission herewith annexed to make this special declaration".

And I make this solemn declaration conscientiously believing the same to be true.

.....

.....
(Signed) A. B.

Declared before me atthis day of
....., 20

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.....

...
Commissioner of
Oaths.