

VICTORIA.



ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ.

No. CXLI.

An Act to prevent Frauds upon Creditors by secret Bills of Sale of Personal Chattels.

[18th June, 1862.]

WHEREAS frauds are frequently committed upon creditors by secret bills of sale of personal chattels whereby persons are enabled to keep up the appearance of being possessed of property while the grantees or holders of such bills of sale have the power of taking possession of such property And whereas it is expedient to provide a remedy in this behalf Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say)—

Preamble.

I. This Act shall commence and come into operation at the expiration of two months after the passing hereof.

Commencement of Act.

II. Every bill of sale of personal chattels made after the commencement of this Act either absolutely or conditionally or subject or not subject to any trusts and whereby the grantee or holder shall have power either with or without notice and either immediately after the making of such bill of sale or at any future time to seize or take possession of any property and effects comprised in or made subject to such bill of sale and every schedule or inventory which shall be thereto annexed or therein referred to or a true copy thereof respectively and of every attestation of the execution thereof shall (together with an affidavit of the time of such bill of sale being made or given and a description of the residence and occupation of the person making or giving the same or in case the same shall be made or given by any person under or in the execution of any process then a description of the residence and occupation of the person against whom such process shall have issued and of every attesting witness to such bill of sale) be filed in the office of the Registrar of the Supreme Court within ten days after the making or giving such bill of sale otherwise such bill of sale shall as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under any laws now or hereafter to be in force relating to bankruptcy or insolvency or under any assignment for the benefit of the creditors of such person and

Bills of sale to be filed in the Supreme Court.

17 & 18 Vic. c. 36, s. 1.

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and as against all officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorizing the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made and against every person on whose behalf such process shall have been issued be null and void to all intents and purposes whatsoever so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale which at or after the time of such bankruptcy or of the estate of the debtor being placed under sequestration or of the execution by the debtor of such assignment for the benefit of his creditors or of executing such process (as the case may be) and after the expiration of the said period of ten days shall be in the possession or apparent possession of the person making such bill of sale or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given as the case may be.

Defeasances and conditions to be written on the bills of sale.

Ib. s. 2.

III. If such bill of sale shall be made or given subject to any defeasance or condition or declaration of trust not contained in the body thereof such defeasance or condition or declaration of trust shall for the purposes of this Act be taken as part of such bill of sale and shall be written on the same paper or parchment on which such bill of sale shall be written before the time when the same or a copy thereof respectively shall be filed otherwise such bill of sale shall be null and void to all intents and purposes as against the same persons and as regards the same property and effects as if such bill of sale or a copy thereof respectively had not been filed according to the provisions of this Act.

Reputed ownership not to invalidate bills of sale.
17 V. No. 16, s. 3.

IV. Every bill of sale of personal chattels (together with every schedule or inventory if any thereto annexed or therein referred to) which or a copy of which shall be filed according to this Act shall be valid notwithstanding that the person making or giving the same or in case the same shall be made or given by any person under or in execution of any process the person against whom such process shall have issued shall by the consent and permission of the true owner thereof have in his possession, order or disposition the property and effects comprised in or made subject to such bill of sale and shall be reputed owner thereof or shall have taken upon himself the sale, alteration or disposition of such property and effects as owner.

5 V. No. 17, s. 55.

Registrar to keep books.

Ib. s. 3.

V. The Registrar of the Supreme Court shall cause every bill of sale and every such schedule and inventory as aforesaid and every such copy filed as aforesaid to be numbered and shall keep a book or books in his said office in which he shall cause to be fairly entered an alphabetical list of every such bill of sale containing therein the name, addition and description of the person making or giving the same or in case the same shall be made or given by any person under or in the execution of process as aforesaid then the name, addition and description of the person against whom such process shall have issued and also of the person to whom or in whose favor the same shall have been given together with the number and the dates of the execution and filing of the same and the sum for which the same has been given and the time or times if any when the same is thereby made payable according to the form contained in the first schedule to this Act which said book or books and every bill of sale or copy thereof filed in the said office may be searched and viewed by all persons at all reasonable times on paying to the said Registrar for every search against one person the sum of one shilling and no more and in addition to the last mentioned book the said Registrar shall keep another book or index in which he shall cause to be fairly inserted as and when such bills of

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of sale are filed in manner aforesaid the name addition and description of the person making or giving the same or of the person against whom such process shall have issued as the case may be and also of the persons to whom or in whose favor the same shall have been given but containing no further particulars thereof which last mentioned book or index all persons shall be permitted to search for themselves paying to the said Registrar for such last mentioned search the sum of one shilling. Search may be made.

VI. The Registrar of the Supreme Court shall be entitled to receive for filing and entering every such bill of sale or a copy thereof as aforesaid the sum of one shilling and no more. Fee for filing.
Ib. s. 4.

VII Any person shall be entitled to have an office copy or an extract of every bill of sale or of the copy thereof filed as aforesaid upon paying for the same the sum of one shilling per folio of seventy-two words. Office copies.
Ib. s. 5.

VIII. It shall be lawful for any judge of the Supreme Court to order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid if it shall appear to him that the debt (if any) for which such bill of sale is given as security shall have been satisfied or discharged. Satisfaction may be entered.
Ib. s. 6.

IX. In construing this Act the following words and expressions shall have the meanings hereby assigned to them unless there be something in the subject or context repugnant to such constructions (that is to say) the expression "bill of sale" shall include bills of sale assignments transfers declarations of trust without transfer and other assurances of personal chattels and also powers of attorney authorities or licenses to take possession of personal chattels as security for any debt but shall not include the following documents (that is to say) assignments for the benefit of the creditors of the person making or giving the same marriage settlements transfers or assignments of any ship or vessel or any share thereof transfers of goods in the ordinary course of business of any trade or calling bills of sale of goods in foreign parts or at sea bills of lading India warrants warehouse keepers' certificates warrants or orders for the delivery of goods or any other documents used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise either by indorsement or delivery the possessor of such document to transfer or receive goods thereby represented the expression "personal chattels" shall mean goods furniture fixtures and other articles capable of complete transfer by delivery but shall not include chattel interests in real estate nor shares or interests in the stock funds or securities of any government or in the capital or property of any incorporated or joint stock company nor choses in action nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale and personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale so long as they shall remain or be in or upon any land occupied by him or as they shall be used and enjoyed by him in any place whatsoever notwithstanding that formal possession thereof may have been taken by or given to any other person. Interpretation clause.
Ib. s. 7.

X. Nothing hereinbefore contained shall be deemed to alter or repeal any of the Acts mentioned in the last schedule to this Act. Certain Acts not to be affected.

SCHEDULES.

Bills of Sale.

SCHEDULES.

THE FIRST SCHEDULE.

Name &c. of the person making or giving the bill of sale or of the person divested of property.	Name &c. of the person to whom made or given.	Whether bill of sale assignment transfer or what other assurance and whether absolute or conditional and number.	Date of Execution.	Date of Filing.	Sum for which made or given.	When and how payable.

THE LAST SCHEDULE.

Date of Act.	Title of Act.
17 Vict. No. 16	<i>“ An Act to give a preferable Lien on Wool from season to season and to make Mortgages of Stock valid without delivery.”</i>
21 Vict. No. 56	<i>“ An Act to facilitate the formation of Mining Associations and to amend and extend the provisions of an Act passed in the eighteenth year of the reign of Her present Majesty intituled ‘ An Act for the better regulation of Mining Companies ’ and to render certain preferable Liens and Mortgages of Personalty by Miners and Mining Companies valid without delivery and for other purposes.”</i>
22 Vict. No. 68	<i>“ An Act for the continuation of expiring Laws.”</i>

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