

T A S M A N I A.



1892.

ANNO QUINQUAGESIMO-SEXTO

VICTORIÆ REGINÆ,

No. 18.

Repealed by 60 Vict. No. 52

AN ACT to consolidate and amend the Law A.D. 1892.
relating to Bills of Sale.

[21 December, 1892.]

WHEREAS it is desirable to consolidate and amend the Law PREAMBLE.
relating to Bills of Sale :

Be it therefore enacted by His Excellency the Governor of *Tasmania*,
by and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows :—

1 This Act may for all purposes be cited as “The Bills of Sale Short title.
Act, 1892.”

2 This Act shall come into operation and take effect on and after Operation of Act.
the First day of *February*, One thousand eight hundred and ninety-
three.

3 The Acts mentioned in the Schedule (1.) hereto, to the extent to Repeal.
which the same are thereby expressed, shall be and are hereby repealed Schedule (1.)
as and from the day on which this Act comes into operation.

But such repeal shall not affect any Bill of Sale made or given or in
existence before or at the day on which this Act comes into operation,
nor the registration of any Bill of Sale effected before the day on
which this Act comes into operation, nor any contract or agreement
made, lien or pledge given, or other act, matter, or thing done before
the day on which this Act comes into operation.

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Interpretation.

4 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 construction; that is to say:—

“Bill of Sale” shall include Bills of Sale, assignments, transfers, declarations of trust without transfer, or other assurances of personal chattels, and also powers of attorney, authorities, or licences 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; warehousekeeper’s 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:

“Personal chattels” shall mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery, and also horses, cattle, sheep, and pigs; but shall not include chattel interests in real estate, nor shares or interest in 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:

“Apparent possession”—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 still remain or be in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or as they are 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:

“Registrar” shall mean the Registrar for the time being of the Supreme Court of *Tasmania*:

“Person” includes any Company or Corporation:

“Court” shall mean the Supreme Court of *Tasmania* or any of the Judges thereof sitting in Chambers, or the Commissioner in Bankruptcy in *Launceston*.

Bills of Sale to
be filed in the
Office of Regis-
trar.

5 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

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affidavit of the time of such Bill of Sale being made or given, and a description of the place of business or residence and business or 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 or place of business and occupation or business of the person against whom such process shall have been issued, and of every attesting witness to such Bill of Sale), be filed in the Office of the Registrar within Thirty-one 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 as against all officers and other persons seizing any property or effects comprised in such Bill of Sale on the execution of any process of any Court of Law or Equity authorising 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 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 Thirty-one 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 been issued under or in the execution of which such Bill of Sale shall have been made or given, as the case may be.

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6 In case two or more bills of sale are given comprising in whole or in part any of the same personal chattels, they shall have priority in the order of the date of their filing in the Office of the Registrar as aforesaid respectively as regards such chattels, but no such Bill of Sale executed on or after the First day of *February*, One thousand eight hundred and ninety-three, shall be so filed unless notice of the intention to file the same be lodged at the Office of the Registrar Fourteen days before the filing thereof; and upon such lodgment there shall be paid to the Registrar a fee of One Shilling.

No Bill of Sale to be filed until after notice of intention to file.

7 Every such notice shall be in the form in the Schedule (2.) hereto or to the like effect, and shall contain a statement of the particulars in such form mentioned, and shall specify an address to which notices of caveats may be posted; and the Registrar shall cause the date at which such notice is lodged to be marked thereupon.

Form of notice. Schedule (2.)

8 The Registrar shall cause a book to be kept, in which the name, place of business or residence, and business or occupation of every person making or giving any Bill of Sale, herein called grantors, specified in such notice, shall be entered in alphabetical order, with the dates at which such notices are lodged; and such book shall be open to the inspection of any person upon payment of a fee of One Shilling; and any person may inspect and take a copy of any notice lodged as hereinbefore mentioned upon payment of a fee of One Shilling.

Notices to be indexed and open to inspection.

9 No Bill of Sale specified in any such notice shall be filed before the expiration of Fourteen days from the day of lodging such notice,

Time within which Bill of Sale may be filed.

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or after the expiration of Thirty days from such day, unless a fresh notice be given.

Caveat to stay filing.

10 If a caveat shall be entered as hereinafter provided against the filing of the Bill of Sale specified in any such notice, such Bill of Sale shall not be filed until the caveat be removed or withdrawn as hereinafter provided.

Creditor may enter caveat.

11 Any creditor of the grantor in such notice mentioned may, at any time within Fourteen days from the day on which notice shall be lodged, enter a caveat against the filing of the Bill of Sale specified in the notice by lodging the caveat with the Registrar and paying a fee of One Shilling; and every such caveat shall be in the form in the Schedule (3.) hereto, or to the like effect, and shall contain the particulars therein mentioned, and shall specify a place within the present limits of the Cities of *Hobart* or *Launceston* at which notices relating to such caveat may be served, and every notice relating to such caveat, if served at such place, shall be deemed to be duly served.

Schedule (3.)

Caveat to be notified to mortgagor, who may summon caveator.

12 Upon receipt of any such caveat the Registrar shall cause a copy thereof to be posted to the grantor mentioned in the notice at the address specified in the notice; and the grantor may summon the caveator before the Court to show cause why his caveat should not be removed, and upon the return of such summons the Court shall hear and determine whether the caveator is a creditor of the grantor. And any person to whom the grantor is indebted on any account whatsoever at law or in equity on the balance of account or otherwise, and whether the debt be due or to accrue due, secured or unsecured, shall be deemed to be a creditor within the meaning of this Section: Provided, however, in the case of a secured creditor, if the Court shall be of opinion that the security held by the secured creditor is sufficient to satisfy his debt or claim he may order the removal of the caveat.

Court may order filing to be stayed or removal of caveat.

13 If on hearing of such summons it shall appear that the caveator is a creditor of the grantor, the Court may make an Order directing that no Bill of Sale shall be filed in pursuance of the notice mentioned in the caveat until the debt for which he shall be found to be a creditor be satisfied; but if it shall not appear that the caveator is a creditor of the grantor, the Court may order that the caveat be removed, and upon service of the Order upon the Registrar he shall remove the caveat therein mentioned.

Caveat may be withdrawn or removal ordered at any time. Schedule (4.)

14 A caveator may withdraw his caveat at any time by signing an application for the withdrawal thereof in the form in the Schedule (4.) hereto, or to the like effect; and if, after satisfaction of his debt before or after the making of any such Order as hereinbefore mentioned, the caveator shall refuse to withdraw his caveat or to sign an application for the withdrawal thereof, the grantor may summon the caveator before the Court, as hereinbefore mentioned to show cause why the caveat should not be removed, and the Court may order the removal of such caveat, and upon the service of the Order upon the Registrar he shall remove the caveat therein mentioned.

Court may extend the time for filing where caveat lodged.

15 Where an Order shall have been made for the removal of a caveat after the time for the filing of the Bill of Sale has expired, it shall be lawful for the Court when making the Order, or any time within

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Seven days thereafter, upon the application of the grantor, to allow further time, not to exceed Seven days, to proceed with the registration of the Bill of Sale; and a Bill of Sale registered within the time allowed by any such Order shall be deemed to be duly registered under the provisions of this Act. A.D. 1892.

Provided always, that the Order allowing further time as aforesaid must be filed at the time when the said Bill of Sale is registered.

16 Upon the hearing of any summons under this Act the Court may make such Order as to costs as it may think fit; and any person not a creditor of the grantor entering a caveat without reasonable cause for considering himself to be a creditor, and any caveator refusing without reasonable cause to sign an application for withdrawal of his caveat after satisfaction of his debt, shall be liable to pay the grantor such sum by way of compensation as the Court upon the hearing of any such summons may deem just and may order. Court to have jurisdiction to award costs and compensation.

17 The Registrar 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 Sixpence and no more. Fees for filing.

18 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 personal chattels, as if such Bill of Sale or copy thereof respectively had not been filed according to the provisions of this Act. Defeasances and conditions to be written on the Bills of Sale.

19 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. Reputed ownership not to invalidate Bills of Sale.

20 The registration of a Bill of Sale under this Act shall, during the subsistence of such security, be renewed in manner hereinafter mentioned once in every period of Two years, commencing from the day of the registration; and, if not so renewed, such registration shall cease to be of any effect at the expiration of any period of any Two years during which a renewal has not been made as hereby required. Renewal of Registration of Bills of Sale.

21 The registration of a Bill of Sale shall be renewed by some person filing with the Registrar an affidavit stating the date of such Bill of Sale, and the names, business or occupations and place of business or residence of the respective parties thereto as stated therein, Mode of renewing Bill of Sale.

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and also the date of the registration of such Bill of Sale, and that such Bill of Sale is still a subsisting security and for what amount; and such Registrar shall thereupon number such affidavit, and re-number the original Bill of Sale or copy filed with him with a similar number.

Form of affidavit.
Schedule (5.)

22 Every affidavit renewing the registration of a Bill of Sale may be in the form in the Schedule (5.), and a fee of Two Shillings and Sixpence shall be payable on filing such affidavit.

Affidavits sworn
before Com-
missioner, &c.

23 Any affidavit required by this Act may be sworn before a Commissioner of the Supreme Court or a Justice of the Peace.

The Registrar to
keep books.

24 The Registrar shall cause every Bill of Sale and every such schedule and inventory as aforesaid, and every such copy filed as aforesaid, and every such affidavit of renewal 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, place of business or residence, and business or 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 process as aforesaid, then the name, place of business or residence, and business or occupation of the person against whom such process shall have issued, and also of the person to whom or in whose favour the same shall have been given, together with the number affixed to the said Bill of Sale or copy, 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 Schedule (6.) 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 payment to the said Registrar for every search against one person the sum of One Shilling and no more, and for every general search made at one time against any number of persons shall be Ten Shillings and no more.

Schedule (6.)

Receipt to be
endorsed on copy
of Bill of Sale.

25 Upon the filing of a Bill of Sale or a true copy thereof under this Act, the proper Officer shall endorse thereon a receipt for the same, in which shall be specified the certain day, hour, and time on which the same shall have been filed, and the Registrar or other proper Officer in that behalf shall then attach his signature to the said receipt; and every such receipt so endorsed and signed shall be taken and allowed as evidence of the filing of such Bill of Sale and of the time when such filing took place, and the onus of proof shall rest upon the person objecting to such signature.

Office copies.

26 Any person shall be entitled to have an office copy or an extract of every Bill of Sale or of the copy thereof or affidavit of renewal filed as aforesaid upon paying for the same the sum of Sixpence per folio of Seventy-two words.

Satisfaction may
be entered.

27 On production to the Registrar of any Bill of Sale or a copy thereof having endorsed thereon an acknowledgment under the hand and seal of the person to whom such Bill of Sale shall have been given, or his executors, administrators, or assigns, and duly attested, to the effect that the debt (if any) for which such Bill of Sale is given

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as security has been fully paid or satisfied, the Registrar shall thereupon cause a Memorandum of Satisfaction to be written upon such Bill of Sale or copy thereof; and in the event of the Registrar refusing or neglecting to cause such Memorandum of Satisfaction to be written as aforesaid, it shall be lawful for the 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 the said Court that the debt (if any) for which such Bill of Sale is given as security shall have been satisfied or discharged.

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28 All moneys received by the said Registrar under this Act shall be paid into the Treasury, and shall form part of the Consolidated Revenue Fund.

Appropriation.

SCHEDULE.

(1.)

ACTS TO BE REPEALED.

Sect. 3.

<i>Date and Number of Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i>
22 Vict. No. 4.	An Act for preventing Frauds upon Creditors by secret Bills of Sale of personal Chattels.	The whole Act
31 Vict. No. 14.	An Act to amend <i>The Bills of Sale Registration Act.</i>	The whole Act.

(2.)

NOTICE OF INTENTION TO FILE BILL OF SALE.

Sect. 7.

Grantor or Grantors.			Property comprised in Bill of Sale.		Consideration.			Grantee or Grantees.		
Name or Names in full; and, where the Grantors are a partnership firm not incorporated, the usual name or style of such firm.	Business or Occupation.	Place of Business or Residence.	Description.	Where situate.	Past Debt.	Advancement at time of giving Bill of Sale.	Future advances.	Name or Names in full.	Business or Occupation.	Place of Business or Residence.

I [or We], the above-named grantor [or grantors], hereby give notice that a Bill of Sale made by me [or us] on the _____ day of _____, 18____, of the property above described to the above-named grantee [or grantees] to secure the debt or advances above mentioned will be filed after the expiration of Fourteen days from the date of lodging this notice, and I [or we] hereby direct that notice of any caveat which may be entered against the filing of such Bill of Sale may be posted, addressed as follows [fill in address].

Dated this _____ day of _____ 18____.

[Signature of grantor or grantors, or his or their attorney or agent.]

Lodged this _____ day of _____ 18____.

To the Registrar of the Supreme Court.

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Sect. 11.

(3.)

CAVEAT.

To the Registrar Supreme Court.

TAKE notice that I [or we] [fill in name or names, or, if the caveators be a partnership firm not incorporated, the usual name or style of such firm, and the business, occupation, and place of business or residence of caveator or caveators] being a creditor [or creditors] of [fill in name, occupation, and place of business of grantor or grantors as described in his or their notice] in respect of a debt of £ [state the amount claimed to be due] due to me [or us] for [and the nature of the debt, as for "goods sold and delivered," "on balance of account current," "money lent," "rent," &c.] hereby forbid the filing of any Bill of Sale in pursuance of the notice given by the said [fill in name], lodged on the [fill in day] day of [fill in month] 18 [fill in year], and I [or we] hereby appoint [fill in name] as the place at which [and, (where the caveators are a partnership firm not incorporated), and [fill in name] as the member of our firm on whom] notices and proceedings relating to this caveat may be served.

Dated the [fill in day] day of [fill in month] 18 [fill in year].

[Signature of caveator or caveators, or usual signature of the partnership firm above mentioned, or his or their attorney or agent.]

Lodged the [fill in day] day of [fill in month] 18 [fill in year].

Registrar.

(4.)

Sect 14.

APPLICATION TO WITHDRAW CAVEAT.

To the Registrar General.

TAKE notice that I [or we] [fill in name or names, or, if the caveators be a partnership firm not incorporated, the usual name or style of such firm and the business, occupation, and place of business or residence of caveator or caveators] hereby withdraw the caveat lodged by me [or us] on the [fill in day] day of [fill in month] 18 [fill in year], against the filing of the Bill of Sale specified in the notice of [name of grantor or grantors], of [address of grantor or grantors], lodged on the [fill in day] day of [fill in month] 18 [fill in year].

[Signature of caveator or caveators, or usual signature of the partnership firm above mentioned, or his or their attorney or agent.]

(5.)

Sect. 22.

I, A.B., of [fill in name], do swear that a Bill of Sale bearing date the [fill in day] day of [fill in month] 18 [fill in year], [insert the date of the Bill of Sale] and made between [insert names &c. of the parties to the Bill of Sale as in the original Bill of Sale], and which said Bill [or "and a copy of which said Bill of Sale," as the case may be,] was filed with the Registrar of the Supreme Court on the day of [fill in day] [fill in month] 18 [fill in year], [insert the date of filing] and is still a subsisting security for the sum of £ [fill in amount] or thereabouts.

Sworn, &c.

(6.)

Sect. 24.

Satisfaction entered.	No.	By whom given, or against whom Process issued.			To whom given.	Instru-ment.	Date of Instru-ment.	Date of Regis-tration.	Date of filing Affidavit of Renewal.
		Name.	Place of Business or Residence.	Business or Occupation.					