

Act No. 10, 1898.

An Act to consolidate Enactments relating to BILLS OF SALE.
Bills of Sale. [27th July, 1898.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Bills of Sale Act of 1898." Short title.
2. The enactments mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed. Repeal
First Schedule.
3. In this Act the following words and expressions shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them, that is to say:— Interpretation.
19 Vic. No. 2, s. 7.

"Apparent possession"—Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are 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. "Bill

Bills of Sale.

“Bill of sale” shall include bills of sale, assignments, transfers, declarations of trusts 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-keeper’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 by 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 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, or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale.

Bills of sale to be void unless the same, or a copy thereof, be filed within thirty days.
19 Vic. No. 2, s. 1.

4. (1) Within thirty days after the making or giving of every bill of sale of personal chattels made after the passing of this Act, either absolutely or conditionally, whether subject or not to any trusts, and whereby the grantee or holder has power either with or without notice, and either immediately or at any future time, to seize and take possession of any property and effects comprised in or made subject to such bill of sale—

- (a) (i) such bill of sale and every schedule or inventory which is thereto annexed or therein referred to; or
- (ii) a true copy thereof and of every attestation of the execution thereof; together with
- (b) an affidavit of the time of such bill of sale being made or given; and
- (c) (i) a description of the residence and occupation of the person making or giving the same; or
- (ii) a description of the residence and occupation of the person against whom such process has issued in case the same is made or given by any person under or in the execution of any process; and
- (d)

Bills of Sale.

(d) a description of the residence and occupation of every attesting witness to such bill of sale—

shall be filed or recorded in the office of the Supreme Court.

(2) In default thereof such bill of sale shall as against—

(a) all assignees or trustees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale, under any assignment for the benefit of the creditors of such person ; and

(b) all sheriff's 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 authorising the seizure of the goods of the person by whom or of whose goods such bill of sale has been made ; and

(c) every person on whose behalf such process has 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 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 days are in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process has issued under or in the execution of which such bill of sale has been made or given, as the case may be.

5. No bill of sale shall have any validity as against the official assignee or trustee of a bankrupt estate, unless it is duly registered in accordance with, and within the time prescribed by this Act or any Act amending the same, and unless such registration is renewed by the grantee, or his assignee, once at least in every twelve months.

Renewal of registration.
60 Vic. No. 29,
s. 31 (1).

6. No promise to give a bill of sale shall have any validity for any purpose, against the official assignee or trustee of a bankrupt estate, unless it be in writing, stating the amount secured thereby, the names, residences, and occupations of the parties thereto, and signed by the person making the promise, and unless it be registered in accordance with and within the time prescribed by this Act, or any Act amending the same, with regard to the registration of bills of sale, and unless such registration is renewed by the promisee once at least in every twelve months.

Promise to give a bill of sale.
Ibid. s. 31 (11).

7. (1) Such renewal of registration shall be effected by filing in the office of the Supreme Court, an affidavit stating the date of the bill of sale or promise as aforesaid, the date of its registration, and the date of the last renewal of registration, and the names, residences, and occupations of the parties thereto, as stated therein, and that the bill of sale, or promise aforesaid, is still an existing security, and stating what amount is then actually due thereon.

Form of renewal.
Ibid. s. 32.

Bills of Sale.

(2) The fact of such renewal shall be noted by the Prothonotary in the book kept by him under this Act.

Goods comprised in certain bills of sale not within bankruptcy law relating to reputed ownership.
6) Vic. No. 29, s. 32.

8. The goods comprised in a bill of sale, in respect of which the provisions of sections four, five, and seven of this Act have been duly complied with, shall be exempt from the provisions of section fifty-two subsection (3), of the Bankruptcy Act, 1887, or any Act amending or consolidating the same.

Defeasance or condition of every bill of sale to be written on the same paper or parchment.
1) Vic. No. 2, s. 2.

9. If such bill of sale is 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 purpose 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 is written before the time when the same, or a copy thereof respectively, is 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, had not been filed according to the provisions of this Act.

Officer of Court to keep a book containing particulars of each bill of sale.
Ibid. s. 3.
Second Schedule.

10. (1) The Prothonotary shall cause every bill of sale, and every such schedule and inventory as aforesaid, and every such copy filed in his said office under the provisions of this Act, to be numbered, and shall keep a book in his 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 is 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 has issued, and also of the person to whom or in whose favour the same has 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 (if any) when the same is thereby made payable according to the form contained in the Second Schedule to this Act.

(2) The said book 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, paying to the officer for every search against one person the sum of sixpence.

(3) In addition to the last-mentioned book, the Prothonotary shall keep another book or index, in which he shall cause to be fairly inserted as and when such bills 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 has issued, as the case may be, and also of the persons to whom or in whose favour the same 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 officer for such last-mentioned search the sum of one shilling.

(4)]

Bills of Sale.

(4) The provisions of this section shall, so far as applicable, apply to renewals of registration and to promises to give bills of sale as aforesaid. 60 Vic. No. 29, s. 34.

11. An office fee of two shillings and sixpence shall be paid to the Prothonotary for filing and entering every such bill of sale, or promise to give a bill of sale, or a copy thereof, as aforesaid. Office fee of 2s. 6d. for filing bill of sale. 19 Vic. No. 2, s. 4.

12. Any person shall be entitled to have an office copy or an extract of every bill of sale, or promise to give a bill of sale, or of the copy thereof filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in the Supreme Court. Office copies or extracts to be given on paying as for copies of judgments. *Ibid.* s. 5. 60 Vic. No. 29, s. 34.

13. Any Judge of the Supreme Court may order a memorandum of satisfaction to be written upon any bill of sale, or copy thereof respectively as aforesaid, if it appears to him that the debt (if any) for which such bill of sale is given as security has been satisfied or discharged. Satisfaction may be entered. 19 Vic. No. 2, s. 6.

14. Nothing in this Act contained shall be deemed to affect the provisions of the present or any future Act passed to give effect to liens on wool and mortgages on sheep, cattle, and horses. Not to affect any Act relating to lien on wool, &c. *Ibid.* s. 8.

SCHEDULE ONE.

Date of Act.	Title of Act.	Extent of Repeal.
19 Vic. No. 2 ..	An Act for preventing Frauds upon Creditors by secret Bills of Sale of personal Chattels.	The whole.
60 Vic. No. 29 ..	Bankruptcy Acts Amendment Act, 1896 ..	Sections 31, 32, 33, 34.

SCHEDULE TWO.

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.