

CAP. III.

An Act to amend the Statutes of this Province respecting Mortgages and Sales of Personal Property in Upper Canada, and to consolidate the same.

[Assented to 27th May, 1857.]

Preamble.

WHEREAS it is expedient to amend and consolidate the Law of Upper Canada concerning mortgages and sales of personal property, and to repeal the Statutes now in force on that subject : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

What shall be necessary to the validity of a mortgage of personals in Upper Canada not accompanied by delivery and change of possession.

I. Every Mortgage, or conveyance intended to operate as a Mortgage, of goods and chattels, made in Upper Canada, which shall not be accompanied by an immediate delivery, and an actual and continued change of possession of the things mortgaged, shall be absolutely null and void as against creditors of the Mortgager, and against subsequent purchasers or Mortgagees in good faith for valuable consideration, unless the Mortgage or conveyance, or a true copy thereof, together with an affidavit of a witness thereto, sworn as hereinafter provided, of the due execution of the said Mortgage or conveyance, or of the due execution of the Mortgage or conveyance of which the copy filed purports to be a copy, together with an affidavit of the Mortgagee or his agent properly authorized to take such Mortgage in writing, a copy of which authority shall be registered therewith (if such Agent be aware of all the circumstances connected therewith), that the Mortgager therein named is justly and truly indebted to the Mortgagee in the sum mentioned therein, that it was executed in good faith and for the express purpose of securing the payment of the money so justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the Mortgager, or preventing the creditors of such Mortgager from obtaining payment of any claim against him, shall be registered as hereinafter provided within five days from the execution thereof.

Affidavit to be made and filed by mortgagee or his agent.

Registration of mortgage.

What shall be necessary to a valid sale of such property, not accompanied by delivery and change of possession.

Affidavit of bargainee or his agent.

II. Every sale of goods and chattels, which shall not be accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Act, and shall be accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the bargainee, or his agent duly authorized in writing to take such conveyance, a copy of which authority shall be attached to such conveyance, that the sale is *bona fide* and for good consideration, as set forth in the said conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors