ABOUT BILLS OF SALE.

THE LATEST ACT IN REGARD TO THE REGISTRY OF THEM.

The Text in Full Published for the First Time—Important Provisions With Which Every Business Man in New Brunswick Should be Acquainted.

The following important act in regard to bills of sale, has just been passed by the local legislature, and the information contained in it, now published for the first time, will be of interest not only to the legal profession but to every merchant throughout the province. The act, as passed, reads as follows:

An Act to Repeal Chapter 75 of the Consolidated Statutes of "Registry of Bills of Sale," and to Make Other Provisions in lieu thereof.

Be it enacted by the Lieutenant Governor and Legislative Assembly as follows:

1. Every Mortgage or conveyance intended to operate as a mortgage of goods and chattels which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged or a true copy thereof, shall within thirty days from the execution thereof be filed as hereinafter provided, together with the affidavit of a witness thereto of the due execution of such mortgage or conveyance or of the due execution of the mortgage or conveyance of which the copy filed purports to be a copy, and also with the affidavit of the mortgagee or of one of several mortgagees, or the agent of the mortgagee or mortgagees, if such agent is aware of all the circumstances connected therewith.

2. Such last mentioned affidavit, whether of the mortgagee or his agent, shall state that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage; that it was executed in good faith and for the express purpose of securing the payment of money justly due, or accruing due, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor or preventing the creditors of such mortgagor from obtaining payment of any claims against him.

3. Every such mortgage or conveyance shall only operate and take effect upon, from, and after the day and time of filing thereof.

4. In case such mortgage or conveyance and affidavits are not filed as hereinbefore provided, the mortgage or conveyance shall be absolutely null and void as against subsequent purchasers or mortgagees in good faith for valuable consideration, the assignee of the mortgagor under any law relating to insolvency or insolvent, absconding or absent debtors, or an assignee for the general benefit of the creditors of the mortgagor or as against the execution creditors of the mortgagor or any Sheriff, Constable or other person levying on or seizing the property comprised in such mortgage under process of law.

5. Every sale of goods and chattels not 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 the conveyance, a copy of which shall be attached to the 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 of the bargainor, and the conveyance and affidavit shall be filed as hereinafter provided within thirty days from the execution thereof, otherwise the sale shall be absolutely void as against subsequent purchasers or mortgagees in good faith, the assignee of the grantor under any law relating to insolvency or insolvent, absconding or absent debtors or an assignee for the general benefit of the creditors of the maker or as against the execution creditors of the maker or any Sheriff, Constable or other person levying on or seizing the property comprised in such Bill of Sale under process of law.

6. In case of an agreement in writing for future advances for the purpose of enabling the borrower to enter into or carry on business with such advances, the time of repayment thereof not being longer than one year from the making of the agreement, and in case of a mortgage of goods and chattels for securing the mortgagee repayment of such advances, or in case of a mortgage of goods and chattels for securing the mortgagee against the indorsement of any Bills or promissory notes or any other liability by him incurred for the mortgagor not extending for a longer period than one year from the date of the mortgage, and in case the mortgage is executed in good faith, and sets forth by recital or otherwise the terms, nature and effect of the agreement and the amount of the liability intended to be created, and in case the mortgage is accompanied by the affidavit of a witness thereto of the due execution thereof, and by the affidavit of the mortgagee, or in case the agreement has been entered into and the mortgage taken by an agent duly authorized in writing to make such agreement and to take such mortgage, and if the agent is aware of the circumstances connected therewith then it accompanied by the affidavit of such agent, such affidavit whether of the mortgagee or his agent stating that the mortgage truly sets forth the agreement entered into by the parties thereto and truly states the extent of the liability intended to be created by the agreement and covered by such mortgage, and that the mortgage is executed in good faith and for the express purpose of securing the mortgagee repayment of his advances or against the payment of the amount of his liability for the mortgagor as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against the mortgagor, and in case the mortgage is filed as hereinafter provided, the same shall be as valid and binding as mortgages mentioned in the preceding sections of this Act.

7. The affidavit of *bona fides* required by the preceding sections may be made by one of two or more bargainees or mortgagees.

8. The instruments mentioned in the preceding sections shall be filed with the Registrar of Deeds and Wills of the county where the maker resides, if resident within the province and if not so resident then with the Registrar or Registrars of the county or several counties in which the goods may be, and registrar shall file all such instruments presented to him for that purpose, and shall endorse thereon the day and hour of receiving the same in his office, and the same shall be kept there for the inspection of all persons interested therein or intending or desiring to acquire any interest in or of any portion of the property covered thereby.

.9 The registrar shall number every such Instrument or copy filed in his office and he shall enter in alphabetical order in a book to be kept by him for that purpose the names of all the parties to such Instruments with the numbers endorsed thereon opposite to each name, and such entry shall be repeated alhpabetically under the name of every party thereto.

10. Every mortgage or copy thereof filed in pursuance of this act, shall before the expiration of one year from the filing thereof be renewed by filing in the office of the Registrar in which such instrument was originally filed, a statement exhibiting the interest of the mortgagee, his executors, administrators or assigns on the property, claimed by virtue thereof and showing the amount still due for principal and interest thereon and showing all payments made on account thereof together with an affidavit of the mortgagee or one of several mortgagees, or of the assignee, or one of the several of the assignees or the agent of the mortgagee or assignee or mortgagees or assignees as the case may be that the statement is true and that that the mortgage has not been kept on foot for any fraudulent purpose and in case of failure to file such statement and affidavit within the time aforesaid any creditor of the mortgagor may by a written notice served upon such mortgagee or mortgagees or upon such assignee or assignees require him or them to file such statement and affidavit, and if the same are not filed as requested by this section within thirty days after service of such notice then such mortgage shall cease to be valid as against any execution against the goods and chattels of the mortgagor issued at the suit of such creditor.

11. The statement and affidavit mentioned in the next preceding section may be in the form given in the Schedule B to this Act or to the like effect

12. The statement and affidavit shall be deemed one Instrument and be filed and entered in like manner as the Instruments in this Act mentioned are by section 8 required to be filed and entered, and the like fees shall be payable for filing and entering the same as are payable for filing and entering such Instruments.

13. Another statement in accordance with the provisions of section 10 of this Act, duly verified as required by that section, shall be filed in the office of the Registrar in which the original Instruments are filed, within thirty days next preceding the expiration of the term of one year from the day of the filing of the statement required by the said section 10, and so on from year to year, that is to say another statement as aforesaid duly verified, shall be filed within thirty days next preceding the expiration of one year from the day of the filing of a former statement, in case of failure to file the statement and affidavit from time to time as required by this section, any creditor of the mortgagor may by a written notice served upon such mortgagee or mortgagees, assignee or assignees, require him or them to file such statement and affidavit, and if the same are not filed as required by this section within thirty days after service of the notice therein provided for, then such mortgage shall cease to be valid as against any execution, as against the goods and chattels of the mortgagor issued at the suit of such creditor.

14 The affidavit required by section 10 may be made by any next of kin, executor or administrator of any deceased mortgagee, or by any asignee claiming by or through any mortgagee or any next of kin, Executor or Administrator of any such assignee, but if the affidavit is made by any asignee, next of kin, Executor or Administrator of any such assignee, the assignment of the several assignments through which the assignee claims, shall be filed in the office in which the mortgage is filed at or before the time of such refiling by the assignee, next of kin, Executor or Administrator of the assignee.

15. (1) In the case of a mortgage or conveyance of personal property of any Company incorporated by or under Imperial Act or Charter, or by or under any Act or Charter of the Dominion of Canada, or by or under any Act or Charter of the Province of New Brunswick, made to a bondholder or bondholders, or to a Trustee or Trustees for the purpose of securing the Bonds or Debentures of such Company, instead of the affidavit of *bona fides* required by the 1st and 2nd sections of this Act, it shall be sufficient for the purposes of this Act if an affidavit be filed as thereby required made by the mortgagee or one of the mortgagees to the effect that the said mortgage or conveyance was executed in good faith and for the express purpose of securing the payment of the Bonds or Debentures referred to therein, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor or of preventing the creditors of such mortgagor from obtaining payment of any claim against him.

(2) Any such mortgage may be renewed in the manner and with the effect provided by the 10th and following sections of this Act upon the filing of a statement by the mortgagee or one of the mortgagees exhibiting the interest of the mortgagee or mortgagees in the property claimed by virtue of the said mortgage and showing the amount of the Bond or Debenture debt that the same was made to secure, and showing all payments on account thereof which to the best of the information and belief of the person making such statement have been made or of which he is aware or has been informed, together with an affidavit of the person making such statement that the statement is true to the best of his knowledge, information and belief, and that the mortgage has not been kept on foot for any fraudulent purpose, and such statement shall be filed instead of the statement required by the said section of this Act.

(3). If any mortgage as aforesaid be made to an incorporated company, the several affidavits and statements herein mentioned may be made by the President, Vice-President, Manager or Assitant Manager of such mortgagee company or any other officer of the company aforesaid for such purpose.

(4) For the purpose of the filing or registering of any conveyance under this act the head office within the province of any incorporation company, shall be deemed the domicile or place of residence of the company.

16. A copy of such original Instrument or of a copy thereof so filed as aforesaid, including any statement made in pursuance of this Act certified by the Registrar in whose office the same has been filed shall be received in evidence in all Courts, but only of the fact that the Instrument or copy and statement were received and filed according to the endorsement of the Registrar thereon and of no other fact, and in all cases the original endorsement by the Registrar made in pursuance of this Act upon any such Instrument or copy shall be received in evidence only of the fact stated in the endorsement.

17. Where any mortgage of goods and chattels is registered under the provisions of this Act, such mortgage may be discharged by the filing in the office in which the same is filed of a certificate signed by the mortgagee, his Executors or Administrators, in the form given in Schedule A hereto or to like effect.

18. (1.) The Registrar with whom the chattel mortgage is filed, upon receiving such certificate, duly proved by the affidavit of a subscribing witness, shall at each place where the number of the mortgage has been entered with the name of any of the parties thereto in the book kept under section 9 of this Act, or wherever otherwise in the said book the said mortgage has been entered, write the words, "discharged by certificate number (state number of the cerfificate,)" and to the said entry the Registrar shall affix his name, and he shall also endorse the fact of the discharge upon the Instrument discharged, and shall affix his name to the indorsement.

(2.) Instead of the certificate above provided for the mortgagee or assignee of the mortgagee may appear before the Registrar with whom the mortgage is filed, and sign a memorandum of discharge in his presence either on the mortgage or the copy filed, and such Registrar shall subscribe the same as a witness and the Registrar shall thereupon enter the discharge of such mortgage as provided in the preceding subsection.

19. Where a mortgage has been renewed under section 10 of this Act, the endorsements or entries required by the preceding section to be made, need only be made upon the statement and affidavit filed on the last renewal and at the entries of the statement and affidavits in the said book.

20. In case a registered chattel mortgage has been assigned, the assignment may upon proof by the affidavit of a subscribing witness be numbered and entered in the alphabetical chattel mortgage book in the same manner as a chattel mortgage, and the proceedings authorized by the next preceding three sections of this Act may and shall be had upon a certificate of the assignee proved in manner aforesaid.

21. In case any Bill of Sale is subject to any defeasance, the same shall be considered as part thereof and such defeasance or a copy thereof shall be filed with the Bill of Sale or copy, otherwise such Bill of Sale shall be null and void as against the same persons and as regards the same property and effects as if such Bill of Sale or copy thereof had not been filed according to the provisions of this Act.

22. Fees for services under this Act. The Registrar aforesaid shall be entitled to receive the following fees:

1. For filing each Instrument and affidavit, and for entering the same in a book, as aforesaid, twenty-five cents.

2. For filing assignment of each Instrument, and for making all proper endorsements in connection therewith, twenty-five cents.

3. For allowing inspection of any Instrument filed under the provisions of this act twenty cents.

4. For administering every oath under this act, twenty cents.

5. For filing certificate of discharge of each Instrument and for making all proper entries and endorsements connected therewith, twenty-five cents.

6. For copies of any document with certificate prepared filed under this act, words twenty-five cents for every hundred words.

23. Where under any provisions of the Act the time for registering or filing any Mortgage, Bill of Sale, Instrument, Document, Affidavit or other paper expires on a Sunday or public holiday, on which the office of the Registrar in which the filing is to be done is closed, and by reason thereof the filing cannot be done on that day, the filing shall, so far as regards the time of doing the same, be regarded to be duly done, if done on the next day on which the office shall be open.

24. An authority for the purpose of taking or renewing a mortgage under the provisions of this Act may be a general one, to take and renew all or any mortgages or conveyances to the mortgagee or bargainee.

25. All the Instruments mentioned in this Act whether for the sale or mortgage of goods and chattels shall contain such sufficient description thereof that the same may be thereby readily and easily known and distinguished.

26. All affidavits and affirmations required by this Act shall be taken and administered by any Judge, Notary Public, Commissioner, or other person in or out of the Province authorized to take affidavits to be read in the Supreme Court, or by the Registrar of Deeds or a Justice of the Peace, and the sum of twenty cents shall be paid for every oath thus administered.

27. This Act does not apply to Bills of Sale or mortgages of vessels registered under the provisions of any Act in that behalf. Nor to transfers of goods in the ordinary course of business of any trade or calling, sales of goods in foreign ports, or at sea Bills of Lading, 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 authorizing or purporting to authorize either by endorsement or by delivery, the possessor of such documents to transfer or receive goods thereby represented, or assignments of personal property to creditors under proceedings for the relief of insolvent debtors, nor any transaction agreement or contract made or entered into by any Bank under the 74th section of "The Bank Act" of the Parliament of Canada. The expression "Goods and Chattels" in this act shall mean goods, furniture, pictures and other articles capable of complete transfer by delivery, and shall not include chattel interest to real estate nor shares nor interest to the stock funds or securities of any Government or Municipal Corporation, or in the Capital Stock or debentures of any incorporated or Joint Stock Company or choses in action.

28. (1.) Every chattel mortgage and every conveyance intended to operate as a mortgage of goods and chattels filed before the passing of this act, and which has not been accompanied by delivery and on actual and continued charge of possession of the things mortgaged, shall be renewed in the manner provided by section 10 and 11 within twelve months from the passing of this act; and go on from year to year thereafter as provided by section 13, otherwise the same may cease to be valid in the manner specified in sections 10 and 13 respectively as against a creditor of the mortgagor serving the notices provided for by the said sections.

2. Every mortgage or conveyance intended to operate as a mortgage of goods and chattels and every Bill of Sale of goods and chattels made before the passing of this act, and which has not been accompanied by delivery, and actual and continued charge of possession of the things mortgaged or conveyed (and which or a copy thereof was not filed under chapter 75 of the consolidated Statutes and as required by that chapter before the passing of this act) or a true copy thereof, shall be filed with the Registrar of Deeds of the County where the maker resided at the time of the execution thereof if resident within the province, or if not so resident, then with the Registrar or Registrars of the several counties in which the goods may be, within three months from the passing of this act, together with an affidavit of the due execution of such mortgage or conveyance of which the copy filed purports to be a copy, and also with the affidavit of *bona fides* required by sections 2 and 5 respectively. Provided, however, if the mortgagee or mortgagees, bargainee or bargainees respectively make an affidavit and file the same with the Registrar at the time of filing such mortgage, conveyance or Bill of Sale, or a copy thereof, that he or they were not aware within the said three months of the provisions of this section and that he or they file the said mortgage, conveyance or Bill of Sale, or copy thereof as soon as he or they became aware of such provisions, such mortgage, conveyance or Bill of Sale or copy thereof if accompanied by the affidavits above mentioned of the due executions thereof and of the *bona fides* may be filed within six months from the passage hereof.

3. If such mortgage or conveyance intended to operate as such, or such Bill of Sale is not filed as required by the next preceding sub-section, the same shall then become absolutely null and void as against the persons mentioned in sections 4 and 5 of this Act.

4. Every such mortgage of conveyance intended to operate as a mortgage filed under the provisions of this section shall be renewed in the manner provided by sections 10, 11 and 13, otherwise the same may cease to be valid in the manner specified in sections 10 and 13 respectively, as against a creditor of the mortgagor serving the notices provided for in the said sections.

29. Chapter 75 of the Consolidated Statutes "Registry of Bills of Sale" and any Act or Acts in amendment thereof are hereby repealed, but such repeal shall not affect the rights of any parties in respect to Bills of Sale or Chattel Mortgages heretofore filed, except as provided in the next preceding section.

30. This Act shall be cited as "The Bills of Sale Act, 1893."

31. This Act shall go into effect on the first day of July next and not sooner.

SCHEDULE A.

(SECTION 17.)

FORM OF DISCHARGE OF MORTGAGE.

To the Registrar of Deeds of the County of

I, A. B. of do certify that

has satisfied all money due on, or to grow due on a certain chattel mortgage made by to which mortgage bears date the day of A. D. and was filed (or in case the mortgage has been renewed, was renewed) in the office of the Registrar of Deeds of the County of on the day of A. D. as No. (here mention the day and date of registration of each assignment thereof, and the names of the parties, or mention that such mortgage has not been assigned as the fact may be): and that I am the person entitled by law to receive the money, and that such mortgage is therefore discharged.

Witness my hand this day of A. D.

A. B.

One Witness
stating residence and occupation.

SCHEDULE B.

(SECTION 11.)

Statement exhibiting interest of C. D. in the property mentioned in a chattel mortgage dated the day of A. D. made between A. B. of of the one part and C. D. of of the other part, and filed in the office of the Registrar of Deeds of the County of on the day of A. D. and of the amount due for principal and interest thereon and of all payments made on account thereof.

The said C. D. is still the mortgagee of the said property and has not assigned the said mortgage (or, the said E. F. is the assignee of the said mortgage by virtue of an assignment thereof from the said C. D. to him dated the day of A. D.) (or as the case may be.)

No payments have been made on account of the said mortgage (or the following payments and no other have been made on account of the said mortgage.)

1883, January 1. Cash received $100 00.

The amount still due for the principal and interest on the said mortgage is the sum of $ computed as follows (here give the computation).

C. D.

County of
to-wit.

I, of in the County of the mortgagee named in the chattel mortgage mentioned in the foregoing (or annexed) statement for assignee of the mortgagee named in the chattel mortgage mentioned in the foregoing (or annexed) statement (as the case may be) make oath and say:

1. That the foregoing (or anenxed) statement is true.

2. That the chattel mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

Sworn before me at the of in the County of this day of A D. 18

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