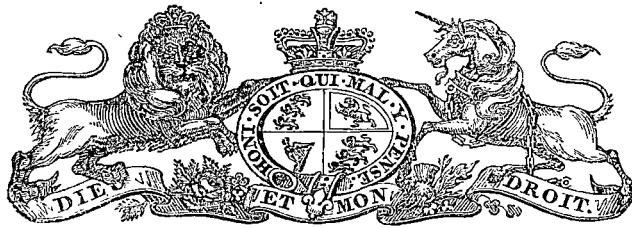


(No. 79.)



1896.

SESSION II.

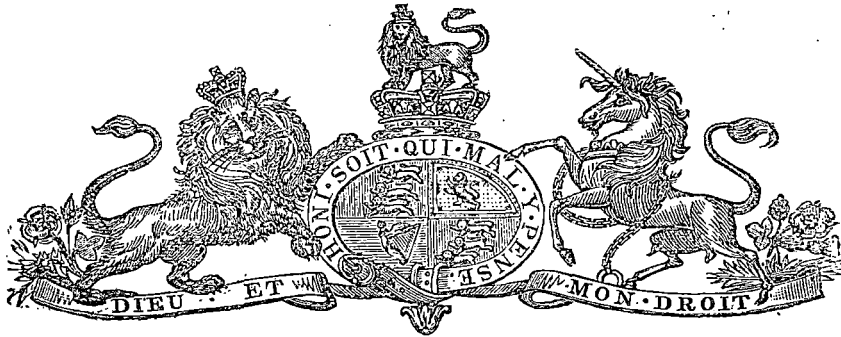
PARLIAMENT OF TASMANIA.

THE BILLS OF SALE BILL, 1896, (No. 34):

REPORT OF SELECT COMMITTEE.

Brought up by Mr. Lewis, October 1, 1896, and ordered by the House of
Assembly to be printed.

Cost of printing—£1 16s.



*SELECT COMMITTEE appointed on Friday, September 11, to consider the
Bills of Sale Bill.*

R E P O R T .

THE Members of the Committee appointed to consider the Bill to consolidate and amend the Law relating to Bills of Sale have given their anxious consideration to the said Bill. Although they are not unanimously in favour of all the changes proposed to be introduced in the existing Law relating to Bills of Sale, they have gone carefully through all the clauses of the Bill, and have made certain Amendments thereto, and have added some new Clauses. They now have the honour to submit an amended Bill for the consideration of your Honorable House.

N. E. LEWIS, *Chairman.*

*Committee Room,
House of Assembly,
October 1, 1896.*

As amended by Select Committee.

A

B I L L


TO




**Consolidate and amend the Law relating to A.D. 1896.
Bills of Sale.**

WHEREAS it is desirable to consolidate, amend, and alter the PREAMBLE-
Law 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
5 House of Assembly, in Parliament assembled, as follows :—

1 This Act may for all purposes be cited as “The Bills of Sale Act, Short title.
1896.”

2 This Act shall come into operation and take effect on and after Operation of Act.
the (First) day of (*January*), 189(7.) 

10 **3** [The Acts mentioned in the Schedule (1.) hereto, to the extent to Repeal.
which the same are thereby expressed, shall be and the same are] Schedule (1.)
 (“The Bills of Sale Act, 1892,” is) hereby repealed as from the date 
on which this Act comes into operation; but such repeal shall not
affect any Bill[s] of Sale made or given or in existence before or 
15 [at] (on) the day on which this Act comes into operation, nor the
registration of any Bill of Sale effected on or before the day on which
this Act comes into operation, [or] (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.

[Bill 34.]

* * The words proposed to be struck out are enclosed in brackets [] ; those to be
inserted in parentheses ().

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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 shall be something in the subject or context repugnant to or inconsistent with such construction ; that is to say,—

“Bill of Sale” shall include bills of sale, assignments, transfers, 5 declarations of trust without transfer, and 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 10 creditors of the person making or giving the same, [ante-nuptial]* 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 15 warrants,] warehousekeepers’ 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 endorsement or delivery) the possessor of such 20 document to transfer or receive the goods thereby represented :

* (marriage)

“Personal chattels” shall mean goods, stock-in-trade, furniture, fixtures, chattels, and other things capable of complete transfer by delivery, and also horses, cattle, sheep, pigs, 25 and other live stock of every description, and their produce and progeny, [and also growing crops, and vehicles of every kind]; but shall not include chattel interests in real estate, nor shares or interest in stock funds or securities of any Government, (local authority or corporate body) or in the 30 capital or property of any incorporated or joint-stock company, (nor debentures and interest coupons issued by any Government or local authority or company or other corporate body,) nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any 35 covenant or agreement ought not to be removed from any farm or lands where the owner shall be at the time of making or giving such bill of sale :

“Apparent possession.”—Personal chattels shall be deemed to be in the apparent possession of the person making or giving 40 the Bill of Sale so long as they shall remain or be in, upon, or about, or used in connection with any house, mill, warehouse, building, yard, land, or other premises occupied by him (or as they are used and enjoyed by him) in any place whatsoever, notwithstanding that formal 45 possession thereof may have been taken or given to any other person :

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

“Person” shall include any Company or Corporation : 50

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

Bill of Sale to be filed in the office of the Registrar.

5 Every Bill of Sale of personal chattels made after the commencement of this Act, whether absolute or conditional, and whether subject 55

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or not subject to any trusts, and whereby the grantee or holder thereof shall have power either with or without notice, and immediately after the filing of such Bill of Sale as herein provided or at any future time, to seize [and] (or) take possession of the personal chattels comprised in or
 5 made subject to such Bill of Sale, and every schedule or inventory which shall be thereto annexed or therein referred, or a true copy thereof respectively, and of every attestation [thereof] (of the execution thereof) respectively shall (together with an affidavit of the date of such Bill of Sale being made or given, and a description of the place
 10 of business or residence and the business or occupation, if any, 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, if any, of the person against whom such process shall have
 15 been issued and (of) every attesting witness [of] (to) such Bill of Sale) be filed in the Office of the Registrar within [Twenty-one] (Thirty-one) days after the making or giving of such Bill of Sale; otherwise such Bill of Sale shall, as against all assignees of the estate and effects of the person whose personal chattels, or any of
 20 them, are comprised in such Bill of Sale under any law 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 personal chattels comprised [or intended to be comprised] in such Bill of Sale on the
 25 execution of any process of any Court of Law or Equity authorising the seizure of any personal chattels of the person by whom or (of) whose personal chattels 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
 30 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 insolvency, or of the execution by the debtor of such assignment for the benefit of his creditors, or of [the] executing [of] such process, as the case may be, and after the expiration of the said period
 35 of (Twenty-one) [Thirty-one] days, shall be in the possession or apparent possession of the person making or giving such Bill of Sale, or of any person against whom the process shall have issued, or in the execution of which such Bill of Sale shall have been made or given, as the case may be.



40 6 Notwithstanding anything contained or implied in or by any Bill of Sale made or given [under] (after) this Act (comes into operation), the [granter] (grantee) or holder thereof shall not be entitled or in any way empowered to exercise any right or power of seizure or sale thereby given to or conferred on him unless and until such Bill of
 45 Sale shall have been duly filed in accordance with the provisions of this Act.

Bill of Sale to be filed before [process] (powers) exercised.



7 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
 50 aforesaid respectively as regards such chattels; but no such Bill of Sale [executed on or before the _____, One thousand eight hundred and ninety- _____.] 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
 55 to the Registrar a fee of One Shilling.

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



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Form of notice.
Schedule (2.)



8 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 as in such form mentioned, and shall specify an address [within the present limits of the Cities of *Hobart* or *Launceston*] to which caveats may be posted, and the Registrar shall cause the date on which such notice is lodged to be marked thereon.

Notices to be indexed and open to inspection.

9 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.

Time in which Bill of Sale must be filed.



10 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, or after the expiration of [Twenty] (Thirty) days from such day (unless a fresh notice shall be given).

Caveat to stay filing.

11 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.



12 Any creditor of the grantor in such notice mentioned whose debt shall amount to not less than Two Pounds, or any number of creditors of such grantor whose [just] (joint) debts shall amount to not less than Five Pounds, may at any time within Fourteen days from the day on which such 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 be in duplicate, and shall contain the particulars therein mentioned, and shall specify an address 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.

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Caveat to be notified to grantor, who may summon the caveator.



13 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.

45

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

14 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

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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.

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15 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.

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

16 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 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.

Court may extend the time for filing where caveat lodged.

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

17 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.

18 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.

19 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.

20 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,

Reputed ownership not to invalidate Bills of Sale.

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(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 5 reputed owner thereof, or shall have taken upon himself the sale, alteration, or disposition of such property and effects as owner.

Renewal of registration of Bills of Sale.

21 The registration of a Bill of Sale under this Act shall, during the subsistence of such security, be renewed in manner hereinafter mentioned once within every period of Two years, commencing from the date of 10 the registration, and if not so renewed such Bill of Sale shall cease to be of any effect whatever at the expiration of any period of any Two years during which a renewal has not been made as hereby required.

Mode of renewing Bill of Sale.

22 The registration of a Bill of Sale shall be renewed by some person filing with the Registrar an affidavit stating the date of such 15 Bill of Sale, and the names, business, or occupations and place of business or residence of the respective parties thereto as stated therein, 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 20 the original Bill of Sale or copy filed with him with a similar number.

Form of affidavit. Schedule (5.)

23 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 Commissioner, &c.

24 Any affidavit required by this Act may be sworn before a 25 Commissioner of the Supreme Court or a Justice of the Peace.

The Registrar to keep books.

25 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 30 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 35 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 40 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 45 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.

26 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 50 in which shall be specified the certain day, hour, and time on which

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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.

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27 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.

Office copies.

28 Upon the satisfaction of every Bill of Sale filed under this Act there shall be filed with the Registrar a Certificate of Satisfaction in the form in the Schedule (7.) hereto signed by the then grantor as holder of such Bill of Sale, and 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; and the Registrar shall be entitled to receive for filing and entering every such Satisfaction the sum of One Shilling and no more.

Satisfaction to be registered.

25 (A) Upon the full or partial Satisfaction of any Bill of Sale made before or after the commencement of this Act (such partial Satisfaction being equal to not less than one-fourth of the total principal moneys for the time being remaining secured by such Bill of Sale) there shall be filed with the Registrar, within Fourteen days from the date thereof, a Certificate of Satisfaction, in the form in the Schedule (7.) hereto, signed by the then grantee or holder of such Bill of Sale, and the Registrar shall thereupon cause a Memorandum of such full or partial Satisfaction, as the case may be, to be written upon such Bill of Sale or a copy thereof; and if at any time after any such partial Satisfaction as aforesaid any sum be again lent on the security of any Bill of Sale there shall be filed with the Registrar, within Fourteen days of such reloan a Certificate of Reloan in the form in Schedule (8.) hereto signed by the then grantee or giver of such Bill of Sale, and the Registrar shall thereupon cause a Memorandum of such sum so again lent to be written upon such Bill of Sale or a copy thereof; and in the event of the Registrar refusing or neglecting to cause any such Memorandum to be written as aforesaid, it shall be lawful for a Judge in Chambers to order a Memorandum of such full or partial Satisfaction or of such sum so again lent, as the case may be, to be written upon any Bill of Sale or copy thereof respectively as aforesaid, if it shall appear to the said Judge that the whole or not less than such proportion as aforesaid of the debt (if any) for which such Bill of Sale is given as security shall have been satisfied or discharged, or that such sum has been so again lent as aforesaid; and the Registrar shall be entitled to receive for filing and entering every such Certificate or Memorandum as aforesaid the sum of One Shilling and no more.)

(Satisfaction, whole or partial, or reloan to be registered.)

26 (B) If any creditor or creditors other than the grantee or any person or persons claiming through him of the grantor of any Bill of

(Creditor may apply to Judge)

A.D. 1896.

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[60 Vict.]

to cause Satisfaction to be registered.)

Sale made before or after the passing of this Act shall have reason to suspect that such Certificate of Satisfaction or Reloan, as the case may be, as in Section mentioned, has not been filed as therein directed, such creditor or creditors may apply by summons or otherwise in a summary manner to a Judge of the Supreme Court to determine such question, and such Judge may examine the parties to such Bill of Sale or other witnesses upon oath, and may make such Order with respect to the question in dispute, and as to the costs of and consequent on the application, as he thinks fit, or may direct such application to stand over from time to time and any enquiry touching the question in dispute to be made in such manner as he shall think fit; and the decision of such Judge shall be final.)

(Attempt to defraud grantee punishable as misdemeanour.)

(C) Whenever after the passing of this Act there is inserted in any Bill of Sale a clause whereby the mortgagor or mortgagors, his, her, or their executors, administrators, or assigns (hereinafter called the grantors), covenant and agree with the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns (hereinafter called the grantees), that during the currency of the Bill of Sale none of the personal chattels mentioned therein shall be wilfully removed from the apparent possession of the grantors without the written consent of the grantees first had and obtained, then, in the event of such personal chattels or any of them being so wilfully removed without such consent as aforesaid, the grantors shall be guilty of a misdemeanour, and liable on conviction thereof to a fine not exceeding One hundred Pounds, with or without imprisonment, and with or without hard labour, for any period not exceeding Two years: Provided, that the onus of proving the personal chattels or part of them were not so wilfully removed shall be on the grantors.)

Rectification of Register. 41 & 42 Vict., c. 31, s. 14.)

(D) Any Judge of the Supreme Court, on being satisfied that the omission to register a Bill of Sale or an Affidavit of Renewal thereof within the time prescribed by this Act, or the omission or misstatement of the name, residence, or occupation of any person was accidental or due to inadvertence, may in his discretion order such omission or misstatement to be rectified by the insertion in the Register of the true name, residence, or occupation, or by extending the time for such registration, on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.)

Appropriation.

29 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.

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Bills of Sale.

SCHEDULE.

A.D. 1896.

(1.)

[ACTS TO BE REPEALED.]

[Sect. 3.]

<i>Year 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. 8.

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.

(3.)

CAVEAT.

Sect. 12.

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 (or a joint debt amounting to) £ [state the amount claimed to be due] due to me [or us] for


[Bill 34.]

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Bills of Sale.

(7.)

Sect. 28.

I, *A.B.*, of _____, being the holder of a Bill of Sale dated the _____ day of _____, 18____, from *C.D.*, of _____ do hereby certify and acknowledge that such Bill of Sale has been fully satisfied (or, in case of *partial satisfaction*, satisfaction to the amount of £ _____) 

Dated this _____ day of _____, 18____.

Witness—

(8.)

Sect. 28.

I, *A.B.*, of _____ being the grantor or giver of a Bill of Sale, dated the _____ day of _____, 189____ to *C.D.*, of _____ do hereby certify and acknowledge that I have been again lent by *C.D.* this day the sum of £ _____

Dated this _____ day of _____ 189____

Witness—