

*Laws of His Majesty's Province of Upper Canada*, passed in the year 1857. Toronto: Stewart Derbyshire & George Desbarats, 1857.

20 Victoria – Chapter 3

**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.**

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:

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.

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 bonâ 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 shall be registered as hereinafter provided, within five days from the executing thereof, otherwise such sale shall be absolutely void as against the creditors of the bargainor and as against subsequent purchasers or Mortgagees in good faith.

III. Any Mortgage of goods and chattels executed in good faith after the passing of this Act, for the purpose of securing any future advances, to be made upon an agreement in writing, entered into between the parties for making such advances, and for the purpose of enabling the Mortgager to enter

into and carry on any business with such advances, the time of re-payment of such advances not being longer than one year from the making of such agreement and Mortgage, or for securing the Mortgagee against any endorsement of any bills or promissory notes or any other liability entered into for the Mortgager, not extending for a longer period than one year from the date of such Mortgage, and in which Mortgage is fully set forth, by way of recital or otherwise, the terms, nature and effect of such agreement, and the amount of liability intended to be created, if accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the Mortgagee (or if the agreement has been entered into and Mortgage taken by an agent duly authorized in writing to make such agreement and take such Mortgage, if aware of the circumstances connected therewith, then by an affidavit of such agent) that such Mortgage truly sets forth the agreement entered into between the parties thereto, and truly states the extent of the liability intended to be created by such agreement and covered by such Mortgage, and that such Mortgage is executed in good faith and for the express purpose of securing the Mortgagee against the payment of the amount of such his liability for the Mortgager, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the Mortgager, nor to prevent such creditors from recovering any claims which they may have against such Mortgager, and registered as hereinafter provided, shall be as valid and binding as Mortgages mentioned in the preceding section of this Act.

IV. All the Instruments mentioned in this Act, whether for the sale or Mortgage of goods and chattels, shall contain such efficient and full description thereof that the same may be thereby readily and easily known and distinguished.

V. The Instruments mentioned in the preceding sections shall be registered in the office of the Clerk of the County Court of the County or Union of Counties where the Mortgager or bargainer therein, if a resident in Upper Canada, shall reside at the time of the execution thereof, and if he be not a resident, then in the office of the Clerk of the County Court of the County or Union of Counties where the property so mortgaged or sold shall be, at the time of the execution of such instrument; and such Clerks are hereby required to file all such instruments aforesaid presented to them respectively for that purpose, and to endorse thereon the time of receiving the same in their respective offices, to be kept there for the inspection of all persons interested therein, or intending or desiring to acquire any interest in the property or any portion thereof covered thereby.

VI. The said Clerks shall respectively number every such instrument or copy which shall be filed in their offices, and shall enter in books to be provided by them, in alphabetical order, the names of all the parties to such Instruments, with the numbers endorsed thereon opposite to each name, which entry shall be repeated alphabetically under the name of every party thereto.

VII. In the event of the permanent removal of goods and chattels mortgaged as aforesaid from the said County or Union of Counties in which they may be at the time of the execution of such mortgage, to another County or Union of Counties before the payment and discharge of such mortgage, a certified copy of such mortgage under the hand of the Clerk of the County Court in whose office it was first registered, and under the seal of the said Court, and of the affidavits and documents and instruments relating thereto and filed in such office, shall be filed with the Clerk of the County Court of the County or Union of Counties to which such goods and chattels are removed, within two months

from such removal, otherwise the said goods and chattels shall be liable to seizure and sale under execution, and in such case, such mortgage shall be null and void as against subsequent purchasers and mortgagees for value consideration as if never executed.

VIII. Every Mortgage or copy thereof filed in pursuance of this Act shall cease to be valid as against the creditors of the persons making the same and against subsequent purchasers or mortgagees in good faith for valuable consideration, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property thereby claimed by virtue thereof, and a full statement of the amount still due for principal and interest thereon and of all payments made on account thereof, shall be again filed in the office of the Clerk of the said County Court of the County or Union of Counties wherein such goods and chattels are then situate, with an affidavit of the mortgagee or his agent duly authorized in writing for that purpose, (which authority shall be filed therewith), stating that such statements are true and that the said mortgage has not been kept on foot for any fraudulent purpose.

IX. A copy of such original instrument or of any copy thereof, so filed as aforesaid, including any statement made in pursuance of this Act, certified by the Clerk in whose office the same shall be filed under the seal of the Court, shall be received in evidence in all Courts, but only of the fact that such instrument or copy and statement was received and filed according to the endorsement of the Clerk thereon, and of no other fact; and in all cases the original endorsement by the Clerk made in pursuance of this Act, upon such instrument or copy, shall be received in evidence only of the fact stated in such endorsement.

X. This Act shall not apply to mortgages of vessels registered under the provisions of the Act passed in the eighth year of Her Majesty's Reign, and intituled, *An Act to secure the right of property in British Plantation vessels navigating the inland waters of this Province, and not registered under the Act of the Imperial Parliament of the United Kingdom, passed in the third and fourth years of the Reign of His late Majesty King William the Fourth, intituled, An Act for the registering of British vessels, and to facilitate transfers of the same, and to prevent the fraudulent assignment of any property in such vessels.*

XI. On any writ, precept or warrant of execution against goods and chattels, it shall be lawful for the Sheriff or other officer to whom such writ, warrant or precept may be directed, to seize and sell the interest or equity of redemption in any goods and chattels of the party or parties against whom such writ may issue; and such sale shall be held to convey whatever interest the mortgager had in such goods and chattels at the time of such seizure.

XII. For services under this Act the Clerks aforesaid shall be entitled to receive the following fees: — For, filing each instrument and affidavit, and for entering the same in a book as aforesaid, one shilling and three pence; for searching for each paper, six pence; and for copies of any document, with certificate prepared, filed under this Act, six pence for every hundred words.

XIII. All affidavits and affirmations required by this Act shall be taken and administered by any Judge or Commissioner of the Courts of Queen's Bench or Common Pleas, or Justice of the Peace in Upper Canada, and the sum of one shilling shall be paid for each and every oath thus administered.

XIV. The Act passed in the twelfth year of Her Majesty's Reign, chapter seventy-four, intituled, *An Act requiring mortgages of personal property in Upper Canada to be filed*, and the Act passed in the session held in the thirteenth and fourteenth years of Her Majesty's Reign, chapter sixty-two, intituled, *An Act to alter and amend the Act requiring mortgages of personal property in Upper' Canada to be filed*, shall be and the same are hereby repealed; but all mortgages and sales registered under the provisions of the said Acts, or either of them, shall be held and taken to be as valid and binding- as if the said Acts had not been hereby repealed.

XV. This Act shall take effect from and after the first day of August next.

XVI. This Act shall apply to Upper Canada only.