

*Laws of Her Majesty's Province of Upper Canada*, passed in the year 1849. Montreal: Stewart Derbyshire & George Desbarats, 1849.

12 Victoria – Chapter 74

**An Act requiring Mortgages of Personal Property in Upper-Canada to be filed. 30th May, 1849.**

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That every Mortgage or Conveyance intended to operate as a Mortgage of Goods and Chattels made after the passing of this Act, in Upper-Canada, which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the Mortgage or Conveyance or a true copy thereof, together with an affidavit of a witness thereto sworn before a Commissioner of the Queen's Bench, of the due execution of the Mortgage or Conveyance, or of the due execution of the Mortgage or Conveyance of which the copy to be filed purports to be a copy, shall be filed as directed in the succeeding section of this Act.

II. And be it enacted, That the instruments mentioned in the preceding section shall be filed in the Office of the Clerk of the District Court of the District where the mortgagor therein, if a resident in Upper-Canada, shall reside at the time of the execution thereof, and if not a resident, then in the Office of the Clerk of the District Court of the District where the property so mortgaged 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, and shall deposit the same in their respective Offices to be kept there for the inspection of all persons interested.

III. And be it enacted, That every Mortgage or copy thereof filed in pursuance of this Act, shall cease to be valid as against the creditors of the person making the same or against subsequent purchasers or mortgagees in good faith 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, shall be again filed in the Office of the Clerk of the said District Court.

IV. And be it enacted, That a copy of any 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, shall be received in evidence, 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 facts stated in such endorsement.

V. And be it enacted, That the Clerks of the Courts aforesaid 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, alphabetically, the names of all the parties to such instruments, with the number endorsed thereon opposite to each name, which entry shall be repeated alphabetically under the name of every party thereto.

VI. And be it enacted, That this Act shall not apply to Mortgages of vessels registered under the provisions of an 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 suck Vessels.*

VII. And be it enacted, That for services under this Act, the Clerks aforesaid shall be entitled to receive the following fees: for filing each instrument and affidavit, and 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 documents filed under this Act, six pence for every hundred words.