

Legislative Council.

52° VICTORIAE, 1889.

A BILL

To amend the Law relating to Bills of Sale.

[MR. DAY;—24 April, 1889.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 1. In this Act, unless the context necessarily requires a different meaning, the word "grantor" means the person making or granting a bill of sale, or in case the same shall be made or given by any person under or in the execution of any process than the person against whom such process shall have issued. And the word "creditor" means any
10 person to whom the grantor is indebted on any account whatsoever at law or in equity on the balance of account or otherwise, whether the debt be due or to accrue, secured or unsecured.

2. (1) No bill of sale executed after the coming into operation of this Act shall be filed or recorded in the office of the Supreme Court unless notice of the intention to file the same be lodged at the office of the Prothonotary fourteen days before the filing thereof, and upon such lodgment there shall be paid to the Prothonotary a fee of one shilling.

Interpretation.

No bill of sale to be filed until after notice of intention to file.

Form of notice.
First Schedule.

(II) Every such notice shall be in the form of the First Schedule hereto or to the like effect, and shall contain a statement of the particulars in such form mentioned, and shall specify an address to which notices of caveats may be posted, and the Prothonotary shall cause the date at which such notice shall have been lodged to be marked thereupon. 5

Notices to be indexed and open to inspection.

3. The Prothonotary shall cause a book to be kept, in which the names and additions of all the grantors specified in such notices shall be entered in alphabetical order, with the dates at which such notices shall have been 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. 10

Caveat to stay filing.

4. 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of the bill of sale specified in any such notice, such bill of sale shall not be filed until the caveat be removed or withdrawn as hereinafter provided. 15

Creditor may enter caveat.

5. Any creditor of the grantor in such notice mentioned, may, at any time within fourteen days from the day on which notice shall be lodged, enter a caveat against the filing of the bill of sale specified in the notice, by lodging such caveat with the Prothonotary and paying a fee of one shilling, and every such caveat shall be in the form in the Second Schedule hereto or to the like effect, and shall contain the particulars therein mentioned, and shall specify a place or address within the present limits of the city of Sydney at which notices relating to such caveat may be served, and every notice relating to such caveat, if served at such address, shall be deemed to be duly served. 20 25

Second Schedule.

Caveat to be notified grantor, who may summon caveator.

6. (I) Upon such caveat being entered the Prothonotary shall forthwith cause a copy thereof to be posted to such grantor at the address specified in the notice, and the grantor may summon the caveator before a Judge in Chambers, to show cause why his caveat should not be removed. 30

Judge may order filing to be stayed, or removal of caveat.

(II) If on the hearing of such summons, it shall appear that the caveator is a creditor of the grantor, the Judge may make an order, directing that no bill of sale shall be filed in pursuance of the notice mentioned in the caveat until the debt as aforesaid be satisfied; but if it shall not appear that the caveator is a creditor of the grantor the Judge may order that the caveat be removed, and upon service of the order upon the Prothonotary, he shall remove the caveat. 35

Caveat may be withdrawn or removal ordered at any time.
Third Schedule.

7. A caveator may withdraw his caveat at any time, by signing an application in the form in the Third Schedule 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 forthwith to withdraw his caveat, or to sign an application for the withdrawal thereof, the grantor may summon the caveator before a Judge in Chambers to show cause why the caveat should not be removed, and the Judge may order the removal of such caveat, and upon the service of such order upon the Prothonotary he shall remove the caveat. 40 45

Judge to have jurisdiction to award costs and compensation.

8. Upon the hearing of any summons under this Act the Judge may make such order as to costs as he 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 Judge upon the hearing of any such summons may deem just and may order. 50 55

Short title.

9. This Act may be cited as the "Bills of Sale Act Amending Act," and shall be read with and as forming part of the Act nineteenth Victoria number two.

SCHEDULES.

THE FIRST SCHEDULE.

Notice of intention to file Bill of Sale.

Section 2.

To the Prothonotary.

5	Grantor or grantors.		Property comprised in Bill of Sale.		Consideration.			Grantee or grantees.			
	10 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.	Advance at time of giving Bill of Sale.	Future advances.	Name or names in full.	Business or occupation.	Place of business or residence.
15											

I [*or we*] the abovenamed grantor [*or grantors*] hereby give notice that a bill of sale made by me [*or us*] on the _____ day 18 _____ of the property above described to the abovenamed grantee [*or grantees*] to secure the debt or advances 20 abovementioned 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 _____ .
 25 Signature of grantor [*or grantors*] or his [*or their*] attorney or agent.
 Lodged this _____ day of _____ 18 _____ .

THE SECOND SCHEDULE.

Caveat.

Section 5.

To the Prothonotary.

30 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 described in his or their notice*] in respect of a debt of £ [*state the amount* 35 claimed to be due] due to me [*or us*] for [*and the nature of the debt as "for goods sold and delivered," "on balance of account current," "money lent," "rent," &c.*] hereby forbid the filing of any bill of sale in pursuance of the notice given by the said lodged on the _____ day of _____ 18 _____ and I [*or we*] do hereby appoint as the place at which [and (*where the caveators are a partnership firm not 40 incorporated*) as the member of our firm on whom] notices and proceedings relating to this caveat may be served.

Dated the _____ day of _____ 18 _____ .
 Signature of caveator [*or caveators or usual signature of the partnership firm abovementioned*] or his [*or their*] attorney or agent.
 45 Lodged the _____ day of _____ 18 _____ .

Prothonotary.

THE THIRD SCHEDULE.

Application to withdraw Caveat.

Section 7.

To the Prothonotary.

50 TAKE notice that [*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*] hereby withdraw the caveat lodged by me [*or us*] on the _____ day of _____ against the filing of the bill of sale specified in the notice of [*name of grantor or grantors* 55 of [*address of grantor or grantors*] lodged on the _____ day of _____ 18 _____ .
 Signature of caveator [*or caveators or usual signature of the partnership firm above mentioned*] or his [*or their*] attorney or agent.

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5 1. In this Act, unless the context necessarily requires a different Interpretation. meaning, the word "grantor" means the person making or granting a bill of sale, or in case the same shall be made or given by any person under or in the execution of any process than the person against whom such process shall have issued. And the word "creditor" means any

10 person to whom the grantor is indebted on any account whatsoever at law or in equity on the balance of account or otherwise, whether the debt be due or to accrue, secured or unsecured.

2. (1) No bill of sale executed after the coming into operation of this Act shall be filed or recorded in the office of the Supreme Court unless notice of the intention to file the same be lodged at the office of the Prothonotary fourteen days before the filing thereof, and upon such lodgment there shall be paid to the Prothonotary a fee of one shilling.

No bill of sale to be filed until after notice of intention to file.

- Form of notice.
First Schedule. (ii) Every such notice shall be in the form of the First Schedule hereto or to the like effect, and shall contain a statement of the particulars in such form mentioned, and shall specify an address to which notices of caveats may be posted, and the Prothonotary shall cause the date at which such notice shall have been lodged to be marked thereupon. 5
- Notices to be indexed and open to inspection. 3. The Prothonotary shall cause a book to be kept, in which the names and additions of all the grantors specified in such notices shall be entered in alphabetical order, with the dates at which such notices shall have been 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. 10
- Caveat to stay filing. 4. 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. 15
- Creditor may enter caveat. 5. Any creditor of the grantor in such notice mentioned, may, at any time within fourteen days from the day on which notice shall be lodged, enter a caveat against the filing of the bill of sale specified in the notice, by lodging such caveat with the Prothonotary and paying a fee of one shilling, and every such caveat shall be in the form in the Second Schedule hereto or to the like effect, and shall contain the particulars therein mentioned, and shall specify a place or address within the present limits of the city of Sydney at which notices relating to such caveat may be served, and every notice relating to such caveat, if served at such address, shall be deemed to be duly served. 20
- Second Schedule. 6. (i) Upon such caveat being entered the Prothonotary shall forthwith cause a copy thereof to be posted to such grantor at the address specified in the notice, and the grantor may summon the caveator before a Judge in Chambers, to show cause why his caveat should not be removed. 30
- Caveat to be notified grantor, who may summon caveator. (ii) If on the hearing of such summons, it shall appear that the caveator is a creditor of the grantor, the Judge may make an order, directing that no bill of sale shall be filed in pursuance of the notice mentioned in the caveat until the debt as aforesaid be satisfied; but if it shall not appear that the caveator is a creditor of the grantor the Judge may order that the caveat be removed, and upon service of the order upon the Prothonotary, he shall remove the caveat. 35
- Judge may order filing to be stayed, or removal of caveat. 7. A caveator may withdraw his caveat at any time, by signing an application in the form in the Third Schedule 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 forthwith to withdraw his caveat, or to sign an application for the withdrawal thereof, the grantor may summon the caveator before a Judge in Chambers to show cause why the caveat should not be removed, and the Judge may order the removal of such caveat, and upon the service of such order upon the Prothonotary he shall remove the caveat. 40
- Caveat may be withdrawn or removal ordered at any time. Third Schedule. 8. Upon the hearing of any summons under this Act the Judge may make such order as to costs as he 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 Judge upon the hearing of any such summons may deem just and may order. 50
- Judge to have jurisdiction to award costs and compensation. 9. This Act may be cited as the "Bills of Sale Act Amending Act," and shall be read with and as forming part of the Act nineteenth Victoria number two. 55
- Short title.

SCHEDULES.

THE FIRST SCHEDULE.

Notice of intention to file Bill of Sale.

Section 2.

To the Prothonotary.

5		Grantor or grantors.			Property comprised in Bill of Sale.			Consideration.		Grantee or grantees.		
10	15	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.	Advance 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 abovenamed grantor [or grantors] hereby give notice that a bill of sale made by me [or us] on the _____ day _____ 18 _____ of the property above described to the abovenamed grantee [or grantees] to secure the debt or advances abovementioned 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 _____
 25 Signature of grantor [or grantors] or his [or their] attorney or agent.
 Lodged this _____ day of _____ 18 _____

THE SECOND SCHEDULE.

Caveat.

Section 5.

To the Prothonotary.

30 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 described in his or their notice] in respect of a debt of £ [state the amount claimed to be due] due to me [or us] for [and the nature of the debt as "for goods sold and delivered," "on balance of account current," "money lent," "rent," &c.] hereby forbid the filing of any bill of sale in pursuance of the notice given by the said lodged on the _____ day of _____ 18 _____ and I [or we] do hereby appoint as the place at which [and (where the caveators are a partnership firm not incorporated) as the member of our firm on whom] notices and proceedings relating to this caveat may be served.

Dated the _____ day of _____ 18 _____
 Signature of caveator [or caveators or usual signature of the partnership firm abovementioned] or his [or their] attorney or agent.
 45 Lodged the _____ day of _____ 18 _____

Prothonotary.

THE THIRD SCHEDULE.

Application to withdraw Caveat.

Section 7.

To the Prothonotary.

50 TAKE notice that [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] hereby withdraw the caveat lodged by me [or us] on the _____ day of _____ against the filing of the bill of sale specified in the notice of [name of grantor or grantors] of [address of grantor or grantors] lodged on the _____ day of _____ 18 _____
 55 Signature of caveator [or caveators or usual signature of the partnership firm above mentioned] or his [or their] attorney or agent.

