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BILLS OF SALE ACT**Principal Act****Act. No. 1961-05***Commencement* 18.6.1961
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date

Acts. 1965-15 s. 9

English sources

Bills of Sale Act 1878 (41 & 42 Vict. c.31)

Bills of Sale Act (1878) Amendment Act 1882 (45 & 46 Vict. c.43)

Bills of Sale Act 1890 (53 & 54 Vict. c.53)

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AN ACT TO CONSOLIDATE THE LAW RELATING TO BILLS OF SALE.

Short title.

1. This Act may be cited as the Bills of Sale Act.

PART I.
APPLICATION AND INTERPRETATION.

Application.

- (1878 c.31, s.3).* 2. This Act shall apply to every bill of sale executed on or after the commencement of this Act (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

Definition of bill of sale.

- (1878 c.31, ss.4 and 6; 1890 c.53, s.2).* 3.(1) In this Act, unless the context otherwise requires,—

“bill of sale” includes—

- (a) bills of sale, assignments, transfers, declarations of trust without transfer;
- (b) inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels;
- (c) powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt;
- (d) any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred;
- (e) as regards any personal chattels which may be seized or taken thereunder, every attornment, instrument or agreement whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future or contingent debt or advance, and whereby any rent is reserved or

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made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only:

Provided that nothing in this paragraph shall extend to any mortgage of any estate or interest in any land, tenement or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

(2) In this Act, unless the context otherwise requires,—

“bill of sale” does not include the following documents—

- (a) assignments for the benefit of the creditors of the person making or giving the same;
- (b) marriage settlements;
- (c) transfers or assignments of any ship or vessel or any share thereof;
- (d) transfers of goods in the ordinary course of business of any trade or calling;
- (e) bills of sale of goods in foreign parts or at sea;
- (f) an instrument charging or creating any security on or declaring trusts of imported goods given or executed at any time prior to their deposit in a warehouse, factory or store, or to their being reshipped for export, or delivered to a purchaser not being the person giving or executing such instrument:

Provided that nothing in this paragraph shall affect the operation of section 38(1) of the Bankruptcy Act, in respect of any goods comprised in any such instrument as is hereinbefore described in this paragraph, if such goods would, but for this paragraph, be goods within the meaning of that subsection; (1934-13)

- (g) bills of lading, India warrants, 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 indorsement or by delivery, the possessor of such documents to transfer or receive goods thereby represented.

Definition of personal chattels.

(1878 c.31, s.4). 4. (1) In this Act, unless the context otherwise requires,—

“personal chattels” means goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but does not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter in this Act defined) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale.

(2) Personal chattels shall be deemed to be in the “apparent possession” of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

Application to trade machinery.

(1878 c.31, s.5). 5. (1) Trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

(2) For the purposes of this Act—

“trade machinery” means the machinery used in or attached to any factory or workshop exclusive of—

- (a) the fixed motive-powers, such as the water-wheels and steam-engines, and the steam-boilers, donkey-engines, and other fixed appurtenances of the motive-powers; and
- (b) the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and,

(c) the pipes for steam gas and water in the factory or workshop.

(3) The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

(4) For the purposes of this Act, “factory or workshop” means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them that is to say,—

- (a) in or incidental to the making of any article or part of an article;
or
- (b) in or incidental to the altering, repairing, ornamenting, finishing, of any article; or
- (c) in or incidental to the adapting for sale any article.

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

6. (1) No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person. *(1878 c.31, s.7).*

(2) The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

PART II.
PROVISIONS APPLICABLE TO BILLS
OF SALE GENERALLY.

Bill of sale to be void unless attested and registered.

(1878 c.31, s.8;
1882 c.43, s.8).

7. Every bill of sale shall be duly attested and shall be registered under this Act within seven clear days after the execution thereof, or, if it is executed in any place out of Gibraltar, then within seven clear days after the time at which it would in the ordinary course of post arrive in Gibraltar if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise the following consequences shall ensue—

- (a) in the case of a bill of sale made or given by way of security for the payment of money by the grantor thereof, such bill of sale shall be void in respect of the personal chattels comprised therein;
- (b) in the case of any other bill of sale, it shall, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs, officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such a bill of sale or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be.

Avoidance of certain duplicate bills of sale.

8. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was bona fide given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

Mode of registering bills of sale.

9. (1) A bill of sale shall be attested and registered under this Act in the following manner; *(1878 c.31, s.10;
1882 c.43, s.10).*

- (a) the execution of every bill of sale, other than a bill of sale made or given by way of security for the payment of money, shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor;
- (b) the execution by the grantor of any bill of sale made or given by way of security for the payment of money shall be attested by one or more credible witnesses, not being party thereto;
- (c) every bill of sale, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in the case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed;
- (d) if the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

(2) A transfer or assignment of a registered bill of sale need not be registered.

Priority given by registration.

(1878 c.31, s.10). 10. In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

Renewal of registration.

(1878 c.31, s.11). 11. (1) The registration of a bill of sale must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

(2) The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

(3) Every such affidavit may be in the form set forth in Schedule 1.

(4) A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

Form of register.

(1878 c.31, s.10). 12. (1) The Registrar shall keep a book (in this Act called the “register”) for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in Schedule 2, or in any other prescribed form, the name, residence and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then, the name, residence and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in Schedule 2 or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

(2) Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

(3) The Registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

(4) Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

Rectification of register.

13. The Chief Justice on being satisfied that the omission to register a bill of sale or an affidavit or 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 mis-statement 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. *(1878 c.31, s.14).*

Entry of satisfaction.

14. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged. *(1878 c.31, s.15).*

Affidavits.

15. Every affidavit required by or for the purposes of this Act may be sworn before any commissioner for oaths or before any person duly authorized to take affidavits in the Supreme Court. *(1878 c.31, s.16).*

Order and disposition.

16. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act. *(1878 c.31, s.20).*

Time for registration.

17. When the time for registering a bill of sale expires on a Sunday, or other day on which the Registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open. *(1878 c.31, s.22).*

PART III.

SPECIAL PROVISIONS RELATING TO BILLS OF SALE GIVEN AS
SECURITY FOR PAYMENT OF MONEY.**Application of Part III.**

(1882 c.43, ss.3 & 17). 18. This Part shall apply only to bills of sale made or given by way of security for the payment of money, but shall not apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of the company.

Bill of sale to have schedule of property attached thereto.

(1882 c.43, s.4). 19. Every bill of sale to which this Part applies shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

Bill of sale not to affect after acquired property.

(1882 c.43, s.5). 20. Save as hereinafter mentioned, a bill of sale to which this Part applies shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Exception as to certain things.

(1882 c.43, s.6). 21. Nothing contained in this Part shall render a bill of sale to which this Part applies void in respect of any of the following things (that is to say),

- (a) any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed;
- (b) any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

Bill of sale with power to seize except in certain events to be void.

(1882 c.43, s.7).

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22. Personal chattels assigned under a bill of sale to which this Part applies shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:—

- (a) if the grantor makes default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;
- (b) if the grantor becomes a bankrupt, or suffers the goods or any of them to be distrained for rent, rates, or taxes;
- (c) if the grantor fraudulently either removes or suffers the goods, or any of them, to be removed from the premises;
- (d) if the grantor without reasonable excuse, upon demand in writing by the grantee, fails to produce to him his last receipts for rent, rates and taxes;
- (e) if execution has been levied against the goods of the grantor under any judgment at law:

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the Supreme Court, or to the Chief Justice in chambers, and such court or the Chief Justice, if satisfied that by payment of money or otherwise the cause of seizure no longer exists, may restrain the grantee from removing or selling the chattels, or may make such other order as may seem just.

Form of bill of sale.

23. A bill of sale to which this Part applies shall be void unless made in accordance with the form in Schedule 3. *(1882 c.43, s.9).*

Bill of sale under £30 to be void.

24. Every bill of sale to which this Part applies, made or given in consideration of any sum under £30 shall be void. *(1882 c.43, s.12).*

Chattels not to be removed or sold.

25. All personal chattels seized or of which possession is taken under or by virtue of any bill of sale to which this Part applies shall remain on the premises where they were so seized or so taken possession of, and shall not

be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

Bill of sale not to protect chattels against taxes and rates.

- (1882 c.43, s.14). 26. A bill of sale to which this Part applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and rates.

**PART IV.
SUPPLEMENTARY.**

Registrar of bills of sale.

27. The Registrar of the Supreme Court shall be the registrar for the purposes of this Act.

Copies may be taken, etc.

- (1878 c.31, s.16). 28. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the Supreme Court, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as prima facie evidence thereof, and of the fact and date of registration as shown thereon.

Inspection of registered bills of sale.

- (1882 c.43, s.16). 29. Any person shall be entitled at all reasonable times to search the register, on payment of such fee as may be prescribed, and subject to such rules as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of such fee as may be prescribed:

Provided that such extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Fees.

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30. (1) The fees set out in Schedule 4 shall be paid and received in respect of the matters specified therein.

(2) The Chief Justice may, by Order published in the Gazette, with the approval of the Governor, amend or add to Schedule 4.

Rules.

31. The Chief Justice may make rules for the better carrying out of the provisions and purposes of this Act.

32. *Omitted.*

33. *Omitted.*

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SCHEDULE 1.

FORM OF AFFIDAVIT.

Section 11(3)

I _____ of _____ do swear that a bill of sale, bearing date the _____ day of _____ 20 _____ (*insert the date of the bill*) and made between (*insert the names and descriptions of the parties in the original bill of sale*) and which bill of sale (*or*, and a copy of which bill of sale, *as the case may be*) was registered on the _____ day of _____ 20 _____ .

(*insert date of registration*) if still a subsisting security.

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SCHEDULE 2.

Section 12

THE REGISTER.

1 Satisfaction entered	2 No.	3 By whom given (or against whom process issued). Name Residence Occupation	4 To whom given	5 Nature of Instrument.	6 Date	7 Date of Registration	8 Date of Registration of affidavit of renewal

SCHEDULE 3.

Section 23

FORM OF BILL OF SALE GIVEN BY WAY OF SECURITY
FOR PAYMENT OF MONEY.

This Indenture made the _____ day of _____ between A.B. of _____ of the one part, and C.D. _____ of _____ of the other part, witnesseth that in consideration of the sum of £ now paid to A.B. by C.D. the receipt of which the said A.B. hereby acknowledges (*or whatever else the consideration may be*) he the said A.B. doth hereby assign unto C.D., his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum £ _____ and interest thereon at the rate of _____ per cent per annum (*or whatever else may be the rate*). And the said A.B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, by _____ equal payments of £ _____ on the _____ day of _____ (*or whatever else may be the stipulated times or time of payment*). And the said A. B. doth also agree with the said C. D. that he will (*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*):

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. for any cause other than those specified in section 22 of the Bills of Sale Act.

In witness, etc.

Signed and sealed by the said A.B. in the presence of me E.F. (*add witness name, address and description*).

SCHEDULE 4.

Section 30

SCALE OF FEES.

	£
1. (a) On filing a bill of sale and affidavit therewith where the consideration (including further advances)–	
(i) does not exceed £100.	0.25
(ii) exceeds £100 but does not exceed £200	0.50
(iii) exceeds £200	1.00
(b) On filing any other document under the Act.	0.50
2. On filing an affidavit of re-registration of a bill of sale or any other document under the Act.	0.50
3. On filing a fiat of satisfaction.	0.25
4. For an official certificate of the results of a search in one name in any register or index under the custody of the registrar if not more than five folios.	0.25
for every additional folio	0.05
for every additional name if included in the same certificate.	0.10
5. For a continuation search, if made within one calendar month of date of official certificate (the result to be endorsed on such certificate).	0.10
6. For search of register by any person (under section 29).	0.10
7. For inspecting, examining and making extracts from any registered bill of sale–	
for each bill of sale inspected	0.10