

THE LAW OF BILLS OF SALE.

THE
BILLS OF SALE ACTS
1878 and 1882;

WITH NOTES, FORMS, AND A SHORT ACCOUNT OF CERTAIN RIGHTS
AFFECTING BILLS OF SALE, TOGETHER WITH A CONCISE OUTLINE
OF THE LAW RELATING TO SUCH BILLS.

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PREFACE.

THE laws of many other countries (*e. g.*, the laws of Scotland, France, Germany) do not recognize the validity of a security upon moveables without delivery of possession. Such is not the principle of our law. English law has always permitted the transfer of ownership without possession: and no doubt the recognition of this principle has, to a considerable extent, acted beneficially as a stimulus to trade.

The ease, however, with which persons, in the apparent possession of chattels of which they were not really owners, were enabled to obtain credit upon the strength of their assumed ownership, gave rise to such a feeling of insecurity, that it became necessary in 1854 to pass an Act (17 & 18 Vict. c. 36) requiring bills of sale to be registered; the intention being, that by "registration," notice should be given to the public that the goods which a person might have assigned or pledged to another, although remaining in his apparent possession, were not really his. This Act was amended in 1866 (29 & 30 Vict. c. 96),

and twelve years later the two Acts referred to were repealed, and a new Act passed (41 & 42 Vict. c. 31) consolidating and amending the law.

Since the passing of the latter (1878) Act, bills of sale have largely increased in number: and this increase has apparently been mainly due to two causes. First, to the circumstance that the poor, instead of resorting on all occasions of pecuniary difficulty to the pawnbroker, in order to obtain a loan by pledging their furniture or clothes, have given bills of sale for small amounts, by which means they have been enabled to continue in possession of their property, while obtaining the necessary temporary advance. Secondly, to the fact that registered bills of sale were taken by this Act out of the order and disposition clause of the Bankruptcy Act, a change which greatly improved their value as securities.

Upon both these causes of increase in the number of bills of sale, the new Bills of Sale Act (45 & 46 Vict. c. 43) places strong checks: first, by entirely avoiding all bills given for any sum under 30l.; secondly, by reviving the operation of the order and disposition clause of the Bankruptcy Act. In addition to these changes, the new Act entirely avoids bills of sale (within

its operation) unless they (*a*) follow the form given in the schedule to the Act, (*b*) truly set forth the consideration for which they are given, (*c*) are duly attested, and (*d*) registered. If the Bills of Sale Act, 1878, erred on the side of too freely assisting persons in their attempts to tide over their pecuniary difficulties, it can hardly be said that the present Act errs in the same direction.

The changes in the law introduced by the new Act are summarized on pp. 57, 58; and the operation of the new Act upon registered bills executed under the 1878 Act is defined, pp. 13, 14.

What effect the new Act may have upon bills of sale executed under the 1878 Act, *and unregistered*, is, perhaps, the question of most pressing importance, and this is discussed pp. 59—61. However, this is only one of many difficulties presented by the new Act: everyone of which might have been avoided had this important Act been more carefully drafted.

E. R. P.

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