

WESTERN AUSTRALIA.



ANNO SEXTO

EDWARDI SEPTIMI REGIS,

XIII.

No. 13 of 1906.

AN ACT to amend the Bills of Sale Act, 1899.

[Assented to 28th November, 1906.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Bills of Sale Amendment Act*, 1906, and shall be read as one with the Bills of Sale Act, 1899, hereinafter referred to as the principal Act. Short title.

2. In sections three to thirteen, inclusive, of this Act the term "bill of sale" means a bill of sale by way of security, and includes all assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for the payment of money or the performance of an obligation. Interpretation.

3. (1.) No bill of sale shall be registered under the provisions of the principal Act unless notice of the intention to register the same is lodged before the registration thereof at the office of the Registrar at the Supreme Court. A fee of one shilling shall be paid on the lodgment of such notice. Notice of intention to register bill of sale to be given. See V., 1890, No. 1103, s. 134.

(2.) If the bill of sale purports to have been executed by the grantor within any of the municipal districts mentioned in the First Schedule hereto, or within twenty miles thereof respectively, such notice shall be lodged seven days at least before the registration of the bill of sale.

(3.) If the bill of sale purports to have been executed by the grantor elsewhere, such notice shall be lodged fourteen days at least before the registration of the bill of sale:

Provided that the Governor may from time to time, by notice published in the *Government Gazette*, add to the number of municipal districts set out in the First Schedule hereto.

Form of notice.
Second Schedule.
Ibid., s. 135.

4. Every notice of intention to register a bill of sale shall be in the Form A in the Second Schedule to this Act, 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 Registrar shall cause the date at which such notice is lodged to be marked thereon:

Provided that if the grantor of a bill of sale is an incorporated company, it shall be sufficient if the notice is in the Form B in the Second Schedule, and contains a statement of the particulars therein mentioned.

Notice to be indexed
and open to inspection.
Ibid., s. 136.

5. (1.) The Registrar shall cause a book to be kept in which the names and addresses of all persons making or giving any bill of sale, herein called the grantors, specified in such notices, shall be entered in alphabetical order, with the dates at which such notices are lodged.

(2.) Such book shall be open to the inspection of any person, and any person may inspect and take a copy of any notice lodged as hereinbefore mentioned upon payment of a fee of one shilling.

Time within which
bill of sale may be
filed.
Ibid., s. 137.

6. Notwithstanding any provision of the principal Act to the contrary, no bill of sale specified in any such notice shall be registered before the expiration of seven days or fourteen days, as the case may be, from the day of lodging such notice, or after the expiration of thirty days from such day, unless a fresh notice is given or the time is extended by order of a Judge of the Supreme Court.

Caveat to stay
filing.
Ibid., s. 138.

7. If a caveat is entered as hereinafter provided against the registration of a bill of sale specified in any such notice, such bill of sale shall not be registered until the caveat is removed or withdrawn as hereinafter provided.

Creditor may enter
caveat.
Ibid., s. 139.

8. (1.) Any person claiming to be a creditor of the grantor in such notice mentioned may enter a caveat against the registration

of the bill of sale specified in the notice, by lodging such caveat with a copy for the grantor, or for each grantor if more than one, with the Registrar and paying a fee of one shilling.

(2.) Every such caveat shall be in the form in the Third Schedule hereto, or to the like effect, and shall contain the particulars therein mentioned, and shall specify a place within the limits of the city of Perth at which notices relating to such caveat may be served; and every notice relating to such caveat, if served at such place, shall be deemed to be duly served.

(3.) Such caveat shall be entered—

- (a.) within seven days from the day on which notice was lodged under section three, if the bill of sale is within the provisions of subsection two thereof; or
- (b.) within fourteen days from the day on which notice was lodged under section three, if the bill of sale is within the provisions of subsection three thereof.

9. (1.) Upon the receipt of such caveat the Registrar shall cause a copy thereof to be sent by post as a registered letter to the grantor mentioned in the notice, at the address specified in the notice.

Caveat to be notified to mortgagor, who may summon caveator.

Ibid., s. 140.

(2.) The grantor may summon the caveator before a Judge of the Supreme Court in Chambers to show cause why his caveat should not be removed, and upon the return of such summons the Judge shall hear and determine whether the caveator is a creditor of the grantor.

(3.) Any person to whom the grantor is indebted on any account whatsoever, at law or in equity, on the balance of account or otherwise, and whether the debt is due or to accrue due, secured or unsecured, shall be deemed to be a creditor within the meaning of this section.

10. If on the hearing of such summons it appears that the caveator is a creditor of the grantor, the Judge may make an order directing that no bill of sale shall be registered in pursuance of the notice mentioned in the caveat until the debt for which he shall be found to be a creditor be satisfied; but if it does 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 Registrar, he shall remove the caveat therein mentioned.

Judge may order registration to be stayed or remove caveat.

Ibid., s. 141.

11. (1.) A caveator may withdraw his caveat at any time by signing an application for the withdrawal thereof in the form in the Fourth Schedule hereto, or to the like effect.

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

Ibid., s. 142.

(2.) If after satisfaction of his debt before or after the making of any such order as hereinbefore mentioned, the caveator shall refuse to withdraw his caveat, or to sign an application for

the withdrawal thereof, the grantor may summon the caveator before a Judge, as hereinbefore mentioned, to show cause why the caveat should not be removed, and the Judge may order the removal of such caveat.

(3.) Upon the service of the order upon the Registrar, he shall remove the caveat therein mentioned.

Costs and compensation.

Ibid., s. 143.

12. (1.) Upon the hearing of any summons under this Act, the Judge may make such order as to costs as he may think fit.

(2.) 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.

Notice of intention not invalidated by misdescription.

13. No notice of intention to file a bill of sale shall be deemed insufficient or invalid by reason only that in such notice there is an omission or incorrect or insufficient description or misdescription in respect of the particulars required to be contained in such notice, if the court, judge, magistrate, or justices before whom the validity of the bill of sale comes into question shall be satisfied that such omission or incorrect or insufficient description or misdescription was accidental or due to inadvertence, and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage.

Certain errors in affidavit filed under Section 8 not to invalidate bill of sale.

14. Notwithstanding anything to the contrary contained in the principal Act, no bill of sale shall be deemed invalid by reason only that in the bill of sale, or in an affidavit filed or to be filed in pursuance of section eight of the principal Act, there is an omission or incorrect or insufficient description or misdescription of the residence or place of business and occupation of the grantor or grantee, or of any attesting witness to such bill of sale, if the court, judge, or justice before whom the validity of such bill of sale shall come into question shall be satisfied that such omission or incorrect or insufficient description or misdescription was accidental or due to inadvertence, and was not of such a nature as to be liable to mislead or deceive.

Affidavit under section 16 may be made by attorney.

15. Any affidavit of renewal of a duly registered bill of sale to be filed in pursuance of section sixteen of the principal Act may be made by any attorney under power of the person or of one of the persons entitled to the money secured by the bill of sale to which such affidavit or renewal relates, or by any person able to depose of his own knowledge as to the amount owing on the security of such bill of sale.

16. Section twelve of the principal Act is hereby amended by striking out the word “fifteen,” in line three, and by inserting the word “five” in lieu thereof.

Amendment of
Section 12.

17. Nothing in this Act shall affect the provisions of section ten of the principal Act whereby bills of sale are required to be presented for registration within the periods therein mentioned :

Time for presenta-
tion of bills of sale
for registration not
affected.

Provided that a notice of intention to register a bill of sale, lodged in accordance with the provisions of this Act, shall be deemed to be a presentation for registration of such bill of sale for all the purposes of the principal Act.

18. Sections three to thirteen, inclusive, of this Act shall not apply to any bill of sale of wool or stock, separately or combined, on any station, made *bona fide* for valuable consideration.

Act not to apply to
bill of sale of wool
or stock.

The term “station” means any land used wholly or in part for the purposes of depasturing stock, whether the same shall consist of freehold land or land held under lease or license, or partly of freehold land or partly of land so held.

The term “stock” means and includes any sheep, cattle, or horses.

19. This Act shall continue in force only until the thirtieth day of November, One thousand nine hundred and nine.

Duration of Act.

Section 3.

First Schedule.

The Municipal Districts of—

Perth,

Fremantle

Section 4.

Second Schedule.

Form "A."

NOTICE OF INTENTION TO REGISTER BILL OF SALE.

Grantor or Grantors.			Property comprised in Bill of Sale.		Consideration.			Grantee or Grantees.		
Name or Names in full, and, where the Grantors are a partnership firm, the registered name of such firm.	Business or Occupation.	Place of Business or Residence.	Description.	Where situated.	Past debt.	Advances at time of giving Bill of Sale.	Future advances.	Name or Names in full, and, where the grantees are a partnership firm, the registered name of such firm.	Business or Occupation.	Place of Business or Residence.

I [*or we*], the above-named grantor [*or grantors*], hereby give notice that a bill of sale made by me [*or us*] on the day of 19 of the property above described, to the above-named grantee [*or grantees*], to secure the debt or advances above mentioned, has been presented for registration, and will be registered after the expiration of seven [*or 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 registration of such bill of sale may be posted, addressed as follows [*fill in address*]:

Dated this day of 19 .

Signature of grantor [*or grantors*] or his [*or their*] solicitor or agent.

Lodged this day of 19 .

To the Registrar of the Supreme Court.

Form "B."

NOTICE BY INCORPORATED COMPANY OF INTENTION TO REGISTER BILL OF SALE.

Grantor.		Property comprised in Bill of Sale.		Consideration.		
Registered Name of Company.	Registered Office of Company.	Description.	Where situated.	Past debt.	Advances at time of giving Bill of Sale.	Future advances.

The above-named grantor hereby gives notice that a bill of sale made by the grantor on the day of , 19 , of the property above described, to secure the debt or advances above mentioned, has been presented for registration, and will be registered after the expiration of seven [or fourteen] days from the date of lodging this notice, and notice of any caveat which may be entered against the registration of such bill of sale may be posted, addressed as follows [fill in address]:

Dated this day of , 19 .

Signature of secretary or other officer of company,
or its solicitor or agent.

Lodged this day of , 19 .

To the Registrar of the Supreme Court.

Third Schedule.

Section 8.

CAVEAT.

To the Registrar of the Supreme Court.

TAKE NOTICE that I [or we] [fill in name or names, or, if the caveators are 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 as 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," etc.] hereby forbid the registration of any bill of sale in pursuance of the notice given by the said , lodged on the day of , 19 , and I [or we] do hereby appoint [fill in address] as the place at which notices and proceedings relating to this caveat may be served.

Dated the day of , 190 .

Signature of caveator [or caveators] or his [or their] solicitor or agent.

Lodged the day of 190 .

Registrar of the Supreme Court.

Section 11.

Fourth Schedule.

APPLICATION TO WITHDRAW CAVEAT.

To the Registrar of the Supreme Court.

TAKE NOTICE that I [or we] [*fill in the name or names, or if the caveators are 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 , 19 , against the registration of the bill of sale specified in the notice of [*name of grantor or grantors*] of [*address*] lodged on the day of , 19 .

Signature of caveator [*or caveators*]
or his [*or their*] solicitor or agent.