

1937

c 183 Assignment of Book Debts Act

Ontario

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CHAPTER 183.

The Assignment of Book Debts Act.

Inter-
pretation.

1. In this Act, unless the context otherwise requires,—

“Assignee.”

(a) “Assignee” means any person to whom an assignment of book debts is made;

“Assignment.”

(b) “Assignment” includes every legal and equitable assignment, whether absolute or by way of security, and every mortgage or other charge upon book debts;

“Assignor.”

(c) “Assignor” means any person making an assignment of book debts;

“Book
debts.”

(d) “Book debts” means all such accounts and debts whether existing or future as in the ordinary course of business would be entered in books, whether actually entered or not, and includes any part or class thereof;

“Creditors.”

(e) “Creditors” means creditors of the assignor, whether execution creditors or not, who become creditors before the registration of an assignment, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the *Bankruptcy Act* (Canada) and a liquidator of a company under the *Winding-up Act* (Canada) or under a Provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor, or when the assignee, trustee or liquidator is appointed;R.S.C.
cc. 11, 213.“Proper
officer.”

(f) “Proper officer” means the officer in whose office assignments are required to be registered in any registration district;

“Regis-
tered.”

(g) “Registered” means filed in accordance with the provisions of this Act;

“Regis-
tration
district.”

(h) “Registration district” means a district established under this Act for the registration of assignments;

- (i) "Subsequent purchasers" includes any person who in good faith for valuable consideration and without notice obtains by assignment, an interest in book debts which have already been assigned; "Subsequent purchasers."
- (j) "Valuable consideration" includes,— "Valuable consideration."
- (i) any consideration sufficient to support a simple contract;
- (ii) an antecedent debt or liability. 1931, c. 35, s. 2.

2. This Act shall not apply to,—

Application
of Act.

- (a) any assignment of book debts, whether by way of specific or floating charge, made by a corporation engaged in a trade or business within the Province and contained,—
- (i) in a trust deed or other instrument to secure bonds, debentures or debenture stock of the corporation or of any other corporation; or
- (ii) in any bonds, debentures, or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing bonds, debentures or debenture stock of any other corporation; or
- (iii) in any bonds, debentures or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument;
- (b) any assignment of book debts due at the date of the assignment from specified debtors;
- (c) any assignment of debts growing due under specified contracts;
- (d) any assignment of book debts included in a transfer of a business made *bona fide* and for value;
- (e) any assignment of book debts, included in any authorized assignment under the *Bankruptcy Act* R.S.C., c. 11. (Canada) 1931, c. 35, s. 3; 1932, c. 48, s. 2.

3.—(1) Save as herein provided every assignment of book debts made by any person engaged in a trade or business within Ontario shall be absolutely void as against the creditors of the assignor and as against the subsequent purchasers unless such assignment is,— Require-
ments as to
assignment.

- (a) in writing;
- (b) accompanied by an affidavit of an attesting witness or affidavits of attesting witnesses, of the execution thereof by the assignor, or by the assignors respectively, identifying the assignment and stating the date of execution by the assignor, or the respective dates of execution by the assignors, as the case may be, and a further affidavit of the assignee or one of the several assignees, his or their agent, stating that the assignment was executed in good faith and for valuable consideration and not for the purpose of protecting the book debts therein mentioned against the creditors of the assignor or for the purpose of preventing such creditors from recovering any claims which they have against the assignor;
- (c) registered, as hereinafter provided, together with the affidavits within thirty days of the execution of the assignment. 1931, c. 35, s. 4 (1); 1933, c. 59, s. 36.

Two or more assignors.

(2) If there are two or more assignors, the date of execution of the assignment shall be deemed to be the date of the execution by the assignor who last executes it.

To have effect from registration.

(3) Every assignment which is required to be in writing and to be registered under this Act shall, as against creditors and subsequent purchasers, take effect only from the time of the registration of the assignment. 1931, c. 35, s. 4 (2, 3).

How registration to be effected.

4.—(1) Registration of an assignment under this Act shall be effected by filing the assignment together with such affidavits as are by this Act required, within thirty days from its execution, in the office of the proper officer of a registration district determined in accordance with the following rules:

- (a) Where the assignor is a corporation incorporated under the laws of Ontario, in the registration district in which the head office or registered office is situate;
- (b) Where the assignor is an extra-provincial corporation, having a head office or registered office within Ontario, in the registration district in which such head office or registered office is situate; 1931, c. 35, s. 5 (1), cls. (a, b).
- (c) Where the assignor is an extra-provincial corporation not having a head office or registered office within Ontario, in the office of the clerk of the county

court of the County of York at Toronto; 1932, c. 48, s. 3.

(d) Where the assignor is not a corporation, in the registration district in which the assignor carries on business at the time of the execution of the assignment;

(e) Where the assignor is not a corporation, and at the time of the execution of the assignment carries on business in different registration districts, in any such registration district, and by filing a duplicate original of the assignment and affidavits, or a copy thereof, certified by the proper officer of that registration district, in each of the other registration districts. 1931, c. 35, s. 5 (1), cls. (d, e).

(2) The proper officer shall cause every assignment filed in his office to be numbered, to be endorsed with a memorandum of the day, hour and minute of filing, and to be indexed by entering in alphabetical order in a register kept by him, the names of the parties to the assignment with their descriptions and the dates of execution and registration of the assignment. Assignments to be numbered.

(3) Where the time for registration of any assignment or other document expires on a Sunday or other day on which the office in which the registration is to be made is closed, the registration shall, so far as regards the time of registration, be valid if made on the next following day on which the office is open. 1931, c. 35, s. 5 (2, 3). Where registration expires on Sunday.

5.—(1) An assignment registered under this Act may be discharged in whole or in part by the registration in the office in which the same is registered of a certificate of discharge, signed by the assignee, his executors, administrators, or assigns, and accompanied by an affidavit of an attesting witness of the due execution thereof. Discharge of assignment.

(2) The proper officer in whose office a certificate of discharge accompanied by the affidavit of execution is registered, shall note the fact of such discharge against each entry in the books of his office respecting the registration of the assignment, and shall make a like notation upon the assignment or copy registered in his office. Noting discharge.

(3) If there are two or more assignors residing in different registration districts affected by the discharge, the registration may be effected either by filing a duplicate or other original of the certificate of discharge and affidavit of execution in the office of the proper officer in each of the registration districts, or by filing the certificate of discharge and affidavit Noting discharge in two or more registration districts.

of execution in one of the registration districts and by filing a certificate of the entry of the discharge therein, signed by the proper officer of that registration district in the office of the proper officer of each of the other registration districts and each proper officer shall make the like notations of the discharge in the records of his office as are provided by subsection 2.

Certificate
of entry of
discharge.

(4) The proper officer in whose office the certificate of discharge is registered shall on request furnish a certificate of the entry of the discharge in the records of his office. 1931, c. 35, s. 6.

Inspection
of records.

6. Upon payment of the prescribed fees every person shall have access to and be entitled to inspect the books of any proper officer containing records or entries of assignments or documents registered or filed under the provisions of this Act, and no person shall be required, as a condition of his right thereto, to disclose the name of the person in respect of whom such access or inspection is sought, and every proper officer shall, upon request accompanied by payment of the prescribed fees, produce for inspection any assignment or document so registered or filed in his office. 1931, c. 35, s. 7.

Registration
districts and
offices.

7. For the purpose of registration of assignments or other documents each county and provisional judicial district in Ontario shall be a registration district and the clerk of the county or district court shall be the proper officer for the registration of assignments or documents in that registration district. 1931, c. 35, s. 8.

Taking
affidavits.

8.—(1) Affidavits required by this Act may be taken and made before the proper officer of any registration district or before any person, whether within or without Ontario, authorized to take affidavits in or concerning any cause, matter or thing pending in any court in Ontario.

Registration
not affected
by interest
of solicitor.

(2) No registered assignment or other document shall be held to be defective or void solely on the ground that any affidavit required by this Act was taken and made before a solicitor for any of the parties to the assignment or other document, or before a partner of such solicitor, or before a clerk in the office of such solicitor. 1931, c. 35, s. 9.

Affidavit
in case of
death of
assignee.

9. Any affidavit required by this Act to be made by an assignee may, in the event of his death be made by his executor or administrator or by any of his next-of-kin or by the duly authorized agent of the executor or administrator. 1931, c. 35, s. 10.

10. Where the assignee is a corporation, every affidavit required or permitted by this Act to be made or given by the corporation as such assignee may be made or given by any officer, employee or agent of the corporation. 1931, c. 35, s. 11.

Affidavit
on behalf of
corporation.

11. Any affidavit made for the purposes of this Act by the agent of an assignee, or of an executor or administrator, or by an officer, employee or agent of a corporation, shall state that the deponent is aware of the circumstances connected with the assignment, and that he has a personal knowledge of the facts deposed to. 1931, c. 35, s. 12.

Affidavit of
agent or
officer.

12. Where an assignment or certificate of discharge or other document has been executed by a corporation under the provisions of this Act no affidavit of an attesting witness shall be required. 1931, c. 35, s. 13.

No affidavit
of execution
by corporation.

13. In case, before the making of any affidavit of execution required by this Act, the attesting witness to an assignment, certificate of discharge or other document dies or leaves Ontario, or becomes incapable of making, or refuses to make such affidavit, the judge of the county or district court may make an order permitting the registration of the assignment, certificate of discharge or other document, upon such proof of its due execution and attestation as the judge, by the order, may require and allow, and the order, or a copy thereof, shall be annexed to the assignment, certificate of discharge, or other document, as the case may be, and filed therewith, and the registration of the assignment, certificate of discharge or other document under and in compliance with the terms of the order, shall have the like effect as the registration thereof with the affidavit of execution otherwise required by this Act. 1931, c. 35, s. 14.

Power of
judge to
permit proof
of execution
otherwise
than by
affidavit of
witness.

14. Subject to the rights of other persons accrued by reason of any omission or misstatement referred to in this section, the judge of the county or district court on being satisfied that the omission to register an assignment within the time prescribed by this Act, or any omission or misstatement in any document filed under this Act, was accidental or due to inadvertence or impossibility, or other sufficient cause, may, in his discretion, extend the time for registration, or order the omission or misstatement to be rectified, on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter or thing as the judge thinks fit to direct, and the order, or a copy thereof, made under this section shall be annexed

Rectification
of omissions
and mis-
statements.

to the assignment or copy thereof on file or tendered for registration and appropriate entries shall be made in the register. 1931, c. 35, s. 15.

Defects
and irregu-
larities.

15. No defect or irregularity in the execution or attestation of an assignment, or other document, no defect, irregularity or omission in any affidavit accompanying an assignment or filed in connection with its registration, and no error of a clerical nature or in an immaterial or non-essential part of an assignment shall invalidate or destroy the effect of the assignment or the registration thereof, unless in the opinion of the court or judge before whom a question relating thereto is tried such defect, irregularity, omission, or error has actually misled some person whose interests are affected by the assignment. 1931, c. 35, s. 16.

Evidence of
records.

16. Copies of an assignment, certificate of discharge or other document registered or filed under this Act certified by the proper officer shall be received as *prima facie* evidence for all purposes as if the original assignment or document were produced and also as *prima facie* evidence of the execution of the original assignment or document according to the purport of such copy, and the certificate of the proper officer shall also be *prima facie* evidence of the date and hour of registration and filing. 1931, c. 35, s. 17.

Fees.

17. For services under this Act each proper officer shall be entitled to receive the following fees:

1. For filing and registering an assignment,—fifty cents.
 2. For filing and registering a certificate of discharge,—twenty-five cents.
 3. For a general search,—fifty cents.
 4. For any certificate of registration or discharge or other certificate for purposes of this Act,—twenty-five cents.
 5. For copy of any document filed under this Act, including certificate, every 100 words,—ten cents.
- 1931, c. 35, s. 18.

Uniform
construction
of Act.

18. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those Provinces which enact it. 1931, c. 35, s. 19.

Rev. Stat.
c. 264, not
affected.

19. This Act shall not apply to any instrument registered under *The Corporations Securities Registration Act*. 1932, c. 48, s. 4.