1937

c 182 Conditional Sales Act

Ontario
CHAPTER 182.

The Conditional Sales Act.

1. In this Act,—

"Goods" shall include wares and merchandise. R.S.O. 1927, c. 165, s. 1.

2.—(1) Where possession of goods is delivered to a purchaser, or a proposed purchaser or a hirer of them, in pursuance of a contract which provides that the ownership is to remain in the seller or lender for hire until payment of the purchase or consideration money or part of it, as against a subsequent purchaser or mortgagee claiming from or under the purchaser, proposed purchaser or hirer, without notice in good faith and for valuable consideration, such provision shall be invalid, and such purchaser, or proposed purchaser or hirer, shall be deemed the owner of the goods, unless

(a) the contract is evidenced by a writing signed by the purchaser, proposed purchaser or hirer or his agent, stating the terms and conditions of the sale or hiring and describing the goods sold or lent for hire; and,

(b) within ten days after the execution of the contract a true copy of it is filed in the office of the clerk of the county or district court of the county or district in which the purchaser, proposed purchaser or hirer resided at the time of the sale or hiring.

(2) Subsection 1 shall apply to the case of a hire receipt where the hirer is given an option to purchase.

(3) Where the delivery is made to any person for the purpose of resale by him in the course of business such provision shall also, as against his creditors, be invalid and he shall be deemed the owner of the goods unless the provisions of this Act have been complied with.

(4) Where such person resells the goods in the ordinary course of his business the property in and ownership of such goods shall pass to the purchaser notwithstanding that the provisions of this Act have been complied with.

(5) Clause b of subsection 1 shall not apply to a contract respecting manufactured goods, including pianos, organs or
other musical instruments which, at the time possession is delivered, have the name and address of the seller or lender painted, printed, stamped or engraved thereon or plainly attached thereto, nor to a contract respecting household furniture other than pianos, organs or other musical instruments.

(6) An error or inaccuracy in the name or address of the seller or lender which does not mislead shall not prevent the application of subsection 5.

(7) This section shall not apply to a contract for the sale by an incorporated company to a railway company of rolling stock if the contract or a copy of it is filed in the office of the Provincial Secretary within ten days from its execution.

R.S.O. 1927, c. 165, s. 2.

3. The seller or lender shall deliver a copy of the contract to the purchaser or hirer within twenty days after the execution thereof, and if, after request, he neglects or refuses to do so, the judge of the county or district court of the county or district in which the purchaser or hirer resided when the contract was made may, on summary application, make an order for the delivery of such copy. R.S.O. 1927, c. 165, s. 3.

4. The clerk of the county or district court shall make a record of every contract of which a copy is filed in his office under this Act, in an index book to be kept for that purpose and shall be entitled to the following fees for services under this Act:

(a) For filing each copy of a contract and making such record,—
   
   (i) if the amount of the contract is less than $1,000.................................$ .50
   (ii) if the amount of the contract is $1,000 or more 1.00

(b) For filing each discharge or assignment and making a record thereof...................... 1.00

(c) For a general search................................. .25

(d) For a search as to any particular person................. .10

(e) For the production or inspection of any copy or document filed.............................. .10

(f) For copies of, or extracts from any copy or document filed, whether made by the person making the search, or by the clerk, per hundred words .10

(g) For a certificate of the filing of or identifying any copy or document filed, giving time, date and number of filing, when required, or any other proper certificate not otherwise provided for.................................................. .50

(h) For every necessary letter................................. .25

R.S.O. 1927, c. 165, s. 4.
5. An error of a clerical nature or in an immaterial or non-essential part of the copy of the contract which does not mislead shall not invalidate the filing or destroy the effect of it. R.S.O. 1927, c. 165, s. 5.

6.—(1) The seller or lender shall, within five days after the receipt of a request in writing from any proposed purchaser of any goods to which this Act applies, or from any other person interested, furnish particulars of the amount remaining due to him and the terms of payment of it, and in default he shall incur a penalty not exceeding $50, recoverable under The Summary Convictions Act.

(2) If the request is by letter the person making the request shall give a name and post office address to which a reply may be sent, and it shall be sufficient if the information is given by registered letter deposited in the post office within the prescribed time addressed to the person inquiring at his proper post office address, or, where the name and address is given by him, by the name and at the post office address so given. R.S.O. 1927, c. 165, s. 6.

7.—(1) Where the seller or lender retakes possession of the goods for breach of condition he shall retain them for twenty days, and the purchaser or hirer or his successor in interest may redeem the same within that period on payment of the amount then in arrear, together with interest and the actual costs and expenses of taking and keeping possession. R.S.O. 1927, c. 165, s. 7 (1).

(2) Where the purchase price of the goods exceeds $30 and the seller or lender intends to look to the purchaser or hirer for any deficiency on a resale, the goods shall not be resold until after notice in writing of the intention to sell has been given to the purchaser or hirer or his successor in interest.

(3) The notice shall contain,—

(a) a brief description of the goods;
(b) an itemized statement of the balance of the contract price due and the actual costs and expenses of taking and keeping possession up to the time of the notice;
(c) a demand that the amount as stated in the notice shall be paid on or before a day mentioned which day shall not be less than twenty days from the day of retaking possession of the goods;
(d) a statement that, unless the amount stated in the notice is paid within the time mentioned, the goods
will be sold either at private sale or advertised and sold by public auction, and that the seller or lender intends to look to the purchaser or hirer for any deficiency occasioned by any resale.

(4) The notice shall be served personally upon or left at the residence or last known place of abode in Ontario of the purchaser or hirer or his successor in interest at least five days before the date set out in the notice for payment or may be sent by registered post at least seven days before such date set out in the notice for payment addressed to the purchaser or hirer or his successor in interest at his last known post office address. 1931, c. 23, s. 12.

(5) The notice may be given during the twenty days mentioned in subsection 1.

(6) This section shall apply notwithstanding any agreement to the contrary. R.S.O. 1927, c. 165, s. 7 (4, 5).

8.—(1) Subject to the provisions of subsection 2, where the goods other than building material have been affixed to realty they shall remain subject to the rights of the seller or lender as fully as they were before being so affixed, but the owner of such realty or any purchaser or any mortgagee or other incumbrancer thereof shall have the right as against the seller or lender or other person claiming through or under him to retain the goods upon payment of the amount owing on them. R.S.O. 1927, c. 165, s. 8; 1932, c. 18, s. 2 (1).

(2) Where the goods consist of mining machinery or appliances on a mining claim for which the patent or lease, as the case may be, has not issued, they shall remain subject to the rights of the seller or lender whether they have been affixed to the realty or otherwise as fully as they were before being so affixed, and the hire receipt or conditional sale contract or a copy thereof may be filed with the recorder of the mining division in the same manner as a hire receipt or conditional sale contract may be filed with the clerk of a county or district court, and the provisions of this Act with regard to filing and discharge shall mutatis mutandis apply. 1932, c. 18, s. 2 (2).

(3) The filing of a conditional sale contract or hire receipt as provided in subsection 2 shall be deemed actual notice to a creditor, subsequent purchaser or mortgagee of such goods or realty. 1933, c. 8, s. 2.

9. Where the goods are in or upon premises with respect to which rent is in arrears, the landlord or other person exercising the right of distress, shall have the right to distrain upon the goods upon payment to the seller or lender or other person
claiming through or under him, of the amount owing thereon, and the landlord may add the amount so paid to his claim for the rent. R.S.O. 1927, c. 165, s. 9.

10. When a contract has been made out of Ontario with reference to goods not then within Ontario which if made within Ontario and with reference to goods within Ontario would come within the provisions of this Act, or where under the law governing the contract the vendor has the right of revendication or to resume possession of the goods notwithstanding the possession of the purchaser upon default in payment of the price or the insolvency of the purchaser, and the goods are brought into Ontario, such contract shall be subject to the provisions of this Act, provided that the period for filing in the office of the clerk of the county or district court of the county or district in which the purchaser, proposed purchaser or hirer resided at the time of the sale or hiring shall be within twenty days after the date on which the goods are brought within Ontario, and provided that a caution under oath stating the nature of the agreement and of the right claimed may be filed in lieu of a true copy of the contract. R.S.O. 1927, c. 165, s. 10; 1929, c. 23, s. 8; 1937, c. 13, s. 2.

11.—(1) A hire receipt or conditional sale contract may be discharged by filing in the office of the clerk of the county or district court in which a copy of such hire receipt or contract has been filed, a certificate that all moneys due thereunder have been satisfied, or to the like effect, signed by the seller or lender and proved by affidavit of a subscribing witness and the clerk of such court shall, upon receiving such certificate, write the words “See discharge number (stating the number of the certificate)” opposite such place where the number of the hire receipt or contract has been entered in the index book kept for that purpose and he shall also endorse a similar memorandum upon the instrument discharged.

(2) The discharge may be in the following form:

I certify that A. B. has paid all money payable to me under conditional sale agreement dated the day of , 19 , signed by him and filed on the day of , 19 .

R.S.O. 1927, c. 165, s. 11.

12.—(1) In addition to any other registration or filing that may be required by this Act, notice of any hire receipt or conditional sale contract (Form 1) may be registered in the proper registry or land titles office, and shall set out,—
(a) the name and residence of the vendor and the purchaser;

(b) a short description of the goods sold;

(c) the amount of the purchase price;

(d) a description of the land owned by the purchaser, or in which he has any interest to which the goods are to be affixed, sufficient for the purpose of registration, and where the land is registered under The Land Titles Act, also a reference to the number of the parcel of the land and to the register in which such land is registered in the land titles office.

(2) The notice shall be signed by the vendor or his authorized agent, assignee or personal representative, and shall be verified in duplicate by the affidavit (Form 2) of the vendor, or his authorized agent, assignee or personal representative having personal knowledge of the matters required to be verified, and the affidavit of the agent, assignee or personal representative shall state that he has such knowledge.

(3) The registration of such conditional sale contract or hire receipt as provided herein shall be deemed actual notice to the owner of such land or any interest therein or to a subsequent purchaser, mortgagee or other incumbrancer of such land or any interest therein.

(4) The fee for registration of such notice shall be $1.

(5) A hire receipt or conditional sale agreement registered under the provisions of this section may be discharged by a certificate (Form 3) signed by the vendor, his authorized agent, assignee or personal representative, accompanied by an affidavit of execution.

(6) The fee for registration of a discharge shall be fifty cents. 1933, c. 8, s. 3.
FORM 1.
(Referred to in section 12 (1).)

NOTICE OF CONDITIONAL SALE CONTRACT OR HIRE RECEIPT.

1, A.B. .........................................................
(Name of vendor, assignee, personal representative or agent of vendor),
of the .....................................................
(fill in place of residence) (set out facts whether vendor, assignee
........................................................., hereby give notice that
personal representative or agent of vendor)
........................................................., was sold under a conditional sale
(set out short description of goods)
agreement to ...........................................
of .........................................................
(name of purchaser) (fill in place of residence)

The amount owing thereon is $ ..........................
The following is a description of the land upon which the goods are affixed.
...........................................................................
This notice is given for the purpose of registration in the .................
(Registry or Land
Titles Office) (set out City, County or District)

Dated ........................................... this ....... day of .........., 19...

.............................................................
(Signature of vendor or agent, etc., as the case may be)

1933, c. 8, Sched. A., Form 1.

FORM 2.
(Referred to in section 12 (2).)

AFFIDAVIT VERIFYING CLAIM.

1, A.B., named in the above (or attached) notice, make oath and say:
That the facts set out there are true.

(Where the affidavit is made by the agent, assignee or personal representative, a clause must be added to the following effect):

"I have full knowledge of the facts set forth in the above (or annexed)
notice."

Sworn before me at
the ........................ of ......................
in the ......................... of ..................
this ........ day of .........., 19...

.............................................................
(Signature of vendor or agent, etc.)

1933, c. 8, Sched. A., Form 2.
FORM 3.

(Referred to in section 12 (5).)

CERTIFICATE OF DISCHARGE.

The lien registered by.........................................................
(name of vendor)
of the.................................................., ...........
(occupation)
upon the following lands..................................................
(set out lands)

..........................................................

Dated the........................................day of................., 19....
and registered the........................................day of...........
as No......................, in the...........................................
(Registry or Land Titles Office, as the
case may be)

..........................................................

..........................................................

(County or District as the case may be)
of..................................................

..........................................................

(Signature of vendor or as the case may be)

1933, c. 8, Sched. A., Form 3.