[HIGH COURT OF AUSTRALIA.]

WURM . . . . . APPELLANT;
APPLICANT,

AND

RICHARDSON . . . . . RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE COURT OF BANKRUPTCY (DISTRICT OF SOUTH AUSTRALIA).

H. C. OF A. 1932.

MELBOURNE, *Mar.* 15.

SYDNEY, *April* 26.

Gavan Duffy C.J., Rich, Starke, Dixon, Evatt and McTiernan JJ.

*Bill of Sale—Assignment of after-acquired property—Description—Sufficiency—Bills of Sale Act* 1886 (*S.A.*) (*No.* 389), *secs.* 9 (3), 28.

A bill of sale of certain personal chattels, which were specifically set forth therein, contained also an assignment by the grantor of "all other personal chattels whether of a like nature or otherwise howsoever which I may during the continuance of this bill of sale be possessed of and which may be in and upon or about the said section or any other land which I may hereafter occupy or be in possession of whether brought there in substitution for renewal of or in addition to the said personal chattels or otherwise howsoever and all my right title claim and demand to the same."

*Held*, that sec. 28 of the *Bills of Sale Act* 1886 (S.A.) did not render such bill of sale void as against the trustee in bankruptcy of the grantor as failing to "contain or state a description of the personal chattels in respect of after-acquired chattels comprised therein" as required by sec. 9 (3) of the Act.

Decision of the Court of Bankruptcy (District of South Australia) reversed.

APPEAL from the Court of Bankruptcy (District of South Australia).

In July 1928 John Alfred Green executed a bill of sale to the appellant, Frederick Henry Wurm, as security for a guarantee given by Wurm to the Union Bank of Australia Limited for advances made to it by Green. By this bill of sale, Green transferred and assigned to Wurm certain personal chattels specifically set forth at the foot thereof "which are situated on that section of land in the Hundred of Napperby County of Victoria numbered 29 and also all other personal chattels whether of a like nature or otherwise howsoever which I may during the continuance of this bill of sale

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be possessed of and which may be in and upon or about the said section or any other land which I may hereafter occupy or be in possession of whether brought there in substitution for renewal of or in addition to the said personal chattels or otherwise howsoever and all my right title claim and demand to the same, to have, hold, take and receive the said personal chattels unto the grantee subject to the provisoes, terms, covenants, conditions and agreements herein expressed or implied." This bill of sale was registered under the *Bills of Sale Act* 1886 (S.A.). In February 1931 the estate of Green was sequestrated, and the Official Receiver, Arnold Victor Richardson, who is the respondent, claimed that the bill of sale was void because of the provisions of the *Bills of Sale Act* 1886. By sec. 28 of that Act it is provided that "Every bill of sale in which there shall be any material omission or misstatement of any of the particulars required by the ninth section . . shall be void, as against—(*a*) The Official Receiver or the trustee in insolvency of the grantor . . . so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale which within three months before the insolvency . . . are in the possession, or apparent possession, of the grantor." Sec. 9 (3) of the Act provides that "Every bill of sale shall contain or state . . . a description of the personal chattels comprised therein; and in case of horses, cattle, sheep, or other animals, the brands or some other distinctive mark thereof." No question arose in this case as to horses, cattle, sheep, or other animals. Wurm sought a declaration from the Court of Bankruptcy (District of South Australia) that certain specified chattels were his property inasmuch as they were after-acquired property within the meaning of the bill of sale and the *Bills of Sale Act* 1886. That Court held that the after-acquired property had not been sufficiently described in the bill of sale pursuant to the latter provision, and that the appellant was not entitled under the bill of sale to any of the after-acquired property of the bankrupt or to any of the proceeds of such after-acquired property against the Official Receiver, and that as against the latter the bill of sale was void.

From this decision Wurm now appealed to the High Court.

*Travers*, for the appellant. The description of the after-acquired property in the bill of sale was a sufficient description to comply

with sec. 9 of the *Bills of Sale Act* 1886 (*Davidson* v. *Carlton Bank* (1); *Hovey* v. *Whiting* (2); *Tailby* v. *Official Receiver* (3); *Lunn* v. *Thornton* (4); *Malick* v. *Lloyd* (5); *Collyer* v. *Isaacs* (6)). The Official Receiver in bankruptcy is expressly deprived of any claim to the goods mentioned in the bill of sale by sec. 91 (*e*) of the *Bankruptcy Act* 1924-1930, and sec. 28 of the *Bills of Sale Act* 1886 cannot operate in any way in conflict with that section (*In re Clark*; *Ex parte Beardmore* (7); *Clyde Engineering Co.* v. *Cowburn* (8); *Inglis* v. *Dalgety & Co and Official Receiver* (9); *Re Harris*; *Jolly* v. *Maynard* (10)). Even if the document purporting to be a bill of sale is not a valid bill of sale, it nevertheless operates as a valid assignment in equity and the bankrupt holds the goods as trustee for the appellant (*Collyer* v. *Isaacs* (11); *Holroyd* v. *Marshall* (12); *Malick* v. *Lloyd*; *McDonald, Henry and Meek* on *Australian Bankruptcy Law and Practice*, at p. 193).

There was no appearance for the Official Receiver.

*Cur. adv. vult.*

April 26.

The following written judgments were delivered :—

GAVAN DUFFY C.J., RICH, DIXON AND MCTIERNAN JJ. The bankrupt gave a bill of sale by way of security which contained an assignment of after-acquired personal chattels of any nature of which during the continuance of the bill of sale he should be possessed and which should be upon any land in his occupation or possession. This bill of sale was registered under the *Bills of Sale Act* 1886 (S.A.). Nevertheless, by the decision under appeal, after-acquired chattels of which the bankrupt became possessed before his bankruptcy and which were on land in his occupation and the proceeds of such chattels have been held to vest in the Official Receiver as trustee. Apart from statute there can be no doubt of the efficacy of the instrument to create an equitable assignment which would operate upon chattels acquired by the grantor as and when they were brought upon land in his occupation or possession. The ground of the decision was that,

(1) (1893) 1 Q.B. 82, at p. 88.
(2) (1887) 14 Can. S.C.R. 515.
(3) (1888) 13 App. Cas. 523.
(4) (1845) 1 C.B. 379; 135 E.R. 587.
(5) (1913) 16 C.L.R. 483.
(6) (1881) 19 Ch. D. 342.
(7) (1894) 2 Q.B. 393.
(8) (1926) 37 C.L.R. 466, at p. 489.
(9) (1930) 2 A.B.C. 194.
(10) (1930) 2 A.B.C. 133.
(11) (1881) 19 Ch. D., at p. 351.
(12) (1862) 10 H.L.C. 191; 11 E.R. 999

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by reason of the provisions of sec. 28 and sec. 9 (3) of the *Bills of Sale Act* 1886, the bill of sale was void against the trustee in relation to the property in dispute. Sec. 9 (3) provides that every bill of sale shall contain or state a description of the personal chattels comprised therein and in case of horses, cattle, sheep, or other animals, the brands or some other distinctive mark. Registration of a bill of sale is forbidden unless it contains the "particulars" required by sec. 9. Sec. 28 provides that every bill of sale in which there shall be any material omission or misstatement of the particulars required by sec. 9 shall be void as against the trustee in bankruptcy of the grantor in respect of property which has been within three months in the bankrupt's possession.

The decision proceeded upon the view that the after-acquired property clause in the bill of sale failed to give a description of the chattels it comprised sufficient to satisfy sec. 9 (3). There is much difficulty in seeing how it is possible to apply to unborn animals the requirement of sub-sec. 3 that, in the case of animals, brands or some other distinctive marks should be given. Yet sec. 10 authorizes an assignment, to operate in law as well as in equity, of future progeny of live-stock comprised in a bill of sale. The true inference may be that sub-sec. 3 of sec. 9 has no operation at all in relation to after-acquired property and that "chattels comprised therein" mean chattels which at the time when the bill of sale is granted are comprised therein as existing things. But if the sub-section is to be applied to future chattels and an equitable assignment of such chattels requires registration, it necessarily follows that a wide meaning must be given to the words "a description of the personal chattels comprised therein." There is no reason to suppose that it was intended to make any class of equitable assignment of after-acquired property no longer possible. Without doing so, no greater precision of description can be demanded than that which the parties adopt as the definition of the property to be caught by the after-acquired clause. In either view, the bill of sale now in question is not vitiated.

We think that the appeal should be allowed, and that so much of the order below should be discharged as determines and orders that the appellant is not entitled to any of the after-acquired property of the bankrupt, or to any of the proceeds of such after-acquired property as against the respondent, and that the bill of sale is void against the respondent. In lieu thereof it should be declared that

the appellant is so entitled. The respondent should be ordered to pay the appellant's costs of this appeal and of the application in the Court below out of the estate.

Starke J. Evatt J.

STARKE AND EVATT JJ. In 1928 John Alfred Green executed a bill of sale to Frederick Henry Wurm as security for a guarantee given by Wurm to the Union Bank of Australia Limited for advances made by it to Green. By this bill of sale Green transferred and assigned to Wurm certain personal chattels specifically set forth at the foot thereof "which are situated on that section of land in the Hundred of Napperby County of Victoria numbered 29 and also all other personal chattels whether of a like nature or otherwise howsoever which I may during the continuance of this bill of sale be possessed of and which may be in and upon or about the said section or any other land which I may hereafter occupy or be in possession of whether brought there in substitution for renewal of or in addition to the said personal chattels or otherwise howsoever and all my right title claim and demand to the same."

An assignment of after-acquired property is not void merely because it is wide. "An assignment for value, in terms present and immediate, has always been regarded in equity as a contract binding on the conscience of the assignor and so binding the subject matter of the contract when it comes into existence, if it is of such a nature and so described as to be capable of being ascertained and identified" (*Tailby* v. *Official Receiver* (1)). So an assignment of goods and chattels now being or which shall hereafter be in or about a messuage or house has always been held valid in equity (*Holroyd* v. *Marshall* (2); *Ex parte Games*; *In re Bamford* (3)). The assignment of the after-acquired chattels in the bill of sale now under consideration falls within these principles. The subject matter is capable of being ascertained and identified, and the document therefore operates as a valid assignment in equity.

In February 1931 the estate of Green was sequestrated, and the Official Receiver insists that the bill of sale is void because of the provisions of the *Bills of Sale Act* 1886 of South Australia. By

(1) (1888) 13 App. Cas., at p. 543. (2) (1862) 10 H.L.C. 191; 11 E.R. 999
(3) (1879) 12 Ch. D. 314.

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sec. 28 of that Act it is provided that every bill of sale in which there shall be any material omission or misstatement of any of the particulars required by the ninth section shall be void as against the Official Receiver or trustee in insolvency of the grantor "so far as regards the property in or right to possession of any personal chattels comprised in such bill of sale which within three months before the insolvency . . . are in the possession, or apparent possession, of the grantor." Sec. 9, sub-sec. 3, declares that every bill of sale shall contain or state a description of the personal chattels comprised therein; and in case of horses, cattle, sheep, or other animals, the brands or some other distinctive marks thereof. The learned Judge of the Court of Bankruptcy (District of South Australia), Judge *Paine*, has held that the after-acquired property has not been sufficiently described in the bill of sale pursuant to this latter provision, and that accordingly the bill of sale is void as against the Official Receiver.

A prior question, however, arises, namely, whether an assignment of after-acquired property falls within the Act at all. But, as it was not really dealt with in the Court below nor fully argued at the Bar of this Court, we propose to say no more than that the question, despite the definition of "bill of sale" in sec. 2, will demand further consideration when the occasion arises. It would be necessary to consider the question here if the decision of the learned Judge in the Court below were right. But, in our opinion, the decision is erroneous. A description of chattels to be after-acquired can in most cases only be given by reference to the nature or class of goods or their location. A specific description of the chattels described in the bill of sale is not required by the section. If the bill of sale so describes the after-acquired chattels that they can be ascertained and identified when they come into existence, that in our opinion is a sufficient description for the purposes of the *Bills of Sale Act* as well as for the purposes of an equitable assignment of those chattels. No question arises in this case as to horses, cattle, sheep, or other animals, and it is unnecessary to consider what would be a sufficient description of after-acquired horses, cattle, sheep, &c., in view of the closing words of sec. 9 (3): "and in case of horses, cattle, sheep, or other animals, the brands or some other

distinctive marks thereof." They may aid the argument that the Act does not apply to after-acquired property or from the necessity of the case cannot be applied to after-acquired horses, cattle, sheep, or other animals.

The appeal should, in our opinion, be allowed, and a declaration made that the appellant is entitled to the after-acquired property in the bill of sale mentioned or to the proceeds thereof as against the Official Receiver.

*Appeal allowed. So much of the order appealed from discharged as determines and orders that the appellant is not entitled to any of the after-acquired property of the bankrupt or to any of the proceeds of such after-acquired property as against the respondent and that the bill of sale is void against the respondent: in lieu thereof declare that the appellant is so entitled. Let the respondent pay the appellant's costs of this appeal and of the application in the Court below out of the estate.*

Solicitors for the appellant, *Villeneuve Smith, Kelly, Hague & Travers.*

H. D. W.