A BILL

Entitled an Act to exempt the Homestead and other Property from forced Seizure and Sale in certain cases.

WHEREAS, it is expedient to exempt portions of the Real and Personal Estate of Debtors and others from forced Seizure and Sale in certain cases : Be it enacted by the Governor of the Colony of Vancouver Island and its Dependencies, by and with the advice and consent of the Legislative Council and Assembly thereof, as follows :

I. The word "Homestead" shall be held to mean the pieces or parcels of Land, together with any Erections or Buildings thereon, whether Leasehold or Freehold, or both Leasehold and Freehold, with their rights, members, and appurtenances, being the *bona fide* place of abode of the owner, and which shall be duly registered as such in manner hereinafter mentioned ; and for the purposes of this Act any erection or building, or any such Homestead as aforesaid, whether or not the same be affixed to the soil, shall be taken to be Real Estate and part of such Homestead.

II. The Homestead aforesaid shall be registered in manner following : The owner of such Homestead shall cause the Title to the same to be registered by the Registrar General of Titles to Real Estate as in the case of other Real Estate, and in addition thereto shall cause a notice of registration, which may be in the form 1 in the Schedule hereunto annexed, to be lodged with the Registrar General of Titles to Real Estate in the said Colony, accompanied with a Schedule of Instruments evidencing his Title to such Homestead, and a Declaration to the effect mentioned in forms 2 and 3 respectively in the said Schedule ; that is to say, in case the Owner of any Homestead shall declare his Assets to be not less than the sum of $2500, then the Declaration shall in that case be to the effect mentioned in form 2 ; and in case the Owner of any Homestead shall declare his assets to be not greater than the value of the Homestead, such Homestead being of less value than $2500, then the Declaration shall be to the effect mentioned in form 3, and thereupon it shall be the duty of the said Registrar General to register such Homestead in he shall be satisfied that the Owner has a *prima facie* Title theretof and without such Notice of Registration and such Declaration duly declared and filed with the said Registrar General, as the case may require, the said Registrar General shall not register such Homestead, and any Declaration in the form or to the effect of form 2 and 3, respectively, may be made before the said Registrar General, or any person now by law entitled to receive solemn declarations.

III. Any person wilfully making a false Declaration of any matter required or permitted to be declared by this Act shall be guilty of a misdemeanor, and on conviction shall be liable to punishment as for Perjury.

IV. The Homestead aforesaid. after the same shall have been duly registered, shall be free from forced Seizure or Sale by any process at Law or in Equity, or on any proceeding in Bankruptcy for or on account of any Debt or Liability incurred after the registration of such Homestead in manner aforesaid ; provided, however,

1. That in case such Homestead shall at the time of the suing out of any process at Law. or in Equity , or of Bankruptcy, be of a value not greater than $2500, then the same shall be wholly exempt from forced Seizure or Sale ; provided the same shall have been from the time of registration and up to the time of issuing of such process, or of the said Bankruptcy, the *bona fide* place of residence of the Owner of such Homestead.

2. That in case such Homestead shall at the time of such suing out of process at Law or in Equity, or of Bankruptcy, be of a greater value than $2500, then so much only of such Homestead being the *bona fide* place of residence and occupation as aforesaid, shall be liable to Seizure or Sale as aforesaid, as shall exceed the sum of $2500.

3. The Registration of any Homestead under the provisions of this Act shall be utterly void and of no effect, and all the benefits of this Act shall be forfeited if any Declaration of matters required or permitted to be declared shall be false, to the knowledge of the person affecting the said Registration, or on whose behalf the same shall be registered.

4. It shall be lawful for any person claiming the benefits of the provisions of this Act with respect to any Household at the time of registration, or at any time thereafter, to limit any Homestead in favor of such persons and for such Estates, and subject to such uses, trusts, and purposes as those to which Lands can now be limited according to the nature and incedents thereof; but in case no special limitation shall be made, the said Homestead shall enure to the Owner, for whose benefit the same shall be registered for an absolute Estate in the same, according to the nature thereof.

5. Nothing herein contained shall be held to prevent the person for whose benefit a Homestead shall be registered at any time from abandoning, aliening Mortgages, or otherwise parting with, limiting, or encumbering his interest therein as to him may seem fit, regard being had to the nature, quality, and interests thereof, and of his power to dispose of the same. Provided, however, that in case the Owner of any Homestead be a married man, he shall not during coverture so abandon, aliene, mortgage, part with, limit, or encumber the same, except with the consent of his wife if she be a resident of the Colony, such consent to be given by way of acknowledgement by her in the manner provided for by "The Land Registry Act, 1865," in cases of the execution of Instruments affecting Real Estate within the said Colony by married women, but in case such wife be not a resident of the Colony no such consent shall be requisite.

6. Any Homestead, and the benefits and privileges conferred upon any person or persons under this Act in respect of any Homestead, may be abandoned by a document which shall be in the form 4 of the Schedule hereunto annexed, duly executed by the person or persons interested therein, and such Document shall be filed in the Office of the Registrar General, and the registration of the Homestead shall be thereupon cancelled in such form as is now used in the cancellation of charges.

7. The following personal property shall be exempt from forced Seizure or Sale by any process at Law or in Equity or from any process in Bankruptcy; that is to say the Goods and Chattels of any Debtor or Bankrupt at the option of such Debtor or Bankrupt or if dead of his personal representative to the value of $150 the same not being Homestead property under the provisions of this Act.

8. On the return of any process at Law or in Equity or in any matter of Bankruptcy in case any question shall arise in whole or in part touching any matter provided for by this Act the Court out of which such process shall issue or the Court of Bankruptcy as the case may be shall dispose of such question between the parties interested therein, by way of Summons and order in a summary way; Provided however that with respect to any matter of fact, such matter shall at the request of any party interested be tried with or without a full Jury of 8 persons at the option of such person and as to any matter involved not being matter of fact the Court shall make such order as to partition and Sale of any portion of a Homestead which exceeds in value the sum of $2500 and generally as to costs and other matters with a view to the final adjustment of any question depending between the parties as to such Court shall seem fit; Provided however, that in the matter of the Sale of any portion of a Homestead, of a valne exceeding the sum of $2500, due regard shall be had to the choice and preference of the Owner and parties interested in the portion reserved from Sale and provided also that in case of the sale of a property comprising a Homestead over the value of $2500 it shall be lawful for the Court ordering such Sale to order the sale of the whole or portion or portions of such property if occasion shall require for the fair realization of its value and make such order for the due investment of the residue by purchase of other Homestead Property, or by distribution among persons interested therein after deducting therefrom the sums due to the Creditors as to such Court shall seem meet.

9. The Registrar General of Titles affecting Real Estate in the said Colony shall keep proper books in which all Notices of Registration of Homesteads Abandonments and Declarations shall be recorded as also Indexes referring to the Registration Abandonment and other dealings with Homesteads under this Act and in particular a nominal list of all persons claiming the benefits of Homesteads under the provisions of this Act, with the descriptions of the Homestead claimed, and shall further have the custody of all original Notices of Registration, Declaration, and Abandonments, but as to other documents affecting the same deal therewith as in other cases of Real Estate Registered in the Land Registry Office.

10. The said last mentioned nominal list of persons claiming the benefit of Homestead, shall be open to inspection by the Public free of charge, and all other Documents lodged with the said Registrar General and relating to the Registration or Abandonment of and other dealings with the Homestead, may be inspected by the Public on payment of the proper fees in that behalf, as hereinafter mentioned.

11. The said Registrar General shall be entitled to take the fees specified in form 5 in the Schedule to this Act annexed, and in so far as the fees therein specified do not apply, the said Registrar General shall be entitled to the like fees which are by Law chargeable under "The Land Registry Amendment Act, 1865," for matters and things done and performed or permitted by him in pursuance of the duties and powers imposed and conferred upon him by the provisions of this Act.

12. Nothing in this Act contained shall be construed as exempting any Real or Personal Property from Sale for Taxes or from distress for Rent.

13. And for the Interpretation of this Act, whenever in this Act in describing or referring to any person or party, matter or thing, any word importing the masculine gender or singular number is used, the same shall be understood to include and shall be applicable to several persons and parties as well as one person or party, and females as well as males, and several matters and things as well as one matter or thing unless it otherwise be provided or there be something in the subject or context repugnant to such construction.

XIV. This Act may be cited for all purposes as "The Homestead Act, 1866."

Passed the Legislative Council this 18th day of June 1866.

E. J. NESBITT,

CLERK OF THE COUNCIL.

SCHEDULE.—FORM 1.

Notice of Registration.

I, A. B., of hereby give Notice that I desire to have registered (Lot Section District or other description in full) being (tenure Freehold or Leasehold) as a Homestead (and if specially limited add (and I hereby declare that the same is limited as in the deed hereto annexed) under and by virtue of the provisions of "The Homestead Act, 1866."

FORM 2.

For a Homestead of any value where the Owner declares his Assets to be not less than the full value of $2500.

I, A. B., of , declare that over and above all Debts and Liabilities whatsoever to which I am now liable, wheresoever the same may have been incurred, I am seized or possessed of Assets in Real or Personal Estate to an amount not less than the sum of $2500.

FORM 3.

For a Homestead of less value than $2500 where the Owner desires to declare his Assets to be not less than the value of the Homestead at time of Registry.

I, A. B., of , declare that over and above all Debts or Liabilities whatsoever to which I am now liable, wheresoever the same may have been incurred, I am seized or possessed of Assets in Real or Personal Estate to an amount not less than the sum of $ [insert the value of the Homestead registered]. And I, the said A. B., hereby declare that to the best of my knowledge and belief the Homestead hereby registered does not exceed in value the sum of $ [value of the Homestead.]

FORM 4.

Abandonment of Homestead.

I, , of , hereby abandon all Homestead rights in the property registered as a Homestead, that is to say [describe the property.]

Dated the day of , A. D., 18

(Signed), [L.S.]

(If the consent of the wife is required add her acknowledgements as in the case of acknowledgments of Deeds by married women).

FORM 5.

Fees to be taken by the Registrar General of Titles affecting Real Estate.

For every registration of Land as a Homestead, including the filing of Notices, and Declarations, and Deeds filed therewith, but exclusive of all other fees for the registration of the Title thereof.	$1 00
For every abandonment of a Homestead,..	$1 00
For the inspection of original documents affecting a Homestead per document,.....	0 25
If more than four Documents,.....	1 00