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No. 52.

2nd Session, 7th Parliament, 26 Victoria, 1863.

BILL.

An Act to facilitate the remedy by Attachment under execution, of separate Creditors against co-partnership property.

Received and read, first time, Friday 27th
February, 1863.

Second reading, Monday, 2nd March, 1863.

Hon. Mr. Rose,

QUEBEC :

PRINTED FOR THE CONTRACTORS BY HUNTER,
ROSE & LEMIEUX, ST. URSULE STREET.

An Act to facilitate the remedy by Attachment under Execution, of separate creditors against co-partnership property.

HER MAJESTY, &c.. enacts as follows :

Preamble.

1. A separate creditor of any one partner in a commercial firm may attach by writ of *saisie arret*, the right, title and interest of such partner in the partnership property.

Attachment.

2. Service of such writ on the partnership *tiers saisi* may be made at the office or place of business thereof, and need not be personal.

Service of Writ.

3. The exigency of such writ shall be to compel the partnership to declare under oath, by one of the partners, (or some duly authorized person,) the right, title and interest of the said partner in the partnership property, and the amount thereof, and in default of such declaration the judgment may be rendered against the partnership.

Exigency of Writ.

Default.

4. In case it appears by the said declaration, that the interest of such partner amounts to a less sum than that claimed by the attaching creditor, and such creditor is not willing to accept a judgment against the partnership for the amount so declared or the amount of the interest of the debtor partner is declared or appears to be indeterminate; or in case it be declared that the partnership is not willing that a judgment should be rendered against it for any specific sum of money, the partnership shall be held within a delay to be fixed by the Court, to produce and file under oath,—

If the partnership do not consent to judgment against them, they shall file certain documents.

(1.) A true copy of the Deed, Articles, or Agreement in writing, of such partnership, or if there be no such Deed, Articles, or Agreement, then a declaration under oath of the verbal agreement under which such partnership exists,—

Articles, &c.

(2.) A statement showing the amounts invested by the partners respectively in the partnership; — the assets thereof, giving separately and in detail an account of the Real and Personal property of the partnership, debts due thereto, with the names, residences and occupations of the debtors respectively; the creditors of the partnership, with their names, residences and occupations, and the amount due to each respectively; a statement of the account of such partner with the partnership, made up to the date of the issuing of such writ of *saisie arret*, and showing the amounts drawn by such partner from, or paid out for him by the firm during the previous year, or such shorter period as the partnership may have subsisted, and a copy of the last balance sheet to be made up to the date of seizure.

Statement of sums invested &c.. by each partner. &c.

Balance sheet.

5. In case of default to comply with any order of the Court under the next preceding section, judgment may be rendered against the partnership for the full amount claimed by the attaching creditor, with the costs of such *saisie arret*; provided always that at any stage of the proceedings, the Court may order the creditors of the partnership to be notified of any matter or thing in which they may be interested in such cause, touching any declaration made, statements and accounts filed,

Judgment in cases of default to file.

Proviso:

Notice to creditors of partnership.

or order or judgments to be applied or prayed for; and in case of absence from Lower Canada, such creditors, or any of them, may be notified by advertisement, as the Court may direct.

Examination
of partner,
&c.

6. The Court may order any partner, manager, book-keeper, or clerk of the partnership to be summarily examined under oath, touching any statement or writing produced, or declaration made under the fourth Section, and to produce any book of accounts, invoices, or papers belonging to the partnership which may be under the control of such person. 5

Sale of interest
of debtor
partner.

7. After the fying of the papers and statements required by the fourth section, the attaching creditor may obtain a writ of *Venditioni Exponas*, to sell the right, title, and interest in such partnership of the debtor partner, and all the provisions of law applicable to such writ when employed for the selling of moveable property in ordinary cases shall apply thereto when issued under this Act. 15

Certain pa-
pers to be
furnished to
the Sheriff,
&c.

8. The Prothonotary or clerk shall furnish to the Sheriff or Bailiff in charge of such writ of *Venditioni Exponas* true copies of all the papers and statements fyled under the fourth section, and of any supplementary papers or statements modifying, and of any judgment or order affecting the same, which shall be open to public inspection *gratis*, until 20 and upon the day of sale.

Mode of sell-
ing interest
of debtor
partner.

9. Upon the day of sale, the Sheriff or Bailiff shall make up a statement of debt, interest, costs and sub-costs, for which such writ issues, (exclusive of poundage and duty,) and shall realize such amounts (with poundage and duty added) by the sale of the smallest proportion or 25 share of such right, title, and interest in the partnership of the debtor partner, which is at such sale offered to be taken in satisfaction of such writ: if no bid can be obtained in that manner, then the Sheriff or Bailiff shall sell the right, title, and interest attached, to the highest bidder, in the usual manner; provided that every such sale shall be 30 made without prejudice to the rights of the other partners, or of the partnership creditors.

Proviso.

Sale of whole
interest to
operate dis-
solution.

10. The sale under such writ of *Venditioni Exponas* of the whole of the right, title, and interest of the debtor partner in the partnership shall operate the absolute dissolution of such partnership, and the pur- 35 chaser of such rights, title and interest, shall be substituted to and subrogated in all the rights of the debtor partner, for the purpose of compelling all the partners to wind up the partnership affairs, and to account to such purchaser; provided that no purchaser shall, by the acquisition of such rights, title and interest, or of any part thereof, of 40 the debtor partner, become in any way liable for the debts of the partnership, or of such debtor partner.

Proviso.

If the debtor
partner be in-
solvent.

11. In case the insolvency of the debtor partner be alleged, his creditors shall be called in to file their claims by advertisement in the usual manner. 45

Effect of sale.
Rights of pur-
chaser.

12. The Sheriff or Bailiff selling under such writ of *Venditioni Exponas*, shall deliver to the *adjudicataire* a written note or contract of such purchase, showing the share acquired by the purchaser, the effect of which note or contract shall be to vest in the *adjudicataire* the share 50 sold of the rights, title and interest of the debtor partner in the partnership property, so that the said *adjudicataire* may maintain an action of account or *en partage* therefor, against all the partners, jointly and

severally; and such *adjudicataire* shall not be obliged to await the expiration of the term for which the partnership may have been entered into, but may compel such partnership, or (in case of dissolution of the same, as provided in the *tenth* section), all the partners or persons theretofore partners in such partnership, forthwith to proceed to a liquidation of the partnership affairs, in order to ascertain and establish the amount of the interest so acquired by the *adjudicataire*.

Rights of purchaser.

13 The Court shall have power upon the requisition of the attaching creditor, at any time after the return day of the said writ of *saisie arret*, by an order summarily made, (after hearing of parties or default to appear), to restrict to such amount as the Court shall think reasonable, the sum and sums of money which the debtor partner shall thereafter during the time to be fixed by such order, be entitled to receive out of the property, funds or profits of the partnership; and during the time mentioned in such order, the attachment under the writ of *saisie arret* shall be *tenante* (except as to the sum so authorized to be paid to the debtor partner), and the *tiers saisi* shall be liable from time to time to appear and make further declaration, or to file further statements or accounts, and to be examined touching the same, as the Court may order.

Court may limit sums to be received by the debtor partner from the partnership.

Saisie to be *tenante* in such case.

14. After any order restricting the sum which the debtor partner shall be entitled to receive from the partnership, such debtor partner shall be liable under the penalty of *contrainte par corps* to represent and refund to the partnership any amount in excess of such sum which may after the making of such order have been received by him, or have come into his hands.

Debtor partner to refund any sum received in excess.

15. This Act shall apply only to Lower Canada.

Act limited to L. C.