

AN ACT

TO PROVIDE FOR

The Equitable Distribution

—OF—

INSOLVENT DEBTORS' ESTATES,

PREPARED IN COMPLIANCE WITH A RESOLUTION PASSED BY THE BOARD OF TRADE,
OF THE CITY OF TORONTO,

—BY—

MESSRS. H. W. DARLING, *Chairman*, W. INCE,
W. F. McMASTER, R. W. ELLIOT,
HUGH BLAIN,

Committee of Toronto Board of Trade.

In Conjunction with ALEX. TURNER, W. F. FINDLAY,
Committee appointed by Hamilton
Board of Trade.

ASSISTED BY

E. R. C. CLARKSON, *Accountant and Trustee*,

—AND—

D. E. THOMSON, *Solicitor*,
Revising Counsel.

Toronto, June, 1883.

ACT 17

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An Act to provide for the distribution of the Assets of Insolvent Traders.

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act shall apply to traders, and to trading co-partnerships, and to trading companies whether incorporated or not, except incorporated banks, insurance, railway and telegraph companies.

The following persons and partnerships or companies exercising like trades, callings or employments shall be held to be traders within the meaning of this Act:—

Apothecaries, auctioneers, bankers, brokers, brickmakers, builders, carpenters, carriers, cattle or sheep salesmen, coach proprietors, dyers, fullers, keepers of inns, taverns, hotels, saloons or coffee houses, lime burners, livery stable keepers, market gardeners, millers, miners, packers, printers, quarrymen, sharebrokers, shipowners, shipwrights, stockbrokers, stock-jobbers, victuallers, warehousemen, wharfingers, persons insuring ships or their freights or other matters against perils of the sea, persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment or otherwise, in gross or by retail, and persons, who either for themselves or as agents or factors for others, seek their living by buying and selling, or buying and letting for hire goods or commodities, or by the workmanship or the conversion of goods or commodities, or trees; but a farmer, grazier, common laborer, or workman for hire shall not, nor shall a member of any partnership, association or company which cannot be adjudged insolvent under this Act be deemed as such a trader for the purposes of this Act;

All such persons, co-partnerships or companies, having been traders as aforesaid, and having incurred debts as such, which have not been barred by the statutes of limitations or prescribed, shall be held to be traders within the meaning of this Act; but

no proceedings in liquidation shall be taken against such trader, based upon any debt or debts contracted after he has so ceased to trade.

INTERPRETATION CLAUSES.

2. For the better interpretation of this Act, the words and phrases therein used, are hereby declared to have therein the meanings hereinafter attributed to them, namely: The word "County" means a county or union of counties: or a judicial district in Ontario not organized into a county. For the purposes of this Act, the temporary judicial district of Nipissing in the Province of Ontario, shall be considered as part of the county of Renfrew; and so much of the territory composing the territorial district of Parry Sound and the territorial district of Muskoka, as is not already included in the judicial County of Simcoe, shall be considered as within the County of Simcoe.

a. The word "district" means a district as defined for judicial purposes by the Legislature of the Province wherein the same is situate.

b. The words "date of Insolvency" mean the date of the issue of the writ of attachment.

c. The words "Official Gazette" mean the Gazette published under the authority of the Government of the Province where the proceedings under this Act are carried on, or which is issued there as the official means of communication between the Lieutenant-Governor and the People, and if no such Gazette is published; or if such Gazette is not in the opinion of the Court or Judge, published with sufficient frequency; then they shall mean any newspaper published in the County, District or Province, designated by the Judge for publishing the notices required by this Act.

d. The word "Court" means the Superior Court in the Province of Quebec, the Court of Queen's Bench in the Province of Manitoba, and the County Courts in the Provinces of Ontario, New Brunswick, British Columbia, Prince Edward Island, and Nova Scotia.

e. The word "Judge" means a Judge of the said Courts respectively, having jurisdiction in the county or district where proceedings shall be had under this Act, and shall also include a Junior and Deputy Judge when such are appointed.

f. The word "Debtor" means any person or persons, co-partnership, company, or corporation that has become subject to the provisions of this Act.

g. The word "Claim" means a debt for which the creditor does not hold security subject to valuation under the provisions of this Act, or such portions of a secured debt as shall be in excess of such valuation, over and above any set-off or counter claim of the debtor validly held by him against the creditor at the date of Insolvency, whether overdue or not: and the words "secured claim" mean a debt for which the creditor holds security under the said provisions, to the extent of such valuation of such security.

h. The word "Clerk" means the Prothonotary or Clerk, of the Court having jurisdiction where proceedings under this Act are being carried on, as the case may be.

i. The words or "before a Notary," mean executed in Notarial form, according to the laws of the Province of Quebec.

j. The word "Creditor" means every person, co-partnership or company to whom the debtor is liable, whether primarily or secondarily, and whether as principal or surety;—but when used with reference to proceedings at meetings under this Act; to the right of voting; to the proportion of creditors; who have become parties to any consent or action with regard to the management and disposal of the estate of a debtor; or to any proceedings by a creditor before any Court or Judge, the word "Creditor" means a person, co-partnership or company whose unsecured claims, to an amount of one hundred dollars or upwards, have been proved in the manner provided by this Act.

k. The word "collocated" means ranked or placed in the dividend sheet for some dividend or sum of money.

l. The word "Guardian" means the Sheriff appointed in the County or District where proceedings shall be had under this Act, and shall also include the deputy Sheriff when such are appointed.

m. The word "Registrar" means the Registrar in Bankruptcy appointed for the Province where proceedings shall be had under this Act.

ACTS OF INSOLVENCY.

3. A debtor shall be deemed Insolvent—

a. If he has called a meeting of his creditors for the purpose of compounding with them, or if he has exhibited a statement shewing his inability to meet his liabilities, or if he has otherwise acknowledged his insolvency:

b. If he has absconded, or is immediately about to abscond from any Province in Canada, with intent to defraud any creditor, or to defeat or delay the remedy of any creditor, or to avoid being arrested or served with legal process; or if, being out of such Province of Canada, he so remains with a like intent; or if he conceals himself within the limits of Canada with a like intent:

c. Or if he has secreted, or is immediately about to secrete, any part of his estate and effects with intent to defraud his creditors, or to defeat or to delay their remedies against him or any of them:

d. Or if he assigns, removes or disposes of, or is about or attempt to assign, remove or dispose of, any of his property with intent to defraud, defeat, or delay his creditors, or any of them:

e. Or if he has made any general conveyance or assignment of his property for the benefit of his creditors, otherwise than in the manner prescribed by this Act; or if, being unable to meet his liabilities in full, he makes any sale or conveyance of the whole or the main part of his stock in trade or of his assets, without the consent of his creditors, or without satisfying their claims:

f. Or if he permits any execution issued against him, under which any of his chattels, land or property are seized, levied upon or taken in execution, to remain unsatisfied till within four days of the time fixed by the Sheriff or officer for the sale thereof, or for fifteen days after such seizure:

g. Or if, upon the issue of a writ of execution against him, the officer charged with such writ, having demanded payment and in default thereof required him to point out any effects susceptible of being seized thereunder, is unable to find any chattels, land or property which can be seized thereunder, and such writ remains unsatisfied for fifteen days after such demand:

4. No proceedings shall be taken under this Act to place the estate of a debtor in liquidation, unless the same are taken within three months next after the act or omission relied upon as subjecting such estate thereto; nor after a writ of attachment has been issued, while it remains in force:

WRITS OF ATTACHMENT AND PROCEDURE,

TO FIRST MEETING OF CREDITORS.

5. Upon the affidavit of any creditor, or that of his clerk or other duly authorized agent, establishing that a trader is indebted to him in a sum not less than two hundred dollars, over and above the value of any security which he holds for the same, and disclosing such facts and circumstances as shall satisfy the Judge that the estate of such trader has become subject to distribution under the provisions of this Act, such creditor shall be entitled to a writ of attachment (Form A) against the estate and effects of such trader, addressed to the Guardian, requiring him to attach the estate and effects of such trader, and to summon him to appear before the Court or Judge to answer the premises. The Guardian of the County or District in which the writ of attachment shall be issued may appoint a Guardian of other counties or districts in any part of the Dominion as his deputy under this Act for the purpose of attaching any part of the estate and effects of the debtor in such counties or districts. Such writ shall be subject as nearly as can be to the rules of procedure of the court in ordinary suits, as to their issue and return and as to all proceedings subsequent thereto before any Court or Judge.

6. Writs of attachment shall be made returnable forthwith after the execution thereof, but it may be provided by any rule of practice to be made in that behalf, that such writ shall be made returnable on a day certain to be declared by the terms thereof, and such writ shall be served by the Guardian in the manner provided for the service of an ordinary writ of summons in the Province where the same is to be made. And if the debtor remains without such Province, or conceals himself within such Province, or has no domicile in any Province of the Dominion, or absconds from his Domicile, in every such case service shall be made by such notice or advertisement as the Judge, or in the Province of Quebec the Judge or Prothonotary may order.

7. The Guardian shall under such writ of attachment, seize and attach at once all the estate, property and effects of the debtor within the limits of the county or district for which he is appointed, including his books of account, moneys, securities for moneys, and all his office or business papers, documents, and vouchers of every kind and description, and shall return with the writ a report under oath stating in general terms his proceedings on such writ. (FORM B.) If he is unable to obtain access to the interior of the house, shop, store, warehouse or other premises of the debtor by reason of the same being locked, barred or fastened, such Guardian is hereby authorized forcibly

to open the same in the presence of at least one witness, making special mention thereof in his return.

8. Whenever a writ of attachment has issued against a debtor and has been served upon him; such writ shall, until the appointment of the Trustee, vest in the Guardian, as the Bailee thereof, all right, title and interest which the debtor has in and to any real or personal property, including his books of account, all vouchers, letters, accounts, titles to property and other papers and documents relating to his business and estate, all moneys and negotiable papers, stocks, bonds and other securities, and generally all assets of any kind or description whatsoever which he may be possessed of or entitled to; and the Guardian shall hold the same in trust for the benefit of the debtor and of his creditors, and subject to the orders of the Court or Judge; and he may, upon such orders and before any meeting of the creditors institute any conservatory process or any proceedings that may be necessary for the protection of the estate; he may also, upon such order, sell and dispose of any part of the estate and effects of the debtor which may be of a perishable nature. But such writ of attachment shall not vest in the Guardian such real and personal property as are exempt from seizure and sale under execution, by virtue of the several Statutes in that case made and provided in the several Provinces of the Dominion respectively, nor the property which the debtor holds as trustee for others.

9. The debtor shall within seven days from the date of the service of the writ of attachment, or if the writ of attachment be contested, then within seven days from the date of the judgment rejecting the petition to have it quashed, furnish the Guardian with a correct statement (Form C) of all his liabilities, direct or indirect, contingent or otherwise, including the nature and amount thereof, together with the names, additions and residences of his creditors and the securities held by them, in so far as may be known to him. The debtor shall also furnish, within the same delay, a statement of all the property and assets vested in the Guardian under this Act; and such statement shall in all cases include a full, clear, and specific account of the causes to which he attributes his insolvency, and the deficiency of his assets to meet his liabilities. And any creditor, his clerk or agent shall have the right to inspect such statements, and may take a copy thereof or extracts therefrom:

10. The debtor may present a petition to the Judge on the return day of the writ of attachment, if such return day be not less than five days after the service of the writ, and otherwise at any time within five days from the service of the writ; and may thereby pray for the setting aside of the attachment made under such writ, for want of, or for a substantial insufficiency in, the

affidavit required by section three, or on the ground that the party at whose suit the writ was issued has no claim against him, or that his claim does not amount to two hundred dollars beyond the value of any security which he holds, or is not proveable, or that his estate has not become subject to distribution under this Act; and such petition shall be heard and determined by the Judge in a summary manner, and conformably to the evidence adduced before him thereon and the judgment, subject to appeal as hereinafter provided, shall be final and conclusive:

11. Immediately after the delay within which the attachment can be contested, or immediately after the contestation has been rejected, or, with the consent in writing of the debtor, immediately after the writ has been returned, the Guardian shall call a meeting of the creditors of the debtor, to be held within twelve days therefrom, notice of which meeting in the Form D, shall be published in accordance with the requirements of this Act: provided always that if the Guardian omits to call such meeting, to be held within the time above limited, the Judge shall, on application of the Guardian or of any creditor, order the meeting to be called for the earliest possible day thereafter; and should the said omission have arisen from the negligence of the Guardian, the Judge shall order him to pay the costs of the application: Provided also, that on application of any creditor, the Judge, on being satisfied that there are creditors whose claims amount to at least one-third of the debtor's direct liabilities, resident in any place whence their attested claims cannot, in due diligence, be received at the place of meeting before the day of the meeting, may order that the meeting be adjourned to some day not more than two weeks thereafter. And thereupon a copy of the order shall forthwith be served on the Guardian, who shall forthwith, by registered pre-paid letter of circular notify each creditor of the adjournment. And if such an order be made no business shall be transacted at the meeting which shall stand adjourned according to the terms of the order.

DELIVERY AND EXAMINATION OF THE DEBTOR.

12. The Trustee shall convene a general meeting of the creditors, to be held within fifteen days from the date of his election for the purpose of receiving from the debtor a specific delivery of his estate and effects and a full and complete statement of his affairs, and immediately after the appointment of the Trustee it shall be the duty of the debtor to prepare the particulars of such delivery and statement under the supervision of the Trustee, for which labor he shall be paid \$2 per day for the time actually spent for that purpose and so long as the Trustee deems necessary, and such delivery and statement shall be pre-

pared in the form (E) and previous to such meeting the debtor shall be summoned, and shall attend thereat and at any other time fixed by the Trustee for that purpose, and after making such corrections as he may deem proper to his statement of Liabilities and Assets and of his Delivery, shall then and there attest the same under oath, and shall also under oath make clear and intelligible answer to the interrogatories set forth in form (F) and to such other questions as may be put to him, touching his estate and affairs. He shall at all times be subject to such examination as the Trustee or the Judge on the application of the Inspector or any creditor may order, and he shall at the expense of the estate execute all proper writings and instruments, and perform all acts required by the Court or Judge touching his estate, and if he refuses or neglects to attend at the place fixed for such delivery and examinations upon being tendered his conduct money and expenses as provided in the case of witnesses subpoenaed in cases tried in the Superior Courts, or if he refuses to be sworn or to answer such questions as may be put to him, or to sign such answers upon such or any other examination required by this act, or to execute such writings or instruments, or to refuse to perform any of the acts which he is required to do under this act, he shall be committed and punished by the Court or Judge as for a contempt of Court.

13. The Court or Judge may also, on the application of the Trustee or the Inspectors, or of any creditor, order any other person, including the husband or wife of the debtor, to appear before the Court or Judge or before the Trustee to answer upon oath all such questions which may be put to him or her touching the affairs of the debtor, and his conduct in the management of his estate; and in case of refusal to appear, or to be sworn, or to answer the questions submitted, such person may be committed and punished by the Court or Judge as for a contempt of Court. No person examined under this Act shall be excused from answering any question on the ground of any privilege; or that the answer would tend to criminate him, but no such answer shall be used as evidence in any criminal proceeding against him, except only for perjury committed by such answer.

TRUSTEES AND INSPECTORS.

14. The creditors at their first meeting shall appoint a Trustee who shall give security to Her Majesty as provided in respect of Trustees, for the due performance of his duties, and to such additional amount as shall be fixed by the creditors at such meeting. The creditors may also, at any meeting called for that purpose, remove the Trustee and appoint another in his stead, or in the stead of a Trustee whose office becomes vacant

by resignation or death. And a certified copy of any resolution of the creditors appointing or removing a Trustee shall be forthwith transmitted in every case to the Clerk, to remain of record in his office. And if the Creditors do not elect a Trustee at such first meeting, or at some adjournment thereof, the Guardian shall report the same to the Judge within forty-eight hours after such meeting or adjournment thereof shall have been dissolved without such election; and thereupon the Judge shall appoint a Trustee to the estate.

15. No Guardian, his agent, employee or clerk, shall be elected or appointed Trustee to any estate under this Act, nor shall any Guardian, his partner, associate, agent or clerk as aforesaid, be employed by the Trustee in any other manner, directly or indirectly, in the winding up of the estate, nor shall any secured creditor, his partner or employee, be appointed Trustee under this Act.

16. Each Trustee before being eligible as such, shall give security for the due fulfilment and discharge of his duties in a sum of ten thousand dollars; such security to be given to Her Majesty for Her benefit and for the benefit of the creditors of any estate which may come into his possession under this Act, and in case any Trustee fails to pay over the moneys received by him or to account for the estate, or any part thereof, the amount for which such Trustee may be in default may be recovered from his sureties by Her Majesty or by the creditors, or by the Trustee entitled to the same, by adopting in the several Provinces such proceedings as are required to recover from the sureties of a sheriff or other public officer: Provided always, that any surety for a Trustee, when no longer disposed to continue his suretyship, may give notice thereof in writing to his principal, and also to the Registrar; and all accruing responsibility on the part of such person as such surety shall cease at the expiration of three months from the receipt of the last of such notices, or upon the acceptance by the Registrar of the security of another surety, whichever shall first happen; and the principal shall within one month from the receipt of the last of such notices, give the security of another surety; but if it appears to the Registrar that the period so limited for giving the security of a new surety is, for any reason insufficient, the Registrar may allow such further period for giving the security of such new surety as appears to him proper, but such further period shall in no case exceed two months.

17. All securities given under this Act shall be deposited with the Registrar, and kept as part of his records, subject to the right of any person entitled to sue upon any such security to such production and delivery thereof as may be necessary in order to the exercise of such right. And any creditor of the

estate may have inspection of such security, without fee, and may, if in his opinion the surety or sureties in such security are insufficient, apply, on notice to the Judge, for an order that new or additional sureties be furnished, and the Judge may, upon such application, make such order as shall seem reasonable, both as to the furnishing of sureties and as to the costs of the application.

18. As soon as the Trustee is appointed, he shall be *ipso facto* vested with all the estate and effects of the debtor, in the place and stead of the Guardian who shall thereby be divested hereof; and immediately upon such appointment, it shall be the duty of the Guardian, without any delay from any cause, or upon any pretence whatever, to account to him for all the estate and property of the debtor which has come into his possession, and to pay over and to deliver to him all such estate and property, including all sums of money, books, bills, notes and documents whatsoever belonging to the estate, and to execute in his favor a deed of release in the form G. And every Trustee, on his becoming such, shall immediately give notice of his appointment as such by an advertisement to be inserted once in the Official Gazette in the form H, and by a copy thereof sent to each creditor by post, post-paid. No Guardian, his Deputy or Employee shall act or vote as the Attorney or Agent of any Creditor, nor shall any Trustee or his Partner or Employee act or vote as the Attorney or Agent of any Creditor upon any matter other than the election of such Trustee—nor shall any Trustee employ, any person being his partner, clerk or employee, as counsel, advocate, attorney or solicitor in respect of the estate; nor shall the Trustee by way of commission or otherwise share in, or receive back any portion of any fee, remuneration, price, or profit derived or received by any person whomsoever from the estate for any cause whatever, under a penalty of ten times the amount so received, to be recovered on summary petition by any creditor for his own benefit.

19. The Trustee, immediately upon his appointment, shall register in the Registry Office of the County or Registration District wherein the estate of the debtor is being liquidated, and also in any other County or Registration District wherein there is real property belonging to the estate, a copy of the writ of attachment, certified by the Clerk, together with an extract from the proceedings of the meeting of creditors by which he was appointed, certified under oath by himself or a certified copy of the order of the Judge appointing him, as the case may be, and the deed of release, or an authentic copy thereof; and in the Province of Quebec the said instruments shall be accompanied by a description of the real

estate belonging to the debtor, with a notice that the same has, by such writ of attachment, appointment and deed of release, been transferred to the Assignee.

20. The creditors may appoint at any meeting one, three or five Inspectors, who shall superintend and direct the proceedings, of the Trustee in the management and winding up of the estate; and they may also, at any subsequent meeting held for that purpose, revoke the appointment of any or all the said Inspectors, and upon such revocation, or in case of death, resignation or absence from the Province of such Inspectors, or any of them, may appoint others in their stead; and whenever anything is allowed or directed to be done by the Inspectors, it may be done by the majority of the Inspectors or by the sole Inspector, if only one has been appointed. But no Trustee or Inspector of any insolvent estate shall purchase directly or indirectly, any part of the stock-in-trade, debts or assets of any description, of such insolvent estate, nor shall any Trustee employ any Inspector, nor shall any Inspector employ any person being his partner of any Trustee, or the partner of any Inspector, as counsel, advocate, attorney, solicitor or agent, in respect of the insolvent estate.

21. The Trustee shall exercise all the rights and powers of the debtor in reference to his property and estate. And he shall wind up the estate by the sale, in the ordinary mode in which such sales are made, of all bank or other stocks, and of all movable property belonging to it, and by the collection of the debts due. The creditors may, at any meeting pass any resolution or order directing the Trustee how to dispose of the estate, or any part of it, and in default of their doing so, he shall be subject to the directions, orders and instructions he may, from time to time, receive from the Inspectors, with regard to the mode, terms and conditions on which he may dispose of the whole or any part of the estate.

22. The Trustee, in his own name as such, shall have the exclusive right to sue for the recovery of all debts due to or claimed by the debtor of every kind and nature whatsoever; for rescinding agreements, deeds and instruments made in fraud of creditors, and for the recovery back of moneys, securities and effects alleged to have been paid or delivered over in fraud of creditors, and to take, both in the prosecution and defence of all suits, all the proceedings that the debtor might have taken for the benefit of the estate, or that any creditor might have taken for the benefit of the creditors generally; and may intervene and represent the debtor in all suits or proceedings by or against him, which are pending at the time of his appointment, and on his application may have his name inserted therein in the place of that of the debtor. And if a partner in an unincorporated

trading company or co-partnership, becomes insolvent within the meaning of this Act, and a Trustee is appointed to the estate of such debtor, such partnership shall thereby be held to be dissolved; and the Trustee shall have all the rights of action and remedies against the other partners in such company or co-partnership, which the insolvent partner could have or exercise by law or in equity against his co-partners after the dissolution of the firm, and may avail himself of such rights of action and remedies, as if such co-partnership or company had expired by efflux of time.

23. Every Trustee shall keep a register showing the name of the debtor, his residence, place of business, and the nature of his trade or business, the date of the issue and service of the writ of attachment, the amount of liabilities mentioned by the debtor in the statement of liabilities, the claims proved, the amount of dividends paid, the amount of dividends remaining unpaid after three months from the declaration of the last dividend, the proceedings for the sale of real estate; with such other information as the Trustee may deem of general interest with reference to each estate,—which register shall be open to the inspection of the public, within office hours, at the office of such Trustee; and as soon as he takes charge of any estate, he shall open a separate book for such estate, containing the foregoing particulars, and showing a debtor and creditor account of all his receipts and disbursements on account thereof. And every Trustee shall, upon his removal, if removed, and if not, within one month after he shall have wound up the estate and obtained his own discharge, deposit the register kept by him as aforesaid, with reference to such estate in the Office of the Registrar, where it shall remain for the like purposes, and under the same provisions as when kept by the Trustee. And every register of, or coming into possession of a Trustee, and every other record required to be kept by him in connection with the performance of his duties, shall be held to be the property of Her Majesty, and upon the death of a Trustee or his ceasing to hold office, the Registrar shall be entitled to, and shall, assume possession and control of such register or other record, which shall thereafter be kept among the records of his office, open to inspection as aforesaid.

TRUSTEES' ACCOUNTS, REMUNERATION, &c.

24. Every Trustee shall, within thirty days after the expiration of the period after which he may apply for his discharge, pay over to the Registrar all moneys belonging to the estate then in his hands, not required for any purpose authorized by this Act, with a statement and account of such moneys, and that they are all he has in his hands, under a penalty of not ex-

ceeding ten dollars for each day on which he shall neglect or delay such payment, and he shall be a debtor to Her Majesty for such moneys and may be compelled as such to account for and pay over the same.

25. The Trustee shall receive remuneration for his services at the rate fixed by schedule (K) of this Act, and such additional sum as the Creditors or Inspectors may vote him, and no disbursements shall be made by any Trustee without the same has previously been sanctioned by the Creditors or Inspectors.

26. The Guardian shall receive remuneration for his services at the rate fixed by schedule (L.) of this Act; he shall not make any disbursement whatever, except by express order of the Judge after notice to at least three creditors; but the charges for advertising the issue of the writ of attachment, and for giving notice of the first meeting of creditors, together with his remuneration, shall be taxed by the proper officer, and shall be the first charge on the estate. And if any Guardian or Trustee shall knowingly charge any sum of money for any remuneration or disbursement not authorized by this Act, in any account filed in Court or delivered to any creditor, or the amount of which is deducted from the sum to be divided in any dividend sheet, he shall forfeit three times the amount so charged, to be recovered from him by any creditor for his own benefit;

27. The Trustees shall call meetings of creditors whenever required in writing so to do, by the Inspectors or by five creditors, if there are five or more, or by all the creditors, if there are less than five, or by the Judge; and he shall state succinctly in the notice calling any meeting the purpose thereof.

28. The Trustee shall deposit at interest in some chartered Bank, to be indicated by the Inspectors or by the Judge, all sums of money which he may have in his hands belonging to the estate, whenever such sums amount to one hundred dollars, in default whereof he shall pay into the estate interest, on the amount in his hands at the rate of 25 per cent. per annum from a date to commence within two days from the date of his reception thereof. Such deposit shall not be made in the name of the Trustee individually, on pain of dismissal, but a separate deposit account shall be kept for each estate of the moneys belonging to such estate, in the name of the Trustee as such, and of the Inspectors (if any), and such moneys shall be withdrawn only on the joint check of the Trustees and of one of the Inspectors, if there be any. The interest accruing on such deposits shall appertain to the estate, and shall be distributed in the same manner and subject to the same rights and privileges as the capital from which such interest accrued. If in any account or dividend sheet made subsequent to any deposit in a bank, the Trustee omits to account for or divide the interest then accrued

thereon, he shall forfeit and pay to the estate to which such interest appertains, a sum equal to three times the amount of such interest. And at every meeting of creditors, the Trustee shall produce a bank pass-book showing the amount of deposits made for the estate, the dates at which such deposits have been made, the amounts withdrawn and the date of such withdrawal, of which production mention shall be made in the minutes of such meeting, and the absence of such mention shall be *prima facie* evidence that it was not produced thereat. The Trustee shall also produce such pass-book whenever so ordered by the Judge at the request of the Inspectors, or of a creditor, or on his refusal to do so he shall be treated as being in contempt of Court. And if he shall make or cause to be made any false entry in such pass-book with a view to deceive the Inspectors, creditors or Judge, he shall be guilty of a misdemeanor, and shall be liable, at the discretion of the Court before which he shall be convicted, to punishment by imprisonment for a term not exceeding three years, or to any greater punishment attached to the offence by any Statute.

29. Upon the death of a Trustee or upon his removal from office, the estate shall remain under the control of the Judge until the appointment of another Trustee, whereupon the estate shall become vested in such other Trustee.—And upon the death of a Guardian, the Judge, on petition of any creditor, shall order another Guardian or person to take charge of the estate, who shall hold it and perform all the duties of Guardian until a Trustee is appointed.

30. After the declaration of a final dividend, or if after using due diligence the Trustee has been unable to realize any assets to be divided, the Trustee shall prepare his final account, and present a petition to the Registrar for his discharge, after giving notice of such petition to the debtor, and also to the Inspectors, if any have been appointed, and to the creditors by circular, and he shall produce and file with such petition a bank certificate of the deposit of any dividend remaining unclaimed, and of any balance in his hands, also a statement under oath, showing the nominal and estimated value of the assets of the debtor, the amount of claims proved, dividing them into ordinary, privileged or secured and hypothecary claims, the amount of dividends paid to the creditors of the estate, and the entire expense of winding up the same. And the Registrar, after causing the account to be audited by the Inspectors, or by some creditor or creditors named by him for the purpose, and after hearing the parties, may grant conditionally, or unconditionally, the prayer of such petition, or may refuse it. And any Trustee who neglects to present such a petition within one month after he shall have been required so to do by the Inspectors or by any creditor of the estate, after the declaration of a final dividend, or after it

shall have been ascertained that there are not assets wherewith to declare a dividend; shall incur a penalty not exceeding one hundred dollars.

REGISTRAR IN BANKRUPTCY.

81. The Governor in Council may appoint in the several provinces in Canada one person to be Registrar in Bankruptcy in and for each province, and to perform the duties of that office with a yearly salary not exceeding \$ per annum, and such Registrar shall not directly or indirectly by himself or by any partner have any management of any estate under this Act.

82. The Registrar shall keep a book entitled Record of Insolvent Debtor's Estates in the general form of schedule M. annexed to this Act, and he shall require from the Guardian and Trustee of every estate administered under this Act the particulars hereafter mentioned, and shall regularly enter such particulars in such record which shall be open to inspection to any person free of charge.

83. And for the purpose of such record each Guardian shall transmit to such Registrar within one week after the date of the meeting whereat a Trustee is appointed the particulars required in schedule N, appended to this Act, under penalty of a fine of \$5 for every time he fails to comply with this rule.

84. And every Trustee shall within one month after the date of the meeting of creditors at which he presents statements of the Debtors affairs transmit to such Registrar a return showing the substance of such statements (Form O) together with a copy of the minutes of the proceedings at such meeting, which copy shall be signed by himself and by at least one Inspector, or if there be no Inspectors by at least two creditors for sums over \$100 each, and within one month after the date fixed for the payment of any dividend such Trustee shall transmit to the Registrar a copy of the dividend sheet (Form P,) signed by himself and by at least one Inspector, or if there be no Inspector by at least two creditors for sums over \$100 each, and copies of all minutes of meetings of creditors and Inspectors signed as aforesaid shall within the same delay be transmitted to the Registrar to be kept as matters of Record by him and open to the inspection of all creditors and from which he shall be able to obtain the information required for the purposes of the record aforesaid.

85. The Registrar shall take cognizance of the conduct of all Guardians and Trustees, and in the event of their not faithfully

performing their duties and duly observing all rules and regulations imposed upon them by Statute, or in the event of any complaint being made to him by any creditor in regard thereto he shall inquire into the same, and if not satisfied with the explanations given he shall report thereon to the Governor in Council, who after hearing such Guardians or Trustees thereon and investigating the whole matter shall decide and shall have power to censure such Guardians or Trustees, or remove them from their office or otherwise deal with them as the justice of the case may require. And the Registrar upon being satisfied that the Trustee has complied with the said rules and regulations, and upon the deposit with him of the Trustees Register showing the affairs of the Estate, may upon petition grant or refuse the Discharge of the Trustee.

SALE OF DEBTS.

36. After having acted with due diligence in the collection of the debts, if the Trustee finds there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he shall report the same to the creditors or Inspectors, and with their sanction, he may sell the same by public auction, after such advertisement thereof as they may order; and pending such advertisement, the Trustee may keep a list of the debts to be sold, open to inspection at his office, and shall also give free access to all documents and vouchers explanatory of such debts.

37. The person who purchases a debt from the Trustee may sue for it in his own name as effectually as the Trustee is hereby authorized to do; and a bill of sale (Form Q), signed and delivered to him by the Trustee, shall be *prima facie* evidence of such purchase, without proof of the handwriting of the Trustee, and the debt sold, shall in the province of Quebec, vest in the purchaser, without signification to the debtor; and no warranty, except as to the good faith of the Trustee, shall be created by such sale and conveyance, not even that the debt is due.

BENEFIT OF PROCEEDINGS.

38. If at any time any creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate and the Trustee under the authority of the creditors or of the Inspectors, refuses or neglects to take such proceeding, after being duly required so to do, such creditor shall have the right to obtain an order of the Judge authorizing him to take such proceeding in the name of the Trustee, but at his own expense and risk, upon such terms and conditions as to indemnity

to the Trustee, as the Judge may prescribe, and thereupon (any benefit derived from such proceedings shall belong exclusively to the creditor instituting the same for his benefit. But if, before such order is granted, the Trustee shall signify to the Judge his readiness to institute such proceeding for the benefit of the creditors, the order shall be made prescribing the time within which he shall do so, and in that case the advantage derived from such proceeding, if instituted with such time, shall appertain to the estate.

LEASES.

39. If the debtor holds property under lease, the Trustee shall, notwithstanding any condition contained in such lease, have the right to retain possession of the premises for his use as such trustee, for the period of two months next after the date of insolvency, and may within that time with the authority of the creditors, evidenced by a resolution in that behalf, passed at the first meeting of creditors, or any adjournment thereof, or at any subsequent meeting duly called for that purpose, or with the authority of the Inspector or Inspectors, or a majority of them, evidenced by writing under his or their hands, elect to retain the premises for the balance of the term covered by any such lease, in which case he personally and the assets of the estate in his hands shall be liable to the landlord for rent at the rate secured by such lease from the date of insolvency to the end of such term, or until he shall have disposed of said term to a purchaser who shall secure such rent to the satisfaction of the landlord or of the Court or Judge, after such notice as said Court or Judge shall direct has been given to the landlord of the application to fix such security, and in the event of the Trustee not so electing to retain the premises and the assets of the estate in his hands, shall be liable only for occupation rent for the premises during the time he shall actually retain possession thereof.

40. In every case where the tenant shall have made improvements upon the premises during the currency of the term existing at the date of insolvency for which the landlord shall not have theretofore paid; the Trustee shall have the right to elect to retain the premises as aforesaid, notwithstanding that the lease shall contain a provision purporting to make the same void or voidable in the event of insolvency, unless the landlord shall pay to the Trustee what shall be adjusted by the Court or Judge to be the fair proportion of the value of such improvements, to which the estate of the debtor shall be entitled having reference to the particular circumstances of each case.

41. No landlord shall be entitled to distrain upon any goods in the custody of any Guardian or Trustee, and any landlord having distrained upon any goods of a debtor, before the same shall have come to the possession of any Guardian or Trustee, shall be bound on demand to deliver up such goods to such Guardian or Trustee, subject to the rights of the landlord to his preferential claim for rent, as hereinafter provided.

42. The preferential claim of a landlord for rent, in the Provinces of Ontario, New Brunswick, Nova Scotia, British Columbia, Prince Edward Island, and Manitoba, is restricted to the rent due or accruing due in respect of the three months next preceding the date of insolvency, and for other arrears of rent if any such landlord shall be entitled to rank as an ordinary creditor. In the Province of Quebec the preferential claim of the landlord shall be governed by the Civil Code. No landlord shall be entitled to any future rent from any Estate, Guardian, or Trustee, save occupation rent as aforesaid; except where the Trustee shall elect to retain the premises as aforesaid. And all provisions in leases providing for payment of any future rent in the event of insolvency shall be null and void as against Creditors and their Trustee.

SALE OF REAL ESTATE.

43. In any province of the Dominion, except Quebec, the real estate of a debtor may be sold by the Trustee under the authority of the inspectors or of the creditors, after such notice, in such manner and upon such conditions as they may order; and the title which such sale shall vest in the purchaser, shall in all respects have the same effect and validity as if it had been executed by the debtor before insolvency. But in such provinces, if ordered by the creditors or inspectors, and in all cases in the Province of Quebec, the real or immoveable property of the debtor which is not assigned to a secured creditor in the manner herein provided, shall be sold, as nearly as may be according to the existing practice therein respectively; and to that end the Trustee shall apply to the Judge for an order addressed to the Sheriff of the County or District wherein such property is situate requiring the Sheriff to seize and sell such property and thereupon the Sheriff shall seize and sell such property in the same manner and after the same notices and procedure, except as to demand of payment from the debtor, as if such order were a writ of *feri facias de terris*; and except that all services of notices and other proceedings, usually required to be served upon the defendant in the course of such seizure and sale shall in such case be served upon the Trustee; and the Sheriff shall make his return to such order to the Court; and all the subsequent and incidental proceedings required or permitted in respect of the seizure or sale of real property under a writ of execution, and in respect of

the payment or enforcement of payment of the price, or of resale in case of non-payment, which are lawful, when the seizure of real property has been made under a writ of execution, shall be lawful, and may be taken in respect of such order and of any sale made thereunder, and in respect of the Sheriff's return thereto. And the sale made under such order, and the title thereby conveyed to the purchaser and the effect thereof generally, shall be the same as if the sale had been made under a writ of execution. And the appointment of a Trustee under this Act shall not interrupt any proceedings for the sale of real or immoveable property which shall then be pending, or for the distribution of the proceeds thereof. But any sum of money levied under such order, or levied after the date of insolvency, or levied before the date of insolvency, and only afterwards distributed, which under the practice of the Court would be paid over to the seizure creditors, shall be paid over to the Trustee; unless the seizing creditor is entitled thereto as holding a privileged or hypothecary claim upon the property sold.

DIVIDENDS.

44. The Trustee shall prepare and keep constantly accessible to the creditors, accounts and statements of his doing as such Trustee and of the position of the estate; and he shall prepare dividends of the estate of the debtor whenever the amount of money in his hands will justify a division thereof, and also whenever he is required by the Inspectors, or ordered by the Judge to do so. And so soon as a dividend sheet is prepared, notice thereof (Form R) shall be given by advertisement, and by letter posted to each creditor, enclosing a copy of the dividend sheet noting the claims objected to; and after the expiry of eight days from the day of the last publication of such advertisement, all dividends which have not been objected to, or which are not upon a claim objected to within that period, shall be paid.

45. All debts due and payable by the debtor at the date of insolvency, and all debts due but then not actually payable, subject to rebate of interest, shall have the right to rank upon the estate; and no interest accrued upon any claim or secured claim after the date of insolvency shall rank upon the general estate; the secured creditors retaining the right to interest after such date, only so far as the proceeds of revenue of the property or effects upon which such security attaches, shall suffice to meet the same. And any person then being, as surety or otherwise, liable for any debt, and who subsequently pays such debt, shall thereafter stand in the place of the original creditor, if such creditor has proved his claim on such debt; or if he has not

proved, such person shall be entitled to prove against and rank upon the estate for such debt, to the same extent and with the same effect as the creditor might have done. But no claim for damages for personal wrongs shall be proved or shall rank upon the estate, unless such claim has been established by the judgment of a competent Court.

46. If any creditor claims upon a contract dependent upon a condition or contingency which does not happen previous to the declaration of the first dividend, a dividend shall be reserved upon the amount of such conditional or contingent claim until the condition or contingency is determined; but if it be made to appear to the Judge that the estate may thereby be kept open for an undue length of time, he may, unless an estimate of the value of such claim be agreed to between the claimant and the Trustee, with the authority of the creditors or of the Inspectors, order that the value of such contingent or conditional claim be established by such person or persons as the claimant and Trustee may appoint, and in case they do not agree, then by such person or persons as the Judge may name, and the persons so named shall make their award—which award the Judge, after hearing the claimant and Trustee, may reject or confirm. In case the award be rejected, other persons shall be appointed as herein provided to establish the value of such claim, subject to the control of the Judge; and if the award be confirmed, the amount herein mentioned shall be that for which the claimant shall rank upon the estate as for a debt payable absolutely.

47. When any property of the debtor consists of unmarketable shares in companies, of unprofitable executory contracts, or of any other property that is not saleable, or readily saleable, by reason of its binding the possessor thereof to the performance of an onerous act, or to the payment of a sum of money, the Trustee with the authority of the creditors, or of the Inspectors, or of the Judge, notwithstanding that he has endeavored to sell, or has taken possession of such property, or has exercised any act of ownership in relation thereto, may by writing under his hand disclaim such property; and thereupon, if a contract, it shall be held to have been determined from the date of the insolvency; and if shares, they shall be deemed to be forfeited from that date and if any other species of property then the same shall revert to the person entitled thereto, on the termination of the interest of the Trustee or of the debtor therein; but in no case shall any estate or interest therein remain in the debtor or in the Trustee. And any person having a right thereto may obtain an order from the Court or Judge ordering the Trustee to convey or deliver the same to him upon such conditions as shall be deemed just. And any person injured by such disclaimer or forfeiture

shall be deemed a creditor to the extent of such injury, and may prove his claim and rank therefor in like manner as other creditors.

48. In the preparation of the dividend sheet due regard shall be had to the rank and privilege of every creditor—which rank and privilege, upon whatever they may legally be founded, shall not be disturbed by the provisions of this Act, except in the Province of Quebec, where the rights of the unpaid vendor shall be governed by the law of stoppage *in transitu* according to the laws of England. But no dividend shall be allotted or paid to any creditor holding security from the estate of the debtor for his claim, until the amount for which he shall rank as a creditor upon the estate as to dividends therefrom, shall be established as hereinafter provided; and such amount shall be the amount which he shall be held to represent in voting at meetings of creditors, and in computing the proportion of creditors, whenever under this Act such proportion is required to be ascertained, except as herein otherwise provided.

49. No lien or privilege upon either the personal or real estate of the debtor shall be created for the amount of any judgment debt, or of the interest thereon, by the issue or delivery to the Sheriff of any writ of execution, or by levying upon or seizing under such writ the effects or estate of the debtor, if before the payment over to the plaintiff of the moneys actually levied under such writ, the estate of the debtor has been assigned to a Trustee, or if proceedings to place the same in liquidation under this Act have been adopted and are still pending; (nor shall any judgment create any Mortgage, hypothec, or lien on any real or immovable property of the debtor unless registered at least thirty days before the date of insolvency.) But this provision shall not effect any lien or privilege for costs which the plaintiff possesses under the law of the Province in which such writ has issued.

50. If a creditor holds security from the debtor, or from his estate; or any security which, if enforced, will diminish the assets, or increase the ranking on the estate of the debtor, he shall specify the nature and amount of such security in his claim, and shall therein on his oath put a specified value thereon; and the Trustee under the authority of the creditors, or of the Inspectors, may either consent to the retention of the property or effects constituting such security or on which it attaches, by the creditor, at such specified value, or except as hereinafter provided, he may require from such creditor an assignment and delivery of such security, property or effects, at an advance of ten per centum upon such specified value, not exceeding in any case, the amount of his claim, to be paid to him out of the estate before any dividend is paid to the ordinary creditors;

and in either of such cases the difference between the value at which the security is retained or assumed, as the case may be, and the amount of the claim of such creditor shall be the amount for which he shall rank and vote as aforesaid. And if a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security and shall put a value on the liability of the party primarily liable thereon, but if such claim is mature or exigible at the date of insolvency, or becomes so and remains unpaid thereafter whether before or after such proof, such creditor shall be entitled for ranking, to treat the claim as unsecured, but for any other purpose except ranking, he shall be still considered to hold security and shall for all such purposes put a value on the liability of the party primarily liable thereon as being his security for the payment thereof. And if the security be upon real estate, and no consent be given to the retention of the property, the creditor shall rank for the difference between his valuation thereof and the amount of the debt; subject to the re-adjustment of his ranking, if necessary, if he receives a portion of the proceeds of such real estate after the sale thereof.

54. If there be more than one debtor liable for a debt as partners, and the creditor holds the liability of one of them as security for a debt of the firm, such liability shall be held to be security within the meaning of the foregoing section, and shall be valued and otherwise dealt with, and the claim of the creditor reduced as therein provided, without regard to the special provisions of the said section with respect to negotiable instruments; and if such security consists in such partner having made himself responsible upon a negotiable instrument, his liability shall be valued and dealt with as aforesaid, and the claim of the creditor shall be reduced accordingly, whether such negotiable paper be or become dishonoured or not.

52. But if the security consists of a mortgage upon real estate or upon ships or shipping, the property mortgaged shall only be assigned and delivered to the creditor, subject to all previous mortgages, hypotecs and lines thereon, holding rank and priority before his claim, and upon his assuming and binding himself to pay all such previous mortgages, hypotecs and lines, which, in such case, shall not be affected as to their privileges or ranking by the insolvency of the debtor or by such assignment and delivery, and upon his securing such previous charges upon the property mortgaged in the same manner and to the same extent as the same were previously secured thereon. And thereafter the holders of such previous mortgages, hypotecs and lines, shall have no further recourse or claim upon the estate of the debtor; and if there be mortgages, hypotecs or lines thereon, subsequent to those of such creditor, he shall only ob-

tain the property by consent of the subsequently secured creditors ; or upon their filing their claims specifying their security thereon as of no value ; or upon his paying them the value by them placed thereon ; or upon his giving security to the Trustee that the estate shall not be troubled by reason thereof.

53. Upon a secured claim being filed, with a valuation of the security, it shall be the duty of the Trustee to procure the authority of the Inspectors or of the creditors at their first meeting thereafter to consent to the retention of the security by the creditor, or to require from him an assignment and delivery thereof ; and if any meeting of Inspectors or of creditors takes place without deciding upon the course to be adopted in respect to such security, the Trustee shall act in the premises according to his discretion and without delay.

54. The amount due to a creditor upon each separate item of his claim at the date of insolvency, which shall remain due at the time of proving such claim, shall form part of the amount for which he shall rank upon the estate, until such item of claim be paid in full, except in cases of deduction of the proceeds or of the value of his security, as hereinbefore provided ; but no claim or part of a claim shall be permitted to be ranked upon more than once, whether the claim so to rank be made by the same person or by different persons ; and the Trustee may at any time require from any creditor a supplementary oath declaring what amount, if any, such creditor has received in payment of any item of the debt upon which his claim is founded, subsequently to the making of such claim, together with the particulars of such payment, in order that such item, if paid in full, may be struck out of the claim, and that if overpaid the surplus to produce or make such oath before the Trustee within a reasonable time after he has been requested so to do, he shall not be collocated in the dividend sheet.

55. If the debtor owes debts both individually and as a member of a co-partnership, or as a member of two different co-partnerships, the claims against him shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other, after all the creditors of that other have been paid in full.

56. The creditors, or a majority of them in number, and three-fourths in value, may by a deed to that effect, allot to the debtor, by way of gift or allowance, any reasonable sum of money, or any property they may think proper ; and the allowance so made shall be inserted in the dividend sheet, and shall

be subject to contestation like any other item of collocation therein, but only on the ground of fraud or deceit in procuring it, or of the absence of consent by a sufficient proportion of the creditors.

57. No costs incurred in suits against the debtor after the date of insolvency shall rank upon the estate ; but all the taxable costs incurred in proceedings against him up to that time shall be added to the demand for the recovery of which such proceedings were instituted ; and shall rank upon the estate as if they formed part of the original debt, except as herein otherwise provided.

58. It shall be the duty of the Inspectors to examine, with the Trustee, the claims made against the estate, also each dividend sheet before the expiration of the delay within which the same may be objected to, and to instruct the Trustee as to which claims or collocations should be contested by and on behalf of the estate ; whereupon they shall be so contested in the name of the Trustee or of the Inspectors or of some individual creditor consenting thereto, and the costs of such contestation, unless recovered from the adverse party, and of any other proceeding authorized or adopted by the creditors or Inspectors, shall be paid out of the estate.

59. If it appears to the Trustee on his examination of the books of the debtor, or otherwise, that the debtor has creditors who have not taken the proceedings requisite to entitle them to be collocated, it shall be his duty to reserve dividends for such creditors according to the nature of their claims, and to notify them of such reserve, which notification may be by letter through the post, addressed to such creditors' residences as nearly as the same can be ascertained by the Trustee ; and if such creditors do not file their claims and apply for such dividends before the declaration of the last dividend of the estate, the dividends reserved for them shall form part of such last dividend.

60. If any claim be contested at any time, or if any dividend be objected to within the said period of eight days ; or if any dispute arises between the creditors, or between the debtor and any creditor, as to the amount of the claim of any creditor, or as to the ranking or privilege of the claim of any creditor upon such dividend sheet, the contestation shall be filed in writing with the Trustee, who shall make a record thereof ; and the grounds of objection shall be distinctly stated in such writing, and the contestant shall also file at the same time the evidence of previous service of a copy thereof on the claimant ; and the claimant shall have three days thereafter to answer the same,—which time may, however, be enlarged by the Judge ;

with a like delay to the contestant to reply ; and upon the completion of an issue upon such contestation, the Trustee shall transmit to the Clerk the dividend sheet, or a copy thereof, with all the papers and documents relating to such contestation ; and any party to it may fix a day, of which two days' notice shall be given to the adverse party, for proceeding to take evidence thereon before the Judge, and shall thereafter proceed thereon, from day to day, until the evidence shall have been closed, the case heard and the judgment rendered, which judgment shall be final unless appealed from in the manner hereinafter provided. The proceeding on such contestation shall form part of the records of the Court, and the judgment shall be made executory as to any condemnation for costs, in the same manner as an ordinary judgment of the Court.

PROCEDURE GENERALLY.

61. Whenever a meeting of creditors cannot be held, or an application made, until the expiration of a delay allowed by this Act, notice of such meeting or application may be given pending such delay. And notices of meetings of creditors shall be given by publication thereof, at least once in the Official Gazette, and once in one local or the nearest published newspaper, which shall be a daily paper, if one be published at or near the place where proceedings are carried on ; and the Guardian or Trustee shall address notices thereof to the creditors and to all the representatives, within the Dominion, of foreign creditors and shall mail the same at least ten days before the day on which the meeting is to take place, the postage being prepaid by such Guardian or Trustee. In other cases not provided for the Trustee shall advertise as directed by the Inspectors or the Judge. But no accidental irregularity in the giving of any notice shall render the notice insufficient, unless the Court or Judge shall be of opinion that such irregularity has caused some substantial injustice, which could only be remedied by renewing such notice, in which case the expense thereof, and all costs and damages incurred, by reason of, or growing out of, such irregularity, shall be paid by the Guardian or Trustee who was guilty of such irregularity.

62. The first meeting of creditors shall be held at the place of business of the debtor, and subsequent meetings at the office of the Trustee, or at such other place as the creditors or the Judge may order. No creditor shall vote at any meeting unless present personally, or represented by his cashier, manager, accountant, clerk or book-keeper, or by some other creditor or person, which person, except in cases where the creditor resides beyond the limits of the county or district wherein the proceed-

ings are carried on, shall be also a creditor of the debtor, having a written authority to represent him, to be filed with the Trustee, and no creditor, with the exception aforesaid, shall vote upon more than one such authority, in respect of the appointment of a Trustee; and no more than one person shall vote as a creditor in respect of the same debt. Persons purchasing claims against an estate after the date of insolvency shall not be entitled to vote in respect of such claims, but shall, in all other respects, have the same rights as other creditors; and no claim shall be divided and transferred in part to any person to increase the number of votes at any meeting.

63. All questions discussed at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:—

For every claim over \$100 and not exceeding \$200—	1 vote.
“ “ \$200 “ “ \$500—	2 votes.
“ “ \$500 “ “ \$1000—	3 votes.
“ additional \$1000, or fraction thereof,	—1 vote.

In case of a tie, the chairman shall have the deciding vote. Such amounts in every case being over and above the value of any security held therefore as hereinbefore provided.

64. At the first meeting of creditors, and also at the second meeting of creditors, if it be called for the ordering of the affairs of the estate generally, and it be so stated in the notices calling such meeting, all the matters and things respecting which the creditors may vote, resolve or order, or which they may regulate under this Act, (except when otherwise specially provided,) may be voted, resolved or ordered upon, and may be regulated without having been specially mentioned in the notices calling such meeting.

65. The claims of creditors shall be furnished to the Trustee in the Form—attested under oath or in some form equivalent thereto, and shall be accompanied by the vouchers on which they are based, which vouchers shall then and there be endorsed and initialed by the Trustee as having been produced as vouchers for such claims; or when vouchers cannot be produced, the claim shall be accompanied by such affidavit or other evidence as in the opinion of the Trustee, justifies the absence of such vouchers, but such vouchers, if consisting of negotiable paper, shall always be produced by the creditor at the time of his application for any dividend.

66. Any Affidavit required in proceedings under this Act may be made by the party interested, his agent or other party having a personal knowledge of the matters therein stated, and may be

sworn in Canada before the Trustee, or before any Guardian, Judge, Notary Public, Commissioner for taking affidavits, or Justice of the Peace, and out of Canada before any Judge of a Court of Record, any Commissioner for taking affidavits appointed by any Canadian Court, any Notary Public, the chief municipal officer of any town or city, or any British Counsel or Vice-Counsel, or before any person authorized by any Statute of the Dominion or of any Province thereof, to take affidavits to be used in any Court of Justice in any part of the Dominion.

67. The Court or Judge shall have the same power and authority in respect of the issuing and dealing with commissions for the examination of witnesses as are possessed by the ordinary Courts of Record in the province in which the proceedings are being carried on; and may order a writ of *subpœna ad testificandum* or of *subpœna duces tecum* to issue, commanding the attendance as a witness, or for examination under the provisions of this Act, of any person within the limits of Canada. And all rules, writs of *subpœna*, orders and warrants, issued by any Court or Judge in any matter or proceeding under this Act, may be validly served in any part of Canada upon any party affected or to be affected thereby; and the service of them or any of them may be validly made in such manner as is now prescribed for similar services in the province within which the service is made: and the person charged with such service shall make his return thereof under oath, or, if a Sheriff or Bailiff in the Province of Quebec, may make such return under his oath of office.

68. In case any person so served with a writ of *subpœna* or with an order to appear for examination, does not appear according to the exigency of such writ or order, the Court or the Judge on whose order or within the limits of whose territorial jurisdiction the same is issued, upon proof made of the service thereof, and of such default, may, if the person served therewith has his domicile within the limits of the Province within which such writ or order issued, constrain such person to appear and testify, and punish him for non-appearance, or for not testifying in the same manner as if such person had been summoned as a witness before such Court or Judge in an ordinary suit; but subject to the same excuses, defences or justification for not appearing under such writ, as in cases before the ordinary Courts; and if the person so served, and making default has his domicile beyond the limits of the province within which such writ or order issued, such Court or Judge may transmit a certificate of such default to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served resides, and the Court to which such certificate is sent shall thereupon proceed against and punish such person so having made default in such manner as it might have done if such

person had neglected or refused to appear to a writ of *subpoena* or other similar process issued out of such last mentioned Court; and such certificate of default attested by the Court or Judge before whom default was made, and copies of such writ or order and of the return of service thereof, certified by the Clerk of the Court in which the order for transmission is made, shall be *prima facie* proof of such writ or order, service, return, and of such default.

69. The forms appended to this Act, or other forms in equivalent terms, shall be used in the proceedings for which such forms are provided; and in every contestation of a claim, collocation or dividend, the facts upon which the contesting party relies shall be set forth in detail, with particulars of time, place and circumstances; and no evidence shall be received upon any fact not so set forth; but in every petition, application, motion, contestation or other pleading under this Act, the parties may state the facts upon which they rely, in plain and concise language, to the interpretation of which the rules of construction applicable to such language in the ordinary transactions of life shall apply. And the rules of procedure as to amendments of pleadings, which are in force at any place where any proceedings under this Act are being carried on, shall apply to all proceedings under this Act; and no pleading or proceeding shall be void by reason of any irregularity or default which can or may be amended under the rules and practice of the Court. And if, after the date of insolvency, the debtor sues out any writ, or institutes or continues any proceeding whatever, he shall give to the opposite party such securities for costs as shall be ordered by the Court before which such suit or proceeding is pending, before such party shall be bound to appear or plead to the same, and before the debtor shall take any further step therein.

70. The death of the debtor, pending proceedings under this Act, shall not affect or interrupt such proceedings; and for the purpose thereof the provisions of this Act shall apply to the heirs, administrators or other legal representatives of the debtor, but only in their capacity as such heirs, administrators or representatives.

71. The disbursements necessary in selling any asset charged with any privilege or lien, and the remuneration payable to the Trustee, in respect of the proceeds of such sale, if any there be, shall be paid as a first charge upon the proceeds of such sale, the general disbursements necessary for winding up the estate; shall be the first charge on the unincumbered assets of the estate and the remuneration payable to the Trustee, in respect of the unincumbered asset, shall be paid therefrom as the last preferential charge thereon. But no asset or property charge-

able with any mortgage, hypothec or lien, except such part of the proceeds thereof as may remain after payment of such charge, shall be liable for any remuneration to the Trustee, nor for any expense or disbursement, except a fair proportion of the costs necessarily incurred in realizing such asset and property.

72. The Judge shall have the power, upon special cause being shown before him under oath for so doing, to order any postmaster to deliver to the Guardian or Trustee, letters addressed to the debtor, and to authorize the Guardian or Trustee, to open such letters in the presence of the Clerk, and in the presence of the debtor, or after notice given to him by letter through the post, if he be within the province; and if such letters be upon the business of the estate the Guardian or Trustee shall retain them, giving communication of them, however, to the debtor on request; and if they be not on the business of the estate they shall be resealed, endorsed as having been opened as aforesaid, and given to the debtor or returned to the post office; and a memorandum in writing of the doings of the Guardian or Trustee in respect of such letters shall be made and signed by him and by the Clerk, and deposited in the Court.

73. In the absence of the Judge from the chief place of any district in the Province of Quebec, the Prothonotary of the Court may make any order which the Judge is empowered to make; but if any objection in writing to such order is filed with the Clerk on the date thereof, such order shall not be executed, but the papers and proceedings relating thereto shall then be referred to the Judge, who shall adjudicate upon the same.

74. In the Province of Quebec, rules of practice for regulating the due conduct of proceedings under this Act, before the Court or Judge, and tariffs of fees for the officers of the Court, and for the advocates and attorneys practising in relation to such proceedings, or for any service performed or work done for which costs are allowed by this Act. (but the amount whereof is not hereby fixed,) shall be made forthwith after the passing of this Act, and when necessary repealed or amended, and shall be promulgated under or by the same authority and in the same manner as the rules of practice and tariff of fees of the Superior Court, and shall apply in the same manner, and have the same effect in respect of proceedings under this Act as the rules of practice and tariff of fees of the Superior Court apply to and affect proceedings before that Court; and bills of cost upon proceedings under this Act may be taxed and proceeded upon in like manner as bills of costs may now be taxed and proceeded upon in the said Superior Court.

75. In the Province of Ontario, the Judges of the Superior Courts of common law, and of the Court of Chancery, or any

five of them of whom the Chief Justice of the Province of Ontario, or the Chancellor, or the Chief Justice of the Common Pleas, shall be one,—in the Province of New Brunswick, the Judges of the Supreme Court of New Brunswick, or the majority of them,—in the Province of Nova Scotia, the Judges of the Supreme Court of Nova Scotia, or the majority of them, in the Province of British Columbia, the Judges of the Supreme Court, or the majority of them,—in the Province of Prince Edward Island, the Judges of the Supreme Court, or the majority of them,—and in the Province of Manitoba, the Judges of the Court of Queen's Bench, or a majority of them,—shall forthwith make and frame and settle the forms, rules and regulations to be followed and observed in the said Provinces respectively, in proceedings under this Act, and shall fix and settle the costs, fees and charges which shall or may be had, taken or paid in all such cases by or to attorneys, solicitors, counsel, and officers of Courts, whether for the officer or for the Crown as a fee for the fee fund or otherwise, or for any service performed or work done for which costs are allowed by this Act, but the amount whereof is not hereby fixed.

76. Every Guardian and Trustee shall be subject to the summary jurisdiction of the Court and to the summary jurisdiction of a Judge thereof, in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction; and shall be accountable for the moneys, books, documents, property and estates coming into his possession as such Guardian or Trustee in the same manner as the Sheriffs and other officers of the Court are. And the performance of his duties may be compelled; and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, hypothec lien or right of property upon, in or to, any effects of property in the hands, possession or custody of a Guardian or Trustee may be obtained by an order of the Court or Judge on summary petition either in vacation or in term, and not by any suit, attachment, opposition, seizure or other proceeding of any kind whatever; and obedience by the Guardian or Trustee to any order of the Court or Judge may be enforced by the Court or Judge under the penalty of imprisonment as for contempt of Court or disobedience thereto, or, except in the case of a sheriff, by removal from office in the discretion of the Court or Judge. And all proceedings in the exercise of such summary jurisdiction shall be had and taken in the most simple and expeditious manner consistent with justice, and without the necessity for any pleadings in writing, unless expressly ordered by the Court or Judge; the Clerk in that case noting them upon the records of the Court.

77. In the Province of Quebec, if a trader has a marriage contract with his wife, by which he gives or promises to give or pay,

or cause to be paid, any right, thing, or sum of money, which contract is not enregistered within three months from the execution thereof; or if a person not a trader, but thereafter becoming a trader, has such a contract of marriage with his wife, which is not enregistered (if it has not been previously enregistered,) within thirty days from becoming such trader, the wife shall not be permitted to avail herself of the provisions of such contract in any claim under this Act upon the estate of such trader for any advantage conferred upon or promised to her by its terms; nor shall she be deprived by reason of its provisions of any advantage or right upon the estate of her husband to which in the absence of any such contract, she would have been entitled by law.

IMPRISONMENT FOR DEBT.

78. Any debtor confined in gaol or on the limits in any civil suit, against whom process for liquidation under this Act has been issued, may, at any time after the first meeting of creditors provided for in this Act, make application to the Judge of the county or district in which his domicile may be, or in which the goal may be, in which he is confined, for his discharge from imprisonment in such suit; and thereupon such judge may grant an order in writing directing the Sheriff or Gaoler to bring the debtor before him for examination at such time and place in such county or district as are fixed by such order; and the Sheriff or Gaoler shall obey such order, and shall not be liable to any action for escape in consequence thereof, or to any action for the escape of the debtor from his custody, unless the same shall have happened through his default or negligence; or if the debtor is confined in a county or district in which the Judge does not reside, the Judge, instead of ordering the debtor to be brought before him for examination may make an order authorizing and directing the Trustee of his estate to take such examination, and it shall be the duty of such Trustee to take down or cause to be taken down such examination in writing, and transmit the same under his hand forthwith to the Judge; and the Trustee shall be entitled to *ten cents* for each folio of one hundred words of such examination.

(1.) In pursuance of such order, the debtor and any witnesses may be examined on oath at the time and place specified in such order before such Judge or Trustee, and if on such examination it appears to the satisfaction of the Judge that the debtor has not been guilty of any fraudulent disposal, concealment or retention of his estate or any part thereof, or of his books and accounts or any material portion thereof, or otherwise in any way contravened the provisions of this Act, such Judge shall, by his order in writing, discharge the debtor from imprisonment;

and on production of the order to the Sheriff or Gaoler, the debtor shall be forthwith discharged without payment of any gaol fees: Provided always, that no such order shall be made in any case unless it be made to appear to the satisfaction of such Judge that at least seven days' notice of the time and place of the said examination had been previously given to the plaintiff in the suit in the course of which the debtor was imprisoned, or to his attorney, and to the Trustee.

(2.) The minutes of the examination shall be filed in the office of the Clerk of the Court out of which the process issues, and a copy thereof shall be delivered to the Trustee; and if during the examination or before any order be made, the Trustee or the creditor or any one of the creditors at whose suit the debtor is in custody, makes affidavit that he has reason to believe that the debtor has not made a full disclosure in the matters under examination, the Judge may grant a postponement of such examination for a period of not less than seven days nor more than fourteen days, unless the parties consent to an earlier day.

(3.) After such examination, in case of any subsequent arrest in any civil suit for causes of action arising previous to the date of insolvency, the debtor may, pending further proceedings against him under this Act, be forthwith discharged from confinement or imprisonment in such suit, on application to any Judge and on producing such previous discharge: Provided that nothing in this section contained, shall interfere with the imprisonment of the debtor, in pursuance of any of the provisions of this Act.

APPEAL.

79. All matters and things decided, and all rules and orders made by any Court or Judge in deciding between the majority in number and the majority in value of the creditors; or in respect of the performance by a Guardian or Trustee of his duties under this Act, or of his appointment or election; or of his obedience to the Order of a Court or Judge; or in respect of his charges, remuneration, fees or disbursements; or in respect of any matter appertaining to the discipline of the Court; or in respect of any matter of routine or of order in the proceedings for winding up an estate, shall be final and conclusive, and shall not be susceptible of appeal or revision, save and except that any Court or Judge may, on motion or petition, remodel or revise his or its own ruling in respect of any such matters or things, rules or orders. And in the Province of Quebec all other decisions by a Judge under this Act shall be considered as judgments of the

Superior Court, and any final order or judgment rendered by such Judge or Court, save as hereinbefore otherwise provided, may be inscribed for revision or may be appealed from by the parties aggrieved, in the same cases and in the same manner as they might inscribe for revision or appeal from a final judgment of the Superior Court in ordinary cases under the law in force when such decision is rendered. And in the other Provinces any final order or judgment save as hereinbefore otherwise provided, may be appealed from in the Province of Ontario, to the Court of Error and Appeal; in the Province of New Brunswick, to the Supreme Court of New Brunswick; in the Province of Nova Scotia, to the Supreme Court of Nova Scotia; in the Province of British Columbia, to the Supreme Court of that Province; in the Province of Prince Edward Island to the Supreme Judicature; and in the Province of Manitoba, to the Court of Queen's Bench; and the judgment upon such appeal shall be final, and shall not be then appealed from to any other Court.

80. No such appeal or proceeding in revision shall be entertained unless the appellant, or party inscribing for revision shall have, within eight days from the rendering of such final order or judgment, adopted proceedings on the said appeal or revision, or unless he shall within the said delay have made a deposit or given sufficient sureties before a Judge that he will duly prosecute the said appeal or proceedings in revision, and pay such damages and costs as may be awarded to the respondent. If the party appellant does not proceed with his appeal, or in review, as the case may be, according to the law or the rules of practice, the Court, on application of the respondent, may order the record to be returned to the officer entitled to the custody thereof, and condemn the appellant to pay costs. And pending the contestation of any claim, and of any appeal or proceeding in revision in respect thereof, the Trustee shall reserve a dividend equal to the amount of the dividend upon such claim, or the dividend already collocated to the claimant, as the case may be, until such contestation shall be finally decided.

FRAUDS AND FRAUDULENT PREFERENCES.

81. All gratuitous contracts or conveyances, or contracts without consideration, or with a merely nominal consideration respecting either real or personal estate, made by a debtor afterwards becoming insolvent, with or to any person whomsoever, whether such person be his creditor or not, within three months next preceding the date of insolvency, and all contracts by which creditors are injured, obstructed, or delayed, made by a debtor unable to meet his engagements, and afterwards becoming in-

solvent, with a person knowing such inability or having probable cause for believing such inability to exist, or after such inability is public and notorious, whether such person be his creditor or not, are presumed to be made with intent to defraud his creditors.

82. A contract or conveyance for consideration, respecting either real or personal estate, by which creditors are injured or obstructed, made by a debtor unable to meet his engagements with a person ignorant of such inability, whether such person be his creditor or not, and before such inability has become public and notorious, but within thirty days next before the date of insolvency, is voidable, and may be set aside by any Court of competent jurisdiction, upon such terms as to the protection of such person from actual loss or liability by reason of such contract, as the Court may order.

83. All contracts, mortgages, hypothecs, or conveyances made and acts done by a debtor, respecting either real or personal estate, with intent fraudulently to impede, obstruct or delay his creditors in their remedies against him, or with intent to defraud his creditors, or any of them, and so made done and intended with the knowledge of the person contracting or acting with the debtor, whether such person be his creditor or not, and which have the effect of impeding, obstructing, or delaying the creditors of their remedies, or of injuring them or any of them, are prohibited and are null and void, notwithstanding that such contract, conveyances, or acts be in consideration, or in contemplation of marriages.

84. If any sale, mortgage, hypothec, deposit, pledge or transfer be made of any property real or personal by any person in contemplation of insolvency, by way of security for payment to any creditor; or if any property, real or personal, moveable, or immoveable, goods, effects, or valuable security, be given by way of payment by such person, to any creditor whereby such creditor obtains or will obtain an unjust preference over the other creditors, such sale, deposit, pledge, transfer or payment shall be null and void, and the subject thereof may be recovered back for the benefit of the estate by the Trustee in any Court of competent jurisdiction; and if the same be made within thirty days next before the date of insolvency it shall be presumed *prima facie* to have been so made in contemplation of insolvency.

85. Every payment made within thirty days next before the date of insolvency by a debtor unable to meet his engagements in full, to a person knowing such inability, or having probable cause for believing the same to exist, shall be void, and the

amount paid may be recovered back by suit in any competent Court, for the benefit of the estate : Provided always, that if any valuable security be given up in consideration of such payment, such security or the value thereof, shall be restored to the creditor before the return of such payment can be demanded.

86. Any transfer of a debt due by the debtor made under the circumstances, in the next preceding section mentioned, and within thirty days next before the date of insolvency to a debtor knowing or having probable cause for believing the debtor to be unable to meet his engagements, or in contemplation of his insolvency, for the purpose of enabling the debtor to set up by way of compensation or set-off the debt so transferred, is null and void, as regards the estate of the debtor, and the debt due to the estate shall not be compensated or affected in any manner by a claim so acquired ; but the purchaser thereof may rank on the estate in the place and stead of the original creditor.

OFFENCES AND PENALTIES.

87. Any person who, for himself or for any firm, partnership or company of which he forms part, or as the manager, trustee, agent or employee of any person, firm co-partnership or company, purchases goods on credit, or procures any advance in money, or procures the indorsement or acceptance of any negotiable paper without consideration, or induces any person to become security for him, knowing or having probable cause for believing himself or such person, firm, copartnership or company for which he is acting to be unable to meet his or its engagements, and concealing the fact from the person thereby becoming his creditor, with the intent to defraud such person, which intent shall be presumed from such knowledge, and from such concealment thereof, subject to rebuttal by the person accused ; or who, by any false pretence, obtains a term of credit for the payment of any advance or loan of money, or of the price or any part of the price of any goods, wares or merchandize, with intent to defraud the person thereby becoming his creditor, or the creditor of such person, firm, co-partnership, or company, and who shall not afterwards have paid or caused to be paid the debt or debts so incurred, shall be held to be guilty of a fraud, and shall be liable to imprisonment for such time as the Court may order, not exceeding two years, unless the debt and costs be sooner paid. And the proceeding for the enforcement of the provisions of this section shall be by civil suit in the ordinary manner, in the Court having jurisdiction in ordinary action of debt, in the place where such debt was contracted. Provided always, that in the suit or proceeding taken for the recovery of

such debt or debts, the defendant be charged with such fraud, and be declared to be guilty of it by the judgment rendered in such suit or proceeding.

88. Whether the defendant in any such case appears and pleads, or makes default, the plaintiff shall be bound to prove the fraud charged, and upon his proving it, if the trial be before a jury, the Judge who tries the suit or proceeding shall immediately after the verdict rendered against the defendant for such fraud (if such verdict is given) or if not before a jury, then immediately upon rendering his judgment in the premises adjudge the term of imprisonment which the defendant shall undergo; and he shall forthwith order and direct the defendant to be taken into custody and imprisoned accordingly; but such judgment shall be subject to the ordinary remedies for the revision thereof.

89. Every Guardian and Trustee is an agent within the meaning of the seventy-sixth and following sections of the "*Act respecting Larceny and other similar offences*," and every provision of this Act, or resolution of the creditors or Inspectors, and every order of the Court or Judge relating to the duties of a Guardian or Trustee shall be held to be a direction in writing, within the meaning of the said seventy-sixth section, and in an indictment against a Guardian or Assignee under any of the said sections, the right of property in any moneys, security, matter or thing, may be laid in "the creditors of the debtor (naming him) under the Debtors Procedure Act."

90. From and after the passing of this Act, any debtor who, with regard to his estate—or any partner, president, director, manager, or employee of any co-partnership, or of any incorporated company not specially excepted in the first section of this Act, with regard to the estate of such co-partnership or company, who shall do any of the acts or things following with intent to defraud, or to defeat the rights of his or its creditors, shall be guilty of a misdemeanor, and shall be liable, at the discretion of the Court before which he is convicted, to punishment by imprisonment for not more than three years, or to any greater punishment attached to the offence by any existing Statute.

a. If he does not upon examination fully and truly discover to the best of his knowledge and belief, all the property, real or personal, inclusive of his or its rights and credits, belonging to him or to such partnership or corporation, and how and to whom, and for what consideration, and when the same or any part thereof were disposed of, assigned or transferred, except such part has been really and *bona fide* before sold or disposed of in the way of his or its trade or business, or laid out in ordinary family or household expenses, and fully, clearly, and truly state

the causes to which his or its insolvency is owing ; or does not deliver up to the Trustee all such part thereof as is in his possession, custody, or power, (except such part thereof as is exempt from seizure as hereinbefore provided) and also all books, papers and writings in his possession, custody, or power, relating to his or its property or affairs ;

b. If, within thirty days prior to the date of insolvency, he removes, conceals, or embezzles any part of his or its property to the value of fifty dollars or upwards with intent to defraud his or its creditors, or any of them ;

c. If, in case of any person having, to his knowledge or belief, proved a false debt against his or its estate, he fails to disclose the same to the Trustee within one month after coming to the knowledge or belief thereof ;

d. If, with intent to defraud, he willfully and fraudulently omits from the schedule any effects or property whatsoever ;

e. If, with intent to conceal the state of his or its affairs, or to defeat the object of this Act, or of any part thereof, he conceals, or prevents, or withholds the production of any book, deed, paper, or writing, relating to his or its property, dealings or affairs ;

f. If, with the intent to conceal the state of his or its affairs, or to defeat the object of the present Act, or of any part thereof, he parts with, conceals, destroys, alters, mutilates, or falsifies, or causes to be concealed, destroyed, altered, mutilated, or falsified, any book, paper, writing, or security, or document, relating to his or its property, trade, dealings or affairs, or makes, or is privy to the making of any false or fraudulent entry, or statement in, or omission from any book, paper, document, or writing thereto ;

g. At his examination at any time, or at any meeting of creditors held under this Act, he attempts to account for the non-production or absence of any of his or its property by representation of fictitious losses or expenses ;

h. If, within the three months next preceding the date of insolvency, he pawns, pledges, or disposes of, otherwise than in the ordinary way of trade, any property, goods, or effects, the price of which remains unpaid by him during three such months.

91. If any person knowingly files a claim on the estate of a debtor for a sum of money not due to him by the debtor or by his estate, or votes, or offers his vote at any meeting of creditors

upon any such claim, or ranks, or attempts or claims to rank, on any such claim, such creditor shall forfeit and pay a sum equal to treble the value of the payment, gift, gratuity or preference so taken, received or promised, or treble the amount improperly ranked for, as the case may be, and the same shall be recoverable by the Trustee for the benefit of the estate, by suit in any competent Court, and when recovered, shall be distributed as part of the ordinary assets of the estate.

92. If, after the date of insolvency, the debtor retains or receives any portion of his estate or effects, or of his moneys, securities for money, business papers, documents, books of account, or evidences of debt, or any sum or sums of money, belonging or due to him, and retains and withholds from the Guardian, or afterwards from the Trustee, without lawful right, such portion of his estate or effects, or of his moneys, securities for money, business papers, documents, books of account, evidences of debt, sum or sums of money, the Guardian or Trustee may apply to the Judge for an order for the delivery over to him of the effects, documents, or moneys so retained; and in default of such delivery in conformity with an order made by the Judge, such debtor may be imprisoned in the common gaol for such time, not exceeding one year, as the Judge may order.

93. Deeds of assignment, release and transfer, made under the provisions of this Act, or in the Province of Quebec authentic copies thereof; or a duly authenticated copy of the record of the appointment of the Trustee certified by the Clerk, under the seal of the Court, shall be *prima facie* evidence in all Courts, whether civil or criminal, of such appointment, and of the regularity of all proceedings at the time thereof, and antecedent thereto.

94. Every offence punishable under this Act shall be tried as other offences of the same degree are triable in the Province where such offence is committed.

BUILDING AND JURY FUND.

95. This Act shall not interfere with the powers of the Lieutenant-Governor of the Province of Quebec in Council, with respect to imposing a tax or duty upon proceedings under this Act, which are conferred upon the Governor General in Council, by the thirty-second and thirty-third sections of the 109th Chapter of the Consolidated Statutes for Lower Canada, intituled: "*An Act to make provision for the erection of Court Houses and Gaols in certain parts in Lower Canada.*"

FORM A.

THE DEBTORS PROCEDURE ACT.

CANADA,
PROVINCE OF
District of

VICTORIA, by the Grace of God, of the
United Kingdom of Great Britain and
Ireland, Queen, defender of the faith.

No.

To the Guardian (or Sheriff) in and for the County (or Judicial
District, *as the case may be*) of

GREETING :

We command you, at the instance of
to attach the estate and effects, moneys and securities for money,
vouchers and all the office and business papers and documents
of every kind and nature whatsoever,
of and belonging to if the
same shall be found in (*name of district or other territorial juris-
diction*) and the same so attached, safely to hold, keep and
detain in your charge and custody until the attachment thereof
which shall be so made under and by virtue of this writ, shall
be determined in due course of law.

We command you also to summon the said
to be and appear before Us, in our Court for
at in the County (or District)
of on the day of to show
cause, if any he hath, why his estate should not be distributed
under the Debtors Procedure Act, and further to do and receive
what, in our said Court before Us, in this behalf shall be con-
sidered ; and in what manner you shall have executed this Writ,
then and there certify unto Us with your doings thereon, and
every of them, and have you then and there also this Writ.

IN WITNESS WHEREOF, We have caused the Seal of our said
Court to be hereunto affixed, at aforesaid
, this day of in the year
of Our Lord one thousand eight hundred and
in the year of our Reign.

FORM B.

The Debtors Procedure Act.
 IN THE MATTER OF
 and

Plaintiff
 Defendant

GUARDIAN'S REPORT.

County of

I, _____ of the _____ of _____ make oath and say:
 TO WIT:) in the County of _____
 1st.—I am the _____ Sheriff of the _____ of _____
 2nd —On the _____ day of _____ A.D. 188 _____, at _____ of the clock _____ m., I received the
 annexed Writ of Attachment, and thereunder seized and attached the property of the Defendant as
 mentioned hereunder, and the same is now held by me as Bailee under the said Act, and is
 sufficiently protected by Insurance, and comprises all the assets of the debtor so far as I have been
 able to ascertain them

Insert any Special
 matter here.)

FORMS.

Date of Seizure or Attachment	Short Description of Property.	Where Situated.	If held in possession of Guard'n or attached by registration of writ.	Estimated Value.	Insurances.		Books of Account Seized.	Remarks.
					Companies	Am'ts.		

SWORN before at the _____ of _____ in the County of _____ this _____ day of _____ A.D. 188 _____

FORM C.

THE DEBTORS PROCEDURE ACT.

In the matter of A. B.

Schedule of Creditors.

1. Direct Liabilities,				Total.
Name.	Residence.	Nature of Debt.	Amount.	
2. Indirect Liabilities.				
Name.	Residence.	Nature of Debt.	Amount.	
3. List of Securities held by creditors and particulars of same.				
Name.	Residence.	Nature of Debt.	Amount.	
4. Pro forma Statement of property and assets vested in Guardian.				

5. Statement of the causes to which the Debtor attributes his Insolvency and the deficiency of his assets to meet his liabilities.

Date.

Signature of Debtor.

FORM D.

THE DEBTORS PROCEDURE ACT.

In the matter of

A writ of attachment has been issued in this matter, and the creditors are notified to meet at _____ in _____ on _____ the _____ day of _____ at _____ o'clock _____ to receive statements of his affairs, and to appoint a Trustee. (*Date and residence of Guardian.*)

(*Signature.*)
Guardian.

FORM G.

THE DEBTORS PROCEDURE ACT.

In the matter of A. B.

This deed of transfer made under the provisions of the said Act between _____ Guardian in possession of the estate of the said debtor, of the first part; and _____ of the second part, witnesseth:

That whereas by a resolution of the creditors duly passed at a meeting thereof duly called and held at _____ (*or by an order of the Judge made at*) on the _____ day of _____ the said party of the second part was duly appointed Trustee to the estate of the said debtor; Now therefore these presents witness that the said party of the first part, in his said capacity, hereby releases to the said party of the second part the estate and effects of the said debtor, in conformity with the provisions of the said Act; and for the purposes therein provided.

In witness thereof, &c.,

(*This form may be adapted in the Province of Quebec to the national form of execution of documents prevailing there.*)

FORM F.

THE DEBTORS PROCEDURE ACT,

I

being duly sworn in this matter make oath and say :—

That the annexed statement Form E, and the details thereof signed by me, contain a full and true account to the best of my knowledge and belief, of all the debts of whatever nature due to me and of all my estate and effects, real and personal, wherever situated, as well as of all claims which I am entitled to make against any person or persons whatsoever, and of all estate in expectancy or means of whatever kind, to which I have or may have an eventual right by contract of marriage trust, deed, settlement or otherwise, and that the said statement contains a full and true account of all debts due by me or demands upon me; and that I have delivered up the whole books, documents, accounts, title, deeds, and papers of every kind belonging to me, which in any way relate to my affairs and which were or are in my possession or under my power; and that I have made a full disclosure of every particular relating to my affairs.

And further, I promise and swear that I will forthwith reveal to the Trustee of my estate all and every other circumstance or particular relative to my affairs which may hereafter come to my knowledge and which may tend to increase or diminish the estate in which my creditors may be interested directly or indirectly.

Sworn by me, etc.)

In the case of partners the above statement and affidavit shall be made by each partner in relation his partnership as well as his individual estate.

FORM H.

THE DEBTORS PROCEDURE ACT.

In the matter of

(A.B. or A.B. & Co.)

I, the undersigned (*name and residence*), have been appointed
Trustee in this matter,

(Place. Date.)

(Signature.)
Trustee

SCHEDULE K.

TARIFF OF FEES TO BE PAID TO GUARDIANS.

For the service of any writ of attachment, and for the attachment made thereunder, and all duties connected therewith.....	\$5 00
For mileage in any travel required to make such service, the rate of mileage allowed to a Bailiff or Sheriff's officer in serving ordinary writs of summons, according to the practice in the jurisdiction within which the service is made.....	
During his continuance in office <i>not to exceed twenty-one days (unless the appointment of a Trustee is protracted beyond that period by legal proceedings)</i> , per day, employing no sub-guardian.....	1 00
If it is necessary for the safe keeping of the assets, books, or effects of the estate that they should be placed in the custody of a sub-guardian, to each sub-guardian, for each day and each night of <i>actual guardianship</i>	1 00
For printing and mailing statement and notice of meeting to each creditor, including postage.....	05
The net cost of advertising issue of writ,.....	

The fees of the Notary for the deed of assignment charged to the Trustee and settled by him.

The costs of attachment to be paid by the Trustee.

SCHEDULE L.

TARIFF OF FEES TO BE PAID TO TRUSTEES.

SCHEDULE M.

See form E.

FORM Q.

THE DEBTORS PROCEDURE ACT.

In the matter of

/

A. B.

In consideration of the sum of \$ _____ whereof quit ; C.D., Assignee of the debtor, in that capacity hereby sell, sand assignee to E.F., accepting thereof all claim by the debtor against G.H., of (*describing the debtor,*) with the evidences of debt and securities thereto appertaining, but without any warranty of any kind or nature whatever.

C. D., Trustee.

E. F.

FORM R.

THE DEBTORS PROCEDURE ACT.

In the matter of

A. B. (or A. B. & Co.)

A dividend sheet has been prepared, open to objection, until
the _____ day of _____, after which dividends
will be paid.

(Place.)

(Date.)

Signature of Trustee.

FORM S.

THE DEBTORS PROCEDURE ACT.

In the matter of

A. B.,

and

C. D.,

Claimant.

I, C. D., of _____
do hereby depose and say ;

_____ , being duly sworn in this matter de-

1. I am the claimant (or, the duly authorized agent of the
claimant in his behalf,) and have a personal knowledge of the
matter hereinafter deposited to, or a member of the firm of
_____ claimants in the matter, and the said firm is com-
posed of myself _____ and of E. F. _____

2. The debtor is indebted to me (or to the claimant) in the sum
of _____ dollars, for (here state the nature and particulars of
the claim, for which purpose, references may be had to document
annexed.) _____

FORM E.

THE DEBTORS PROCEDURE ACT.

*In the matter of**Statement of the affairs of the above as on the*

Liabilities.	Assets.
Unsecured Creditors as per annexed list A.	Stock in trade as per annexed list G.
Creditors fully secured as per annexed list B.	Book Accounts as per annexed list H.
Less estimated value of securities.	Cash on hand.
Surplus to contra \$	Bills of Exchange or similar securities as per annexed list K,
Creditors partly secured as per annexed list C.	Trade Furniture and Fittings as per annexed list G.
Estimated value of securities.	Household Effects as per annexed list G.
Creditors for claims payable in full out of the estate as per annexed list D.	Real Estate as per annexed list N.
Other liabilities as per annexed list E.	Other assets as per annexed list G.
Liabilities on Bills discounted as per annexed list F.	Surplus from Securities in hands of Creditors fully secured see contra.
\$	
Of which it is expected will rank against the estate for dividend.	
<i>Total Debts, \$</i>	<i>Total Assets, \$</i>

LIST A.

UNSECURED CREDITORS.

NAMES.	RESIDENCES.	NATURE OF CLAIM.	AMOUNT.
Certified Correct.			Total.

FORMS.

LIST B.

CREDITORS FULLY SECURED.

NAMES.	RESIDENCES.	NATURE OF CLAIM.	AMOUNT.	NATURE OF SECURITY.	AMOUNT.	SURPLUS.
Certified Correct.					Net Surplus.	

50.

LIST C.

CREDITORS PARTLY SECURED.

NAMES.	RESIDENCES.	NATURE OF CLAIM.	AMOUNT.	NATURE OF SECURITY.	AMOUNT.	BALANCE.

Certified Correct.

LIST D.

CREDITORS FOR CLAIMS PAYABLE IN FULL OUT OF THE ESTATE.

NAMES.	RESIDENCES.	NATURE OF CLAIM.	AMOUNT.	REMARKS.

Certified Correct.

LIST E.

MISCELLANEOUS CREDITORS NOT INCLUDED IN LISTS A. B. C. D.

NAMES.	RESIDENCES.	NATURE OF CLAIM.	AMOUNT.	REMARKS.

Certified Correct.

LIST F.

LIABILITIES ON BILLS DISCOUNTED.

HOLDERS OF BILLS.	PARTICULARS OF BILLS.	DUE DATE	AMOUNT.	REMARKS.

LIST G.**STOCK IN TRADE.**

Per Inventory in detail, Trade Furniture and Fittings, Household Effects, and Sundry Assets.

DESCRIPTION.	LOCATION.	COST.	ESTIMATED VALUE.

LIST H.**BOOK DEBTS.**

NAMES.	RESIDENCES.	AMOUNT.	CLASSIFICATION.		
			GOOD.	DOUBTFUL.	BAD.

LIST K.

BILLS RECEIVABLE OR SIMILAR SECURITIES.

54

NAMES.	RESIDENCES.	AMOUNT.	DUE.	CLASSIFICATION.		
				GOOD.	DOUBTFUL.	BAD.

Certified Correct.

LIST N. REAL ESTATE (INCLUDING MORTGAGES AND LEASES OF REAL ESTATE.)

DESCRIPTION.	COST.	VALUE.	ENCUMBRANCE.	BALANCE.

FORMS.