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No. 37.

4th Session, 6th Parliament, 24 Vic., 1861.

BILL.

An Act for the protection and relief of
Traders.

Received and read, 1st time, Saturday, 23d
March, 1861.

Second Reading, Tuesday, 2nd April, 1861.

Mr. ABBOTT.

QUEBEC :

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An Act for the protection and relief of Traders.

WHEREAS in the interest of Trade, it is expedient, that the position of persons engaged in commerce should be defined, and that their affairs should be regulated differently in some respects from those of other members of the community generally; and particularly that means should be provided to facilitate the amicable settlement of the estates of insolvent debtors, the prevention and punishment of fraudulent preferences to creditors, of fraudulent devices for defeating their remedies, and of the contracting of debts without means of payment: Therefore, Her Majesty, &c., enacts as follows :

Preamble.

10 I. The continuous stoppage of payment by any trader or trading company shall constitute insolvency.

Insolvency—
what to be.

15 II. Any insolvent trader desirous of making an assignment of his estate and effects (*cession de biens*), or who shall be required so to do as hereinafter provided, may call a meeting of his creditors, by advertising the same for one fortnight in the *Canada Gazette* and in two newspapers published one in French, the other in English, in the place, or if there be none in the place, then nearest to the place, where he is carrying on his trade : stating in such advertisements the object of such meeting ; and at such meeting he shall exhibit statements shewing the position of his affairs, particularly the names of his creditors and the amount respectively due to them ; and those of his creditors present at such meeting in person or by their authorized agents, may name an assignee or assignees, to whom such assignment shall be made ; and thereafter, such trader shall have the right to make an assignment of his estate and effects (*cession de biens*) to the assignee or assignees who may be so chosen by such creditors, or by the majority of them in number and value then present ; or if no assignee or assignees be so chosen at such meeting or at some adjournment thereof ; then to such assignee or assignees, being creditors of his and not being related, allied or of kin to him, as he may himself select.

Insolvent trader may, and must when required, call a meeting of his creditors for the purpose of assigning his property to them. Statement of his debts and assets. How Assignees shall be appointed.

20 III. Such assignee or assignees shall forthwith give public notice of such assignment by advertising the same in the manner hereinbefore mentioned, continuously for the space of one month ; thereby requiring all creditors of the insolvent to furnish statements of their respective claims, and to signify to such assignee or assignees whether or not they accept such assignment ; and if within two months from the completion of such advertisements, four-fifths in number and value of the creditors, whose names appear on the statement of the Debtors' affairs so exhibited to his creditors, and of those not named therein (if any there be) who shall have so furnished to such assignee or assignees, statements of their claims on the insolvent, shall signify their acceptance of such assignment, the same shall be held to be accepted by all of the Creditors of the Insolvent, and

Notice calling in creditors to be given by Assignees.

Acceptance by four-fifths of the creditors in number and value to bind the whole.

shall be binding upon them to the same extent and in the same manner as if they had all actually accepted the same.

Assignment not to stay proceedings until accepted.

IV. No such assignment shall have the effect of staying or preventing any legal proceeding to the benefit of which any creditor shall be entitled, until the same shall have been accepted as hereinbefore provided, nor until so accepted, shall it have any other or further effect than to make the assignee, administrator for the time being of the effects assigned, subject to the obligation of accounting for them to any competent Court of Justice, or to any creditor under a writ of *saisie arrêt* or other legal process : And no assignee under any such assignment shall declare or pay any dividend to the creditors of such insolvent trader or to any of them until the time for the acceptance of such assignment has expired.

No dividend until time for acceptance has expired.

Effect of acceptance of Assignment in protecting the Debtor.

V. Upon any assignment being accepted as aforesaid, the Insolvent shall forthwith, thereupon, and *ipse facto*, be absolutely freed and discharged from all liabilities whatsoever existing against him, and mentioned and set forth in the statement of his affairs furnished to his creditors as hereinbefore provided ; or which may be made to the Assignee named under the Deed of Assignment within the delay hereinbefore fixed for that purpose, whether such debts be exigible or not at the time of his insolvency, and whether direct or indirect, and without any stipulation to that effect being required to be inserted in the Deed operating such Assignment ; and all actions, suits or proceedings then pending against him shall be stayed, and the costs of the prosecution of such actions, suits or proceedings up to the time of such acceptance, shall be added to the demand, for the collection of which such proceedings were instituted ; and no property, moveable or immoveable, afterwards acquired by the Insolvent, otherwise than by inheritance or bequest in a direct line, shall be affected by or liable for any such liability, but any property afterwards acquired by the Insolvent by inheritance or by bequest from an ancestor in a direct line shall form part of his assets as such Insolvent ; and upon such acceptance the Assignee shall declare dividends of the estate of the Insolvent, and otherwise proceed with the winding up thereof in manner and form as provided by the Deed of Assignment.

What future property of debtor shall be liable.

Assignee to wind up estate.

Settlement of disputes as to claims of creditors.

VI. If any dispute shall arise between the creditors of any Insolvent Trader, or between him and any creditor, as to the correct amount of the claim of any creditor, the Assignee shall obtain from the creditor whose claim is disputed, all vouchers in support thereof, and from the Insolvent a statement shewing his pretensions as to the amount thereof, and shall examine and verify such statements by the books and accounts of the Insolvent and by such vouchers ; and his decision as to the amount shall be final, so far as the sufficiency of the acceptance of the assignment is affected by the amount of such claim ; but if such creditor shall persist in his claim, and it shall be contested, and at any time thereafter fixed by any Court of Justice at a sum less than would have been sufficient to make such acceptance valid,—then such acceptance shall be held to be invalid as to the creditors who shall have contested the same only, but shall be binding against all others ; and if the amount for which such creditor is to rank on the Insolvent's estate be the only matter in dispute, and such creditor shall persist in his claim, the Assignee shall reserve a dividend on the full amount thereof to await any order or judgment of any competent Court adjusting the amount thereof.

VII. Every Assignee of an Insolvent whose Assignment has been accepted as aforesaid, shall be held to be an Officer of the Superior Court of Lower Canada, subject to its summary jurisdiction, and to all the responsibilities and remedies to which a curator to a vacant estate is subjected, and any question arising between such Assignee and any creditor shall be settled by any Judge of the said Court in a summary manner, on petition of such Assignee or creditor in vacation, or by the said Court in term.

Assignee to be an officer of Superior Court, and liable as such.

VIII. Every general assignment of the Estate and effects of an Insolvent shall be held to include his books of account and the papers relating to his business, and also all moneys and negociable paper, stocks, bonds, and other securities, and all property afterwards acquired by the Insolvent by inheritance in a direct line, or by bequest from an ancestor in a direct line; besides the ordinary assets of such Insolvent.

Assignment to include books of account, &c.

IX. It shall be lawful for any creditor of an Insolvent Trader to make or cause to be made, a demand in writing, upon such Insolvent, requiring him to make an assignment of his estate and effects for the benefit of his creditors; and the Insolvent shall forthwith thereupon stop his trade or business, and discontinue all sales of goods or collection of moneys therein; and if he refuses to make such an assignment upon being required so to do as aforesaid, or if he continue to sell or otherwise to trade thereafter, or if he collect or receive thereafter any monies due to him, then in any such case he shall be held to be about to secret his effects with intent to defraud his creditors; and if under this section, or under the 87th chapter of the Consolidated Statutes for Lower Canada, or under any other provision of law, a writ of attachment, *saisie arret*, before Judgment be issued against the estate and effects of such Insolvent, the officer charged with the execution of such writ shall be entitled to seize and attach thereunder all the books of account, documents, papers, bonds, obligations, moneys and securities for money of every kind and nature soever belonging to such Insolvent.

Creditor of an Insolvent may demand an assignment.

Penalty on debtor refusing.

And if such seizure and attachment be subsequently declared valid by the judgment of a competent Court, it shall be the duty of such Court by the same judgment to order that a curator be appointed to wind up the estate of such Estate of such Insolvent trader in the same manner and with the same powers as if such estate were vacant.

Appointment of Curator.

X. The insolvency of a trader under this Act shall have the same effect in law as to such trader—and as to his estate and effects; and as to the effect of any previous or subsequent transfer, sale, *dation en paiement*, unjust preference, or other transaction executed, granted or entered into, with or in favor of any creditor either directly or indirectly; as would the absolute and total insolvency or bankruptcy (*déconfiture*) of such trader under the laws heretofore in force in Lower Canada.

Effect of insolvency as to transfers of property by debtor

XI. In the event of an assignment being accepted within the meaning of this Act, and the insolvent trader thereby discharged from his liabilities, such acceptance or discharge shall not operate any change in the liability of any person or company secondarily liable for the debts of such insolvent, either as drawer or endorser of negotiable paper, or as guarantor surety or otherwise; nor shall such discharge affect any mortgage, *hypothèque*, lien or collateral security held by any creditor as security for any debt so discharged.

Assignment not to discharge persons secondarily liable, or affect hypothecs, &c.

Discharge not to affect certain debts.

XII. The discharge effected by the acceptance within the meaning of this Act, of an assignment of the estate of an insolvent debtor, shall not apply to any debt for enforcing the payment of which, *contrainte par corps*, is granted by this Act; nor to any debt due as damages for personal wrongs; nor shall such debts, nor the creditors thereof be computed in ascertaining whether a sufficient proportion of the creditors of such insolvent have accepted his assignment: Provided always, that if the creditors of any such debts accept the assignment, such debts shall be computed and shall be discharged in the same manner as ordinary commercial debts.

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Proviso.

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Debtor whose assignment is accepted may apply to the Sup. Court for a discharge.

XIII. It shall be lawful for any insolvent whose assignment has been accepted within the meaning of this Act, to apply by petition to the Superior Court for Lower Canada, sitting in the district in which such insolvent has his domicile, for a confirmation of the discharge effected by such acceptance, and notice of such application shall be given by advertisement in the *Canada Gazette* for two months, and also for the same period in one newspaper published in French and in one newspaper published in English, in or nearest to the place of residence of such insolvent; and upon such application it shall be lawful for any creditor of such insolvent to appear and oppose such confirmation, either upon the ground of fraud or evil practice in procuring the acceptance by the creditors of the deed of assignment; or of the insufficiency in number or value of the creditors accepting the same; or of the fraudulent retention or concealment by the insolvent of some portion of his estate or effects. And the said Court, upon hearing such application and the objections thereto and the evidence in support thereof, shall have power either to grant or refuse such confirmation. And until the Court shall have confirmed such discharge, the burden of proof of the acceptance of the requisite number of creditors, and of the said discharge being completely effected under the provisions of this Act shall be upon the insolvent; but the confirmation thereof by the Court shall render the discharge thereby confirmed, final and conclusive; and an authentic copy of the judgment confirming the same shall be sufficient evidence, as well of such discharge as of the confirmation thereof.

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Proceedings on such application.

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Proof of acceptance of assignment.

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Right of Vendor of Goods restricted.

XIV. The exercise of the rights and privileges conferred upon an unpaid vendor of goods, by the 176th and 177th articles of the *coutume de Paris*, in all cases of sales of merchandize to a trader subsequently becoming insolvent, is hereby restricted to a period of fifteen days from the delivery of such merchandise.

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Proceedings if the insolvent be also a partner in some co-partnership.

XV. If an insolvent trader enter into an unincorporated trading company or copartnership as a member thereof, or become insolvent while a member of an unincorporated trading company or copartnership, any judgment creditor of such trader may cause to be served upon such trading company or copartnership, a notice informing them of the insolvency of such trader, stating the amount of the judgment against him, with such interest and costs as may be due thereon, and requiring payment thereof from such trading company or copartnership, and if upon such service the amount of such judgment, interest and costs, and the costs of such service be not forthwith paid by such insolvent trader to such creditor, such non-payment shall entitle the solvent partner or partners therein to dissolve such company in the same manner as if it had expired by efflux of time; and if within thirty days from such service, the copartnership existing between such insolvent trader and such trading company or copartnership shall not have been dissolved

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and put in course of liquidation, and due notice of such dissolution and liquidation given by advertisement in the *Canada Gazette*, such judgment shall be executory against the assets and property of such trading company or copartnership : Provided always that the creditors of such company or copartnership shall have a prior claim upon the assets thereof, to such creditor of a member thereof. Proviso.

XVI. Any trader who shall purchase goods on credit, or procure advances of money, knowing himself to be unable to meet his engagements, and concealing the fact from the person thereby becoming his creditor, with the intent to defraud such person; or who shall purchase goods or incur debts in contemplation of insolvency, with intent to defraud the person thereby becoming his creditor, and who shall afterwards become insolvent without having paid the debt or debts so incurred, shall be held to be guilty of a fraud, and shall be liable to *contrainte par corps* to compel payment of the debt so incurred by him, and of all costs incurred in endeavouring to enforce the collection thereof; and if such debt or debts be incurred by a trading company, then every member thereof who shall not prove himself to have been ignorant of the incurring, and of the intention to incur, such debt or debts, shall be so liable : Penalty on Traders fraudulently obtaining credit without means of paying.

20 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 to be rendered in such suit or proceeding. Proviso.

XVIII. The word "Creditor" in this Act shall be held to mean every person to whom the trader is liable, whether primarily or secondarily, and whether as principal or surety; but no debt shall be doubly represented or ranked for, either in the computations for ascertaining the acceptance of creditors, or in the dividends to be paid under any assignment. And all the provisions of this Act respecting traders shall be held to apply equally to unincorporated trading companies and co-partnerships. Word "creditor" how construed. Act to apply to unincorporated companies and partnerships.

XIX. This Act shall apply only to Lower Canada.