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No. 26.

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

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**BILL.**

**An Act to facilitate the winding up of Insolvent Joint Stock Companies.**

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Received and Read 1st time, Saturday, 23rd  
April, 1861.

Second Reading, Tuesday, 2nd April, 1861.

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Mr. ABBOTT.

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**QUEBEC :**

PRINTED BY THOMPSON, HUNTER & CO.,  
ST. URSULE STREET.

**An Act to facilitate the winding up of the affairs of Insolvent Joint Stock Companies.**

**W**HEREAS it is expedient for the benefit of the Creditors, and also of the members, of such Companies as are hereafter mentioned, to give them a speedy and inexpensive remedy for the winding up of the affairs of such Companies, when unable to meet their pecuniary engagements ; Therefore Her Majesty, &c., enacts as follows :

Preamble.

I. The word "Company" when used in this act, shall be construed to mean any Incorporated Company, whether formed or subsisting before or after the passing of this Act, other than and excepting Railway Companies Incorporated by Act of Parliament; to which last mentioned Companies, and to ordinary commercial partnerships, this Act shall not apply.

Meaning of "Company."

II. The word "Court," wherever it occurs in this Act, shall be construed to mean the Court of Chancery, when proceedings shall be taken under its provisions in Upper Canada, and the Superior Court for Lower Canada, when proceedings shall be taken thereunder in Lower Canada : and the jurisdiction of such Courts respectively shall be determined by the section of the Province in which the chief place of business of any Company to be wound up shall be situate : Provided always that the powers of a curator appointed in one section of the Province, as hereinafter provided, shall extend over any assets of the Company in respect of which he shall have been so appointed, which may be found in the other section thereof ; in which other section he shall have all the rights and powers required to perform his duties in conformity with this Act.

Meaning of "Court."

Proviso.

III. A Company may be wound up under this Act by the Court,—

1. Whenever the Company in general meeting has passed a special resolution, concurred in by a majority in number and value of the shareholders therein, requiring the Company to be wound up.
2. Whenever the Company has forfeited its charter by non-user or otherwise, or suspended its business for the space of a whole year, or has become dissolved by effluxion of time.
3. Whenever the Company is insolvent.
4. Whenever three-fourths of the Capital of the Company has been lost or become unavailable.

When Company may be wound up under this Act.

IV. The return unsatisfied, in whole or in part, of any writ of execution against any Company, addressed to the Sheriff of the County or District in which the chief place of business of such Company shall be situate, shall be *prima facie* evidence of insolvency within the meaning of this Act.

Evidence of insolvency.

Service of  
process on  
company.

V. Service of any notice, order, rule, or writ, in, or incident to, or preliminary to, any proceeding under this Act, against or in respect of any Company, may be made upon such Company by leaving a copy thereof at the chief place of business of such Company, with any grown person in charge thereof; or elsewhere with the President or Secretary thereof; or if the Company have no known place of business, or be without any known President and Secretary, then, upon a statement to that effect being made under oath to the Court having the requisite jurisdiction, such Court shall order the publication for one month in some local newspaper, of such notice, order, rule or writ, or the substance thereof respectively; which publication shall be held to be due service thereof. 5 10

Application  
for winding  
up of com-  
pany-

VI. Any application for the winding up of any Company shall be by petition filed in the office of the Registrar, Clerk, or Prothonotary of the Court, and shall be verified by affidavit or other sufficient evidence; and in cases where the Company is insolvent, such Petition may be filed either by a creditor whose debt has remained unsatisfied after such proceedings as aforesaid taken to compel payment thereof, or by any member of the Company liable to become a contributory towards the payment of its debts; but when any ground other than the non-payment of debt is alleged for the winding up of the Company, such contributory alone shall be entitled to make such application. 15 20

Notice of fi-  
ling of peti-  
tion.

VII. Notice of the filing of such Petition, and of the day on which such Petition is to be presented for hearing thereof before the Court, shall be served upon the Company at least ten days before such presentation thereof, and shall also be given by advertisement, to be twice inserted in the *Canada Gazette*, and twice in some newspaper published at the place where the chief place of business of the Company is situate, or in case no newspaper be published at such place, then in the newspaper whose office of publication is nearest thereto; Provided always that the Court may, at the hearing of the Petition, direct the same to stand over, and order such further notice to be given as to the Court shall seem meet; Provided also that the Court may, in its discretion, proceed upon the production of the *Canada Gazette* with such notice as aforesaid, in case no better service, after due diligence, can, in the opinion of the Court, be effected within a reasonable time. 25 30 35

Proviso.

Proviso.

Order for the  
winding up  
of company  
and appoint-  
ment of cura-  
tor.

VIII. Upon the hearing of any petition for the winding up of any Company, filed by such Creditor or Contributory as aforesaid, the Court may make an order for the winding up of the Company, and shall therein fix a day for the appointment of a Curator to such Company, and shall therein require the creditors and members of such Company to appear before any Judge of such Court, on such day, to give their advice as to such appointment; and such Judge shall on such day, after hearing any suggestion made by any creditor or contributory, but without being bound by any suggestion, nominate and appoint a curator of such company; and in the event of such curator neglecting to put in security as hereinafter provided or refusing to accept such appointment, or afterwards becoming incompetent by reason of death, absence from the jurisdiction, removal by the Court, or other cause, to perform the duties thereof, another and other appointments of a curator may be, from time to time, made in like manner to the first appointment. 40 45 50

IX. Such Curator shall give such description and amount of security for the due performance of his duties as the Court or any Judge thereof in Chambers may determine; and may be called upon by the Court from time to time to substitute and give, and shall thereupon give, fresh or  
 5 additional security; and upon the completion of such security shall become and be vested, in his capacity of Curator, with all monies and securities for money, documents, papers, books of account, estate, effects, and assets of the Company generally, and shall have power forthwith  
 10 thereupon as such Curator to take possession thereof, and in his said capacity to institute and maintain any kind of action, attachment, or proceeding for obtaining and maintaining possession of such estate and effects and of every part and portion thereof, which could be instituted  
 or maintained by such Curator if he were the absolute and unconditional proprietor thereof; And a copy of the order appointing such Curator  
 15 shall be *prima facie* evidence of such appointment and of such security having been given.

Curator to give security and then to be vested with property of company.

X. After the appointment of such Curator, all suits against the Company shall be stayed, unless the Court, on application to that  
 20 effect by the Plaintiff, and after notice to the Curator, authorize the Plaintiff to proceed with such suit; and such order may be made subject to such provision as to future costs as the Court may think fit to make; and no member or officer of the Company shall, after such appointment  
 as aforesaid, dispose of any of the property or effects of the Company,  
 25 and no subsequent transfer of any share or interest in the Company shall be valid.

Effect of appointment of curator on suits against company, etc.

XI. The Curator so appointed shall, as soon as possible without unreasonable sacrifice thereof, convert the moveable assets into money and collect the outstanding debts and unpaid stock subscriptions due to  
 30 the Company; and for that purpose may sue and be sued in his name as such Curator, and may sell in the manner he may deem most advantageous all personal or moveable property of the Company, and subject to an Order of the Court to be obtained in that behalf, may refer debts or claims to arbitration, compound or compromise the same; and as to  
 35 the immoveable property thereof, the same shall be sold by such Curator, when so ordered by the Court, after such publications and notices, and after the expiry of such time as the Court in such order shall appoint, and when regularly made such sale shall have the same effect as if made  
 by the Company, and shall convey the same title as may purport to be  
 40 conveyed by any deed signed and sealed by the said Curator, or by any vesting order made by the Court, and no other.

Sale of real and personal property of company.

XII. The proceeds of the realization of the assets and debts of such Company shall, from time to time, be paid into Court with the privacy  
 45 of the Registrar, Clerk or Prothonotary of the Court, together with an account current between the Company and the Curator, sworn to by such Curator, shewing the amount so paid in; and such accounts current shall be filed, and the balance shewn thereby paid in as aforesaid, at intervals not exceeding one month; and previous to the special order hereinafter mentioned, any creditor of the Company may file his claim  
 50 either in the hands of the Curator or in the Office of the Court by which such Curator shall have been appointed; and such claim shall be

Proceeds to be paid into Court, with account current sworn to by curator.

in effect in the form of Schedule [A] to this Act appended; and any claim so filed in the hands of the Curator shall be returned into the Court with the next subsequent statement of account to be made by such Curator.

**Creditors to be called in.**

XIII. Whenever the amount of monies realized from the assets of any Company shall appear to the Court to warrant a dividend thereof, the Court shall make an order to call in the Creditors of the Company, and to require them to file their claims in the Office of the Registrar, Clerk, or Prothonotary of such Court, on or before a day to be fixed by such order; and notice of such order or the substance thereof shall be twice inserted in the *Canada Gazette*, and twice in some newspaper published in the County or District wherein the chief place of business of such Company shall have been situate: Provided always that in Lower Canada every such notice or the substance thereof shall be published in the *Canada Gazette*, and in such local newspaper or newspapers, both in the French and English languages; and after the expiration of the time so limited, the Court shall proceed to the distribution of the monies so realized according to the rights of the claimants thereon, in Lower Canada in the manner recognized by law for the distribution of the monies of a vacant estate in the hands of a Curator, and in Upper Canada in the manner in which such assets are or but for this Act would be distributed by the Court of Chancery.

**And proceeds to be distributed.**

**Curator be an officer of the court.**

XIV. The Curator of any Company appointed in manner aforesaid shall be an officer of the Court appointing him, subject to the summary jurisdiction of that Court as to all matters, things and duties confided to and imposed upon him by this Act, and his accounts shall be subject to contest, the performance of his duties enforced, and his acts in his said capacity restrained and regulated in every respect, on summary application by petition or motion to the Court which appointed him, and he shall be liable to be removed by the Court for misconduct or want of sufficient security. Provided always that when the bringing or defending of any suit or the doing of any act in the winding up of any Company shall or may be attended with more cost than the Curator thereof shall consider it expedient to expend or to risk, and any application be made to compel him to bring or defend such suit or do such act, the Court may order such Curator to bring or defend such suit, or to do such act, as the case may be, but on condition only that the applicant shall give good and sufficient security to such Curator for the payment to him of any costs which may be incurred by him in obedience to such order.

**Proviso.**

**Disposal of surplus funds.**

XV. If there be any surplus of the funds realized from the assets of any Company after the payment of all the Creditors thereof in full, the same shall first be devoted to the adjustment of the rights of the contributories among themselves, and afterwards shall be distributed *pro rata* among the contributories.

**Members to contribute.**

**Proviso.**

XVI. In the event of any Company being wound up under this Act, the members thereof shall be liable to contribute to the assets of the Company an amount sufficient to pay the debts of the Company, and all costs, charges and expenses of winding up the same. Provided that if any company is limited, and has complied with the requirements of

the Act limiting the liability of its members, no contribution shall be required from any limited Shareholder who paid his limited share in cash.

5 XVII. The Court may at any time, and from time to time after the appointment of such Curator as aforesaid, make calls on all or any of the contributories to the extent of their respective liabilities, for payment of all or any of the sum or sums it may deem necessary to satisfy the debts of the Company, and the costs, charges and expenses of winding it up, and it may in making such calls take into consideration 10 the probability of some assets, not yet collected, being realized, some liabilities not yet ascertained becoming debts, and that some of the contributories, on whom the call is made, may fail wholly or in part to pay their respective portions thereof.

Court may make calls on contributories.

15 XVIII. No contributory to any company in process of being wound up under this Act, shall be entitled to set off any claim he may have against such Company by way of set off to the unpaid balances of stock held by him in such company, unless such set off shall have been allowed and credited to him on the books of the Company on account of such 20 unpaid balance, previous to the insolvency of the Company, and by express order of the Directors or Managers thereof.

Set off against unpaid balance of stock.

25 XIX. This Act shall apply to any Company doing business as an incorporated Company, formed under the provisions of any general Act authorizing the incorporation of such Companies, notwithstanding that from any defect in the organization of such Company, the incorporation thereof shall not have been perfected; and in such case each contributory or member of such Company shall be liable to the Curator of such Company for an amount equal to his share of the deficiency required to meet the debts of the Company, and the expenses of winding it up, 30 after realization of the other assets thereof, in the computation of which amount regard shall be had to the insolvency of any contributory thereto.

Act to apply to Companies formed under general Act, even imperfectly.

35 XX. No attachment at the suit of any person whomsoever of any effects or monies in the hands of any Curator shall be valid; and any such writ of attachment which may be issued for such purpose shall be dismissed.

No attachment in hands of curator to be valid.

40 XXI. An appeal from any judgment rendered under this Act shall be allowed in the same manner and to the same Court as appeals in ordinary cases instituted in the Court rendering such judgment are allowed or would lie, and may be made by such form of proceeding as the Court of Appeal shall for such cases prescribe.

Appeals from judgments under this act.

XXII. There shall be paid to the Curator such salary or remuneration, by way of percentage or otherwise, as the Court may direct.

Remuneration of curator

45 XXIII. When the affairs of the Company have been completely wound up, the Court shall make an order declaring the Company to be dissolved from the date of such order, and thereupon the Company shall be dissolved accordingly.

Dissolution of company.

Court to  
make rules  
and tariff.

XXIV. The Court may, as often as circumstances require, make such rules concerning the mode of proceeding to be pursued for winding up a Company, and such tariff of fees applicable to all proceedings under this Act, as from time to time may seem necessary or convenient; and until such rules and tariff are made it shall be competent to the Court to make any order it may deem just, and which shall not be inconsistent with this Act, for winding up any Company, and for the proceedings necessary therefor under this Act; and any power or direction contained in any such order shall be deemed to have been fully authorized by this Act.

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Court may  
determine  
who are to  
attend the  
proceedings.  
Proviso.

XXV. The Court shall have power by special order to determine what parties are sufficient to attend the proceedings under this Act, and may appoint one or more person or persons to represent contributors, or a class of contributors, to attend such proceedings. Provided that all contributors may if they choose, and at their own expense, be entitled to attend such proceedings, and to submit any proposal in writing in relation to the affairs of such Company, and the winding up of the same.

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Act not to af-  
fect privilege.

XXVI. Nothing in this Act contained shall affect any existing privilege or priority of one creditor or class of creditors over another.

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#### SCHEDULE A.

Province of Canada, } In the [name of the Court]  
Canada. }  
In re.

The (*Name of Company*).

A. B., of (*residence*), (*occupation*), claims of the (*name of Company*),  
the sum of \_\_\_\_\_ dollars due him as follows:—

[*Particulars of the claim which may refer to an account in detail annexed.*]

The above named claimant [or A. C., *Agent or Clerk of the above named claimant,*] being duly sworn declares that the foregoing claim is correct, and that the sum thereby demanded is justly due him by the Company,—and he hath signed—

Sworn before me at } A. B.  
this day of 186 . }