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2nd Session, 7th Parliament, 26 Victoria, 1

BILL.

An Act respecting Insolvency.

Received and read, first time, Fri
6th March, 1863.

Second reading, Tuesday, 10th Ma
1863.

Hon. Mr. ABBOTT

QUEBEC :

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An Act respecting Insolvency.

WHEREAS it is expedient that provision be made for the settlement of the estates of insolvent debtors for giving effect to arrangements between them and their creditors, and for the punishment of fraud. Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. This Act shall apply only to traders.

Preamble.
Application of this Act.

OF INSOLVENCY.

2. The continuous stoppage of payment by any debtor shall be held to constitute such debtor insolvent within the meaning of this Act.
2. Any debtor who absconds from this Province, or who secretes his estate or effects or any part thereof, with intent to defraud his creditors: or who makes an assignment of his estate and effects; shall also be held to be insolvent within the meaning of this Act.

OF VOLUNTARY ASSIGNMENTS.

3. Any insolvent desirous of making an assignment of his estate or who is required so to do as hereinafter provided, may call a meeting of his creditors, by advertisement (Form A), stating in such advertisement the object of such meeting: and at such meeting he shall exhibit statements showing the position of his affairs, particularly the names and residences of his creditors, the amount due to each, and the amount of his assets: and shall also produce his books of account, and all other documents and vouchers, if required so to do by any creditor.
2. At such meeting, the creditors may name an assignee, to whom such assignment may be made; and thereafter the insolvent shall make an assignment of his estate and effects to the assignee so chosen.
3. If no assignee be named at such meeting, or at any adjournment thereof, the insolvent may assign his estate to any solvent creditor, not related, allied, or of kin to him, and being such creditor for a sum exceeding \$500; or to any official assignee nominated for the purposes of this Act, by the Board of Trade at the place, or within the district or county within which the place is situate, where the insolvent has his domicile.
4. If any dispute arises at the first meeting of creditors as to the amount which any one of the creditors is entitled to represent in the nomination of an assignee, or upon any other question which may properly be discussed at such meeting; such dispute shall be decided by the votes of the majority in number of the creditors present, or represented by agents or proxies, exclusive of the person whose pretensions are being voted upon; unless a different mode of voting is herein made specially applicable to the subject in dispute. But no neglect or irregularity in any of the proceedings antecedent to the appointment of the assignee, shall vitiate an assignment subsequently made to an assignee competent to receive it under this Act.

Proceedings to assign an insolvent estate.

Assignee appointed.

If no assignee be appointed.

In cases of dispute at first meeting of creditors.

Irregularity not to vitiate appointment.

- Form of Deed of assignment** 5. The deed of assignment may be in the form B, or in any other form equivalent thereto, and if executed in Upper Canada, shall be in duplicate: and copies of the statements produced at the first meeting of creditors shall be appended to it; and no description or detail of the property or effects assigned need be inserted in such deed. 5
- Effect of assignment.** 6. The assignment thereby effected, shall be held to convey to the assignee the books of account of the insolvent, all vouchers, accounts, letters and other papers and documents relating to his business, all moneys and negotiable paper, stocks, bonds, and other securities, as well as all the estate, real and personal, moveable and immoveable, property, debts, assets and effects, which he has or may be entitled to at any time before his discharge is effected under this Act; excepting only such as are exempt from seizure and sale under execution, by virtue of the several statutes in such case made and provided. 10
- Effect of execution of Deed.** 7. The execution of the deed of assignment shall operate a legal delivery of all that is thereby conveyed to the assignee under the terms of this Act, subject to the obligations of the insolvent attaching to any portion of the estate assigned. But no lien, privilege, right of pledge, or of possession, can attach to, or affect the books of account, office papers, or vouchers of the insolvent. 15 20
- Copy of assignment to be deposited.** 8. Forthwith upon the execution of the deed of assignment, the assignee, if appointed in Upper Canada, shall deposit one of the duplicates thereof, and if in Lower Canada, an authentic copy thereof, with a copy of the Schedules thereunto annexed, in the office of the Court. 20
- Registration of Deed of assignment.** 9. If the insolvent possesses real estate, the deed of assignment may be enregistered in the Registry Office for the Registration Division or County within which such real estate is situate; and no subsequent registration of any deed or instrument of any kind shall have any force or effect upon such real estate. And if the real estate be in Upper Canada and the deed of assignment be executed in Lower Canada before Notaries, it may be enregistered by memorial proved on oath by one of such Notaries, on the production to the Registrar of a copy of the deed certified under the hand and official seal of the Notary in whose custody the original remains; and if the property be in Lower Canada and the deed of assignment be executed in Upper Canada, it may be enregistered by memorial or at full length in the usual manner; but it shall not be necessary to enregister, or to refer on registration in any manner to the statements annexed to the deed of assignment. 25 30 35
- Deed executed in U.C. to have force in L. C. and vice versa.** 10. If such deed be executed in Upper Canada, according to the form of execution of deeds prevailing there, it shall have the same force and effect in Lower Canada as if it had been executed in Lower Canada before notaries. And if such deed be executed in Lower Canada before notaries it shall have the same force and effect in Upper Canada, as if had been executed in Upper Canada, according to the law in force there; and notarial authentic copies of such deed shall be treated as original deeds constituting *prima facie* proof in themselves of their execution and of their contents. 40 45
- Public notice of execution of deed.** 11. Upon the execution of a deed of assignment, the assignee shall forthwith give public notice thereof by advertising the same continuously for the space of one month; requiring by such advertisement (Form C,) all creditors of the insolvent to furnish of their respective claims to the assignee within two months from the date of the first publication of such notice, and to signify to such assignee whether or not they consent to the discharge of the insolvent. 50
- Suits, &c., against insolvents stayed on execution of assignment.** 12. After the execution of the deed of assignment, and the deposit of a duplicate or copy thereof in the office of the Court in conformity with this Act, on application of the assignee, all actions, suits and proceedings then pending against the Insolvent shall be stayed, and all the costs thereof shall be added to the demand for the recovery of which they were instituted; and shall rank upon the estate as if they 55 60

formed part of the original debt; and the assignee shall proceed to wind up the estate in conformity with the terms of this act, of the deed of assignment, and of any instructions for his guidance which are adopted at a meeting of creditors called for the purpose.

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COMPULSORY LIQUIDATION.

4. The estate of an Insolvent trader becomes subject to compulsory liquidation ;

When the estate of an insolvent trader becomes subject to compulsory liquidation.

10 If he absconds or is immediately about to abscond from this Province 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 he conceals himself within this Province with a like intent.

If he secretes or is immediately about to secrete any part of his estate and effects with intent to defraud his creditors or any of them.

15 If he assigns, removes or disposes of, or is about or attempting to assign, remove or dispose of any of his property with intent to defraud, defeat or delay his creditors.

If he suffers himself to be taken in execution for any debt not due, with such intent.

20 If he remains in prison or upon the gaol limits for more than thirty days for a claim in its nature proveable under this Act, exceeding the sum of \$

25 If upon the demand of a creditor for \$200 or upwards (Form D), he refuses to make an assignment of his estate for the benefit of his creditors.

If upon such demand, he neglects to call a meeting of his creditors as provided by the third section of this Act; or if he does not complete such assignment within three days after such meeting, or if there be an adjournment thereof, within three days after such adjournment.

30 If after such demand he continues to trade, or collects, or receives any monies due to him.

2. But no such act or omission shall justify any proceeding to place the estate of an insolvent in compulsory liquidation, unless proceedings are taken under this Act in respect of the same, within three months next after the act or omission relied upon as subjecting such estate thereto; nor after a voluntary assignment has been made, or an assignee appointed under this Act.

But proceedings must be taken within three months.

3. Upon an affidavit being made by a creditor for a sum not less than \$200, or by the clerk or other duly authorized agent of such creditor, setting forth the particulars of his debt, the insolvency of the person indebted to him, and any fact or facts which under this Act subjects the estate of such debtor to compulsory liquidation (form E.); and upon such affidavit being filed with the Prothonotary or Clerk of the Court; a writ of attachment (form F.) shall issue against the estate and effects of the insolvent, addressed in Lower Canada to the Sheriff of the District in which such writ issues, and in Upper Canada to such person as the Judge shall direct; requiring the person or officer charged with the execution of such writ, to seize and attach the estate and effects of the insolvent, and to summon him to appear before the Court to answer the premises, within such time as is usual therein for the return of ordinary writs of summons; and such writ shall be accompanied by a declaration setting forth such facts and circumstances as are necessary to be proved to sustain the issue thereof; and shall be subject as nearly as can be to the rules of procedure of the Court in ordinary suits, as to its issue, service, return and subsequent proceedings.

Proceedings for issue of Writ of attachment.

4. Immediately upon the issue of a writ of attachment under this Act, the person charged with the execution of such writ shall give notice thereof by advertisement thereof, (form G).

Notice of execution of writ.

- How writ shall be executed. 5. Under such writ of attachment the person charged with the execution thereof shall seize and attach all the estate and effects of the insolvent within the jurisdiction of the Court, including his books of account, moneys and securities for money, 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 of his action thereon. 5
- In whose custody, property attached shall be placed in L. C. 6. If in Lower Canada, the Board of Trade at the domicile or in the County or District in which is situate the domicile of the debtor, has appointed official assignees for the purpose of this Act, the Sheriff shall place the estate and effects attached, in the custody of one of such official assignees, who shall be guardian under such writ; but if not he shall appoint as guardian such solvent and responsible person as may be willing to assume such guardianship. 10
- Duty of such person. 7. The person so placed in possession shall forthwith proceed to make an inventory of the estate and effects of the defendant; and also such statements of his affairs as can be made from the books, accounts and papers attached. And he shall file such inventory in the Court on the return day of the writ; and shall produce such statements at the meeting of creditors called for the appointment of an official assignee. 15
- Duty of person charged to execute the writ in U. C. 8. In Upper Canada, the person charged with the execution of such writ shall retain in his custody the estate and effects attached until an official assignee is appointed as hereinafter provided, shall make and file an inventory of the estate of the defendant, and shall make and produce statements of his affairs in the same manner and at the same times and places as are hereinbefore provided with respect to guardians in Lower Canada. 25
- Proceedings to set aside attachment. 9. The alleged insolvent may present a petition to the Judge at any time within five days from the return day of the writ, but not afterwards, and may thereby pray for the setting aside of the attachment made under such writ, on the ground that his estate has not become subject to compulsory liquidation; and such petition shall be heard and determined by the Judge in a summary manner, and conformably to the evidence adduced before him thereon. 30
- Meeting of creditors for appointment of assignee. 10. Immediately upon the expiration of five days from the return day of the writ, if no petition to quash or to stay proceedings be filed; or upon the rendering of judgment upon the petition, to quash if it be dismissed; the Judge upon the application of the Plaintiff, or of any creditor intervening for the prosecution of the cause, shall order a meeting of the creditors to be held before him or any other Judge, at a time and place named in such order, and after due notice thereof, for the purpose of giving their advice upon the appointment of an official assignee. 40
- Who may be official assignee. 11. At the time and place appointed, and on hearing the advice of the creditors present upon oath, the Judge shall appoint some person to be such official assignee, which person may either be one of the persons proposed by the creditors; or in Upper Canada the person charged with the execution of the writ of attachment; or in Lower Canada any of the official assignees named by the Board of Trade. 45
- Debtor may petition for suspension of proceedings. 12. Instead of petitioning to quash the attachment the debtor may, within the like delay, petition the judge to suspend further proceedings against him and to that end to submit such petition to a meeting of the creditors and the debtor to be called for that purpose, in order that the creditors may determine whether the proceedings against the debtor shall be suspended or not. 50
- Schedule to be produced with the petition. 13. The debtor shall produce with such petition a schedule of his estate, and a list of his creditors with the amount of his indebtedness to each, and the places of their respective residences, or places of business the whole under oath. 55

14. Upon the schedule of the estate and the list of creditors being furnished by the debtor, sworn to as aforesaid, the judge instead of ordering a meeting of creditors to be called for the appointment of an official assignee; shall order a meeting of creditors to be called for the purpose of taking into consideration the prayer of such petition, and at such meeting shall take and record by a writing under his hand the opinion of the creditors thereon. Duty of Judge in such case.
15. The Judge shall postpone the meeting so called if it appears that the creditors have not been properly and reasonably notified, or that important omissions have been made in the creditors' list. Postponement of meeting.
16. The Judge shall preside at such meeting of creditors, and the question which they shall decide shall be, "Shall the debtor be proceeded against under this Act or not?" And if the decision of the majority in number and three-fourths in value of the creditors present be in the negative, it shall be in force for three calendar months thereafter, during which time no other proceedings in insolvency shall be commenced against the debtor, based upon any act or omission of his which took place previous to the institution of the proceedings so stayed by the decision of the creditors. Judge to preside at such meeting.
17. If the decision at such meeting be not in the negative the Judge shall at once proceed thereat to take the advice of the creditors as to the appointment of an official assignee and shall appoint such assignee as hereinbefore provided. Proceedings on decision of meeting.
18. If any question arises at such meeting respecting the amount of any creditor's claim, it shall be decided by the Judge from an inspection of the schedules and list so sworn to by the debtor, and of the statements of the debtors affairs prepared and produced at such meeting by the guardian, or person intrusted with the writ of attachment. In case of question as to amount of any creditor's claim.
19. Upon the appointment of the official assignee, the guardian, or in Upper Canada the person charged with the execution of the writ, shall deliver the estate and effects attached, to the official assignee; and by the effect of his appointment, the whole of the estate and effects of the insolvent, as existing at the date of the issue of the writ, and which may accrue to him by any title whatsoever, up to the time of his discharge under this Act, and whether seized or not seized under the writ of attachment, shall vest in the said official assignee, in the same manner and to the same extent, and with the same exceptions as if a voluntary assignment of the estate of the insolvent had been on that date executed in his favor by the insolvent. Effect of appointment of official assignee.
20. An authentic copy or exemplification, under the hand of the proper officer of the Court, of the order of the Judge appointing an official assignee, may be enregistered at full length in any registry office, without any proof of the signature of the officer; and such enregistration shall have the same effect as to the real estate of the Insolvent and in all other respects, as the enregistration of a deed of assignment under this Act. Effect of registration of order of appointment.
21. Immediately upon his appointment, the official assignee shall give notice thereof by advertisement (form H.); requiring by such notice all creditors of the insolvent to produce before him their claims, and the vouchers in support thereof. Notice of appointment.

OF ASSIGNEES.

5. The Board of trade at any place may name any number of persons to be official assignees for the purposes of this Act, and at the time of such nomination shall declare what security for the due performance of his duties, shall be given by each of such official assignees before entering upon them; and a copy the resolution naming such persons, Boards of Trade may name official assignees.

shall be transmitted, under the hand of the Secretary of the Board, to the Prothonotary or Clerk of the Court at the place where such Board sits.

Security to be given by assignee. 2. Such security shall be taken in the name of office of the President of such Board of Trade, for the benefit of the creditors of any person whose estate is, or subsequently may be, in process of liquidation under this Act; and in case of the default of any such assignee in the performance of his duties, his security may be enforced and realized by the assignee or official assignee who shall be appointed his successor. 5 10

Meeting of creditors, when to be called by. 3. The assignee shall call meetings of creditors, whenever required in writing so to do by five creditors, stating in such writing, the purpose of the intended meeting: or whenever he is required so to do by the Judge, on the application of any creditor, of which application he shall have notice; or whenever he shall himself require instructions from the creditors: and he shall state succinctly in the notices calling meetings, the purposes of the meeting. 15

To be subject to certain rules, &c. 4. The assignee shall be subject to all rules, orders, and directions, not contrary to law, or to the provisions of this Act, which are made for his guidance by the creditors at a meeting called for the purpose; and until he receives directions from creditors in that behalf, he shall deposit weekly, at interest, all monies received by him, in some bank in or nearest to the place of business of the insolvent. 20

To attend all meetings of creditors. 5. The assignee shall attend all meetings of creditors, and take and preserve minutes of such meetings, signed by himself, and signed and certified at the time by the chairman, or by three creditors present at the meeting; and copies of, and extracts from such minutes, certified by the assignee, shall be *prima facie* evidence of the proceedings purporting to be recorded in such minutes. And he shall also keep a correct register of all his proceedings, and of all claims made to or before him. 25 30

And keep minutes. 6. The assignee shall give such security and in such manner as shall be ordered by a resolution of the creditors; and shall conform himself to such directions in respect thereof, and in respect of any change or modification thereof or addition thereto, as are subsequently conveyed to him by similar resolutions. 35

Powers of insolvent vested in assignee 7. All powers vested in any insolvent which he might legally execute for his own benefit, shall vest in, and be executed by the assignee, in like manner, and with like effect as they were vested in the insolvent, and might have been executed by him.. 40

Winding up affairs. 8. The assignee shall wind up the affairs of the insolvent, by the sale in a prudent manner, of all bank and other stocks, and of all moveables belonging to him, and by the collection of all debts: but in all of such respects shall be guided by the direction of the creditors, given as herein provided. 45

Assignee's right of action, &c. 9. The assignee, in his own name as such, may sue for the recovery of all debts due to the Insolvent; and may take, both in the prosecution and defence of suits, all the proceedings that the insolvent might have taken with respect to the estate, and may intervene and represent the insolvent in all suits or proceedings by or against him, which are pending at the time of his appointment. 50

As to doubtful debts due estate. 10. After having acted with due diligence in the collection of the debts, if the assignee finds there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he may report the same to the creditors at a meeting thereof, duly called for the purpose; and with their sanction he may obtain an order of the Judge to sell the same by public auction, after such advertisements thereof, as may be required by such order; and pending such advertisements, the 55

assignee shall 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. But all debts amounting to more than \$100, shall be sold separately. **Proviso.**

5 11. The person who purchases a debt from the assignee, may sue for it in his own name as effectually as the assignee is hereby authorised to do; and a bill of sale (form M.) signed and delivered to him by the Assignee shall be *prima facie* evidence of such purchase without proof of the handwriting of the Assignee. **Purchaser of debt.**

10 12. The assignee may sell the real estate of the insolvent; but only after advertisement thereof, for the same time, and in the same manner as is required in sales of real estate by the Sheriff in the district where such real estate is situate, and to such further extent as the assignee deems expedient. And if the price offered for any real estate at any public sale duly advertised as aforesaid, is in the opinion of the assignee too small, he may withdraw such real estate, and sell it subsequently under such directions as he receives from the creditors. **Sale of Insolvent's real estate.**

15 13. The sale of real estate in Upper Canada so made by the assignee, shall have the same effect as if the same had been made by a Sheriff in Upper Canada, under a writ of execution issued in the ordinary course. And in Lower Canada, such sales shall have the same effect as if made by a Sheriff under a similar writ. And the deed of such sale which he executes, shall have precisely the same effect as a Sheriff's deed has in the Province within which the real estate is situate. **Effect of sale of real estate by assignee.**

20 But he may grant such terms of credit as he may deem expedient, and as may be approved of by the creditors for any part of the purchase money. And he shall be entitled to reserve a special mortgage by the deed of sale, as security for the payment of such part of the purchase money (form I), and such deed may be executed before witnesses, or before Notaries, according to the exigency of the law of the place where the real estate sold is situate.

25 14. The assignee shall be subject to the summary jurisdiction of the Court or Judge in the same manner, and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and the performance of his duties may be enforced by the Judge on summary petition in vacation, or by the Court on a rule in term, under penalty of imprisonment, as for contempt of Court; whether such duties be imposed upon him by the deed of assignment, by instructions from the creditors validly passed by them under this Act and communicated to him, or by the terms of this Act. **Assignee to be subject to summary jurisdiction of the Court.**

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35 16. Any assignee may be removed after the period at which dividends may be declared, by a resolution passed by the creditors present or represented at a meeting duly called for the purpose. **Removal of assignee.**

40 15. The remuneration of the assignee shall be fixed by the creditors at a meeting called for the purpose; but if not so fixed before a final dividend is declared, shall be put into the dividend sheet at a rate not exceeding five *per centum* upon the cash receipts, subject to objection by any creditor as exceeding the value of the services of the assignee, in the same manner as any other item of the dividend sheet. **His remuneration.**

45 17. Upon the death of an assignee the estate of the insolvent shall not descend to the heirs or the representative of the assignee; but shall become vested in any assignee who shall be appointed by the creditors in his place and stead: and until the new assignee is appointed, the estate shall be under the control of the Judge, **In the event of his death.**

50 18. After the declaration of a final dividend, the assignee may prepare his final account, and after due notice by advertisement may present a petition to the Judge for his discharge from the office of assignee. And from the time of the first advertisement thereof, to the time of the presentation of such petition, he shall keep such final account open for inspection at his office. **How assignee may obtain his discharge**

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Assignee to 19. The assignee shall produce and file with such petition a bank cer-
 fyle a certifi- tificate of the deposit of any dividends remaining unclaimed in his hands,
 cate with his petition for and thereupon the judge after hearing the parties may refuse, or grant
 discharge. conditional or unconditionally the prayer of such petition.

OF DIVIDENDS.

Accounts to 6. Upon the expiry of the period of two months from the first insertion 5
 be kept and of the advertisements giving notice of an assignment, or of the appoint-
 dividends ment of an official assignees, or as soon as may be after the expiration of
 prepared by ment of such period, and afterwards from time to time at intervals of not more
 assignee. such period, and afterwards from time to time at intervals of not more
 than six months, the assignee shall prepare and keep constantly acces- 10
 sible to the creditors, accounts and statements of his doings as such as-
 signee, and of the position of the estate; and at similar intervals shall
 prepare dividends of the estate of the insolvent.

What debts 2. All debts due and payable by the Insolvent at the time of the
 may rank for execution of a deed of voluntary assignment, or at the time of the
 payment out appointment of an assignee; and all debts due but not then actually 15
 of Insolvent's estate. payable, subject to such rebate of interest as may be reasonable, shall
 have the right to rank upon the estate of the Insolvent.

Contingent 3. If any creditor of the Insolvent claims upon a contract dependant
 claims, provi- upon a condition or contingency, which does not happen previous to
 sion for pay- the declaration of the first dividend, a dividend shall be reserved upon 20
 ment of. the amount of such conditional or contingent claim until the condition
 or contingency is determined, unless an estimate of the value thereof
 be agreed to, or fixed by arbitration by and between the Claimant and
 the Assignee: in which case such value shall be ranked upon as a deb
 payable absolutely. 25

Preparation 4. In the preparation of the dividend sheet due regard shall be had,
 of dividend to the rank and privilege of every creditor, which rank and privilege,
 sheet. upon whatever they may legally be founded, shall not be disturbed by
 the provisions of this Act. But no dividend shall be paid to any cre-
 ditor holding collateral security for his claim, until such security has 30
 been assigned and delivered to the assignee, and the proceeds thereof
 distributed with a due regard to the privilege of such creditor thereon.
 And the balance due such creditor, after deduction of the amount re-
 ceived by him from the proceeds of such security shall be the amount for
 which he shall rank as a creditor on the estate as to dividends therefrom, 35
 as to voting at meetings of creditors, and in computing the proportion
 of creditors, whenever under this Act such proportion is required to be
 ascertained.

How creditors 5. The amount due to a creditor upon each separate item of his claim
 shall rank for at the time of the assignment, or of the appointment of the official 40
 payment of assignee, as the case may be, shall form part of the amount for which he
 claims. shall rank upon the estate of the insolvent, until such item of claim be
 paid in full, except in cases of deduction of the proceeds of collateral
 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 45
 to rank be made by the same person or by different persons.

In case insol- 6. If the insolvent owes debts both individually and as a member of a
 vent owes in- co-partnership, or as a member of two different co-partnerships, the
 dividually claims against him shall rank first upon the estate by which the debts
 and as co- they represent were contracted, and shall only rank upon the other after 50
 partner. all the creditors of that other have been paid in full.

Allowance to 7. The creditors, or the same proportion of them that may grant a dis-
 insolvent. charge to the debtor under this Act, may allot to the Insolvent by way
 of allowance, any sum of money, or any property they may think proper;
 and the allowance so made shall be inserted in the dividend sheet, and 55
 shall be subject to contestation like any other item of collocation there-
 in, 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.

8. So soon as a dividend sheet is prepared, notice thereof (form K) shall be given by advertisement, and after the expiry of six juridical days from the day of the last publication of such advertisement all dividends which have not been objected to within that period shall be paid. Notice of dividend sheet.

5 9. If it appears to the assignee on his examination of the books of the insolvent, that the insolvent has creditors not named by him in his statements, and who have not filed claims before such assignee; it shall be his duty to reserve dividends for such creditors and to notify them of such reserve; which notification may be by letter through the post, addressed to such creditors' domicile as nearly as the same can be ascertained by the assignee.—And if such creditors do not file their claims and apply for such dividends previous to the declaration of the last dividend of the estate, the dividends reserved for them shall form part of such last dividend. In case insolvent has not disclosed all his creditors.

15 10. If any dividend be objected to, within the said period, of six days, and any dispute arises between the creditors of the insolvent or between him and any creditor, as to the correct 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 assignee shall obtain from the creditor whose claim or ranking is disputed, his statements and vouchers in support thereof, and from the insolvent or opposing creditor, a statement shewing his pretensions as to the amount thereof, and shall hear and examine the parties and their witnesses under oath; which oath the assignee is hereby empowered to administer; and shall take clear notes in writing of the parol evidence adduced before him, and shall examine and verify the statements submitted to him by the books and accounts of the insolvent and by such evidence, vouchers and statements as may be furnished to him; and shall make an award in the premises, which shall be final, unless appealed from within three days from the date of its communication to the parties to the dispute. In case of objections to or disputes concerning dividends.

20 11. The creditors may by resolution authorize and direct the costs of the contestation of any claim or any dividend to be paid out of the estate; and may make such order either before or pending any such contestation. Costs of contestation.

30 12. Pending any appeal, the assignee shall reserve a dividend equal to the amount of dividend claimed. Pending appeal.

13. All dividends remaining unclaimed at the time of the discharge of the assignee shall be left in the bank where they are deposited for three years, and if still unclaimed, shall then be paid over by such bank with the interest accrued thereon, to the Provincial Government; and if afterwards duly claimed shall be paid over to the persons entitled thereto with interest at the rate of three per centum per annum from the time of its reception thereof by the Government. Unclaimed dividends,—how dealt with.

40 14. If any balance remains of the estate of the insolvent, or of the proceeds thereof, after the payment in full of all debts due by the insolvent, such balance shall be paid over to the insolvent upon his petition to that effect, duly notified to the creditors by advertisement, and granted by the Judge. Balance of estate after payment of debts.

OF LEASES.

50 7. If the insolvent holds property under a lease extending beyond the year current under the terms of the lease at the time of his insolvency, the creditors shall meet and decide whether such lease shall be retained in whole or in part, or whether the unexpired term thereof after the property shall cease to be required for the use of the estate, shall be sold for the benefit of the estate or cancelled, as hereinafter provided; or whether, and at the end of what yearly term thereof the lease shall terminate; and the decision of the creditors shall be final. How unexpired leases shall be dealt with.

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How lessor's claim shall be paid. 2. The lessor shall in such case be collocated in the dividend sheet for the amount of rent due, and also of the rent for the current year, and for the further periods of one year during which the leased property is required for the use of the estate; and such collocation shall be made and be payable in the same manner and upon the same conditions as are hereinbefore provided with reference to creditors holding security; such security in the case of the lessor being his legal lien and privilege, upon the effects in and upon the property leased. 5

In case the lease be cancelled. 3. If the lessor signifies to the assignee his willingness to cancel the lease from and after the period during which he is hereby authorized to claim rent for the leased premises, all liability to him by the estate of the Insolvent for rent after such period shall cease; and when such period expires the assignee shall consent to the cancelling of the lease and shall deliver the leased premises over to the lessor; but if not, and if the un- 10

In case of sale of unexpired term. expired term of the lease be sold, the sale shall be binding upon the lessor; and the estate of the insolvent shall be thereafter discharged from all claim for rent, if at the time thereof the purchaser be solvent and of good credit and repute. 15

OF APPEAL.

Proceedings in appeal from award of assignee. 8. There shall be an appeal to the Judge from the award of an assignee made under the 10th sub-section of the 6th section of this Act, 20 which appeal shall be by summary Petition, of which due notice shall be given to the opposite party and to the assignee; and the assignee shall attend before the Judge at the time and place indicated in such notice, and shall produce before him all evidence, notes of evidence, books or proved extracts from books, documents, vouchers and papers having reference 25 to the matter in dispute: and thereupon the Judge may confirm such award, or modify it, by such order as will satisfy the ends of justice.

Appeal from decision of the Judge. 2. If the Judge reverses or modifies the decision of the assignee, any of the parties may appeal from his judgment in Lower Canada to the Court of Queen's Bench for Lower Canada on the Appeal side thereof; and in 30 Upper Canada to either of the superior common law courts or to the court of chancery, or to any of the judges of the said courts; upon an appeal being first allowed by one of such judges.

But notice of appeal must be given within a certain period. 3. Such appeal shall not be permitted unless the party desiring to appeal notifies the opposite party or his agent or attorney during the day 35 on which the judgment of the Judge is rendered, of his intention to appeal; and unless within ten juridical days thereafter he causes to be served upon the opposite party and upon the assignee, a Petition in appeal setting forth the Petition to the Judge, and his decision thereon and praying for its revision: and also within the said period of ten days 40 causes security to be given before the Judge by two sufficient sureties, that he will duly prosecute such appeal, and pay all costs incurred by reason thereof by the respondent.

Presenting of petition in appeal. 4. The Petition in appeal, when the appeal is to a court, shall be presented on the first day of the term next following the service of the 45 Petition in appeal and the putting in of the security in appeal, and shall not be thereafter received; and when the appeal is to a judge the petition shall be presented within ten days after putting in security, and shall not thereafter be received: and on or before the day of the pre- 50 sentation of the petition, the assignee shall file in the Office of the Court of Appeal, or of the court to which the judge appealed to belongs, the evidence, papers, and documents which had been previously produced before the Judge, and thereupon the appeal shall be proceeded with and decided according to the practice of the Court.

In case petition is not presented. 5. If the party appellant does not present his petition on the day 55 fixed for that purpose, the Court, or Judge selected to be appealed to,

as the case may be, shall order the record to be returned to the assignee, and the party respondent may on the following or any other day during the same term produce before the Court, or within six days thereafter before such Judge, the copy of Petition served upon him, and obtain costs thereon against the appellant.

6. The costs in appeal shall be in the discretion of the Court or of the Judge appealed to, as the case may be. Costs in appeal.

OF FRAUD AND FRAUDULENT PREFERENCES.

9. All Contracts made by an insolvent, with intent fraudulently to impede or obstruct his creditors in their remedies against him; or with intent to defraud his creditors, or any of them; and which have the effect of impeding or obstructing the creditors in their remedies, or of injuring them, or any of them, are prohibited, and are null and void. Fraudulent contracts by insolvent void.

2. All gratuitous contracts made by an insolvent with any person whomsoever: and all onerous contracts by which creditors are injured or obstructed, made by an insolvent with a person knowing his insolvency or after his insolvency is public and notorious, are presumed to be made with intent to defraud his creditors. What shall be deemed fraudulent contracts.

3. An onerous contract by which creditors are injured or obstructed, made by an insolvent with a person ignorant of his insolvency, and before it has become public and notorious, is voidable, and may be set aside at the suit of the assignee or of any creditor; 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. Contracts made by insolvent voidable in certain cases.

4. If any sale, deposit, pledge, transfer, gift in payment, or payment, whether by way of security for payment, or of payment of any debt, be made by any person to any creditor, in contemplation of insolvency, whereby such creditor obtains or will obtain an unjust preference over the other creditors: and such person, within thirty days thereafter becomes insolvent, such sale, deposit, pledge, transfer, gift in payment, or payment is presumed to be made in fraud of creditors and is null and void, and the subject thereof may be recovered back for the benefit of the estate by the assignee, or by any creditor, in any Court of competent jurisdiction. In what case preferential sales, &c. shall be deemed fraudulent.

5. Every payment made within thirty days next before insolvency by a trader unable to meet his engagements in full, to a creditor knowing such inability, is presumed to be made with intent to defraud the creditors, and is void; and the amount paid may be recovered back by suit in any competent Court by the assignee, or by any creditor, for the benefit of the estate. When payments shall be deemed fraudulent.

6. Any transfer of a debt due by the insolvent, made within thirty days next previous to his insolvency, or at any time afterwards, to a debtor, knowing the insolvent 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 insolvent; and the debt due to the estate of the insolvent 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. Transfer of debts due by insolvent.

7. Any trader who purchases goods on credit, or procures advances in 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 purchases goods or incurs debts in contemplation of insolvency, with intent to defraud the person thereby becoming his creditor; or who by any false pretence obtains a term of credit for the payment of the price or any part of the price of any goods, wares or merchandise, with intent to defraud the seller Certain other frauds defined.

thereof; 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 imprisonment for such time as the Court may order, not exceeding years, to compel payment of the debt so incurred by him, and of all costs incurred in endeavouring to enforce the collection thereof, unless such debt and costs be sooner paid. 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 severally liable. 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.

OF COMPOSITION AND DISCHARGE.

10. A deed of composition and discharge executed by the majority in number, and three-fourths in value of the creditors of an insolvent, who are respectively creditors for sums of one hundred dollars and upwards shall have the same effect with regard to the remainder of his creditors, and be binding to the same extent upon him, and upon them, as if they were also parties to it. And such a deed may be validly made either before, pending, or after proceedings upon a voluntary assignment, or for the compulsory liquidation of the estate of the insolvent.

2. If the insolvent procures a deed of composition and discharge, to be duly executed as aforesaid, and deposits it with the assignee or official assignee pending the proceedings upon a voluntary assignment or for compulsory liquidation; after the period hereinbefore fixed as that after which dividends may be declared has elapsed, the assignee shall give notice of such deposit by advertisement; and if opposition to such composition and discharge, be not made within six juridical days after the last publication of such notice, he shall act upon such deed of composition and discharge according to its terms. But if any opposition be made within the said period, then he shall abstain from taking any action upon such deed until the same has been confirmed, as hereinafter provided.

3. The consent of the said proportion of creditors to the discharge of a debtor after a voluntary assignment absolutely frees and discharges him from all liabilities whatsoever existing against him, (except such as hereinafter specially excepted), which are mentioned and set forth in the statement of his affairs annexed to the deed of assignment, or which are shewn by any statement subsequently furnished to the assignee within the delay hereinbefore fixed for that purpose, or upon which dividends are accepted from the assignee: 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 of assignment. And if the holder of any negotiable paper is unknown to the insolvent, the insertion of the particulars of such paper in the statement of the insolvent, with the declaration that the holder thereof is unknown to him, shall bring the debt represented by such paper, and the holder thereof, within the operation of this section.

4. The discharge of the insolvent under a voluntary assignment made under the provisions of this Act, shall not apply to the claims of any creditor or creditors who are not named by him in his statements at the first meeting of his creditors, or who do not afterwards make such claims or accept dividends thereon from the assignee; nor to the debt arising upon any negotiable security not mentioned in the statements annexed to the deed of assignment as being in the hands of an

unknown holder—unless the holder thereof afterwards claims, or accepts dividends thereon.

5 The consent to a discharge under a voluntary assignment under this Act, or the execution of a deed of composition or discharge, shall not operate any change in the liability of any person or company, secondarily liable for the debts of the insolvent, either as drawer or endorser of negotiable paper, or as guarantor, surety or otherwise; nor affect any mortgage, hypothecque, lien or collateral security held by any creditor as security for any debt thereby discharged.

Effect of discharge as regards persons secondarily liable for debts of insolvent.

10 6. The discharge effected by such consent or by the execution of a deed of composition or of discharge, shall not apply to any debt for enforcing the payment of which the imprisonment of the debtor is permitted by this Act; nor to any debt due as damages for personal wrongs, or as a penalty for any offence of which the insolvent has been convicted: or as a balance of account due by the insolvent as an assignee, tutor, curator, trustee, executor or public officer; nor shall such debts, nor any privileged debts, nor the creditors thereof, be computed in ascertaining whether a sufficient proportion of the creditors of the insolvent have accepted his assignment: Provided always, that if the creditors of any such debts accept dividends under the assignment or become parties to the deed of composition and discharge, such debts shall be computed, and shall be discharged in the same manner as ordinary debts.

Certain other debts excepted from operation of discharge.

25 7. An insolvent who has procured consent to his discharge under a voluntary Assignment, or the execution of a deed of composition or of discharge, within the meaning of this Act, may apply by petition to the Court in Lower Canada, or in Upper Canada to the Judge, for a confirmation of the discharge effected thereby; and notice of such application shall be given by advertisement in the *Canada Gazette* for two months; and also nor the same period in Upper Canada, in one newspaper, and if Lower Canada, in one newspaper published in French, and in one newspaper published in English, in or nearest to the place of residence of the insolvent; and upon such application, any creditor of the insolvent may appear and oppose such confirmation, either upon the ground of fraud or fraudulent preference within the meaning of this Act, or of fraud or evil practice in procuring the consent of the creditors to the discharge or their execution of the deed of composition or of discharge, as the case may be; or of the insufficiency in number or value of the creditors accepting or executing the same, or of the fraudulent retention and concealment by the insolvent of some portion of his estate or effects, or of the evasion, prevarication, or false swearing of the insolvent upon examination as to his estate and effects.

Proceedings to obtain Confirmation of discharge,

40 8. The court or judge, as the case may be, upon hearing such application, the objections thereto, and any evidence adduced; shall have power either to grant such confirmation absolutely, suspensively, or conditionally, or may absolutely refuse the same.

Power of court or judge.

45 9. Until the court or judge, as the case may be, has confirmed such discharge, the burden of proof of the discharge being completely effected under the provisions of this Act, shall be upon the insolvent; but the confirmation thereof 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.

Effect of confirmation.

50 10. If after the expiration of two years from the date of a voluntary assignment made under this Act: or from the date of the appointment of an official assignee as the case may be; the insolvent has not obtained from the required proportion of creditors, a consent to his discharge under a voluntary assignment or the execution of a deed of composition and discharge, he may in like manner apply to the Court

When insolvent may apply to the Court for discharge.

in Lower Canada, or to the judge in Upper Canada, by petition to grant him his discharge; first giving notice of such application, (Form N,) in the manner hereinbefore provided for notice of applications for confirmation of discharge.

- Opposing application. 11. Upon such application any creditor of the insolvent may appear and oppose the granting of such discharge either upon the ground of fraud or fraudulent preference within the meaning of this Act; or of the fraudulent retention, concealment, or disposition of any portion of his estate and effects: or of the evasion, prevarication or false swearing of the insolvent upon his examination as to his estate and effects. 5
- Judgment of court. 12. The Court or judge, as the case may be, after hearing the assignee, the insolvent, and the objecting creditors, and any evidence that may be adduced may either grant the discharge of the insolvent absolutely, conditionally or suspensively; or may refuse it absolutely. 15
- Discharge, &c. obtained by fraud to be void. 13. Any discharge or composition and any confirmation of any discharge or composition, which has been obtained by fraud or fraudulent preference, or by means of the consent of any creditor, procured by the payment to such creditor of any valuable consideration for such consent shall be null and void. 20

EXAMINATION OF THE INSOLVENT AND OTHERS.

- When and how insolvent may be examined. 11. The insolvent may be from time to time examined as to his estate and effects upon oath, before the Judge, by the assignee or by any creditor; upon an order from the Judge obtained without notice to the insolvent, upon petition, setting forth satisfactory reasons for such order—and he may also be examined in like manner upon a *subpoena*, issued as of course without such order, in any action in which a writ of attachment has been issued against his estate and effects; which *subpoena* may be procured by the plaintiff, or by any creditor intervening in the action for that purpose, or by the assignee, 30
- Examination by assignee or creditor. 12. The Insolvent may also be so examined by the assignee or by any creditor, on the application of the insolvent for a discharge or for confirmation of such discharge, at any stage of such proceedings: or upon any petition to set aside an attachment in the proceedings for the compulsory liquidation of his estate. 35
- Wife of insolvent may be examined. 13. The wife of the insolvent, and any other person who is believed to possess information respecting the estate or effects of the insolvent, may also be from time to time examined before the Judge upon oath, as to such estate or effects, upon an order from the Judge to that effect; which order the Judge may grant upon petition setting forth satisfactory reasons for such order, without notice to the insolvent or to his wife, or to the party to be so examined. 40
- Insolvent to attend meetings of his creditors. Conduct of witnesses. 14. The insolvent shall attend all meetings of his creditors, and shall answer all questions that may be put to him at such meetings touching his business, and touching his estate and effects. 45
- Their costs. 15. Any person summoned for examination or under examination under this Act shall be subject to proceedings and punishments similar to those which may be taken against or inflicted upon ordinary witnesses. And on application, the Judge may in his discretion tax persons so examined and order them to be paid such taxation out of the estate or otherwise. 50

OF PROCEDURE GENERALLY.

- Notices under this Act, how to be given. 12. Notice of meetings of creditors and all other notices herein required to be given by advertisement, without special designation of the nature of such notice, shall be so given by publication thereof for two weeks 55

in the *Canada Gazette* also in Lower Canada in every issue during two weeks of one newspaper in English and one in French, and in Upper Canada, in one newspaper in English published at or nearest to the place where the proceedings are being carried on, if such newspapers are published within ten miles of such place; and in any case the assignee or person giving such notice shall also address notices thereof to all creditors and to all representatives of foreign creditors, within the Province, and shall mail the same with the postage thereon paid, at the time of the insertion of the first advertisement.

2. The questions discussed at meetings of creditors shall be decided by the majority in number and value present or represented at such meeting, unless herein otherwise specially provided. But if the majority in number do not agree with the majority in value, the meeting may be adjourned for a period of not less than fifteen days, of which adjournment notice by advertisement shall be given; and if the adjourned meeting has the same result, the views of each section of the creditors shall be embodied in resolutions, and such resolutions shall be referred to the Judge, who shall decide between them.

3. The claims of creditors shall be furnished to the assignee in writing and shall specify what security if any, the creditor holds for the payment of his claim; and if none, then it shall also be so therein stated.

4. The claims shall be attested under oath, taken in Canada before any Judge, 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, the Chief Municipal Officer of any Town or City, or any British Consul or Vice-Consul.

5. If, in Lower Canada, any claim be secured by *hypothèque* upon the real estate of the Insolvent, or if it consist of any *hypothèque* or *privilege* upon such real estate or any part thereof, the nature of such *hypothèque* or *privilege* shall be summarily specified in such claim: But unless such claim be filed with the assignee, with the deeds and documents in support thereof within three days from the day of sale of the property affected thereby, or if not, unless leave to file the same be afterwards obtained from the Judge upon special cause shewn, previous to the distribution of the proceeds of such real estate, such claim shall not be entitled to any preferential collocation upon the proceeds of such real estate.

6. Any affidavit required under this Act may be made by the party interested, or by his agent in that behalf having a personal knowledge of the matters therein stated.

6. One clear day's notice of any petition, motion or rule shall be sufficient, if the party notified resides within 15 miles of the place where the proceeding is to be taken, and one extra day shall be sufficient allowance for each additional 15 miles of distance between the place of service and the place of proceeding.

7. The 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 portion of the Province in which the proceedings are being carried on.

8. All rules orders and warrants, issued by any Judge or Court in any matter or proceeding under this Act, may be validly served in any part of this Province upon the party affected or to be affected thereby; and the service of them or of any of them may be validly made by any sheriff, bailiff, constable or other peace officer. And the certificate of any such officer under his oath of office, or his affidavit before any Judge, or Commissioner for taking affidavits, shall be *prima facie* evidence of his doings in respect of such service.

9. The 4th, 5th, 7th, 8th, 9th, 10th, 11th and 13th clauses of cap. 79 of the Consolidated Statutes of Canada shall apply to proceedings under this Act; and the whole of cap. 80 of the said Consolidated Statutes shall also apply to proceedings under this Act in the same manner and

Decision of questions.

Claims of creditors.

How to be attested.

Claims secured by *hypothèque* or *privilege*.

Who may make affidavits under this Act.

Notices of proceedings.

Commissions for examination of witnesses.

Rules, &c. may be served in any part of the Province.

Certain ss. of caps. 79 and 80, Con. Stat.

to the same extent as to proceedings before Courts of Records in Upper and Lower Canada.

Forms.

10. The forms appended to this Act or other forms in equivalent terms, shall be used in the proceedings for which such forms are provided.

Case of death of insolvent.

11. The death of the insolvent, pending proceedings upon a voluntary assignment or in compulsory liquidation shall not affect such proceedings, or impede the winding up of his estate. And his heirs or other legal representatives may continue the proceedings on his behalf to the procuring of a discharge, or of the confirmation thereof, or of both.

Costs.

12. The costs of the action to compel compulsory liquidation shall be paid by privilege as a first charge upon the assets of the insolvent; and the costs of the judgment of confirmation of the discharge of the insolvent, or of the discharge if obtained direct from the Court, and the costs of winding up the estate, being first submitted at a meeting of creditors, and afterwards taxed by the Judge, shall also be paid therefrom; and the Superior Court for Lower Canada and the in Upper Canada shall forthwith make a tariff of fees and disbursements, for all proceedings under this Act in the office of any clerk or prothonotary of any Court, or before any Court, or any Judge of any Court.

GENERAL PROVISIONS.

Rights of unpaid vendor under *Coutume de Paris* restricted.

13. In all cases of sales of merchandize to a trader in Lower Canada subsequently becoming insolvent; the exercise of the rights and privileges conferred upon the unpaid vendor, by the 176th and 177th articles of the *Coutume de Paris*, is hereby restricted to a period of fifteen days from the delivery of such merchandize.

Marriage contracts of traders to be registered within a certain period.

In Lower Canada, every trader who marries, having previously executed a contract of marriage by which he gives, or promises to give or to pay, or cause to be paid, to his wife, any property or effects, or any sum of money, shall cause such contract of marriage to be enregistered within thirty days from the execution thereof, and every trader already married, having such a marriage contract with his wife, shall enregister the same, if it be not already enregistered, within three months from the passing of this Act; and every person not a trader, but hereafter becoming a trader, and having such a contract of marriage with his wife, shall cause such contract to be enregistered, (if it be not previously enregistered,) within thirty days from becoming such trader.

In default of such registration.

And in default of such registration the wife shall not be permitted to avail herself of its provisions in any claim upon the estate of such insolvent for any advantage conferred upon or promised to her by its terms.

Judgments in actions *en separation de biens*.

3. No judgment shall be rendered against any insolvent trader in Lower Canada in any action against him by his wife *en separation de biens*, or *en separation de corps et de biens*, unless the institution of such action is advertised continuously for one month in the *Canada Gazette*, and in two newspapers published in or nearest to the place of residence of such trader, one in French, the other in English: nor unless such action be brought in the district within which the defendant has his domicile: And any creditor of the defendant in any such suit may intervene therein for the purpose of examining such debtor respecting his estate and effects, without becoming liable for any costs either to the plaintiff or to the defendant: and may also intervene therein and oppose the demand of the plaintiff, or subsequently contest the validity of any judgment rendered therein subject to the ordinary rule as to costs.

Case of insolvent trader entering a copartnership.

4. 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

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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.

5. If upon such service the amount of such judgment, interests 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.

6. If within thirty days from such service, the copartnership existing between such insolvent trader and such trading company or copartnership is not dissolved 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.

7. The words "the Judge" shall, in Lower Canada, signify a Judge of the Superior Court for Lower Canada, having jurisdiction at the domicile of the insolvent—and in Upper Canada a Judge of the County Court of the county in which the proceedings are carried on. and the words, "the Court" shall, in Lower Canada signify the said Superior Court—and in Upper Canada the County Court unless it is otherwise expressed or unless the content plainly requires a different construction.

8. The word "Assignee" shall mean the official assignee appointed in proceedings for compulsory liquidation as well as the assignee, appointed under a deed of voluntary assignment. The word "day" shall mean a juridical day. The word "Creditor" 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 computation for ascertaining the numbers of creditors, or in the dividends to be paid under any assignment or deed of composition: And all the provisions of this Act respecting traders, shall be held to apply equally to unincorporated trading companies, and co-partnerships; and the chief office, or place of business of such incorporated trading companies and co-partnerships shall be their domicile for the purposes of this Act.

9. Every assignee to whom a voluntary assignment is made under this Act, and every official assignee appointed under the provisions of this Act, is an agent within the meaning of the 43rd, 44th, 46th, 48th and 49th sections of the 92nd chapter of Consolidated Statutes of Canada; and every provision of this Act, or resolution of the creditors, relating to the duties of an assignee or official assignee shall be held to be a direction in writing, within the meaning of the said 43rd section of the said chapter. And in an indictment against an assignee or official assignee under any of the said sections, the right of property in any monies, security, matter, or thing, may be laid in "the creditors of the insolvent, (naming him,) under the Insolvent Act of 1863."

10. The deed of assignment, or an authentic copy thereof, or a duly authenticated copy of the order of the judge appointing an official assignee: or a duly certified extract from the minutes of a meeting of creditors; according to the mode in which the assignee or official assignee is alleged to be appointed 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.

Solvent partners may dissolve company in certain cases,

In what case judgment executory against the copartnership

Interpretation.

"Judge."

"Court."

"Assignee."

"Day."

"Creditor."

Domicile.

Assignees to be agents within the meaning of Gen. Stat. . Can: d. cap. 92 sec. 43 &c

Deed of Assignment &c., to be *prima facie* evidence.

Short title.

14. This Act shall be known and cited as the Insolvent Act of 1863.

FORM A.

INSOLVENT ACT OF 1863.

The Creditors of the undersigned are notified to meet at _____ in
 on _____ the _____ th day
 of _____ at eight o'clock for the purpose of re-
 ceiving statements of his affairs, and of naming an assignee to whom he
 may make a voluntary assignment, under the above Act.
 (Domicile of debtor and date.)

(Signature.)

FORM B.

INSOLVENT ACT OF 1863.

This assignment made between _____ of the
 first part, and _____ of the second part.
 Witnesses.

(or

On this _____ day of _____
 Before the undersigned notaries
 came and appeared
 of the first part and
 of the second part which said parties declared to us Notaries.)

That under the provisions of "the Insolvent Act of 1863" the said
 party of the first part, being insolvent, has voluntarily assigned and
 hereby does voluntarily assign to the said party of the second part,
 accepting hereof as assignee under the said Act, and for the purposes
 therein provided, all his estate and effects real and personal of every
 nature and kind whatsoever.

To have and to hold to the party of the second part as assignee for
 the purposes and under the Act aforesaid.

And duplicates of the statements exhibited at the first meeting of his
 creditors, by the said party of the first part are hereto annexed.

In witness whereof, &c.

or

Done and passed, &c.

FORM C.

INSOLVENT ACT OF 1863.

In the matter of

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

an Insolvent.

The creditors of the insolvent are hereby notified that he has made
 a voluntary assignment of his estate and effects, under the above Act, to
 me, the undersigned assignee, and they are required within two months
 from this date to furnish me with statements of their claims, speci-

fyng the security they hold, if any, and if none, stating the fact, the whole attested under oath, with the vouchers in support of such claims; and also to inform me in writing whether or no they consent to the discharge of the insolvent.

(Place date)
Signature of assignee.

FORM D.

INSOLVENT ACT OF 1863.

To (name Residence and description
of insolvent.

You are hereby required to make an assignment of your estate and effects under the above Act, for the benefit of your creditors.

Place date.
(Signature of creditor.)

FORM E.

INSOLVENT ACT OF 1863.

PROVINCE OF CANADA, }
DISTRICT OF }

A. B.—, (name, residence and description.) Plaintiff.

vs.

C. D.—, (name, residence and description.) Defendant.

I, A. B.—, (name, residence and description) being duly sworn, depose and say:

1. I am the Plaintiff in this cause (or one of the Plaintiffs,) (or the clerk, or the agent of the Plaintiff in this cause, duly authorised for the purposes hereof.)

2. The Defendant is a trader,) and is indebted to the Plaintiff in the sum of _____ dollars currency for, (state concisely and clearly the nature of the debt.)

3. To the best of my knowledge and belief the defendant is insolvent within the meaning of the insolvent Act of 1863, and my belief is founded upon the following facts (state concisely the facts which are believed to establish the insolvency of the debtor.

4. To the best of my knowledge and belief the defendant has rendered himself liable to have his estate placed in compulsory liquidation under the above mentioned Act: and my reasons for so believing are as follows: (state concisely the facts relied upon as rendering the estate of the insolvent liable to be placed in compulsory liquidation.)

And I have signed; (or I declare that I cannot sign.)

Sworn before me at
this _____ day of _____ 186 .

and if the deponent cannot sign,
add—' the foregoing affidavit having
been first read over by me to the de-
ponent.

FORM F.

PROVINCE OF CANADA, } VICTORIA, by the Grace of God, of the
 District of Quebec, } United Kingdom of Great Britain and Ire-
 land, Queen, Defender of the Faith.
 To the Sheriff of our District of
 (Or in Upper Canada to
 of)

No.

GREETING :

WE command you at the instance of
 to attach the estate and effects, moneys and securities for money, vouch-
 ers, 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 of 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
 then and there to answer the said

of the plaint contained in the declaration hereto annexed, and fur-
 ther to do and receive what, in our said Court before Us, in this behalf
 shall be considered; 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 sixty in the
 year of our Reign

FORM G.

INSOLVENT ACT OF 1863.

A. B.,
 Piff.
 vs.
 C. D.,
 Deft.

A writ of attachment has issued in this cause, of which all persons
 interested in the estate of the defendant, and all persons having in their
 possession, custody or power any portion of the assets of the defend-
 ant, or who are in any way indebted to him are required to take notice.

(Place date.)

(Signature,)

Sheriff.

FORM H.

This deed, made under the provisions of the insolvent Act of 1863,
 the day of &c.,
 between A. B., of &c., in
 his capacity of assignee of the estate and effects of

an insolvent, of the one part, and C. D., of &c., of the other part, witnesseth: That he, the said A. B., in his said capacity, doth hereby grant, bargain, sell and confirm unto the said C. D., his heirs and assigns for ever, all (*in Upper Canada insert "the rights and interests of the Insolvent in"*) that certain lot of land, &c., (*insert here a description of the property sold*): To have and to hold the same, with the appurtenances thereof, unto the said C. D., his heirs and assigns for ever. The said sale is so made for and in consideration of the sum of \$
 in hand paid by the said C. D. to the said A. B., the receipt whereof is hereby acknowledged (*or of which the said C. D. hath paid to the said A. B. the sum of* the receipt whereof is hereby acknowledged, and the balance or sum of \$
 the said C. D. hereby promises to pay the said A. B., in his said capacity, as follows, to wit—(*here state the terms of payment*)—the whole with interest payable
 and as security for the payments so to be made, the said C. D. hereby specially mortgages and hypothecates to and in favor of the said A. B. in his said capacity, the lot of land premises hereby sold. In witness, &c.,

A. B. (L.S.)
 C. D. (L.S.)

Signed, sealed and delivered
 in the presence of
 E. F.,

FORM I.

INSOLVENT ACT OF 1863.

In the matter of

A. B. (*or A. B. & Co.*),
 An Insolvent.

The Creditors of the insolvent are notified that I, the undersigned, (*name and residence,*) have been appointed official assignee of his estate and effects: and that they are required to produce before me within two months from this date, their claim upon the said estate under oath, specifying the security they hold if any, and if none, stating the fact, with vouchers in support of such claims.

(*Place* *date.*)

(Signature,)
 Official Assignee.

FORM K.

INSOLVENT ACT OF 1863.

In the matter of

A. B. (*or A. B. & Co.*),
 An Insolvent.

The Creditors of the insolvent are notified that a dividend sheet has been prepared, and will remain open to inspection and objection, at my office (*describing it*) every day between the hours of
 and until the day of
 after which the dividends therein allotted will be paid.

FORM L.

INSOLVENT ACT OF 1863.

Province of Canada, } In the (*name of Court*)
 District (or County) of } In the matter of
 A. B. (or A. R. & Co.,)
 An Insolvent.

Notice is hereby given that on the
 day of next, at ten of the clock in the forenoon, or
 as soon as counsel can be heard, the undersigned will apply to the said
 Court (or to the Judge of the said Court as the case may be) for a con-
 firmation of the discharge effected in his favor, under the said Act,
 by the consent of a certain portion of his creditors to such discharge,
 (or by the deed of composition and discharge executed by a certain por-
 tion of his creditors in his favor on the day of)
 (or by the deed of discharge executed by a certain portion of his credi-
 tors in his favor on the day of)
 (Place date.)
 (Signature of Insolvent, or of his Attorney *ad litem*.)

FORM M.

INSOLVENT ACT OF 1863.

In the matter of A- B., an Insolvent.

In consideration of the sum of \$ whereof quit; C. D. assignee of
 the Insolvent, in that capacity hereby sells and assigns to E. F. accepting
 thereof, all claim by the Insolvent against G. H. of (*describing the debtor*)
 with the evidences of debt and securities thereto appertaining, but with-
 out any warranty of any kind or nature whatsoever.

C. D. Assignee.
 E. E.

FORM N.

INSOLVENT ACT OF 1863.

Province of Canada, } In the (*name of Court*)
 District (or County) of } In the matter of
 A. B. (or A. B. & Co.)
 An Insolvent.

Notice is hereby given that on the
 day of next, at ten of the clock in the forenoon,
 or as soon as counsel can be heard, the undersigned will apply to the
 said Court (or to the Judge of the said court, as the case may be) for
 a discharge under the said Act.
 (Place date).
 (Signature of Insolvent or of his Attorney *ad litem*.)