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No. 44.

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

BILL.

**An Act to enable unfortunate Debtors to
make voluntary Assignments of their
Property to their Creditors.**

Received and read, first time, Saturday, 23rd
March, 1861.

Second reading, Tuesday, 2nd April, 1861.

Hon. Mr. SICOTTE.

QUEBEC:

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

BILL.**An Act to enable unfortunate Debtors to make voluntary Assignment of their Property to their Creditors.**

HER MAJESTY, &c., enacts as follows :

I. Any Trader who has had his domicile in Canada for a period of at least twelve months, and who is unable to pay his bonâ-fidê and honest debts, may, to avoid being harrassed by his creditors, voluntarily
5 cede and assign to them all his property or any part of his property, that they may thereby be enabled to pay themselves out of the property so assigned, in such manner as shall have been arranged by previous agreement.

II. In case of the acceptance of such assignment by the creditors,
10 by at least a majority of the creditors both as regards number and amount of indebtedness, the said creditors shall be placed and remain in possession of the property of the debtor until the debts of the latter have been entirely paid, unless in virtue of the agreement stipulated in the deed of assignment, or of any subsequent deeds the creditors have
15 re-transferred to him the surplus.

III. The creditors do not hold possession for their own benefit, of the property ceded and assigned, but only as trustees to administer and dispose of it in the name of the debtor for the benefit of the creditors.

IV. The debtor retains the ownership of the property assigned, and
20 the right, until it is sold, of re-assuming the possession and enjoyment of his property, upon payment of the whole amount of his indebtedness to the creditors in possession, and also the costs they may have incurred in administering or disposing of the property.

V. If the creditors refuse to accept the amount due to them, the
25 debtor may cause them to be condemned to re-instate him in the possession and enjoyment of the property assigned, after having first made tender thereof, and depositing in court, with the return of his application, the moneys he has tendered.

VI. The Court within whose jurisdiction the domicile of the debtor
30 lies, is the tribunal to which the debtor must in such case apply, unless, by any agreement contained in the Deed of Assignment, a tribunal other than that within the jurisdiction of which the domicile of the debtor is, has been agreed upon as that before which any contestation between the debtor and his creditors is to be brought, and in such case the ap-
35 plication above mentioned and all contestations between the debtor and his creditors which cannot be settled by mutual arrangement shall be brought before the tribunal so indicated and selected by the parties.

VII. If it happens that the property assigned is sold at such a price as to leave a balance in hand, after discharging all the debts, such balance shall belong to the debtor.

VIII. In case of the death of the debtor before the sale of the property assigned, the creditors shall retain possession thereof, and the right of proceeding to the sale thereof, without it being requisite to notify the heirs of the debtor. 5

IX. The conditions of the assignment of the property shall be established either by the deed of cession and assignment or by a separate deed, and in such deed the creditors shall appoint one or more of their number to assume the management of the property, and the administration of the business resulting from the cession and assignment. 10

X. The said Administrators shall be appointed by the majority of the creditors, such majority moreover, representing by their claims three-fourths of the total amount of the debts, as indicated by the statement of debts in the balance sheet presented by the debtor. 15

XI. The creditors appointed as such Administrators, shall be designated the Trustees, and shall be the representatives of all the creditors, and it shall be their duty to establish as speedily as possible, the correctness of the balance sheet furnished by the debtor. 20

XII. The said Trustees may, in their own names as Trustees, sue for the recovery of all debts due to the debtor, and may take, both in the prosecution and defence of suits, all the proceedings that the debtor might take with respect to the property assigned, and in all matters relative to its administration and sale. 25

XIII. The Trustees may, by one and the same action, sue all the persons indebted to the debtor who has assigned, in the Court having jurisdiction over such persons, and the costs of such suit shall be paid by all the persons indebted, in such proportions as may be ordered by the Court. 30

XIV. The deed of assignment shall not alter the condition of the hypothecary or privileged creditors, and such creditors shall be paid in the order of their hypothecs or privileges in preference to the chirographary creditors.

XV. Those creditors who shall not have consented to the deed of cession and assignment, shall not be bound by such assignment, and they may take proceedings against the person and property of the debtor, excepting in the circumstances and under the conditions indicated in the section following. 35

XVI. In the interests of commerce it is enacted, that either in case of a composition, or a contract of voluntary cession and assignment, or of any other arrangement made and entered into between a debtor, being a trader and his creditors, the minority of the creditors is obliged to yield to the majority, provided that the arrangement is made and accepted by a number of the creditors forming the majority, and representing three-fourths of the whole amount due by the debtor. 45

XVII. The debtor or any creditor who has given his consent to the

deed of assignment, may summon all the creditors refusing to consent to the deed of assignment, by one and the same action in the ordinary form of proceeding, in an action for a sum equivalent to that due to the minority of the creditors, to shew cause why the deed of assignment
 5 should not be declared obligatory against all the creditors, and such action shall be brought and proceeded with in the Court having jurisdiction, as regards domicile over the majority of the creditors so called upon.

If the Court is of opinion that the debtor is acting in good faith, that no fraudulent transaction to the detriment of his creditors has
 10 been proved against him, and that he has assigned the whole of his property, excepting only such as is exempted by law from seizure, or that which the majority of his creditors has agreed to leave in his possession, and at his disposal, it shall grant homologation of the deed of assignment, or of any other arrangement, whenever it shall be estab-
 15 lished that a number of the creditors forming the majority, and representing, moreover, after verification of the claims, the three-fourths of the whole amount due, have consented to the assignment.

XVII. No appeal shall be allowed from the judgment or judgments rendered in the matters arising out of such assignment, and indicated
 20 in the deed thereof.

XVIII. The trustees shall render an account of their management and administration, by causing to be transmitted to each creditor every six months, a statement of the matters entrusted to their direction.

XIX. The trustees shall be bound, at least every six months, to pay
 25 over to the creditors, according to the rights and privileges of each creditor, the amount they may have in hand, accruing from the administration or sale of the property of the debtor.

XX. The trustees shall be deemed, and shall be dealt with as judicial guardians, in respect of the property assigned and placed in their
 30 possession.

XXI. In case the Court refuses to homologate the deed of assignment, on account of bad faith or fraud on the part of the debtor, as against any one of his creditors, it shall render judgment against the debtor, and in favor of each creditor, for the amount admitted or estab-
 35 lished to be due to each creditor.

XXII. Such judgment shall be executory and executed against the debtor in the name of all the creditors, upon the order of any one creditor given in the ordinary manner, and proceedings shall be taken upon such judgment as in other cases after judgment.

40 XXIII. The distribution of the monies realized by the sale of the immoveable and moveable estate of the debtor, shall take place in the ordinary manner as practised in the Court in cases in which the defendant is insolvent.