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No. 228.

2nd Session, 6th Parliament, 22 Victoria, 1859.

BILL.

An Act to facilitate the winding up of the affairs of Commercial Companies unable to meet their pecuniary engagements.

Received and read, first time, Wednesday, 6th April, 1859.

Second reading, Saturday, 9th April, 1859.

MR. DAWSON.

TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to facilitate the winding up of the affairs of Commercial Companies unable to meet their pecuniary engagements.

WHEREAS it is expedient for the benefit of the creditors, and also of the members of such Commercial Companies as are hereinafter 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. This Act shall apply to all partnerships, associations and companies whereof the members are not fewer than five in number, whether limited or general, whether incorporated or unincorporated, and whether formed or subsisting before or after the passing of this Act, other than and except Railway Companies incorporated by Act of Parliament, to which last mentioned companies this Act shall not apply.

To what Companies, &c., the Act shall apply.

II. 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 to an amount sufficient to pay the debts of the company, and all the 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 shareholder thereof exceeding the amount, if any, unpaid on the shares held by him.

Liability of Members.

Proviso.

III. A company may be wound up under this Act by the Court of Chancery of Upper Canada under the following circumstances, that is to say :

Under what circumstances a Company may be wound up.

1. Whenever the company in general meeting has passed a special resolution requiring the company to be wound up by the Court ;

2. Whenever the company does not commence its business within a year from its incorporation or formation, or suspends its business for the space of a whole year, or shall have become dissolved by effluxion of time ;

3. Whenever the company is unable to pay its debts ;

4. Whenever one half of the capital of the company has been lost or become unavailable.

When a Company shall be deemed unable to pay its debts.

IV. A company shall be deemed unable to pay its debts, within the meaning of this Act, whenever execution against the goods of such company is returned unsatisfied in whole or in part by the Sheriff of the County in which the principal office or house of business of such company is situate, or whenever a sum of money directed by a decree, order or report of the said Court to be paid by such company shall have remained unpaid for the space of thirty days after service on such company of such decree, order or report, by leaving a copy thereof with any one of its members or officers, or at its said principal house of business.

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On what application a Company may be wound up.

V. Any application for the winding up of any company shall be by petition filed in the said Court, and verified by affidavit or other sufficient evidence; and such petition may, in cases where the company is unable to pay its debts, be filed either by a creditor whose debt shall have 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 such assets as aforesaid for 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.

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Notice of hearing by advertisement.

VI. Twenty days before the hearing of any such petition as aforesaid, notice of such hearing shall be advertized once in the "Canada Gazette," and once in some newspaper published at the place where the head or only office or house 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; and such notice shall also be served at the said head or only office of the company upon any member, officer or servant thereof, or in case no such member, officer or servant can be found there, then by being left at such office, or served anywhere personally upon any member of the said company; Provided that in case such service as aforesaid cannot be effected within such time as the said Court may deem reasonable, the said Court may proceed to hear and to make any order on the said petition on production of the number of the "Canada Gazette" and newspaper containing such advertisement, and without proof that such notice has been served in manner aforesaid; Provided also, that the said Court may, if it shall think fit, at the hearing of the said petition, direct the same to stand over for the purpose of making such further service (if any) as to the Court shall seem meet.

Proviso.

Proviso.

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What orders the Court may make.

VII. Upon the hearing of any petition filed by such creditor as aforesaid, the Court may dismiss such petition or make an order for the payment of the debt, and in case of default in such payment then an order absolute for winding up the company by a certain day therein named, or it may make an order absolute in the first instance for the winding up of the company, or such other order as it may deem just.

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And if the application is made by a Contributory.

VIII. Upon the hearing of a petition filed by such contributory as aforesaid, the Court may dismiss the petition, or make an order absolute directing the company to be wound up, or such other order as it may deem just.

IX. After the date of such order absolute for winding up the company, all suits against the company shall, if the Court so direct, be stayed.

Suits may be stayed.

No member or officer of the Company shall, without the sanction of the Court, dispose of any of the property or effects of the company, and no transfer of any shares or interest in the company shall be valid without the sanction of the Court.

Property of Company not to be disposed of.

X. As soon as may be after making an order absolute for winding up the Company, the Court shall cause the assets of the company to be collected and applied in discharge of its liabilities in a due course of administration, and for that purpose shall have power to appoint an Official Liquidator with such powers as hereinafter mentioned to summon persons suspected of having property belonging to the company, and compel them to give it up or pay the value of it in case it shall be proved to the satisfaction of the Court that they are chargeable with such property or its value.

Assets to be collected and applied by an Official Liquidator.

XI. The Court may at any time, and from time to time, after making an order absolute for winding up a Company, make calls on all or any of the contributories to the extent of their liability, for payment of all or any sum or sums it deems necessary to satisfy the debts of the Company, and the costs of winding it up, and it may, in making such calls, take into consideration the probability of some assets not yet collected being realized, some liabilities not yet ascertained, becoming debts, and that some of the contributories upon whom the call is made may fail wholly or in part to pay their respective portions thereof.

Calls on contributories.

XII. As soon as the creditors are satisfied, the Court shall proceed to adjust the rights of the contributories among themselves, and to distribute any surplus that may remain, among the parties entitled thereto, and for the purposes of such adjustment it may make calls on contributories to the extent of their liabilities for the payment of such sums as it deems necessary.

Division among contributories when creditors are satisfied.

XIII. The Court may make such order as to the payment of the costs, charges, and expenses incurred in winding up any Company, and as to the priority of such payments, as it may deem just.

Costs, and expenses.

XIV. For the purpose of conducting the proceedings in winding up a company, and assisting the Court therein, there shall be appointed a person to be called the Official Liquidator, and such appointment shall be made in the same manner and with the like securities as now adopted and required by the said Court, on the appointment of a Receiver, or such securities as under the circumstances the Court may deem sufficient.

Official Liquidator. Appointment &c.

XV. The Official Liquidator shall be described by the style of the Official Liquidator of the particular company in respect of which he is appointed, and not by his individual name: And it shall be his duty to take into his custody all the property and effects whatsoever of the company, and to perform such services in reference to the winding up of the company as may from time to time be imposed upon him by the said Court, and he shall have power, with the sanction of the Court, by any order in that behalf, to bring and defend suits,—to sell and dispose of all

His Official Style, &c. His duties.

the property and effects of the company,—to collect all debts and assets belonging to it,—to execute all deeds and documents in the name of the company, under its seal, or otherwise,—to refer disputes to arbitration,—to compromise any debts or claims,—to appoint a solicitor to make out lists of contributories, and add to or vary the same as the contributories thereon, or any one of them, may require; and to do and execute all such acts and things whatsoever as may be necessary or convenient for winding up of the affairs of the company, and distributing its assets. 5

His pay. XVI. There shall be paid to the Official Liquidator such salary or remuneration, by way of per centage or otherwise, as the Court may 10 direct.

Dissolution of XVII. When the affairs of the company shall have been completely the Company. 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. 15

Court may XVIII. The said Court may, as often as circumstances require, make make rules for such rules concerning the mode of proceeding to be pursued for winding up a company as from time to time may seem necessary or convenient, and until such rules are made, it shall be competent to the said 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 granting powers to the said Official Liquidator, in the discharge of his duties under this Act; and any power or direction contained in any such order shall be deemed to have been fully authorized by this Act. 20

Court may XIX. It shall be lawful for the Court—in any decree or order for the order Companies to be dissolution of a company or any other association or partnership, (whether wound up in included in this Act or not,) to be made in any suit now pending, or certain cases, or hereafter to be instituted, or in any order made after such decree of dissolution, in such suit—to direct that the affairs of such company, association, or partnership, shall be wound up under the provisions of this Act, and for that purpose to give such directions as the Court shall deem necessary in that behalf, and as to costs or otherwise; and any decree or order so made, shall, if the Court shall therein so direct, be deemed to be an order absolute for winding up such Company under this Act. 25 30

Who shall attend proceedings in Liquidation. XX. Upon any order absolute for winding up any Company under this Act being brought into the Master's office, he may, at his discretion, determine what parties are sufficient to attend the proceedings before him, and may appoint representatives of contributories, or classes of contributories, to attend and watch the proceedings of the liquidation before him, or any particular part of such proceedings; Provided that all contributories may, if they choose, and at their own expense, be entitled to attend such proceedings, and to submit any proposal in writing or otherwise, as the Master may direct, in relation to the affairs of such company, and such winding up of the same. 35 40

Proviso.