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No. 204.

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3rd Session, 5th Parliament, 20 Victoria, 1857.

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**BILL.**

An Act to facilitate arrangements between  
Debtors and Creditors.

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Received and read, first time, Wednesday, 1st  
April, 1857.

Second reading, Thursday, 16th April, 1857.

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HON. MR. CAMERON.

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TORONTO :  
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## An Act to facilitate arrangements between Debtors and Creditors.

**WHEREAS** it is expedient that amicable modes of arrangement between debtors and their creditors should be facilitated, and that better means should be provided for carrying the same into effect : Therefore Her Majesty, &c., enacts as follows :

Preamble.

- 5 I. From and after the passing of this Act, it shall be lawful for any number of creditors, not less than three, whose claims in the aggregate amount to £100, of any debtor who has failed to meet his engagements, to present a petition to the Judge of the County Court of the County or Union of Counties in which such debtor is residing at the time of presenting the petition, setting forth the nature of their claims, the time when they were due, that the debtor has failed to meet them, and their belief of his inability to meet all his engagements ; and upon the verification of such petition by the oath of the creditors so presenting the same, the Judge of such County Court shall summon such debtor, upon a day to be named in such summons to appear before him, and to produce a statement on oath, setting forth a full account of his debts, and the names, residences and occupations of his creditors, and also a full account of his estate and effects, whether in possession, reversion or expectancy, and of all debts and rights due to or claimed by him, and of all property of what kind soever held in trust for him ; and upon the appearance of such debtor such Judge shall require the production of such statement, and may examine on oath such debtor or any of the creditors petitioning, or any witness produced by either of such creditors or the debtor, and may order such meeting of creditors to be called as hereinafter mentioned, or refuse to proceed upon such petition, as to such Judge shall seem most just.

Presentation of petition by creditors of a debtor failing to meet his engagements, to County Judge, and proceedings thereon.

Statement of debts and effects.

Judge may order meeting of creditors, or refuse to proceed.

- II. Any debtor who is unable to meet his engagements, with the concurrence of one-third in number and value of his creditors, (certified by their signing his petition,) may present a petition to the Judge of the County Court of the County or Union of Counties in which such debtor is residing at the time of presenting his petition, setting forth a full account such as is in the first section of this Act mentioned ; and also setting forth that he is unable to meet his engagements with his creditors, and the true cause of such inability, and also setting forth such proposal as he is able to make for the future payment or compromise of such debts or engagements, and that one-third in number and value of his creditors have assented to such proposal, and praying that such proposal (or such modification thereof as by the majority of his creditors shall be determined,) may be carried into effect under the superintendence and control of the said Court, and that he, the said petitioning debtor, may, in the mean time, be protected from arrest, by order from the said Court.

Debtor unable to meet his engagements may present a Petition, with the consent of a portion of his creditors, &c., and with a statement as above.

The prayer thereof.

Judge to examine into the matter of such petition.

III. Upon the presentation of a petition by any debtor, the Judge of the said Court shall examine into the matter of the said petition, and for that purpose shall have power to examine upon oath such petitioning debtor, and any creditor concurring in his petition, and any witness produced by such petitioning debtor, and if such Judge shall be satisfied of the truth of the several matters alleged in such Petition, and that the debts of such petitioning debtor have been contracted *bona fide* and honestly, without fraud or breach of trust, and with reasonable probability, at the time of contract, of being able to pay the same, and that such petitioning debtor has made a full disclosure of his debts and credits and estate and effects, and is desirous of making a *bona fide* arrangement with all his creditors, and that his proposal to that effect is reasonable,— or where such petition as aforesaid has been presented by creditors, if such Judge is satisfied that from the debtor's inability to meet his engagements it is advisable that his creditors shall be called together,— it shall be lawful for such Judge to direct that a meeting of all the creditors of such debtor shall be convened at such time and place as the said Judge shall appoint, notice of which meeting and of the purpose thereof, and of the order under which it is to be held, shall be given personally to every creditor or left at his last place of abode or business, by such petitioning creditors, or one of them, or by such debtor, if the creditor is resident within this Province, or if resident without this Province, notice shall be sent to him by mail, not less than fourteen days before the same is held.

And, if satisfied, to order a meeting of the creditors.

Notice to the creditors.

Who shall prescribe at the meeting.

IV. At such meeting of creditors, the creditor present whose debt, from such debtor, is of the largest amount, as stated in his said account or petition or statement, shall preside, and report the resolution thereof to the said Judge.

Agreement entered into by a certain proportion of the creditors to bind the rest, and the debtor.

V. If at such meeting of creditors, the major part in number and value, or three-fourths in value or three-fourths in number whose debts exceed twenty-five pounds, shall assent to any arrangement with such debtor for the payment or compromise of the debts and claims against him, and shall reduce the terms thereof to writing and sign the same, such resolution or agreement shall thenceforth be binding and of full force, as well against the said debtor as against all persons who were his creditors at the date of the petition of the petitioning creditors or debtor, and who had notice of the said meeting of creditors; Provided, however, that such resolution or agreement shall not be valid, unless one full third in number and value of all the creditors of such debtor were present at such meeting, either in person or by an authorized agent.

Proviso.

Such agreement to be filed within a certain time, and debtor protected from arrest.

VI. Within one week after the passing of such resolution or agreement, the same shall be filed and entered of record in the said Court, and the Judge thereof shall grant to such debtor a certificate of such filing, and shall from time to time endorse on such certificate the protection of such debtor from arrest, and such debtor shall be free from arrest at the suit of any person being a creditor at the date of such petition as aforesaid and having had such notice as aforesaid: Provided, however, that no such protection shall be valid in favor of any such debtor, who shall be proved to the satisfaction of such Judge, to have been about to abscond from this Province, or who has concealed or is concealing any part of his estate or effects, nor against any creditor whose debt has been contracted by reason of any manner of fraud or breach of trust.

VII. It shall be lawful for such Judge as aforesaid, upon the examination of such debtor as aforesaid, to grant to such debtor a limited and temporary protection from arrest, and such debtor shall accordingly be free from arrest for such time and within such limits and conditions as shall be specified in the said protection; and it shall be lawful for such Judge to require such debtor to give bail for his appearance at the several meetings of his creditors, and any such debtor shall have such protection from arrest when going to, remaining in, and returning from, his necessary attendance on the said Judge, or the said meetings of creditors, as is enjoyed by any party or witness attending any Court of Record.

Temporary protection from arrest may be granted.

Debtor to give bail.

VIII. From and after the date of the filing of such resolution or agreement as aforesaid, all the estate and effects of such petitioning debtor shall vest in the assignee, (if any such shall be appointed) by virtue of such resolution or agreement, and without any deed, as fully as if such assignee were an assignee under the statutes relating to Bankruptcy in force in England, and every such assignee may sue and be sued as if he were such assignee in Bankruptcy.

Estate of debtor vested in assignee, (if any) appointed under such agreement.

IX. Every such assignee as aforesaid, or the debtor if his estate and effects have been left in his own management without any assignee, once at least in every six months, or oftener if any two or more of the creditors of such debtor whose debts amount to one-tenth of the amount of the debts of such debtor, require it, shall produce to the said judge, on oath, a full and true account of all moneys, property and effects of such debtor, which have come to his hands and of his disposal thereof, and the said Judge shall examine the same and certify the result of such examination, and if need be, shall order payment to the creditors of such debtor according to the terms of such resolution or agreement as aforesaid.

Assignee (or debtor) to file accounts from time to time.

Judge to examine them, and order payments, &c.

X. If at any time it shall appear to the said Judge, on the representation of such assignee as aforesaid, or of any two creditors as aforesaid, that such debtor has not made a true discovery of his estate and effects, or has not duly accounted for any subsequently acquired property, (if required by the true intent and meaning of the said resolution or agreement,) or has wilfully made any false return of creditors, the said Judge shall summon such debtor to be examined before him on oath touching such matters, and such summons and examination shall be enforced in the same manner as is practised in England in the summoning and examination of Bankrupts.

Debtor may be called up and examined on oath.

XI. If any difficulty shall arise in the execution of such resolution or agreement, or if such assignee as aforesaid, shall die, or remove from the Province, or become incapable of performing the trust for any cause, or if it shall be shewn to the Judge that such assignee ought to be removed for any cause, it shall be lawful for the said Judge to cause a special meeting of the creditors of such debtor to be assembled, and the resolution of the majority of the creditors at such meeting, to confirm, alter or annul the whole or any part of the said original resolution or agreement, shall be as valid as if it had been part of such original resolution or agreement: Provided, however, that if one-third in number and value of the creditors of such debtor, do not attend such meeting in manner aforesaid, the resolution thereof shall not be valid unless the same be approved and confirmed by the said Judge; And provided also, that such altered resolution shall be written, signed, and filed, as is herein provided for the original resolution.

Agreement may be altered or annulled in certain cases, and how.

Proviso.

Proviso.

When and how the assignee may be discharged from his trust.

XII. So soon as the said resolution or agreement shall have been carried into effect, and the creditors of the said debtor shall have been satisfied according to the terms of the same, the said Judge shall cause a meeting of the said creditors to be had before him, and on being satisfied that the assignee has fully performed his trust, shall give to such assignee a certificate thereof, under his hand and the seal of such Court, and such certificate shall be a full release and discharge to such assignee, both in law and equity, for all matters done by him as such assignee: Provided always, that it shall be lawful for such assignee, or the said debtor, to receive for his services in the execution of his said trust, such sum of money as the majority of the said creditors in number and value, at such last mentioned meeting shall appoint. 5 10

Proviso: remuneration of assignee, &c.

Final discharge, how and when to be granted.

XIII. At or after such last mentioned meeting, the said Judge shall give to the said debtor a certificate under the hand of the said Judge, and the seal of the said Court, of the filing of the petition, of the making of the said resolution or agreement, and that the same has been fully carried into effect; and such certificate shall from thenceforth operate to all intents and purposes as a full discharge of such debtor from all debts due by him at the date of his said petition, excepting only that no debt herein excepted from the operation of this Act, shall be barred by the said certificate. 15 20

Its effect.

Court of Chancery to make rules under this Act.

XIV. For the better carrying into effect the several purposes of this Act, it shall be lawful for the Court of Chancery of Upper Canada, from time to time, to make such forms, rules, regulations and orders as the said Court shall think fit.

Extent of Act.

XV. This Act shall extend to aliens, denizens, and women, and shall be in force only in Upper Canada. 35