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No. 152.

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

BILL.

An Act for the better securing the payment of debts and obligations due by Railway Companies, and for preventing the seizure in execution of the property of such Companies.

Received and read, first time, Monday, 14th March, 1859.

Second reading, Wednesday, 16th March, 1859.

MR. BENJAMIN.

TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act for the better securing of the payment of debts and obligations due by Railway Companies, and for preventing the seizure in execution of the property of such Companies.

WHEREAS by the construction of Railways other means of transport along the lines of such Railways are in very many instances abandoned, and serious loss and injury are sustained by Her Majesty's subjects where such Railways are closed by reason of the property of Railway Companies being taken in execution for payment of debts due by them; And whereas the provisions for enforcing payment of debts due by Railway Companies at present existing are insufficient for securing the due payment to creditors of their debts; Therefore Her Majesty, &c., enacts as follows: Preamble.

I. From and after the passing of this Act the lands of any Railway Company in this Province and the rolling stock and other property whatsoever of any such Company shall not be liable to be seized or taken in execution on any writ of *fiery facias* or other process issued out of any Court of Law or of Equity in this Province, and no further proceedings shall be had or taken on any writ of *fiery facias* issued before the passing of this Act. Lands, &c., of Railway Company not to be seized in execution.

II. Whenever any Railway Company shall have raised money on the bonds of such Company, payable with interest, and on which said bonds any sum of money shall be over due and unpaid for principal or interest for the space of thirty days after such principal money or interest shall be due and payable, it shall and may be lawful for the holders of any such bonds or of any coupons issued by such Company for the payment of interest thereon, to make application to the Court of Chancery in Upper Canada, or to the Superior Court in Lower Canada to appoint a Receiver of all monies payable to such Railway Company, and if the said Court of Chancery or the said Superior Court, on motion made for that purpose to the said Court, shall think fit so to do, the said Court shall and may appoint a Receiver of all monies which are then or at any time thereafter may, during the continuance of the appointment of such Receiver, be payable to the Railway Company; And if such application is made for non-payment of interest only, the production of the coupons shall be sufficient evidence of the interest due without production of the bonds to which they were attached. If a Company do not pay any bond, &c., when due, the creditor may have a Receiver appointed.

III. If any person shall obtain final judgment from any Railway Company, which said judgment shall be unpaid for the space of thirty days after such final judgment shall have been signed or rendered, and notice Coupons to be evidence.

And so if any judgment against a Company remains unpaid thirty days.

thereof given to the Company, it shall be lawful for such judgment creditor in like manner to make application to the said Court of Chancery in Upper Canada, or to the said Superior Court in Lower Canada, for the appointment of a Receiver, and if the said Court of Chancery, or the said Superior Court, on motion made for that purpose shall think fit so to do, 5 the said Court shall and may appoint a Receiver of all monies which are then or at any time thereafter may, during the continuance of the appointment of such Receiver be payable to the said Railway Company.

Duty of Receiver.

IV. It shall be the duty of any Receiver appointed under the provisions of this Act to keep full and clear accounts of all monies which 10 may be received or expended by him as such Receiver; And it shall be the duty of the Directors and all other officers or servants of any Railway Company to which such Receiver is appointed, to pay over to such Receiver all monies received by them for or on account of such Railway Company so soon as the same shall have been received. 15

And of Company's officers.

Payment of wages and current expenses, &c.

V. The said Court by whom any such Receiver shall be appointed, shall make such order for payment of the necessary current expenses of working such Railway, and for the payment of salaries and wages, as to the said Court may seem proper; and it shall be the duty of such Receiver, under the direction of the Court, to pay out of any monies 20 received by him all such necessary current expenses, salaries and wages.

Payment of creditors of Company.

VI. The said Court of Chancery in Upper Canada or the said Superior Court in Lower Canada shall and may from time to time make such orders as to them respectively may seem fit, for the distribution and payment of all monies which shall from time to time be in the hands of 25 any Receiver appointed under the provisions of this Act, and all persons entitled to claim under this Act against any Railway Company when such Receiver may have been appointed, shall be paid rateably and without preference, except as hereinafter mentioned, due regard being had in the case of bondholders or holders of coupons for interest to the 30 priority of lien under which such bonds and coupons may have been issued, and all bonds and interest thereon shall be paid according to such priority; but in case of judgment creditors no priority shall be allowed: Provided always, that all salaries and wages due to any 35 officers or servants of such Company shall have been paid in full before any such distribution shall take place.

As to priority of lien.

Wages to be first paid.

Company not to spend money without authority of Court.

VII. It shall not be lawful during the continuance of any order for the appointment of any Receiver under this Act, for any Company or the Directors of such Company in whose case such Receiver shall have been appointed, to expend any monies which may be raised or received 40 by them, in upholding, maintaining or improving their Railway without the sanction or order of the Court by which such Receiver shall have been appointed: Provided always, that no such order shall be made for the expenditure of any money upon such Railway for the purpose of extending such Railway, or further than such expenditure shall be neces- 45 sary for keeping the Railway in working order, and no such expenditure shall be made except under the sanction of an Engineer to be appointed by the Court as hereinafter directed.

Proviso: extension of Railway not allowed.

Court may appoint an

VIII. It shall be lawful for the Court by which any Receiver under this Act has been appointed, whenever it shall seem fit to such Court, to 50

nominate an Engineer to examine the Railway of the Company in whose case such Receiver is appointed, and if it shall appear to the Court by the Report of such Engineer that any expenditure is necessary on the said Railway, to direct the expenditure required for such purpose to be made, either out of any monies to be raised by such Company, or out of monies in the hands of such Receiver as to the said Court shall seem fit: Provided always, that no such expenditure shall take place except under the superintendence of such Engineer or of some other Engineer to be appointed by the said Court for that purpose.

Engineer to
examine Rail-
way, &c.

Proviso.

IX. It shall be lawful for any person who shall obtain final judgment against any such Railway Company, or for any holder of any bond or coupon on which any principal sum of money or interest shall be due from any Company to which a Receiver has been appointed under this Act, during the continuance of the appointment of such Receiver, to apply to the Court of Chancery in Upper Canada, or to the Superior Court in Lower Canada, to be allowed to participate in the monies received or thereafter to be received by such Receiver under the provisions of this Act, and the said Courts respectively shall and may make an order directing that such person shall participate therein, and such order shall give the person so obtaining it the same rights as if a Receiver had been appointed under this Act on his application: Provided always, that any person-obtaining such order shall in any future distribution of monies in the hands of such Receiver, be entitled only to receive a dividend to the same amount on his claim as the creditors upon whose application such Receiver was appointed, notwithstanding that such other creditors shall have received prior dividends on their respective claims.

Creditors of
Company may
apply to be
allowed to
participate in
monies re-
ceived

Proviso.

X. As soon as it shall appear to the satisfaction of the Court by whom any Receiver has been appointed under this Act that the claims of all such creditors as have availed themselves of the provisions of this Act have been satisfied, the said Court shall discharge the order for the appointment of such Receiver, who shall thereupon account to the Company for all the monies he has received, and shall deliver back to the Company all monies and property of the said Company remaining in his hands, and all books and papers of the Company in his possession.

Order for ap-
pointment of
Receiver to be
discharged
when all debts
are paid.

XI. It shall be lawful for any Judge of the Court of Chancery in Upper Canada or of the Superior Court in Lower Canada to exercise all powers given by this Act to the said Courts respectively.

Anyone Judge
may act under
this Act.

XII. It shall be lawful for the said Court of Chancery in Upper Canada and the Superior Court in Lower Canada to make any rules for carrying out the provisions of this Act, which they shall think fit, having due regard to priority of lien of parties.

Courts to
make rules
under this
Act.

XIII. Nothing in this Act contained shall in any way alter, affect or impair the lien, mortgage or charge of the Government on any Railway which may have received Government aid; any such lien, mortgage or charge shall continue and remain in full force as if this Act had not been passed.

Act not to
affect Govern-
ment lien.

XIV. Notwithstanding any thing in this Act contained, any person or persons or corporation that, before the passing of this Act, shall have obtained judgment against any Railway Company and sued out execu-

Receiver may
be appointed
in cases where
judgment has

been obtained before the passing of this Act. tion thereon against the goods and chattels or lands and tenements of such Company, or shall have obtained judgment against such Company, but on which no execution has been sued out, may apply for a Receiver in the same manner as if such judgment had been obtained after the passing of this Act; and in either of the above cases the said judgments shall be paid and satisfied out of any moneys which may thereafter be received by such Receiver, according to the priority in date of such judgments, before any other claim or claims, except claims for salaries and wages against the said Company, in any case in which, on the application of any party, a Receiver may hereafter be appointed; Provided always, that those judgments on which execution has been sued out and placed in the hands of any Sheriff for execution shall be paid before those judgments on which no execution has been sued out, notwithstanding the last mentioned judgments may have been obtained at a prior date.

Priority in such cases.

Proviso. —

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