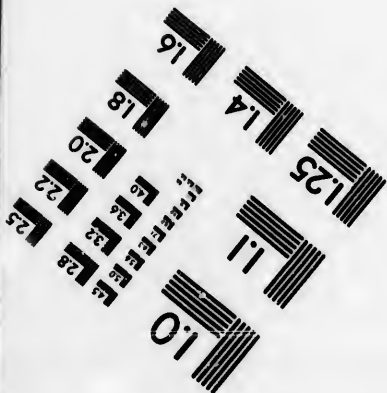
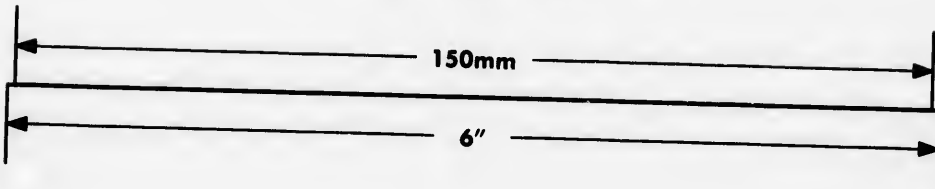
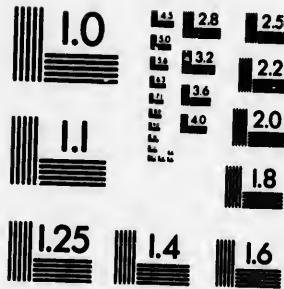
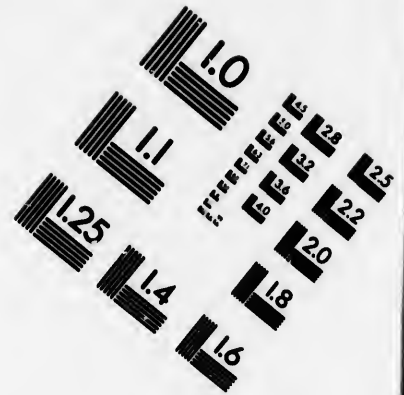
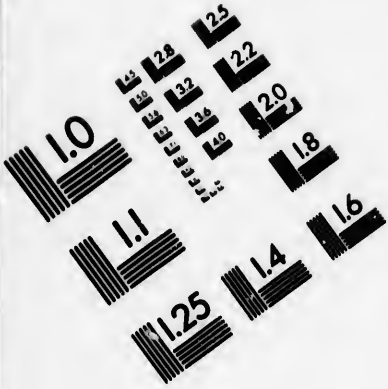


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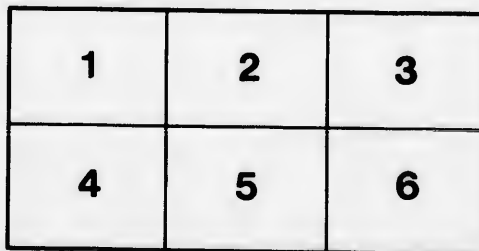
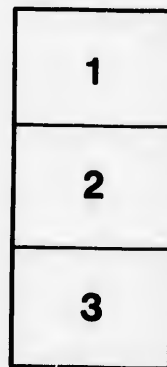
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7  
**SYNOPSIS AND INDEX**

OF THE

**INSOLVENT ACT**

OF 1875,

~~~~~  
BY WILLIAM WILSON,  
*Assistant Law Clerk, House of Commons.*  
~~~~~

*(The numbers in the Index refer to the Sections and n<sup>o</sup> to the Pages, so that it may be used for the Act, as printed separately or in the Statutes.)*

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An Act respecting Insolvency.

[Assented to 5th April, 1875.]

SYNOPSIS.

Section 1. Act to apply to Traders and Trading Companies, except Banks, Insurance, Railway and Telegraph Companies. Traders defined. Proceedings in Insolvency not to be based on any debt contracted after the trader has ceased to trade.

Section 2. Interpretation, County, District, Official Assignee, Assignee, Official Gazette, Court, Judge, Debtor, Insolvent, before Notaries, Creditor, and Collocated, defined.

Section 3. Debtor deemed insolvent,—if he acknowledges his insolvency, if, with intent to defraud his creditors, he absconds, secretes, fraudulently assigns, or connives at the seizure of his effects; if he is imprisoned for more than thirty days in an action for \$200 or more; if he fails to appear or to comply with any rule or order in respect of the payment of his debts; or if he has made any general assignment of his property otherwise than herein prescribed; or if he permits any execution to remain unsatisfied within a time fixed.

Section 4. Creditors to amount of \$500 may demand an assignment; notice shall be signified; creditors to file an affidavit, verifying debts and specifying good faith; creditors must elect a domicile for service of process.

Section 5. If the claims do not amount to \$500, or if the stoppage is only temporary, and without fraudulent intent, the Judge may annul the demand of assignment. Treble costs may be awarded, if demand has been made without reasonable grounds.

Section 6. If the debtor is absent, the time for contestation or assignment may be enlarged, but the same may be refused, if injurious to the creditors.

Section 7. Estate of the debtor to become subject to liquidation for non-compliance with the orders of the Judge, or for failure to make an assignment, if petition is not presented.

Section 8. Time for commencing proceedings limited.

Section 9. Creditor on affidavit of debt of \$200 or more, proving insolvency, may obtain a writ of attachment. Concurrent writs, subject to ordinary rules of Court, may be issued.

Section 10. How service of writs of attachment and of concurrent writs of attachment may be made.

Section 11. Writ of attachment returnable immediately after execution; notice of issue.

Section 12. Property of the insolvent to be attached by the Official Assignee. Return of the writ.

Section 13. Official Assignee to have power forcibly to enter the premises of the insolvent.

Section 14. After demand, assignment may be made to the Official Assignee, but assignment may be set aside after notice, for insufficiency, by the Judge on summary petition of a creditor.

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**Section 15. Form of assignment.**

**Section 16.** After assignment or issue of writ of attachment, property of the insolvent vested in the Official Assignee; conservatory proceedings may be instituted by him; but property exempt from seizure or held in trust not to be so vested.

**Section 17.** Within a delay fixed the insolvent to furnish a statement of his liabilities and assets, with full particulars, stating causes of insolvency. Statement may be corrected.

**Section 18.** On certain grounds specified the insolvent may petition the Judge to set aside the attachment. Hearing to be summary, and judgment to be subject to appeal.

**Section 19.** Deed of assignment or writ of attachment to be registered; in the Province of Quebec real estate to be specified.

**Section 20.** First meeting of the creditors of the insolvent, how and when called; notice to be given of such meeting.

**Section 21.** Further written notice to be sent by mail to each creditor. Local notice in case no list of creditors can be had.

**Section 22.** Who shall preside at meetings of creditors.

**Section 23.** Insolvent to attend and attest his statements; he may be examined under oath.

**Section 24.** Attestation of examination.

**Section 25.** Further and subsequent examination of insolvent; execution of instruments by the insolvent; refusal to subject him to punishment as for contempt of Court.

**Section 26.** Any other person may be summoned and examined; refusal to be punishable as for contempt of Court.

**Section 27.** Appointment of Official Assignee; in Quebec in districts; in the other Provinces in Counties; district defined.

**Section 28.** Term of office of and security to be given by the Official Assignee; recovery of the amount in default from such Assignee. Further security may be required for special benefit of an estate. Assignee to be an Officer of Court, and responsible as such.

**Section 29.** An Assignee, not the Official Assignee, may be appointed, and shall give security. Removal of Assignee. How creditors shall vote at meetings.

**Section 30.** Transfer by the Official Assignee to the Assignee appointed, of the estate and property of the insolvent.

**Section 31.** Notice of appointment of the Assignee be given.

**Section 32.** Assignee not to act as agent of a creditor.

**Section 33.** But for the general interest he may act as such, with leave of the Judge.

**Section 34.** Where meetings of the creditors shall be held.

**Section 35.** Appointment, replacement, duties and remuneration of Inspectors; Assignee or Inspector not to purchase the property.

**Section 36.** Provision as to the disposal of the estate of the insolvent.

**Section 37.** Creditors objecting to proposed disposal of estate, may, after notice, appeal to the Court or Judge.

**Section 38.** Powers of the insolvent as to his property vested in the Assignee; sanction of creditors previous to sale of entire estate; privileged claims saved.

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Section 39. Powers of the Assignee in respect of recovery of debts due the insolvent and of fraudulent agreements; pending proceedings in insolvency, insolvent to give security for costs in any suit instituted by him.

Section 40. Insolvency of a partner to dissolve a partnership; Assignee substituted in the rights of the insolvent partner.

Section 41. Every Assignee to keep a register; what the same shall show; separate accounts to be kept for each estate. Deposit of register by an Assignee, not official, to be made with the Official Assignee.

Section 42. Within a time specified, balances to be paid over to the Receiver General by Assignees with a sworn account; penalty in default.

Section 43. Commission payable to Assignees; to be in full payment of all charges except certain expenses specified. Counsel not to be employed without authority. Remuneration of Official Assignee, when superseded, to be fixed by the Court.

Section 44. Meetings to be called by the Assignee upon requisition.

Section 45. Deposit of moneys of the estate to be made; how the same shall be withdrawn; interest to belong to the estate, and to be accounted for by the Assignee; penalty in default. Assignee to produce bank book at meetings of creditors, and whenever so ordered by the Judge. Making false entry in such book to be a misdemeanor; punishment therefor.

Section 46. Pending vacancy of the office of Assignee, the Judge to have control.

Section 47. Assignee to prepare final account and apply for his discharge. Certain documents and statements to be produced and filed. Application may be granted or refused.

Section 48. Penalty in case the Assignee neglects to present such petition. Provisions of the next preceding section made applicable to Assignees under former Acts.

Section 49. On filing of consent or deed of composition and discharge, Assignee to call a meeting to take the same into consideration; costs to be payable by the insolvent.

Section 50. Notice to be given of such meeting by advertisement and letter; what the notice shall contain.

Section 51. Discharge may be approved or not, by resolution; objections may be filed.

Section 52. When the insolvent has obtained the necessary consent to his discharge, the Assignee to annex to the deed a certificate; what the certificate shall contain. Copy of resolution and of objections and certain statements having reference to the discharge to be also attached. Probable ratio of dividend for unsecured creditors to be also stated.

Section 53. The insolvent, having procured such consent, may give notice of his intention to apply to the Court or Judge for a confirmation of the discharge; notice to be given; confirmation may be opposed.

Section 54. If the application is unopposed the discharge may be at once confirmed; notice to be given in case of opposition.

Section 55. Discharge not to be confirmed unless affidavit is filed by the insolvent shewing that there is no collusion with his creditors, together with the Assignee's certificate of his having delivered a sworn statement of his liabilities and assets.

Section 56. No discharge without proper consent,—if there has been any fraud, and if proper books have not been kept; but the latter provision not imperative, as to time before the passing of this Act and former Insolvent Acts. Similar provision as to fraud.

Section 57. Discharge may be confirmed or annulled by the Judge, or in his discretion may be modified or suspended.

Section 58. Discharge may be refused or suspended if dividend is less than 33 per cent.

Section 59. Deed of composition may be conditional; Assignee to resume possession if condition is not performed; rank of creditors in such case defined.

Section 60. Re-conveyance of estate to the insolvent by the Assignee; to have the same effect as a sale; payment of instalment may be suspended by the Judge; nature and form of deed.

Section 61. Confirmation of discharge to free the debtor from all debts not specially excepted, including negotiable paper the holder of which is unknown to the insolvent, special mention of the fact being made.

Section 62. Discharge not to affect liability of person secondarily liable, nor any privilege.

Section 63. Without express consent discharge not to apply to a debt for which imprisonment is hereby permitted, or due as damages for certain offences, or for the support of certain relatives, nor to certain trust moneys specified. Debts to which discharge does not apply not to be computed in proportion of creditors, but may rank upon the estate.

Section 64. After expiration of one year, if consent has not been obtained, insolvent may, after notice, apply to the Court or Judge for his discharge.

Section 65. Application may be contested; insolvent in any case to prove that he has conformed to this Act; he may be examined, and a report may be required from the Assignee; after hearing, the discharge may be granted, suspended, or classified.

Section 66. Discharge obtained by fraud to be void.

Section 67. After notice, debts the collection of which would be too onerous may be sold by auction; Assignee to keep a list of the debts open to inspection; debts of more than \$100 to be sold separately.

Section 68. With the authority of the Judge a creditor may take proceedings for his own benefit, refused to be taken for the general benefit. But before order is granted, Assignee may take the proceedings for the general benefit.

Section 69. Person purchasing a debt may sue for the same; bill of sale by the Assignee to be evidence; no warranty to be thereby created.

Section 70. In case of a lease of greater value than the rent payable, the same may be sold by order of the Judge; sale to be subject to conditions of the lease.

Section 71. In case of leases extending beyond the current year the creditors may determine the same at the end of such current year, or may continue it for another year.

Section 72. After expiration of the time so fixed the lease to be cancelled; Lessor may claim upon the estate for any loss he may be subject to.

Section 73. In computing such claim the rent unpaid to govern; damages to rank as an ordinary debt.

Section 74. In Quebec, privilege of the lessor to be subject to the Civil Code; in other Provinces, the same limited to one year.

Section 75. After notice of two months, real estate may be sold by the Assignee; by consent term of notice may be shortened; if too low a price is offered the sale may be adjourned for not more than a month, when if no higher bid is offered, the property shall be adjudged to last bidder; further postponement by consent, but last bidder to be discharged from obligation.

Section 76. Sale to vest real estate in the purchaser; in Quebec to have the same effect as a Sheriff's sale. Assignee may grant credit, but not in Quebec without consent of a privileged creditor; portion unpaid to be secured by mortgage.

Section 77. In Quebec the sale may be subject to the same charges as a Sheriff's sale, and also to certain other charges specified. Re-sale may be had for false bidding. Assignee shall procure a certificate from the Registrar, in the same manner as a Sheriff; code of civil procedure to apply; distribution of the proceeds among the creditors.

Section 78. In Quebec a privileged creditor may require sale of the property if his claim is actually due.

Section 79. Assignee to prepare accounts of the estate, and dividends thereon.

Section 80. Debts due and to become due may rank on the estate; substitution of creditor.

Section 81. Dividend to be reserved for a contingent claim; value may be ascertained by arbitration.

Section 82. Rank and privilege of every creditor to be regarded; no dividend to any creditor holding security until the amount for which he shall rank is established.

Section 83. Subsequent to assignment, no lien to be created by an execution; costs to be subject to the law of the Province.

Section 84. A creditor holding security to put a specified value thereon; Assignee may assume the same, or allow it to be retained.

Section 85. If the security is on realty or shipping, the transfer to be subject to previous liens; provisions as to subsequent liens.

Section 86. On the fying of the secured claim, decision as to the security to be at once come to.

Section 87. Claims due at the time of proving to rank upon the estate; but no claim to be ranked upon more than once. Oath of creditor may be required as to non-payment.

Section 88. Claims to rank upon the estate by which the debts they represent were contracted.

Section 89. Allowance may be made to the insolvent, and shall be inserted on the dividend sheet.

Section 90. Costs in suits after assignment not to rank on the estate, but those incurred previously to be added to the original debt.

Section 91. Clerks to be collocated by privilege for not more than five months wages, for any other claim as ordinary creditors.

Section 92. Notice of dividend to be given, and uncontested dividends to be paid after eight days.

Section 93. Under order of the Inspectors, claims and dividends may be contested by the Assignee.

Section 94. Dividends may be reserved for creditors who have not fyled their claims.

Section 95. Objections to claims and dividends to be fyled with the Assignee; three days allowed to claimant to answer; case to be heard by the Judge, and judgment rendered.

Section 96. Costs of contestation on behalf of the estate or for the general interest may be ordered to be paid out of the estate.

Section 97. If there be property of the insolvent under seizure at the time of the assignment, the sale to be proceeded with, unless stayed by order of the

Judge; if the sale is proceeded with, the balance of the proceeds, after payment of privileged creditors, to be paid over to Assignee.

Section 98. Dividends unclaimed to remain in the Bank for three years and then to be paid over to the Government, but may be claimed by the person entitled.

Section 99. By leave of the Judge any balance after payment of all claims to be paid to the insolvent.

Section 100. Notice of meeting or application may be giving pending delay.

Section 101. Notice of meetings to be given for two weeks in Official Gazette, and also by mail.

Section 102. Questions to be decided by majority of votes in number and value, unless otherwise provided; if number and value do not agree, Judge to decide.

Section 103. Creditors may vote upon all matters not specially excepted, at first meeting, if called for ordering of affairs generally.

Section 104. Claims attested under oath to be held proved; evidence in case of contestation.

Section 105. Affidavits required may be sworn before certain officials specified.

Section 106. A creditor holding security may surrender it to the Assignee, or may set a value upon it; debt then to be deemed unsecured only to extent of the balance.

Section 107. Law of set-off to apply to claims and proceedings in Insolvency.

Section 108. Except otherwise provided, one days' notice, and one more for each fifteen miles distance, to suffice in service of process.

Section 109. Judge to have ordinary powers as to commissions for examination of witnesses.

Section 110. Any person in Canada may be summoned to testify.

Section 111. Process may be validly served in any part of Canada in the ordinary manner; return to be made.

Section 112. Person failing to appear may be punished; if in another Province a certificate may be transmitted to that end; certificate and copies of process to be evidence.

Section 113. No certificate to be transmitted unless expenses have been tendered.

Section 114. Forms appended to be used; in contestations and applications, facts to be set forth in detail and in plain language.

Section 115. Foreign discharges not to bar debts contracted in Canada.

Section 116. Amendments of pleadings to be subject to ordinary rules of procedure.

Section 117. Death of Insolvent not to affect proceedings; heirs and administrators to be liable only as such.

Section 118. Costs to be chargeable in a certain order and on certain property specified.

Section 119. Judge may order letters addressed to the Insolvent to be delivered to the Assignee to be by him opened in presence of the Clerk or Prothonotary of the Court.

Section 120. Causes of disqualification of a Judge to be the same as

In civil matters in the several Provinces; if Judge be disqualified, Judge in adjoining county or district to act.

Section 121. In Quebec, subject to a reference to the Judge, the Prothonotary to act instead of the Judge in his absence.

Section 122. In Quebec, rules of practice and tariff of fees to be made forthwith, as rules of practice and tariff of fees of the Superior Court are made.

Section 123. In the other Provinces, rules and regulations to be made, and costs, fees and charges to be fixed by the proper Courts.

Section 124. Present rules and tariff of fees to continue until others are made.

Section 125. Assignee to be subject to the jurisdiction of the Court, and obedience to the order of the Court may be enforced.

Section 126. In Quebec, every trader to register his marriage contract, if not already registered, within three months, and every person becoming a trader, to register such contract within thirty days; in default, estate not to be affected by its provisions.

Section 127. An insolvent imprisoned may apply to the Judge for his discharge; thereupon the Judge may examine the insolvent, or cause him to be examined.

If it appears to the Judge that the debtor has made an assignment, and that he has not been guilty of fraud, the Judge shall order his discharge; but seven days' notice must be previously given to the Plaintiff and to the Assignee.

Minutes of the examination to be kept, and a copy delivered to the Assignee; postponement may be granted for cause shown.

In case of subsequent arrest, debtor to be discharged on producing previous discharge, but imprisonment under this Act not to be interfered with.

Section 128. In Quebec, judgment may be inscribed for revision as from a final judgment of the Superior Court. In Ontario, appeal shall lie to the Superior Courts of Common Law or the Court of Chancery, in New Brunswick, Nova Scotia, British Columbia, and Prince Edward Island, to the Supreme Court; in Manitoba, to the Court of Queen's Bench, or to any Judge of the said Courts respectively. Any appeal to a single Judge may be referred to a full Court. Proceedings must be adopted, and security given within eight days. If appeal is not proceeded with, record to be returned to the Court below, and costs awarded.

Section 129. Dividend to be reserved pending contestation.

Section 130. Gratuitous contracts and contracts injurious to creditors, within three months of insolvency, presumed to be fraudulent.

Section 131. Contracts by a debtor unable to meet his engagements, with a person ignorant of his inability, to be voidable, but such person may be protected.

Section 132. Contracts made with intent to defraud creditors, with the knowledge of the person contracting, to be void.

Section 133. Fraudulent preferential sales, deposits, pledges or transfers of property, to be void, and property may be recovered back; fraud presumed, if the transaction takes place within thirty days of insolvency.

Section 134. Payments within thirty days of insolvency to a person having reason to believe the payer insolvent, to be void, but any valuable security given up in consideration to be restored.

Section 135. Transfer of debt made in contemplation of insolvency to be void as regards estate of insolvent, but purchaser may rank instead of original creditor.

Section 136. Any person purchasing goods on credit, obtaining advances or inducing persons to become security, knowing himself or those for whom he acts to be insolvent, and with intent to defraud, and not paying debts so incurred, to be liable to imprisonment for not more than two years; provided he be charged with such fraud, and found guilty thereof.

Section 137. In any such case, Plaintiff shall be bound to prove the fraud charged; judgment to be pronounced forthwith, but to be subject to ordinary remedies.

Section 138. Assignees to be agents within the meaning of the Act respecting larceny; other provisions of the 76th Section of the said Act to apply.

Section 139. An Assignee making a wilful misstatement in a certificate, to be liable to imprisonment for not more than three years.

Section 140. The following acts by insolvents to be misdemeanors, punishable, unless otherwise provided, by imprisonment for not more than three years:—Not fully discovering or not delivering property, books and papers; removing property; not denouncing false claims; preparing false schedule; withholding books and papers; falsifying books; stating fictitious losses; disposing of goods not paid for.

Section 141. Offences triable in the same manner as other offences of the same degree, in the Province where committed.

Section 142. Creditors taking consideration for granting discharge or ranking for a sum not due, to forfeit treble value of consideration or sum improperly ranked for.

Section 143. An insolvent receiving money and not handing the same to the Assignee, may be ordered to do so by the Judge, and may be imprisoned for disobedience.

Section 144. Deeds of assignment and transfer, or, in Quebec, authentic copies, and an authenticated copy of the appointment of the Assignee, to be evidence.

Section 145. One per cent of the proceeds of the sale of real property in Quebec to be paid to the Sheriff, for the Building and Jury Fund.

Section 146. Duty on proceedings may, under the Act respecting Court Houses and Gaols in Lower Canada, be imposed by the Governor in Council.

Section 147. Provisions to apply to incorporated companies, not herein excepted, subject to following modifications:—

Forty-eight hours notice to be given of the application for a writ of attachment; Judge may order the Official Assignee to make inquiry.

Thereupon officers of the Company shall exhibit the books thereof to the Assignee, and give all required information; refusal to be contempt of Court.

Company to hold property in trust after service of order.

Meeting of creditors may be called as ordered by the Judge, at which the affairs of the Company may by resolution be ordered to be wound up.

Resolution to be submitted to the Judge.

Judge may confirm, reject or modify the resolutions, and may order the issue of a writ of attachment, or may suspend the same.

Judge may appoint a Receiver.

Receiver to account for all moneys received.

Another meeting shall be called within six months

Further delay, not exceeding six months, may be granted.  
If the demands are then unsatisfied, the Judge shall order the estate to be wound up.

But the Judge may cancel his orders, and take certain other steps as circumstances may require.

Affairs of the Company may be examined.

Remuneration of Assignee and Receiver to be fixed by the Judge.  
Company may make an assignment pending any delay granted.

Section 148. Foregoing provisions to come into force on 1st Sept. 1875; but official Assignees may be appointed, and rules may be made at any time after the passing hereof.

Section 149. The Insolvent Acts of 1864 and 1869, and amendments, and Acts of British Columbia, and Prince Edward Island, continued to 1st Sept. 1875, and then repealed, saving certain matters and proceedings specified. Procedure under this Act to apply and supersede that under the said Acts. Securities to remain valid. Inconsistent Acts repealed.

Section 150. This Act to apply to all the Provinces of Canada.

Section 151. Certain provisions of the Insolvent Act of 1869 specified, to apply to Insolvents in Manitoba, until 1st Sept. 1875. Court and Judge in the said provisions defined.

Section 152 Short title.



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