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An Act to facilitate the arrangement of Insolvent Estates in Lower Canada.

WHEREAS it is expedient to facilitate voluntary settlements between
debtors and creditors in Lower Canada: Therefore Her Majesty,
&c., enacts, as follows:

I. Any debtor, or any creditor of such debtor, may file in the office of the
Prothonotary of the Superior Court for the District in which such debtor has
his principal place of business or abode, a Notarial instrument between the
said debtor of the one part, and the majority in number of his creditors
owning at least three-fourths of the debts of such debtor, exclusive of
privileged mortgage debts, of the other part.

Agreement
between a
Debtor and a
certain propor-
tion of his
creditors may
be filed in
Court.

II. The said Notarial instrument shall contain,—

What it must
contain.

1. A full and true account of all the creditors of the said debtor.

2. The place of residence of each creditor, if known to such debtor:
and if not known, the fact to be so stated.

3. The sum owing to each creditor, and the nature of each debt or de-
mand, whether arising on written security, on account, or otherwise.

4. The true cause and consideration of such indebtedness in each case,
and the place where such indebtedness accrued.

5. A statement of any existing judgment, mortgage or collateral or
other security, for the payment of any such debt.

6. A full and true inventory of all the property moveable and immoveable,
debts and effects, estate real and personal, of such debtor, of the incum-
brances existing thereon, and of all the books, vouchers and securities
relating thereto.

7. The said Notarial instrument shall also contain an agreement or ar-
rangement between the said debtor and the creditors signing the same, by
which the debtor shall assign to the said Prothonotary all or part of the
said property, moveable or immoveable, debts and effects, estate real and
personal of the debtor, for the benefit of all his creditors, and by which the
signing creditors accept of such assignment in full discharge of all their
claims against the debtor: or the signing creditors may by such agree-
ment and arrangement compound with the debtor and accept of a stated
percentage of their respective debts either paid down, or payable in one
or more sum or sums on any named future day or days, and either with or

Also an agree-
ment between
the Debtor
and his credi-
tors signing
the instrument,
for assignment
of his estate.

Or for a Com-
position.

without interest, and either with or without security; such percentage being taken in full discharge of each and every such debt due as aforesaid; or the signing creditors may by such agreement and arrangement accord to the debtor a term or terms for payment of the whole or any part or parts of his indebtedness; or such agreement or arrangement may be varied in any manner the debtor and signing creditors may agree upon, but it must in every case be distinctly expressed, and be applicable equally and fairly as well to the signing creditors as to those who do not sign the same.

III. And with the said Notarial instrument there shall also be filed an affidavit sworn before any Judge of the Superior Court in Lower Canada or before any Commissioner authorized to receive affidavits to be used therein, by each of the signing creditors, or by one partner of each firm or partnership, or, in the absence or sickness of the creditor, by his legal agent having a personal knowledge of the facts sworn to; which affidavit shall state that the sum specified therein and annexed to the name of such creditor in the said Notarial instrument is justly due to him by the debtor, and shall also state the nature of the debt and whether arising from any written security or otherwise, and giving the general ground of such indebtedness; and if such debt shall consist of any written security, such affidavit shall state in detail the particulars of the original cause of debt or of the value given or original consideration for such written security.

IV. There shall also be filed with the said Notarial instrument, an affidavit by the debtor sworn to as aforesaid, in the following words:

"I, _____, do swear (or affirm, as the case may be), that the account of my creditors, and the inventory of my estate, which are contained in the Notarial instrument, passed before A. B. and his colleague Notaries Public, on the _____ day of _____ last; an authenticated copy whereof is herewith filed, are in all respects just and true; and that I have not, at any time nor in manner whatsoever, disposed of, or made over, any part of my estate, for the future benefit of myself or my family, or in order to defraud any of my creditors; and that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owed; and that I have not paid, secured to be paid, or in any way compounded with any of my creditors, with a view fraudulently to obtain any advantage therefrom, or unjustly to benefit any of them."

V. Upon the filing of such Notarial instrument and affidavits, the Prothonotary shall insert a notice in the Official Gazette and in at least one newspaper published in each language in the District, stating, in concise language, the contents of the said Notarial instrument, and calling upon all persons interested to file their claims against the said debtor on or before a day in term named in such notice; and on the said day to show cause why the Superior Court should not confirm and homologate the said Notarial instrument, and in and by such confirmation adjudge that the arrangement so entered into by the signing creditors should be extended to all other creditors of the said debtor, whether residing in Lower Canada or elsewhere. The said notice shall be published in four successive weeks in each of the aforesaid papers, the last insertion whereof shall take place at least two months before the day named therein for filing claims and shewing cause as aforesaid, and the signing of such notice by the Prothonotary, shall stay all legal proceed-

Or for terms for payment.

Or any other distinct arrangement.

Affidavits of creditors signing which must accompany such Instrument.

Affidavit of the Debtor.

The form.

Notice to be published by the Prothonotary, to show cause why the arrangement should not be confirmed. Arrangement to affect all creditors wherever resident.

Effect of publication of notice.

ings against the debtor on the part of all the creditors in the said Notarial instrument named, until a final judgment shall be rendered thereon.

VI. On the appointed day, if no sufficient cause be shown, the Court may render judgment in the case, confirming the arrangement contained in the notarial instrument, and extending the same to, and making the same obligatory upon, all the creditors of the debtor equally, wherever they reside.

Judgment declaring the arrangement obligatory.

VII. When the agreement between the debtor and creditors contains an assignment to the Prothonotary for the benefit of the creditors, the signing Creditors shall in the said instrument name an assistant assignee, who shall assist the Prothonotary in winding up the estate and liquidating the debts, and he shall be paid at the rate and in the manner stated in the said instrument; but if no such assistant assignee be named in such instrument, or if he die or become insolvent or otherwise unable to act, the Prothonotary shall name some practical and efficient man of business, to act as such assistant and to perform the said duty, and he shall be paid at the rate usual and customary where such duty is performed, subject to the taxation of any Judge of the Superior Court after notice to the parties interested; and such assistant assignee shall be an officer of the Court, subject to such punishment by fine and imprisonment for any neglect, omission or misconduct as other officers of the Court would be in like case.

In case of assignment, creditors to appoint an assistant assignee.

If not, Prothonotary to name one.

To be deemed an officer of the Court.

VIII. The proceeds arising from any such assignment may be distributed among the Creditors by the Prothonotary, upon their all signing a receipt each for his share of the same; but if they do not all consent, the Prothonotary shall file a Report of Distribution and Collocation of the monies in hand, either after all the assets are sold, or after the sale of part of them, as may be found most advantageous for the creditors, which report or reports shall be homologated in the usual manner.

Distribution of proceeds of property assigned.

IX. The final judgment on the Notarial agreement as between the debtor and creditors, may be rendered at any time, either before or after the sale and distribution of the property assigned.

Final judgment may be rendered at any time.

X. The effect of such final judgment shall be, if confirmatory of the said agreement, to place the creditors who have not signed the same in the same position in relation to the debtor as they would have occupied if they had been parties and assented to the said Notarial agreement, and to discharge the debtor from all legal liability to and in favor of all his creditors in the said instrument named, which existed up to the time of the signing of the said Notarial instrument.

Effect of final judgment confirming the arrangement.

XI. When any Judge of the Superior Court shall be satisfied on the oath or oaths of any creditor or creditors or of his or their book-keeper or book-keepers, legal agent or agents, that any person is indebted in one sum exceeding £100, or in two or more sums together exceeding £100, for two or more causes of indebtedness to such creditor or creditors, and that such person is in a state of actual insolvency, and is unable to pay his just and lawful debts, it shall be lawful for such Judge to order that a writ of attachment, *saisie arrêt* and *arrêt simple*, do issue to attach in the hands of the debtor or any other person, all the property, moveable and personal, of, and all the debts due to the debtor.

Judge being satisfied that any person is insolvent, may order all his property and credits to be attached.

XII. The issuing of such writ of attachment shall have the effect of

Effect of such attachment.

instantly vesting the whole of the moveable and immoveable property, estate, real and personal, of the debtor, and all the debts due to him of every kind, in the Prothonotary of the District, for the benefit of all the creditors of such debtor.

Debtor to have thereafter no power to deal with property attached. Except by arrangement with his creditor. Proviso.

XIII. Every alienation, payment, hypothecation, discharge, novation, 5 other disposition of all or any part of the estate, debts and effects of the debtor, made or attempted to be made by the debtor after the issue of such writ of attachment as aforesaid, shall be absolutely null and void, with the exception of any voluntary arrangement between him and the majority of his creditors owing, at least three-fourths of the debts due by him, which 10 may be made at any time after such writ may have issued, but shall not have the effect of divesting the Prothonotary of the estate of the debtor, except under the authority of the judgment confirming the same; Provided always, if the debtor shall succeed in setting aside, quashing, or otherwise disposing of the writ of attachment, all the consequences herein assigned 15 to the issue thereof shall cease with it.

Writ how addressed and served.

XIV. The writ of attachment may be in the form contained in the schedule, or any words to the same effect, and may be addressed either to the Sheriff or to the Bailiffs in the District, and may be served by any one or more of them, each Bailiff making a separate return respecting the service 20 effected by him.

Proceedings in the case.

XV. The writ, with a declaration setting forth succinctly the facts stated in the affidavits, shall be served upon the debtor in the usual manner, and the service, return, pleadings and proceedings, in relation thereto, shall be regulated by the course and practice of the Court in cases of a like nature; 25 the defendant may put the question of insolvency in issue by specifically denying the same, but in that case the burden of proof shall be on him; and in order to sustain the plea of his solvency, he must produce evidence to the satisfaction of the Court that he is able fully to pay and satisfy all his debts. 30

Contents of judgment against defendant.

XVI. Any judgment against the defendant shall declare him insolvent, and shall declare the attachment made of his estate, or of part thereof, to be good and valid, and may contain such further adjudication for calling on the creditors, distributing the proceeds of the estate, confirming the voluntary arrangement between the debtor and creditors, or for such other matter 35 or thing as circumstances and the justice of the case may require.