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[No. 230.]

2nd Session, 7th Parliament, 26 Victoria, 1863.

BILL.

An Act to amend Chapter sixty-five of the Consolidated Statutes for Lower Canada, and to facilitate remedies against partners and others trading under designations other than their own names.

Received and read first time, Tuesday, 14th
April, 1863.

Second reading, Friday, 17th April, 1863.

Hon. Mr. Sol. Genl. ABBOTT.

G. Desbarats, Queen's Printer.

An Act to amend Chapter sixty-five of the Consolidated Statutes for Lower Canada, and to facilitate remedies against partners and others trading under designations other than their own names.

WHEREAS it is expedient to assimilate the laws of Upper and Lower Canada in respect of the discovery of the names of persons engage in trade, and for that purpose to extend to both provinces and to every person trading individually under the name of a firm, or under any name other than his own, the provisions of the sixty-fifth chapter of the Consolidated Statutes for Lower Canada, intituled: *An Act respecting Partnerships*: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Preamble.

Con. Stat. L. C., c. 65.

1. All persons trading in partnership shall file, in the office of the Registrar of each County in which they trade or intend to trade, a declaration in writing, signed by the several members of such partnership, when all such members are, at the time of making the same, in this province, and if any of the said members be absent at the time, then by the members present, in their own names and for their absent co-members, under their special authorization to that effect to be annexed to such declaration.

Declaration to be filed, signed by or for all the partners.

2. Such declaration shall contain the names, surname, addition and residence of every partner, the name, style or firm under which they trade or intend to trade, the time during which the partnership has existed, and a statement that the persons therein named are the only members of such partnership; and such declaration shall be in the form or to the effect of Schedule A.

What it must contain.

Form.

3. Such declaration shall be filed within sixty days after the passing of this Act, or within a like period after the formation of the partnership; and a like declaration shall be filed in like manner when and so often as any change or alteration takes place in the members of such partnership, or in the name, style or firm under which they trade or intend to trade.

New declaration in case of change of members.

4. Every person trading separately under the name of a firm or under any name or style whatever, other than the true name and surname only of such person, or in any manner assuming in any trade, or in the making, drawing, accepting or endorsing of negotiable paper, the name of any firm, or any name or style whatever other than the true name and surname

Declaration to be filed by any person trading under any other name than his own.

only of such person, shall file in the office of the Registrar of each County in which he trades or intends to trade, a declaration in writing in the form or to the effect of Schedule B, signed by him and containing his name, surname, addition and residence, and the name or style under which he trades or intends to trade, or signs, or intends to sign, negotiable paper; and if such person be a married woman, then the same shall contain the name, surname, addition and residence of her husband, and shall also be signed by him. 5

Married women.

When to be filed. 5. Such declaration shall be so signed and filed within sixty days next after the passing of this Act, or within a like period after such person has commenced to trade under, or has assumed in any manner such name or style. 10

Penalty for non compliance with the foregoing requirements. 6. Each and every member of any partnership with regard to which the requirements of this Act are not complied with, and each and every person who fails to comply in every respect with such requirements, shall be severally liable to a penalty of *two hundred dollars*, to be recovered before any court having jurisdiction in civil cases to the amount of such penalty, on behalf of Her Majesty or by any person suing as well in his own behalf as on behalf of Her Majesty; and one moiety of such penalty shall belong to the Crown for the uses of the Province, and the other moiety to the party suing for the same, unless the suit be brought on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty for the uses aforesaid. 15 20 25

Registration of declaration, and fees. 7. The registrar shall enter each such declaration as aforesaid, in a book to be by him kept for that purpose, which shall be at all times, during office hours, open to the inspection of the public, gratuitously; and for registering each such declaration the registrar shall be entitled to demand the sum of *fifty cents* if it does not contain more than two hundred words, and an additional fee of *five cents* per hundred words for all above the number of two hundred; and he shall be entitled to make similar charges and no more for a copy of any such declaration, with a certificate of Registration appended thereto. 30 35

Effect of the declaration so filed. 8. The allegations contained in such declaration shall not be controvertible by any person who has signed the same; nor shall any such signer, nor any person declared by any such declaration to be a partner and actually being a partner in any partnership, be deemed to have ceased to be a partner therein, until a new declaration has been made and filed under this Act, in the form or to the effect of Schedule C, stating the alteration in the partnership. 40

Actions against partnerships as to which a de- 9. If any persons have been or are associated as partners for trading purposes, and no declaration is filed within the periods aforesaid with regard to such partnership, then any 45

action which might be brought against all the members of the partnership, may also be brought against any one or more of them, as trading, or as having traded jointly with others, (without naming such others in the writ and declaration) under the name and style of their said partnership firm; and any other partner or partners, when discovered, may be made a party or parties to any such action under a rule or order of the Court or of any Judge of the Court in which such action is pending, at any stage of such action and upon such terms as to costs or otherwise as may be deemed reasonable; or such partner or partners may be subsequently sued jointly and severally for the original cause of action, together with any costs which the defendants in the first suit have been condemned to pay.

claration has not been filed.

15 **10.** If any such action is founded on any obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein shall be made parties to such action, subject however to the provisions of any existing law applicable to such cases.

If the action be on a written instrument.

20 **11.** The service of any summons or process for any claim or demand against any existing partnership, at the office or place of business, within this Province, of such partnership, shall have the same effect as a service made upon the members of the said partnership personally; and any judgment rendered against any member of such existing partnership, as trading with another or others under the name of such partnership, for a partnership debt or liability, shall be executory by process of execution against all and every the partnership stock, property and effects, in the same manner and to the same extent as if such judgment had been rendered against such partnership.

Service of summons or process on a partnership.

Execution.

35 **12.** If any person trading under or assuming any firm, or style, or any name other than his own true name and surname only, has not filed in the office of the Registrar a declaration as required of him by this Act, he may be sued by the style, firm or name which he has assumed, and the service of any summons or process issued against him at his office or place of business, shall have the same effect as if served upon him personally, and judgment in such suit may be rendered and execution issued and levied against his estate and effects, as effectually as if he were sued and condemned under his true name and surname only.

Person trading under assumed name may be sued by it; unless he has filed a declaration.

45 **13.** Nothing in this Act shall exempt from liability any person who, being a partner, has not been mentioned in the declaration required by this Act, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in such declaration, or afterwards separately upon being discovered to be such partner.

Partners not mentioned in declaration to be liable.

As to Partners' rights among themselves.

14. Nor shall anything in this Act be construed to affect the rights of any partners with regard to each other, except that no declaration shall be controverted by any signer thereof.

Interpretation. "Partnership."

15. The word "partnership" in this Act, shall include any unincorporated society, company or association for trading purposes; persons engaged in trade of every kind, including banking, mining, manufacturing and mechanical operations, the constructing of roads, dams, bridges or other buildings, brokers and dealers in money and negotiable securities, common carriers by land or water and persons occupied in the colonization or settlement of land, combined with traffic in lands, shall be held to be traders and to be trading within the meaning of this Act; and the word "action" shall include any proceeding at law or in equity to which any partnership is a party.

Repeal of part of c. 65, con. stat. L. C.

16. The first five sections of the said Chapter sixty-five, with their sub-sections, are hereby repealed except in so far as regards any actions or proceedings pending thereunder; all of which may be proceeded with as if this act had not been passed; and any partnership firm now in existence in respect of which a declaration has been filed and registered in accordance with the provisions of the said Chapter sixty-five, shall be held to have complied with the requirements of the first and second sections of this Act.

Declarations filed under it to remain valid.

SCHEDULE A.

Province of Canada, }

We, of in (Grocers,) hereby declare or (I, for myself and for C. D. of , and E. F. of , under the authority hereto annexed,) hereby declare that we have traded and intend to trade as , at , in partnership under the style or firm of ; that the said partnership hath subsisted since the day of , one thousand , and that we (or I or we and the said C. D. and E. F.) are and have been since the said day the only members of the said partnership.

Witness our (or my) hands at , this day of , one thousand ,

In the presence of } G. H. of }

SCHEDULE B.

I, A. B., of in (grocer) (wife of C. D., of) hereby separated from him as to property by aforesaid, and)

declare that I have traded since the _____ day of
last past and intend to trade _____ (or intend to trade)
as (a grocer) at _____ aforesaid under the name or
style of _____ and that no person is associated or in
partnership with me in the said trade.

Witness my hand (and the hand of the said C. D.,) at
aforesaid, this _____ day of
one thousand _____

In the presence of _____ }
E. F. of _____ }

SCHEDULE C.

Commence as in Schedule A to "declare" and continue as follows :

That the partnership heretofore existing between us (or between me and the said C. D., and E. F.,) which was enregistered on the _____ day of _____ has been dissolved, (or has been changed by the retirement of the said E. F., on the _____ day of _____ last from the said partnership, (or by the admission into the said partnership on the _____ day of _____ last of G. H., as a partner), since which day we (or I and the said C. D., or we and the said G. H.,) have been the only members of the said partnership.

Witness our hands at _____ this _____ day of
one thousand _____

In the presence of _____ }