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No. 52.

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1st Session, 8th Parliament, 27th Victoria, 1863

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BILL.

An Act to facilitate arrangements between  
Insolvent Debtors and their Creditors, and  
the *cession de biens*, in Lower Canada.

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Received and read, first time, Thursday, 3rd  
September, 1863.  
econd reading, Monday, 7th September,  
1863.

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HON. MR. CARTIER.

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QUÉBEC :

PRINTED FOR THE CONTRACTORS BY HUNTER,  
ROSE & LEMIEUX, ST. URSULE ST.

An Act to facilitate arrangements between Insolvent Debtors and their Creditors, and the *cession de biens*, in Lower Canada.

**WHEREAS** it is desirable that greater facilities should exist for arrangements between Insolvent Trader Debtors and their Creditors in Lower Canada, such arrangements when proposed being often frustrated by the vexatious opposition of a fractional portion of the creditors; And whereas such opposition is unjust as well to the debtor as to the majority of creditors, and frequently causes them to sustain serious losses: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Every Insolvent Trader Debtor residing and having resided for three years or more in Lower Canada, who is unable to pay his just debts, may call a meeting of his creditors in the manner hereinafter provided. Insolvent Trader may call meeting of creditors.
2. Such meeting shall take place at the Office of the Notary chosen for the purpose by the debtor, or at some suitable place selected by such Notary. Where to be held.
3. The debtor shall deliver to the Notary a list containing the names, surnames, additions, and places of residence of his creditors, and the Notary shall give notice to each of the said creditors according to the Form A annexed to this Act. This notice must be left at the domicile or at the office, shop or place of business of the creditor, if within the limits of any City, ten days at least before the day appointed for such meeting; and service of this notice shall be made personally by the Notary when the creditor resides within the limits of a City as above, and by post when without such limits, or without the Province, but when made by post whether within or without the Province, in addition to the said notice of ten days, such additional time shall be added as may be required for the transmission by mail of a letter to and from the residence of such creditor. List of creditors and notice. Service of such notice.
4. On the day fixed in the said notice the debtor shall attend the meeting, and he or the Notary shall lay before the creditors then present a statement of the affairs of the said debtor attested on oath by the said debtor, before a Judge of the Superior Court or a Commissioner for receiving affidavits to be used in the said Court, and shall set forth in writing the terms of settlement proposed by him; the creditors present shall then proceed to investigate the affairs of the debtor or may name a committee for that purpose to be chosen from amongst themselves to report at a subsequent meeting, the day of which shall be by them then and there fixed, and of which notice shall be given in three newspapers published in or nearest to the place of residence of the Notary; and if at such first or subsequent meeting or at any other time, in consequence of the proceedings had and taken thereat, a majority in number of the said creditors whose debts shall amount to at least three-fourths in value of the whole of the debtor's liabilities, shall bind the whole. Statement of debtor at meeting. Investigation by creditors or committee of them. Majority in number and three-fourths in value to bind the whole.

shall agree to accept the offer and terms then proposed by the debtor, the agreement so made shall be binding upon all the other creditors, whether they afterwards ratify the said agreement or refuse so to do.

Deed to be drawn up in notarial form, and to be notified to creditors and binding

5. Immediately after the said agreement, or as soon thereafter as convenient, a deed shall be drawn up and executed in notarial form, giving effect to the arrangement so entered into, and thereupon the Notary chosen as aforesaid by the debtor, shall give notice in the manner above prescribed to each of the creditors who shall have refused to enter into such agreement or who shall not have attended the meeting, setting forth the nature of the arrangement come to between the said debtor and his creditors, and such arrangement may be pleaded by the debtor as a bar to any action or other legal proceeding instituted by any such creditor for the recovery of any claim or sum of money, beyond what may be due or payable to him under the said arrangements. 5 10 15

Provision as to privileged and hypothecary creditors

6. Privileged or hypothecary creditors and persons claiming to be paid by privilege, shall not count or be permitted to form part of the creditors whose consent shall be deemed necessary to the above arrangement, unless they shall have first abandoned the security held by them, and agreed to rank as chirographary creditors; and no creditor, so claiming to be paid by privilege or hypothec, whose claim shall be contested, and who shall refuse to abandon his security, shall be permitted to disturb the said arrangement after it shall be found that he has no privilege or hypothec, and that his consent might have been necessary to constitute the required majority; but on the contrary, he shall be bound by the same. 20 25

Persons acquiring debts may vote; proviso.

7. For all the purposes of this Act, any person acquiring the debt of any one or more creditors, shall be entitled to represent the creditor or creditors whose debts he may have so acquired: Provided always, that to enable him to vote in the name of the party so represented, he must show that such debt was only acquired by him subsequent to the first meeting of creditors held as above. 30

Creditors must attest their claims.

8. All creditors, previous to filing their claims, and before being admitted to vote at the meeting of the creditors to be so held, shall be bound to attest such claims before a Judge of the Superior Court, or a Commissioner for receiving affidavits to be used therein, or a Justice of the Peace; and no creditor refusing to attest his claim upon being required so to do, shall vote or be counted at the said meeting, but shall be bound by the arrangement which the majority aforesaid shall agree to, in the same manner as other creditors. 35 40

Debtor may petition the Court if the majority, but not three-fourths in value, consent.

9. If, at the meeting convened as mentioned in section third, the creditors to the amount of one-half or more in value, but not to the amount of three-fourths in value, agree to the arrangement proposed by the debtor, the debtor may apply by petition to the Superior Court in the district in which he resides, setting forth the facts aforesaid, and the circumstances of the case, accompanying such petition, by the original writing or document containing the offer of the debtor and the assent of the creditors who have accepted it, and by a list of all his creditors with the amount due to each, distinguishing those who have accepted his offer from those who have not accepted it; and the Court may then in its discretion, order that by an advertisement published as provided in the fourth section, all the creditors of the debtor or such of them as have refused to accept his offer as aforesaid, be required to appear and file the objections which they or any of them may have to the debtors offer; and if the non- 45 50 55

Court after hearing may declare non-assenting debtors bound.

assenting creditors do not shew good cause for their non-assent, or if one-half or more in value, of such non-assenting creditors do not appear at the time and place appointed,—the Court, if otherwise satisfied that the debtor's offer is just and reasonable, and that his conduct  
 5 has been without fraud, may adjudge that the said offer is just and reasonable, and that the arrangement shall be binding on the non-assenting, as well as the assenting creditors, and shall be carried into effect; and the Court may in its discretion, further order that the original of the said offer and assent be transmitted to the Notary who  
 10 in the first instance gave notice for the meeting of the creditors, or to some other Notary, if such first named Notary be for any reason unable to act, and may order such Notary to prepare in notarial form, and cause to be executed a deed of arrangement for giving effect to the offer of the debtor, and to which the assenting creditors shall, and any others  
 15 may become parties: and such arrangement, when so duly executed, shall be binding on all the creditors of the debtor, as well the non-assenting as the assenting: and if the debtor desires that the said arrangement be confirmed by the Court, the Court may confirm the same on motion on behalf of the debtor, made in the case, and accom-  
 20 panied by an authorized copy of the deed of arrangement.

and order  
deed to be  
prepared.

Confirmation  
by the Court.

**10.** If the deed of settlement or arrangement between the debtor and his creditors as aforesaid, contains or implies a cession of the debtor's property to his creditors, or if in any other deed between the debtor and his creditors there is a cession of the debtor's property to his  
 25 creditors,—the creditors, or two-thirds in value of them, may, if they think proper, appoint one or more of themselves to be assignee or assignees to liquidate the debtor's estate; and such assignee or assignees shall, by virtue of such appointment, have and exercise as well with respect to the active or assets, as to the passive or liabilities  
 30 of the debtor, all the rights and powers of the debtor himself with regard to the estate and property to which the said cession shall extend; or the said creditors may, if they think it more advisable, manage and administer the said estate and property themselves, and for this purpose they shall then have and exercise all the rights and promises  
 35 which the assignee or assignees, if appointed, would have had with respect to the same.

Appointment  
of assignee  
in case of  
cession.

But creditors  
may adminis-  
ter them-  
selves.

**11.** In case of the death, resignation, absence from Lower Canada, or inability to act of the assignee, or of any one or more of the assignees, the creditors or two-thirds of them in value, may appoint  
 40 another or others, in his or their place, and the assignee or assignees so appointed shall have all the powers of the assignee or assignees in whose place he or they is or are appointed: and if there be any suit then pending, to which the former assignee or assignees was or were a party or parties, the same shall not abate, but shall be continued by or  
 45 against such new assignee or assignees, whose name or names shall in any subsequent proceeding in the case be substituted as of course, for the name or names of the former assignee or assignees.

Provision in  
case of death,  
&c. of an as-  
signee.

**12.** Any debtor, who after entering into an arrangement with his  
 50 creditors pursuant to this Act, shall desire to have the same judicially confirmed, may for that purpose make application by Petition to the Superior Court, in the District within which he resides, setting forth the circumstances of the case, and the fact of such arrangement having been entered into, which Petition shall be accompanied by an authentic copy  
 55 of the said arrangement, and by a list of all the creditors bound thereby, and of all the creditors who refused or neglected to become parties thereto, with the amount due to each; and thereupon the said Court may

Debtor hav-  
ing made an  
arrangement  
with the re-  
quisite num-  
ber of his  
creditors,  
may have the  
same judicial-  
ly confirmed.

order, that by an advertisement to be published in the "Canada Gazette," and in one English and one French paper, published in or nearest to the place of residence of the said debtor, during the space of one month, all the creditors of the said debtor, or such of them as shall not have signed the said arrangement, be called upon and required to appear and file any objections they may have to the said confirmation, with the Prothonotary of the said Court, before the expiration of the said month, and that failing so do they shall ever afterwards be prevented from opposing the said arrangement, or taking any exception thereto; and unless it shall be made manifest to the said Court that the required majority of the said creditors have not agreed to the said arrangement, the Court shall confirm the same, and such confirmation shall bind all the creditors as effectually as if they and each of them had signed the deed of arrangement, so confirmed.

Creditor not mentioned in arrangement may claim the same terms.

**13.** No creditor refusing or neglecting to attend the meeting to be called as hereinbefore provided, or not filing his claim, or otherwise omitting to take notice of the proceedings of his debtor under this Act, shall be prevented at any time thereafter from claiming from such debtor the same terms of settlement in respect of his debt as he would have been entitled to if he had been named in the said deed of arrangement and had been a party thereto.

Creditors may examine the debtor or his wife, &c., as to his affairs.

**14.** Any creditor may cause the debtor applying for such judicial confirmation as aforesaid of his arrangement with his creditors, or the wife of such debtor or any person cognizant of his affairs or any of them, to be examined before a Judge or the Prothonotary of the Court to which, and at the place where such application shall be made; and such debtor or his wife or other person so examined, shall be bound to answer all lawful questions touching his affairs and business, to the best of their knowledge and belief; and the Prothonotary shall have full power to administer the necessary oath to the debtor or any person so examined; and if any doubt arise as to the obligation to answer any question, it shall be decided by any Judge of the Court, by whose decision in the matter all parties shall be bound; and if the debtor or his wife be so examined, they shall not be entitled to be taxed as witnesses.

Extent of Act.

**15.** The sections of this Act shall apply to Lower Canada only.

FORM A.

Province of Canada, }  
 District of }  
 To (here insert the names, surnames, additions and residence of creditor to be notified.)

Take Notice that A. B., of (insert residence and occupation,) has become Insolvent, and demands a meeting of his creditors, which will take place at my Office, situate in the City of Quebec, (or otherwise, as the case may be,) on the day of (next or instant, (as the case may be) at o'clock in the forenoon or afternoon, as the case may be) and that a statement of his affairs will then and there be submitted to you, and an offer of arrangement made.

(Quebec,) this day of , one thousand eight hundred and fifty

L. M.,  
 Notary.