

An Act respecting Insolvency.

WHEREAS in the interest of Trade, it is expedient, that the position of persons engaged in commerce should be defined, and that means should be provided to facilitate the amicable settlement of the estates of insolvent debtors, the prevention and punishment of fraudulent preferences to creditors, of fraudulent devices for defeating their remedies, and of the fraudulent contracting of debts without means of payment:

Preamble.

Therefore, Her Majesty, &c., enacts as follows:

1. The continuous stoppage of payment by any trader or trading company shall constitute insolvency.

Insolvency—
what to be.

2. Any insolvent trader who shall procure the execution in his favor by four-fifths of his creditors in number and value, of a deed of composition of the debts due by him—at a pound rate or otherwise; shall upon payment of such composition to all of his creditors, in conformity with the terms and conditions of such deed be absolutely freed and discharged from all liabilities whatsoever existing against him; whether such debts be then exigible or not, and whether they be direct or indirect.

Discharge of
insolvent by
composition
with four-
fifths of his
creditors.

3. Any insolvent trader desirous of making an Assignment of his estate and effects (*cession de biens*), or who shall be required as to do as hereinafter provided, may call a meeting of his creditors, by advertising the same for one fortnight in the *Canada Gazette*, and in two newspapers published, one in French, the other in English, in the place, or if there be none in the place, then nearest to the place, where he is carrying on his trade, stating in such advertisements the object of such meeting; and at such meeting he shall exhibit statements shewing the position of his affairs, particularly the names of his creditors and the amount due to them respectively, and shall at such meeting exhibit his books of account; and those of his creditors present at such meeting in person or by their authorized agents, or the majority of them in number and value, may name an assignee to whom such assignment may be made; and thereafter, such trader shall have the right to make an assignment of his estate and effects (*cession de biens*) to the assignee who shall be so chosen by such creditors; or if no assignee be so chosen at such meeting or at some adjournment thereof, then to such assignee being a creditor of his and solvent, and not being related, allied or of kin to him, as he may himself select: and immediately upon the execution of the deed of assignment, he shall deliver over to the assignee duplicates of the statements so by him exhibited to his creditors.

Insolvent trader may, and must when required, call a meeting of his creditors for the purpose of assigning his property to them. Statement of his debts and assets. How Assignees shall be appointed.

4. If any dispute shall arise at the first meeting of the creditors of an insolvent trader, as to the amount which any one of such creditors shall be entitled to represent at such meeting in the nomination of an

Amount on which each creditor shall vote: how de-

ided in case of dispute: defect of form not to vitiate appointment. assignee or assignees, such dispute shall be decided by the votes of the majority in number of the creditors, or their representatives who are present at such meeting: but no neglect or irregularity in any of the proceedings indicated in the third section of this Act, shall vitiate or affect the appointment, position or acts of the assignee, to whom an assignment of an insolvent debtor's estate is actually completed by a valid deed of assignment. 5

Notice calling in creditors to be given by Assignee. 5. Upon the execution of an assignment, the assignee shall forthwith give public notice thereof by advertising the same in the manner hereinbefore mentioned, continuously for the space of one month; 10 requiring by such advertisement all creditors of the insolvent to furnish statements of their respective claims, and to signify to such assignee whether or not they accept such assignment; and if within two months from the completion of such advertisements, four-fifths in number and value of the creditors, whose names appear on the statement of the Debtors' affairs so exhibited to his creditors, and of those not named therein (if any there be) who shall have so furnished to such assignee, statements of their claims on the insolvent, shall signify their acceptance of such assignment, the same shall be held to be accepted by all of the creditors of the insolvent, and shall be binding upon them to the same extent and in the same manner, as if they had all actually accepted the same. 20

Acceptance by four-fifths of the creditors in number and value to bind the whole.

Assignment not to stay proceedings until accepted. 6. No such assignment shall have the effect of staying or preventing any legal proceeding to the benefit of which any creditor shall be entitled, until the same shall have been accepted as hereinbefore provided, nor until so accepted, shall it have any other or further effect than to make the assignee, administrator for the time being of the effects assigned, subject to the obligation of accounting for them to any competent Court of Justice, or to any creditor under a writ of *saisie arrêt* or other legal process: And no assignee under any such assignment shall declare or pay any dividend to the creditors of the insolvent or to any of them until the time for the acceptance of the assignment has expired. 25 30

No dividend until time for acceptance has expired.

Effect of acceptance of Assignment in protecting the Debtor. 7. Upon any assignment being accepted as aforesaid, the Insolvent shall forthwith thereupon, and *ipso facto*, be absolutely freed and discharged from all liabilities whatsoever existing against him, and mentioned and set forth in the statement of his affairs furnished to his creditors as hereinbefore provided, or which may be made to the Assignee named under the Deed of Assignment within the delay hereinbefore fixed for that purpose, whether such debts be exigible or not at the time of his insolvency, and whether direct or indirect, and without any stipulation to that effect being required to be inserted in the Deed operating such Assignment; and all actions, suits or proceedings then pending against him shall be stayed, and the costs of the prosecution of such actions, suits or proceedings up to the time of such acceptance, shall be added to the demand for the collection of which such proceedings were instituted; and no property, moveable or immoveable, afterwards acquired by the Insolvent, shall be affected by or liable for any such liability: and upon such acceptance the Assignee shall declare and pay dividends of the estate of the Insolvent, and otherwise proceed with the winding up thereof in manner and form as provided by the Deed of Assignment. 35 40 45 50

No future property of debtor shall be liable. Assignee to wind up estate.

If there be creditors not 8. If it shall appear to the assignee on his examination of the books

of the Insolvent, that the Insolvent has creditors not named by him in his statements, and who have not furnished statements of their claims to such assignee, it shall be the duty of such assignee to reserve dividends for such creditors, and to notify them of such reserve; 5 which notification may be by letter through the post, addressed to such creditors domicile: as nearly as the same can be ascertained by the assignee: but if such creditors do not furnish their statements and apply for such dividends previous to the declaration of the last dividend of the estate, the dividends reserved for them shall form part of such 10 last dividend: But the discharge of the Insolvent under the provisions of this Act, shall not apply to the claims of any creditor or creditors who are not named by him in his statements, at the first meeting of his creditors, and who do not afterwards accept their dividends thereof from the assignee.

named in the Insolvent's statement.

15 9. If at any time after the execution of the deed of assignment, the Insolvent produces and deposits with the assignee, a deed or agreement of composition between the Insolvent and his creditors, whereby the creditors executing the same, agree to accept a composition at a pound rate upon the debts due by the Insolvent, and if such deed or agreement 20 be executed by a like proportion of the creditors of the Insolvent, as it is hereby provided must concur in his assignment to entitle him to his discharge: then the assignee shall be bound forthwith to reconvey to the Insolvent, his estate and assets, and the proceeds of his estate and assets, and all his books, documents, moneys and securities, if any, in the state 25 and condition in which they then are; and the Insolvent shall thereupon be discharged in like manner and to the same extent, and subject to the same exceptions, as are hereinbefore provided in the case of an Insolvent obtaining his discharge by means of an assignment and the acceptance thereof, and the Insolvent may procure the confirmation thereof in like manner.

Provision if the Insolvent afterwards effects a composition with his creditors.

30 10. If any dispute shall arise between the creditors of the Insolvent or between him or any creditor, as to the correct amount of the claim of any creditor, the Assignee shall obtain from the creditor whose claim is disputed, his statements and vouchers in support thereof, and 35 from the Insolvent or opposing creditor, a statement shewing his pretensions as to the amount thereof, and shall examine and verify such statements by the books and accounts of the Insolvent and by such vouchers and statements as may be furnished to him; and his decision as to the amount shall be final, so far as the 40 sufficiency of the acceptance of the assignment is affected by the amount of such claim; but if such creditor shall persist in his claim, and it shall be contested, and if at any time thereafter it be fixed by any Court of Justice at a sum less than would have been sufficient to make such acceptance valid,—then 45 such acceptance shall be held to be invalid as to the creditors who shall have contested the same only, but shall be binding against all others; and if the amount for which such creditor is to rank on the Insolvent's estate be the only matter in dispute, and such creditor shall persist in his claim, the Assignee shall reserve a dividend on the full amount 50 thereof, during the whole of the next following session in term of the Superior Court in the district in which he shall be domiciled: and if any proceeding respecting such dividend or claim be taken by such creditor or any Judge thereof, then during the pendency of such proceeding, to await any order or judgment of the said Court or any Judge thereof in the premises.

Settlement of disputes as to claims of creditors.

Reserving dividends for decision of the Court.

Assignee to be an officer of Superior Court, and liable as such.

11. Every Assignee of an Insolvent whose assignment has been accepted as aforesaid, shall be held to be an Officer of the Superior Court of Lower Canada, subject to its summary jurisdiction, and to all the responsibilities and remedies to which a curator to a vacant estate is subjected; and any question arising between creditors of the Insolvent as to the amount due to them or the mode of ranking, and any question between the Assignee and any creditor, arising upon the deed of Assignment, shall be settled in a summary manner by any Judge of the said Court in vacation, or by the said Court in term, upon Petition of such Assignee or creditor.

Assignment to include books of account, &c.

12. Every general assignment of the estate and effects of an Insolvent shall be held to include his books of account and the vouchers, accounts and other papers relating to his business, and also all moneys and negotiable paper, stocks, bonds, and other securities, besides the ordinary assets of such Insolvent.

Creditor of an Insolvent may demand an assignment.

13. It shall be lawful for any creditor of an Insolvent Trader to make or cause to be made, a demand in writing upon such Insolvent, requiring him to make an assignment of his estate and effects for the benefit of his creditors; and the Insolvent shall forthwith thereupon stop his trade or business, and discontinue all sales of goods or collection of moneys therein; and if he refuses to make such an assignment upon being required so to do as aforesaid, or if he continue to sell or otherwise to trade thereafter, or if he collect or receive thereafter any moneys due to him, then in any such case he shall be held to be about to secrete his effects with intent to defraud his creditors; and if under this section, or under the 87th chapter of the Consolidated Statutes for Lower Canada, or under any other provision of law, a writ of attachment, (*saisie arret* before Judgment) be issued against the estate and effects of such Insolvent, the officer charged with the execution of such writ shall be entitled to seize and attach thereunder all the books of account, documents, papers, bonds, obligations, moneys and securities for money of every kind and nature soever belonging to such Insolvent:

Penalty on debtor refusing.

Appointment of Curator.

And if such seizure and attachment be subsequently declared valid by the judgment of a competent Court, it shall be the duty of such Court by the same judgment to order that a curator be appointed to wind up the estate of such Insolvent trader in the same manner and with the same powers as if such estate were vacant.

Effect of insolvency as to transfers of property by debtor.

14. The insolvency of a trader under this Act shall have the same effect in law as to such trader,—and as to his estate and effects,—and as to the effect of any previous or subsequent transfer, sale, *dation en paiement*, unjust preference, or other transaction executed, granted or entered into, with or in favor of any creditor either directly or indirectly,—as would the absolute and total insolvency or bankruptcy (*déconfiture*) of such trader under the laws heretofore in force in Lower Canada.

Assignment not to discharge persons secondarily liable, or affect hypothecs, &c.

15. In the event of an assignment being accepted, or a deed of composition executed and perfected within the meaning of this Act, and the Insolvent trader thereby discharged from his liabilities, such acceptance, execution of composition deed, or discharge, shall not operate any change in the liability of any person or company secondarily liable for the debts of such insolvent, either as drawer or endorser of negotiable paper, or as guarantor, surety or otherwise; nor shall such discharge affect any mortgage, *hypothèque*, lien or collateral security held by any creditor as security for any debt so discharged.