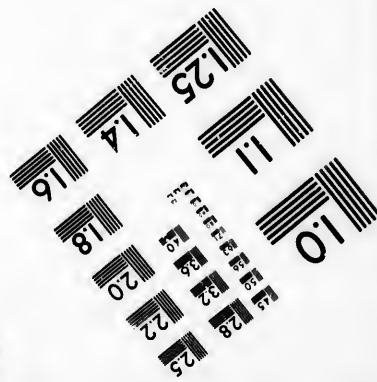
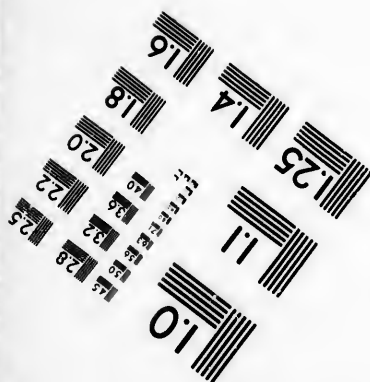
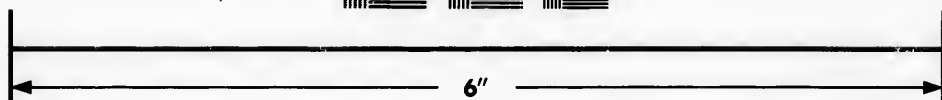
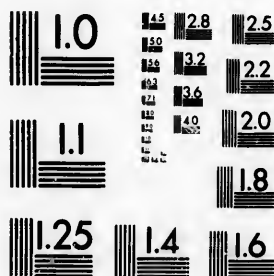


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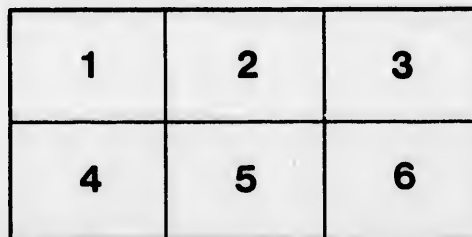
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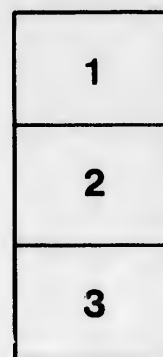
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AN ACT

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INSOLVENCY.

ASSENTED TO 22ND JUNE, 1869.



Ottawa :

PRINTED BY MALCOLM CAMERON

Law Printer to the Queen's Most Excellent Majesty.

1869.





ANNO TRICESIMO-SECUNDO ET TRICESIMO-TERTIO

VICTORIÆ REGINÆ.

CAP. XVI.

An Act respecting Insolvency.

[Assented to 22nd June, 1869.]

WHEREAS it is expedient that the Acts respecting Bank-^{Preamble}ruptey and Insolvency in the several Provinces of Ontario, Quebec, New Brunswick and Nova Scotia, be amended and consolidated, and the Law on those subjects assimilated in the several Provinces of the Dominion: Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. This Act shall apply to traders only.

Application of
Act.

OF VOLUNTARY ASSIGNMENTS.

2. Any debtor unable to meet his engagements, and desirous of making an assignment of his estate, and any debtor who is required to make an assignment, as hereinafter provided, shall make an assignment of his estate and effects to any official assignee resident within the county or place wherein the Insolvent has his domicile; or if there be no official assignee therein then to an official assignee in the county or place nearest to the domicile of the Insolvent wherein an official assignee has been appointed, and the official assignee to whom such assignment is made shall be known as the Interim Assignee; and forthwith upon the execution of the deed of assignment to him, a meeting of the creditors of the Insolvent for the appointment of an assignee, shall be called by the interim assignee to be held at the place of business of the Insolvent within a period not exceeding three weeks from the execution of the deed of assignment.

Assignment to
be made to In-
terim Assignee

Meeting of
creditors to be
called.

3. Such meeting shall be called by advertisement (Form A), and previous to such meeting the interim assignee shall prepare, and shall then exhibit, statements showing the position of the affairs of the Insolvent, and particularly a schedule (Form B), containing the names and residence of all his creditors, and the amount

Calling of
meeting and
proceedings
thereat

Schedule of liabilities and assets; and what it must show.

Insolvent to assist, and make a declaration on oath.

amount due to each, distinguishing between those amounts which are then actually overdue, or for which he is directly liable, and those for which he is only liable indirectly as indorser, surety or otherwise, and which have not become due at the date of such meeting, the particulars of any negotiable paper bearing his name, the holders of which the interim assignee shall be unable to ascertain, the amount due to each creditor, and also any contingent liabilities, describing the same; and a statement showing the amount and nature of all the assets of the Insolvent, including an inventory of his estate and effects; and the insolvent shall assist in the preparation of such statements and of the said schedule, and shall attend at such meeting for the purpose of being examined on oath touching the contents thereof, and touching his books of account and his estate and effects generally; And at such meeting he shall file a declaration under oath stating whether or no such statements and schedule are correct, and if incorrect, in what particulars; And the interim assignee shall also produce at such meeting, the Insolvent's books of account, and all other documents and vouchers, if required so to do by any creditor.

Notice to each Creditor: what to contain.

4. At least ten days before the day fixed for such meeting the interim assignee shall mail to each of the creditors of the Insolvent, in so far as he shall then have been able to discover them, a notice of such meeting with a list containing the names of all creditors holding direct claims, and also of all creditors holding indirect claims maturing before the meeting, amounting to one hundred dollars each, with the amount appearing to be due to each of them; and the aggregate amount of those under one hundred dollars.

Appointment of Assignee.

Irregularity not to vitiate it.

5. At such meeting, the creditors who have proved their claims in the manner hereinafter provided by the one hundred and twenty-second section, may appoint an assignee to the estate of the Insolvent; and no neglect or irregularity in any of the proceedings antecedent to the appointment of an assignee shall vitiate such appointment, whether it be made under a voluntary assignment, or in compulsory liquidation.

In case no Assignee is appointed, Interim Assignee to act, &c., otherwise to deliver estate to Assignee.

6. If no assignee be appointed at such meeting, or at any adjournment thereof; or if the assignee named refuses to act; or if no creditor attends at such meeting, the interim assignee shall be the assignee to the estate of the Insolvent; but if any assignee be appointed thereat, he shall thenceforth be the assignee of such estate, and the interim assignee shall immediately deliver over to him the whole of the estate of the Insolvent, and all statements, documents and papers prepared by such interim assignee, and unless he is himself appointed assignee, shall also immediately execute a deed of transfer to such assignee of the estate and effects of the Insolvent.

7. The deed or instrument of assignment may be in the form C., Form of instrument of assignment, and of deed of transfer by Interim Assignee. and the deed of transfer by the interim assignee in the form D., or in any other forms equivalent thereto respectively, and if executed in any part of Canada other than the Province of Quebec, they shall be in duplicate, and a copy of the list of creditors produced at the first meeting of creditors shall be appended to the deed; and no particular description or detail of the property or effects assigned need be inserted in either of such deeds: and any number of counterparts of such deeds required by the assignee, and any further or other deeds or assurances required by the assignee, shall be executed by the Insolvent or by the interim assignee, as the case may be, at the request of the assignee, either at the time of the execution of such deed or instrument, or afterwards, to which counterparts no list of creditors need be appended.

8. If the interim assignee shall fail or neglect to execute such deed of transfer within twenty-four hours after the nomination of an assignee at such meeting—he shall in the discretion of the Judge be subject to imprisonment for a period not exceeding one month; and such imprisonment may be ordered by the Judge upon the application of the person so nominated as assignee, or of any creditor, supported by affidavit to the satisfaction of the Judge: and the interim assignee shall not be permitted to plead to or answer such application either as to its form or upon the merits in any manner or way whatever until after he shall have executed and delivered to the assignee such deed of transfer, and shall have also delivered over to him the whole of the estate and effects of the Insolvent—with all books, instruments, vouchers and documents appertaining thereto.

9. If by election or by failure of election, the interim assignee shall become assignee, his appointment shall be established, if by election by an instrument (Form D D) declaring the fact, signed by the chairman and by one or more of the creditors present at the meeting appointing him, and authenticated by his own affidavit: and if by failure of election, by an instrument declaring the fact, and signed and sworn to by himself before the Judge, who shall have power to interrogate him specially upon the contents thereof, and, shall not receive his oath if he has any reason to doubt the facts stated in such instrument; and the instrument of appointment shall be deposited in the office of the Court with the deed of assignment; and a copy of such instrument certified by the clerk or Prothonotary of the Court wherein it is deposited under the seal of such Court, shall serve all the purposes of the deed of transfer hereinbefore provided for, and for that purpose shall be annexed to the deed of assignment or in the Province of Quebec to the copy thereof and registered therewith.

10. The assignment shall be held to convey and vest in the interim assignee in the first instance, the books of account of the Insolvent, all vouchers, accounts, letters and other papers and documents

Proviso: as to
pledgees of the
property of
the Insolvent.

documents relating to his business, all moneys and negotiable papers, stocks, bonds, and other securities, as well as all the real estate of the Insolvent, and all his interest therein, whether in fee or otherwise, and also all his personal estate, and moveable and immoveable property, debts, assets and effects, which he has or may become entitled to at any time before his discharge is effected under this Act, excepting only such as are exempt from seizure and sale under execution, by virtue of the several statutes in such case made and provided; and if an assignee be subsequently appointed, or if by the failure of election, the interim assignee becomes assignee, such assignee shall have the same rights in and to the whole of such estate and effects as were previously held under this Act by the interim assignee; Provided always that no pledgee of any of the effects of the Insolvent or any other party in possession thereof with a lien thereon, shall be deprived of the possession thereof, without payment of the amount legally chargeable as a preferential claim upon such effects; except in the case hereinafter provided for of such pledgee or party in possession proving his claim against the estate and putting a value upon his security; But at any time before the maturity of any advance made upon the pledge of effects of the Insolvent, or within fifteen days thereafter, the assignee shall have the right to sell such effects as he may sell the other effects of the Insolvent; and thereupon if the price is sufficient to cover such advance with interest and lawful charges, the pledgee shall carry out such sale and deliver the effects sold in conformity therewith receiving the price thereof, but not otherwise.

Deposit of
duplicate of
deed of
assignment.

11. Forthwith upon the execution of the deed of transfer, the assignee, if appointed in any part of Canada other than the Province of Quebec, shall deposit one of the duplicates of the deed of assignment and of such deed of transfer, and if in the Province of Quebec, authentic copies of each, in the office of the proper Court; and in either case the list of creditors shall accompany the instruments so deposited.

Registration
of Deeds of
Assignment
and of transfer.

12. If the Insolvent possesses real estate, the deed of assignment with the deed of transfer annexed thereto, if any such deed of transfer be required and executed, or, if such real estate be in the Province of Quebec, authentic copies thereof, may be enregistered in the Registry Office for the Registration Division or County within which such real estate is situate; and no subsequent registration of any deed or instrument of any kind executed by the Insolvent, or which otherwise would have affected his real estate, shall have any force or effect thereon; and if the real estate be in any part of Canada other than the Province of Quebec, and deeds of assignment and of transfer be executed in the Province of Quebec before Notaries, copies of such deeds certified by the Notary or other public officer in whose custody the originals remain, may be registered without other evidence of the execution thereof, and without any memorial; and a certificate of such registration may be endorsed upon like copies, and if the property be

be in the Province of Quebec and the deeds of assignment and of transfer be executed elsewhere in the Dominion they may be enregistered at full length in the usual manner; but it shall not be necessary to enregister, or to refer on registration in any manner to, the list of creditors annexed to the deed of transfer.

COMPULSORY LIQUIDATION.

13.—A debtor shall be deemed insolvent and his estate shall become subject to compulsory liquidation:

When a debtor's estate shall be subject to compulsory liquidation.

a. If he absconds or is immediately about to abscond from any Province in Canada with intent to defraud any creditor, or to defeat or delay the remedy of any creditor, or to avoid being arrested or served with legal process; or if being out of any such Province in Canada he so remains with a like intent; or if he conceals himself within the limits of Canada with a like intent;

b. Or if he secretes or is immediately about to secrete any part of his estate and effects with intent to defraud his creditors, or to defeat or delay their demands or any of them;

c. Or if he assigns, removes or disposes of, or is about or attempts to assign, remove or dispose of, any of his property with intent to defraud, defeat or delay his creditors, or any of them;

d. Or if with such intent he has procured his money, goods, chattels, lands or property to be seized, levied on or taken under or by any process or execution, having operation where the debtor resides or has property, founded upon a demand in its nature proveable under this Act, and for a sum exceeding two hundred dollars, and if such process is in force and not discharged by payment or in any manner provided for by law;

e. Or if he has been actually imprisoned or upon the gaol limits for more than thirty days in a civil action founded on contract for the sum of two hundred dollars or upwards, and still is so imprisoned or on the limits; or if in case of such imprisonment he has escaped out of prison or from custody or from the limits;

f. Or if he wilfully neglects or refuses to appear on any rule or order requiring his appearance, to be examined as to his debts under any statute or law in that behalf;

g. Or if he wilfully refuses or neglects to obey or comply with any such rule or order made for payment of his debts or of any part of them;

h. Or if he wilfully neglects or refuses to obey or comply with the order or decree of the Court of Chancery or of any of the judges thereof, for payment of money;

i. Or if he has made any general conveyance or assignment of his property for the benefit of his creditors, otherwise than in the manner prescribed by this Act; or if being unable to meet his liabilities in full, he makes any sale or conveyance of the whole or the main part of his stock in trade or of his assets, without the consent of his creditors, or without satisfying their claims;

j. Or if he permits any execution issued against him under which any of his chattels, land or property are seized, levied upon or taken in execution, to remain unsatisfied till within four days of the time fixed by the Sheriff or officer for the sale thereof, or for fifteen days after such seizure; subject however to the privileged claim of the seizing creditor for the costs of such execution, and also to his claim for the costs of the judgment under which such execution has issued, which shall constitute a lien upon the effects seized, or shall not do so, according to the law as it existed previous to the passing of this Act, in the Province in which the execution shall issue.

If a debtor
fails to meet
liabilities.

14. If a debtor ceases to meet his liabilities generally as they become due, any one or more claimants upon him for sums exceeding in the aggregate five hundred dollars, may make a demand upon him either personally within the county or judicial district wherein such Insolvent has his chief place of business or at his domicile, upon some grown person of his family, or in his employ; (Form E.) requiring him to make an assignment of his estate and effects for the benefit of his creditors.

But if claims
do not amount
to \$500, &c.,
Judge may
make an order
suspending
proceedings.

15. If the debtor, on whom such demand is made, contends that the same was not made in conformity with this Act, or that the claims of such creditor or creditors do not amount to five hundred dollars, or that they were procured in whole or in part for the purpose of enabling such creditor or creditors to take proceedings under this Act, or that the stoppage of payment by such debtor was only temporary, and that it was not caused by any fraud or fraudulent intent, or by the insufficiency of the assets of such debtor to meet his liabilities, he may after notice to such claimant or claimants, but only within five days from such demand, present a petition to the judge praying that no further proceedings under this Act may be taken upon such demand, and, after hearing the parties and such evidence as may be adduced before him, the judge may grant the prayer of his petition, and thereafter such demand shall have no force or effect whatever; and such petition may be granted with or without costs against either party; but if it appears to the judge that such demand has been made without reasonable grounds, and merely as a means of enforcing payment under color of proceeding under this Act, he may condemn the creditors making it, to pay treble costs.

If the debtor
be absent
when the de-
mand is made.

16. If at the time of such demand the debtor was absent from the Province wherein such service was made, application may be made after due notice to the claimants, within the said period of five days to the Judge on his behalf, for an enlargement of the time

time for making an assignment; and thereupon if such debtor have not returned to such Province the Judge may make an order enlarging such period and fixing the delay within which such assignment shall be made; but such enlargement of time may be refused by the Judge if it be made to appear to his satisfaction that the same would be prejudicial to the interests of the creditors.

17. If such petition be rejected, or if while such petition is pending, the debtor continues his trade, or proceeds with the realization of his assets, or if no such petition be presented within the aforesaid time, and the Insolvent during the same time neglects to make an assignment of his estate and effects for the benefit of his creditors as provided by the second section of this Act, his estate shall become subject to compulsory liquidation.

In certain cases such debtor's estate to become subject to compulsory liquidation.

18. But no act or omission shall justify any proceeding to place the estate of an Insolvent in compulsory liquidation, unless proceedings are taken under this Act in respect of the same, within three months next after the act or omission relied upon as subjecting such estate thereto; nor after a writ of attachment in compulsory liquidation has been issued while it remains in force, nor after a voluntary assignment has been made, or an assignee appointed under this Act.

When act or omission shall not justify the placing of the estate in compulsory liquidation.

19. In the Province of Quebec an affidavit may be made by a claimant for a sum of not less than two hundred dollars, or by the clerk or other duly authorized agent of such claimant setting forth the particulars of his debt, the insolvency of the person indebted to him, and any fact or facts which, under this Act, subject the estate of such debtor to compulsory liquidation.—(Form F).—And upon such affidavit being filed with the Prothonotary of the district within which the Insolvent has his chief place of business, a writ of attachment (Form G) shall issue against the estate and effects of the Insolvent addressed to the sheriff of the district in which such writ issues, requiring such sheriff to seize and attach the estate and effects of the Insolvent, and to summon him to appear before the court to answer the premises; and such writ shall be subject as nearly as can be to the rules of procedure of the court in ordinary suits, as to its issue, service, and return, and as to all proceedings subsequent thereto before any Court or Judge.

Affidavits in Province of Quebec, how made.

Writ of attachment founded thereon:

20. In the Province of Ontario, New Brunswick or Nova Scotia in case any claimant by affidavit of himself or of any other individual (Form F), shows to the satisfaction of the judge that he is a creditor of the Insolvent for a sum of not less than two hundred dollars, and also shews by the affidavits of two credible persons, such facts and circumstances as satisfy such judge that the debtor is insolvent within the meaning of this Act, and that his estate has become subject to compulsory liquidation, such judge may order the issue of the writ of attachment (Form G) against the estate and effects of the Insolvent, addressed to the sheriff of the county in which such writ issues, requiring such sheriff to seize and attach the

Affidavits in other Provinces, how made.

Writ of attachment.

the estate and effects of the Insolvent and to summon him to appear before the court to answer the premises, and such writ shall be subject as nearly as can be to the rules of procedure of the Court in ordinary suits as to its issue and return, and as to all proceedings subsequent thereto before any Court or Judge.

Service of writ, in case Insolvent has no domicile or absconds.

21. If the defendant in any process for compulsory liquidation, has no domicile in any Province of Canada, or absconds from the Province in which he has his domicile or remains without such Province, or conceals himself within such Province, service of the Writ of Attachment issued against him under this Act, may be validly made upon him in any manner which the Judge may order, upon application to him in that behalf; and in proceedings for compulsory liquidation, concurrent Writs of Attachment may be issued, if required by the plaintiff, addressed to the sheriffs of districts or counties in any part of Canada other than the District or County in which such proceedings are being carried on.

Concurrent writs.

Return of writs of attachment.

22. Writs of attachment in proceedings for compulsory liquidation may be made returnable after the expiry of three days from the service thereof, when the defendant resides in Canada, and not more than fifteen miles from the place of return, or when the defendant has no domicile therein; and of one additional day for every additional distance of fifteen miles between such residence, if in Canada, and such place of return; and immediately upon the issue of a writ of attachment under this Act, the Sheriff shall give notice thereof by advertisement thereof (Form H).

Sheriff to be officer of Court issuing writs.

His duty in executing it.

23. For all the purposes of such writ of attachment and in respect of all his duties regarding it, the Sheriff shall be an officer of the Court issuing such writ, and subject to its summary jurisdiction as such; and under such writ, he shall by himself or by such agent or messenger as he shall appoint for that purpose, whose authority shall be established by a copy of the writ addressed to him by name and description, and certified under the hand of the Sheriff, seize and attach all the estate and effects of the insolvent within the limits of the County or District for which such Sheriff is appointed, including his books of account, moneys and securities for money, and all his office or business papers, documents, and vouchers of every kind and description; and shall return, with the writ, a report under oath stating in general terms his action thereon.

Sheriff may enter house and shop, &c., forcibly.

24. If the Sheriff or officer charged with any writ of attachment is unable to obtain access to the interior of the house, shop, warehouse, or other premises of the defendant named in such writ, by reason of the same being locked, barred or fastened, such Sheriff or officer shall have the right forcibly to open the same.

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compulsory liquidation,
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compulsory liquid-
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25.

25. If, in the County or District in which is situate the chief place of business of the debtor, official assignees have been appointed for the purposes of this Act, the Sheriff shall place the estate and effects attached in the custody of one of such official assignees, who shall be guardian under such writ; but if not, he shall appoint as guardian such competent and responsible person as may be willing to assume such guardianship; and the person so placed in possession shall be bound to perform all the duties hereinbefore imposed upon the interim assignee, except the calling of a meeting of creditors for the appointment of an assignee.

In whose cus-
tody Sheriff
shall place
estate: duty
of such person.

26. Except in cases where a petition has been presented as provided for by the fifteenth section of this Act, the alleged insolvent may present a petition to the Judge at any time within three days from the return day of the writ, but not afterwards; and may thereby pray for the setting aside of the attachment made under such writ, on the ground that his estate has not become subject to compulsory liquidation; or if the writ of attachment has issued against a debtor by reason of his neglect to satisfy a writ of execution against him as hereinbefore provided, then on such ground, and also on the ground that such neglect was caused by a temporary embarrassment, and that it was not caused by any fraud or fraudulent intent, or by the insufficiency of the assets of such debtor to meet his liabilities; and such petition shall be heard and determined by the Judge in a summary manner, and conformably to the evidence adduced before him thereon; but proceedings for compulsory liquidation shall not be contested either as to form or upon the merits, otherwise than by a summary petition, in the manner, upon the grounds, and within the delay, hereinbefore provided.

When petition
may be
presented by
insolvent.

Hearing on
such petition.

Proviso.

27. Immediately upon the expiration of three days from the return day of the writ, if no petition to quash or to stay proceedings be filed, or upon the rendering of judgment on the petition to quash, if it be dismissed, or immediately upon such return with the consent of the insolvent, the Judge, upon the application of the plaintiff, or of any creditor declaring in such application that he thereby intervenes for the prosecution of the cause, shall order a meeting of the creditors to be held at a time and place named in such order, and after due notice thereof by advertisement, for the purpose of appointing an assignee; and the guardian shall perform the duties imposed upon the interim assignee by section four of this Act.

Meeting of
creditors, how
called.

28. At the time and place appointed, the Judge or the prothonotary or clerk of the Court in which the proceedings are carried on shall preside, and the creditors shall have the right to appoint an assignee to the estate and effects of the Insolvent, and the presiding officer shall draw up and sign a record of such appointment which shall be a record of the Court, but if no creditor be present at such meeting the presiding officer shall have power to adjourn such meeting.

Who shall
preside at
meeting.

Appointment
of Assignee.

Transfer of
estate from
guardian
to assignee.

29. Upon the appointment of the assignee, the guardian shall immediately deliver the estate and effects in his custody to such assignee; and by the effect of his appointment, the whole of the estate and effects of the Insolvent, whether real or personal, moveable or immoveable, as existing at the date of the issue of the writ, and which may accrue to him by any title whatsoever, up to the time of his discharge under this Act, and whether seized or not seized under the writ of attachment, shall vest in the said assignee in the same manner, to the same extent, and with the same exceptions, as if he had been duly appointed assignee to such insolvent under a voluntary assignment of his estate and effects executed by the insolvent to an interim assignee, and such estate and effects had been duly transferred to him as hereinbefore provided.

Proof and
registry of
appointment.

30. An authentic copy or exemplification, under the hand of the Court, of the record of appointment of an assignee, may be registered at full length in any registry office, without any proof of the signature of the officer and without any memorial; and such registration shall have the same effect as to the real estate of the insolvent and in all other respects, as the registration under this Act of a deed of assignment with deed of transfer annexed.

Appointment
of official
assignees by
Board of
Trade.

31. The Board of Trade at any place, or the Council thereof, shall within three months from the time at which this Act shall come into force, and afterwards, from time to time, within three months after any vacancy by the death, resignation or removal of any official assignee, name any number of persons within the County or District in which such Board of Trade exists, or within any County or District adjacent thereto in which there is no Board of Trade, to wit: at least one Official Assignee for each of such Counties, and at least three Official Assignees in each District of the Province of Quebec, to be official assignees for the purposes of this Act, and at the time of such nomination shall declare what security for the due performance of his duties, shall be given by each of such official assignees before entering upon them; and a copy of the resolution naming such persons, certified by the Secretary of the Board shall be transmitted to the Prothonotary or Clerk of the Court in the District or County within which such assignees are resident respectively; and such copy shall be *prima facie* evidence of the appointment of an official assignee; but such nomination may be made by the Judge, in any District or County wherein or adjacent to which no Board of Trade exists, and also in such District or County wherein, or adjacent to which a Board of Trade exists, but in which the Board of Trade shall have failed to make such nomination during the delay aforesaid, and in that case the Judge shall certify such nomination under his hand, and shall file such certificate in the office of the Court over which he presides; and such security as such Judge shall declare in such nomination, shall be given by such official assignee; and the Board or Judge who has appointed an Official Assignee or the Judge having

In places
where there is
no Board of
Trade.

Security by
and removal
of assignees.

the guardian shall
custody to such
the whole of the
real or personal,
of the issue of
title whatsoever,
and whether seized
vest in the said
and with the
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his estate and
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having jurisdiction at the domicile of such official Assignee, may remove him upon petition to that effect duly notified to such Official Assignee, and upon such notice and for such causes as such Board or Judge may deem sufficient ; but such removal shall not have the effect of removing such Official Assignee from the office of Assignee to any estate to which he has previously been appointed ; and all official assignees now holding that office shall continue to hold the same, but subject to all the provisions of this Act with respect to official assignees ;

Present official Assignees continued.

32. Such security shall be taken in the name of office of the President of such Board of Trade or Judge, for the benefit of the creditors of any person whose estate is or subsequently may be, in process of liquidation under this Act; and in case of the default of any such official assignee in the performance of his duty, his security may be enforced and realized by the Assignee of the estate which suffers by such default, then or subsequently appointed, who may sue in his own name as such assignee upon such security; Provided always that the giving of such security shall not prevent the creditors of any insolvent from requiring security to be given for their benefit as hereinafter provided; but in that case the security taken in the name of the President of the Board of Trade or Judge shall be regarded as supplementary to the security so required, and shall be enforceable only after discussion of such security; and upon the security so given coming to an end, the Official Assignee shall be incapable of being appointed interim assignee or guardian until new security be given instead thereof to the satisfaction of the official receiving the same; and if in case of such default it be found that more than one insolvent estate has claims upon such security, the total amount claimed, not exceeding the amount of such security, shall be payable to such of the assignees of such estates, as shall be named by the President of such Board of Trade or Judge by an instrument in writing, for that purpose, and may be claimed and recovered by such assignee after a copy of such nomination has been delivered to the surety, who shall be discharged by such payment; and thereafter the assignee so named shall distribute the amount so received among the claimants thereof including the estate represented by himself, in the next dividend sheet of such estate, subject to contestation like all other items in such sheet; and he shall receive in respect of the amount so received and distributed, a commission of one half per centum thereon and no more.

To whom and
for whose
benefit the
security shall
be given.

Proviso: creditors may require further security.

If more than one insolvent estate has claims on it.

33. The interim assignee or guardian shall have the right in his own name, and in his capacity of interim assignee or guardian, as the case may be, to institute any conservatory process or any process or proceeding that may be necessary for the protection of the estate, provided that he shall first have obtained the authority of the Judge for so doing;

Conservatory proceedings.

Inspectors
may be ap-
pointed by
creditors.
Their duties.
Term of office,
&c.

Place for
meetings to
be fixed.

Inspectors to
represent the
creditors.

34. At the first meeting of creditors which shall be held for the appointment of an assignee either on a voluntary assignment or in compulsory liquidation, or at any subsequent meeting, the creditors may appoint one or more inspectors either from among themselves, or otherwise, whose services may be gratuitous, or paid for, as the creditors shall decide at such meeting, and who shall superintend and direct the assignee in the performance of his duties under this Act, until the next meeting of creditors; and if their appointment be not then or at some subsequent meeting revoked, they shall continue to hold the same till the final closing of the estate; and at such meeting, and at subsequent meetings from time to time the creditors may fix, by resolution, the City, Town or other place in which meetings of creditors shall thereafter be held; and thereafter no meetings held elsewhere shall be valid; and whenever under this Act the consent, authority or direction of the creditors is required, to enable the assignee to perform any act, or to adopt any course, the unanimous consent, sanction, authority or directions of the inspectors, if any there be, evidenced by a writing signed by them and deposited with the assignee, shall be held and taken to be the consent, sanction, authority or directions of the creditors in that behalf, save and except in the case of the proposed sale of the entire estate of the Insolvent as hereinafter provided; subject always however to revision by the creditors at any meeting thereof held for the purpose

If an offer of
composition be
made and
accepted.

35. If at such meeting the Insolvent shall make an offer of composition, and such offer be approved by the creditors, they may make such order as they may deem expedient, either for suspending the disposal of the estate and all or any proceedings tending thereto, for such time as may be fixed by such meeting, or for any other purpose.

OF AS SIGEES.

Notice by
Assignee.
Form.

36. Immediately upon his appointment the assignee shall give notice thereof by advertisement (Form I);

Calling meet-
ings of cre-
ditors.

37. The assignee shall call meetings of creditors, whenever required in writing so to do by the inspectors, or by five creditors stating in such writing the purpose of the intended meeting and making themselves liable for the expense of calling the same; or whenever he is required so to do by the Judge, on the application of any creditor, of which application he shall have notice; or whenever he shall himself require instructions from the creditors; and he shall state succinctly in the notice calling any meeting, the purposes of such meeting;

Assignee to
obey instruc-
tions and
deposit
moneys in a
Bank, &c.

38. The assignee shall be subject to all rules, orders and directions, not contrary to law, or to the provisions of this Act, which are made for his guidance by the creditors; and until he receives directions from the creditors in that behalf, if there be a Bank or agency of a Bank in the place or county in which the insolvent

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has his place of business or within fifteen miles of such place, he shall deposit weekly, at interest, in the name of the estate, all moneys received by him, in the Bank or Bank Agency in or nearest to the place where the Insolvent so carries on business; but he shall not deposit moneys belonging to the estate, in his own name in any Bank, on pain of dismissal by the Judge on the summary petition of any creditor; and the interest received upon deposits shall appertain to the estate, and shall be distributed in the same manner and subject to the same rights and privileges as the capital from which such interest accrued; and if in any account or dividend sheet made subsequent to any deposit in a Bank, the assignee shall omit to account for or divide the interest then accrued thereon, he shall forfeit and pay to the estate to which such interest appertains, a sum equal to three times the amount of such interest; and he may be constrained so to do by the Judge upon summary petition and by imprisonment as for a contempt of Court; And at every meeting of inspectors or of creditors, the assignee shall produce a Bank pass-book showing the name in which the Bank account of the estate is kept at such Bank, and all the transactions with such Bank connected with such account, of which production mention shall be made in the minutes of such meeting, or it shall be conclusively presumed not to have been produced thereat.

Interest
thereon.

Bank pass-
book to be
produced.

39. The interim assignee, assignee or guardian, as the case may be shall attend all meetings of creditors, and take and preserve minutes of such meetings, signed by himself, and signed and certified at the time by the Chairman, or by three creditors present at the meeting; and the assignee shall also keep a correct register in duplicate of all his proceedings, and of the reception of all papers and documents served upon or delivered to him, and of all claims made to or before him, and shall enter therein in the first place the minutes of all meetings of creditors held before or at the time of his appointment, as delivered to him; one of which duplicates shall remain in the office of the Prothonotary or Clerk of the Court, and shall be written up and completed by the assignee monthly from the duplicate in his own possession; and also if required, and independent of the security hereinbefore required to be given, the assignee, in any case, shall give such other security, and in such manner, as shall be ordered by a resolution of the creditors, and shall conform himself to such directions in respect thereof, and in respect of any change or modification thereof or addition thereto, as are subsequently conveyed to him by similar resolutions; and in every such case, the bond or instrument of security shall be taken in favor of the creditors, by the name of the "Creditors of A. B., an Insolvent, under the Insolvent Act of 1869," and shall be deposited in the office of the Court, and in case of default by the assignee on whose behalf it is given, may be sued upon by any assignee, who shall be subsequently appointed, to the same estate, in his own name as such assignee: And it shall be the duty of the assignee at the meeting by which he is appointed, if present thereat, or if not, then at the next meeting

Further duties
of Assignee, to
keep minutes,
&c.

To give
further secu-
rity, if required

Form of
bond, &c.

meeting thereof, to bring before such meeting the question of the security to be given by him.

Powers of insolvent vested in Assignee.

40. All powers vested in any Insolvent which he might have legally executed for his own benefit, shall vest in, and be executed by the assignee, in like manner and with like effect as they were vested in the Insolvent, and might have been executed by him; but no power vested in the Insolvent or property or effects held by him as Trustee or otherwise for the benefit of others, shall vest in the assignee under this Act.

Exception.

Assignee to sell property of Insolvent, and in what manner.

41. The assignee shall wind up the affairs of the Insolvent, by the sale, in a prudent manner, of all Bank and other stocks, and of all moveables belonging to him, and by the collection of all debts, but in all of such respects shall be guided by the direction of the creditors given as herein provided; but nothing in this Act contained shall prevent the assignee from selling the entire estate and effects of the Insolvent, real and personal, in one lot, either for a gross price, or at a dollar rate upon the liabilities of the Insolvent, and upon such other terms and conditions as to the payment of the price, the payment or assumption and payment, by the purchaser of mortgages or hypothecary debts, and the payment of privileged debts, as may be considered advantageous, such conditions however, in the case of mortgages, hypothecations or privileged claims, not to diminish the security of the creditors holding the same nor to extend the term of payment agreed to by them, without their express consent; Provided always that such sale and all and every the terms and conditions thereof and connected therewith be first approved at a meeting of creditors; and such meeting may be held at any time after the appointment of an assignee, provided notice by advertisement as provided by this Act has been given by the assignee, interim assignee or guardian, as the case may be.

Proviso for sanction of creditors.

Assignee to sue for debts due to Insolvent.

42. The Assignee, in his own name as such, shall have the exclusive right to sue for the recovery of all debts due to or claimed by the Insolvent of every kind and nature whatsoever; for rescinding agreements, deeds and instruments made in fraud of creditors and for the recovery back of monies alleged to have been paid in fraud of creditors, and to take, both in the prosecution and defence of suits, all the proceedings that the Insolvent might have taken for the benefit of the estate, or that any creditor might have taken for the benefit of the creditors generally; and may intervene and represent the Insolvent in all suits or proceedings by or against him, which are pending at the time of his appointment, and on his application may have his name inserted therein, in the place of that of the Insolvent; And if after the appointment of an assignee, and before he has obtained his discharge under this Act, the Insolvent shall sue out any writ or institute or continue any proceeding of any kind or nature whatsoever, he shall give to the opposite party such security for costs as shall be ordered by the Court before which such suit or proceeding

If the Insolvent sues for the same.

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ceeding is pending, before such party shall be bound to appear or plead to the same or take any further proceeding therein.

43. If a partner in an unincorporated trading company or copartnership, becomes insolvent within the meaning of this Act, and an Assignee is appointed to the estate of such Insolvent, such partnership shall thereby be held to be dissolved; and the Assignee shall have all the rights of action and remedies against the other partners in such company or copartnership, which any partner could have or exercise by law or in equity against his copartners after the dissolution of the firm; and may avail himself of such rights of action and remedies, as if such copartnership or company had expired by efflux of time.

If a partner becomes insolvent, partnership thereby dissolved, &c.

44. After having acted with due diligence in the collection of the debts, if the Assignee finds there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he may report the same to the creditors, and with their sanction he may obtain an order of the Judge to sell the same by public auction, after such advertisement thereof as may be required by such order; and pending such advertisement, the Assignee shall keep a list of the debts to be sold, open to inspection at his office, and shall also give free access to all documents and vouchers explanatory of such debts; but all debts amounting to more than one hundred dollars shall be sold separately, except as herein otherwise provided.

Sale of debts the collection of which would be too onerous.

Proviso.

45. If at any time any creditor of the Insolvent shall desire to cause any proceeding to be taken which in his opinion would be for the benefit of the estate, and the assignee shall under the authority of the creditors or of the Inspectors refuse or neglect to take such proceeding after being duly required so to do, such creditor shall have the right to obtain an order of the Judge authorizing him to take such proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from such proceeding shall belong exclusively to the creditor instituting the same for his benefit and that of any other creditors who have joined him in causing the institution of such proceeding; but if before such order is granted, the assignee shall signify to the judge his readiness to institute such proceedings for the benefit of the creditors, the order shall be made prescribing the time within which he shall do so, and in that case the advantage derived from such proceeding shall appertain to the estate.

A creditor may obtain an order of a Judge authorizing him to take any special proceedings at his own risk.

46. The person who purchases a debt from the Assignee may sue for it in his own name, as effectually as the Insolvent might have done and as the Assignee is hereby authorized to do; and a Bill of Sale (Form K), signed and delivered to him by the Assignee, shall be *prima facie* evidence of such purchase, without proof of the handwriting of the Assignee; and no warranty, except as to the good faith of the Assignee, shall be created by such sale and conveyance, not even that the debt is due.

Rights of purchasers of insolvent's debts

Sale of real
estate, on cer-
tain conditions.

47. The Assignee may sell the real estate of the Insolvent, but only after advertisement thereof, for a period of two months, and in the same manner as is required for the actual advertisement of sales of real estate by the sheriff in the district or place where such real estate is situate, and to such further extent as the assignee deems expedient; but the period of advertisement may be shortened to not less than one month by the creditors with the approbation of the Judge; but in the Province of Quebec such abridgement shall not take place without the consent of the hypothecary creditors upon such real estate, (if any there be) and if the price offered for any real estate at any public sale duly advertised as aforesaid, is, in the opinion of the Assignee, too small, he may withdraw such real estate, and sell it subsequently under such directions as he receives from the creditors.

Effect of sales
of real estate.

48. All sales of real estate so made by the Assignee, shall vest in the purchasers all the legal and equitable estate of the insolvent therein, and in all respects shall have the same effect as to mortgages, hypothecs or privileges then existing thereon, as if the same had been made by a sheriff in the Province in which such real estate is situate, under a writ of execution issued in the ordinary course, but no other, greater, or less effect than such sheriff's sale; and the title conveyed by such sale shall have equal validity with a title created by a sheriff's sale; and the deed of such sale which the Assignee executes (Form L.) shall have the same effect as a sheriff's deed has in the Province within which the real estate is situate; but he may grant such terms of credit as he may deem expedient, and as may be approved of by the creditors, for any part of the purchase money; except that no credit shall be given in the Province of Quebec for any part of the purchase money coming to any hypothecary or privileged creditor without the consent of such creditor; and the Assignee shall be entitled to reserve a special hypothec or mortgage by the deed of sale as security for the payment of such part of the purchase money as shall be unpaid; and such deed may be executed before witnesses or before notaries, according to the exigency of the law of the place where the real estate sold is situate.

Form of deed
and terms.

Sales in Que-
bec may be
subject to
certain
charges.

49. In the Province of Quebec such sale may be made subject to all such charges and hypothecs as are permitted by the law of the said Province to remain chargeable thereon, when sold by the sheriff, and also subject to such other charges and hypothecs thereon, as are not due at the time of the sale, the time of payment whereof shall not however be extended by the conditions of such sale; and also subject to such other charges, and hypothecs as may be consented to in writing by the holders or creditors thereof:—

Folle enchère.

And an order of re-sale for false bidding may be obtained from the judge by the assignee upon summary petition; and such re-sale may be proceeded with after the same notices and advertisements, and with the same effect and consequences as to the false bidder, and all others, and by means of similar proceedings, as are provided in ordinary cases for such re-sales, in all essential particulars and

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and as nearly as may be without being inconsistent with this Act; and as soon as immoveables are sold by the Assignee, he shall procure from the Registrar of the Registration Division in which each immoveable is situate, a certificate of the hypothees charged upon such immoveable and registered up to the day of the issue of the writ of attachment, or of the execution of the deed of assignment by which the estate of the Insolvent was brought within the purview of this Act, as the case may be; And such certificate, shall contain all the facts and circumstances required in the Registrar's certificate obtained by the Sheriff subsequent to the adjudication of an immoveable in conformity with the provisions of the Code of Procedure and shall be made and charged for by the Registrar in like manner; And the provisions of the Code of Procedure as to the collocation of hypothecary, and privileged creditors, the necessity for and the filing of oppositions for payment and the costs thereon shall apply thereto under this Act as nearly as the nature of the case will admit; And the collocation and distribution of the money arising from such sale shall be made in the dividend sheet in the same manner as to all the essential parts thereof, as the collocation and distribution of monies arising from the sale of immoveables are made in the appropriate Court in ordinary cases, except in so far as the same may be inconsistent with any provision of this Act.

Certificate of Registrar.

Code of Procedure to apply.

Order of distribution.

50. Every interim Assignee, Guardian and Assignee shall be subject to the summary jurisdiction of the Court or Judge in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and the performance of their respective duties may be compelled, and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, hypothec, lien or right of property upon, in or to any effects or property in the hands, possession or custody of the Assignee, may be obtained, by an order of the Judge on summary petition in vacation, or of the Court on a rule in term, and not by any suit, attachment, opposition, seizure or other proceeding of any kind whatever; and obedience by the Assignee to such order may be enforced by such Judge or Court under the penalty of imprisonment, as for contempt of Court or disobedience thereto, or he may be dismissed, in the discretion of the Court or Judge.

Assignees, guardians, &c., to be subject to the orders of the Court, or Judge, &c.

51. Any Assignee may be removed, either at the will of the creditors or upon his own resignation, by a resolution passed by the creditors present or represented at a meeting duly called for the purpose; and if the Assignee dies or is removed they shall have the right of appointing another assignee, either at the meeting by which he is removed, or at any other called for the purpose; but the Assignee so removed shall, nevertheless, remain subject to the summary jurisdiction of the court and of any Judge thereof, until he shall have fully accounted for his acts and conduct while he continued to be Assignee.

Assignee may be removed or resign.

Proviso.

Remuneration
of assignee,
interim assignee
and
guardian.

52. The remuneration of the interim Assignee, Guardian and Assignee respectively, shall be fixed by the creditors at their first meeting or at any other meeting called for the purpose; but if not so fixed before a final dividend is declared, shall be put into the dividend sheet at a rate for the interim Assignee or Guardian, such as the Assignee shall deem reasonable, and for the Assignee not exceeding five per centum upon the cash receipts,—set to contestation by any party interested as being insufficient or as exceeding the value of the services rendered, in the same manner as any other item of the dividend sheet; But no sum of money shall be inserted as a remuneration to the Assignee unless the question of such remuneration shall have been previously brought before a meeting of creditors competent to decide it.

In case of
death of
assignee,
estate how
vested.

53. Upon the death of an Assignee the estate of the Insolvent shall not descend to the heirs or representatives of the Assignee, but shall become vested in any Assignee who shall be appointed by the creditors in his place and stead; and in case of the office of Assignee becoming vacant from any cause, the estate shall be under the control of the Judge, until a new Assignee is appointed.

Final account
and discharge
of assignee.

54. After the declaration of a final dividend, or if after using due diligence the Assignee has been unable to realize any assets to be divided, the Assignee may prepare his final account, and may present a petition to the Judge for his discharge from the office of Assignee after giving notice of such petition to the Insolvent and also to the Inspectors if any have been appointed, or to the creditors by circular, if no Inspector has been appointed; and shall produce and file with such petition a bank certificate of the deposit of any dividends remaining unclaimed, or of any balance in his hands, and a statement showing the nominal and estimated value of the assets of the Insolvent, the amount of claims proved, dividing them into ordinary, privileged and hypothecary claims, the amount of dividends or of composition paid to the ordinary creditors of the estate, and the entire expense of winding up the same, and thereupon the Judge after causing the account to be audited by the Inspectors or by some creditor or creditors named by him for the purpose, and after hearing the parties, may refuse or grant conditionally, or unconditionally the prayer of such petition.

OF DIVIDENDS.

Accounts and
statements by
assignee.

55. Upon the expiration of the period of one month from the first insertion of the advertisements giving notice of the appointment of an Assignee, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than three months, the Assignee shall prepare and keep constantly accessible to the creditors, accounts and statements of his doings as such Assignee, and of the position of the estate, and at any similar intervals shall prepare dividends of the estate of the insolvent.

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56. All debts due and payable by the insolvent at the time of the execution of a deed of assignment, or at the time of the issue of a writ of attachment under this Act, and all debts due but not then actually payable, subject to rebate of interest, shall have the right to rank upon the estate of the insolvent; and any person then being, as surety or otherwise, liable for any debt of the insolvent, who subsequently pays such debt, shall thereafter stand in the place of the original creditor, if such creditor has proved his claim on such debt; or if he has not proved shall be entitled to prove against and rank upon the estate for such debt, to the same extent and with the same effect as such creditor might have done.

What claims shall rank on the estate.

57. If any creditor of the insolvent claims upon a contract dependent upon a condition or contingency, which does not happen previous to the declaration of the first dividend, a dividend shall be reserved upon the amount of such conditional or contingent claim until the condition or contingency is determined; but if it be made to appear to the Judge that such reserve will probably retain the estate open for an undue length of time, he may, unless an estimate of the value thereof be agreed to between the claimant and the Assignee, order the Assignee to make an award upon the value of such contingent or conditional claim, and thereupon the Assignee shall make an award after the same investigation, and in the same manner and subject to a similar appeal, as is herein-after provided for the making of awards upon disputed claims and dividends, and for appeals from such awards; and in every such case the value so established or agreed to shall be ranked upon as a debt payable absolutely.

Case of contingent claims provided for.

58. In the preparation of the dividend sheet due regard shall be had to the rank and privilege of every creditor, which rank and privilege, upon whatever they may legally be founded, shall not be disturbed by the provisions of this Act; but no dividend shall be allotted or paid to any creditor holding security from the estate of the insolvent for his claim, until the amount for which he shall rank as a creditor on the estate as to dividends therefrom, shall be established as hereinafter provided; and such amount shall be the amount which he shall be held to represent in voting at meetings of creditors, and in computing the proportion of creditors, whenever under this Act such proportion is required to be ascertained.

Rank and privilege of creditors: Proviso as to creditors holding security.

59. No lien or privilege upon either the personal or real estate of the Insolvent shall be created for the amount of any judgment debt, or of the interest thereon, by the issue or delivery to the Sheriff of any writ of execution, or by levying upon or seizing under such writ, the effects or estate of the Insolvent, if before the payment over to the plaintiff of the moneys actually levied under such writ, the estate of the debtor shall have been assigned to an interim Assignee, or shall have been placed in compulsory liquidation under this Act; but this provision shall not affect any lien or privilege acquired before the passing of this Act or any privilege for costs which the plaintiff possesses under the law of the Province

Seizure in execution after appointment of assignee: its effect.

in which such writ shall have issued by reason of such issue, delivery, levy or seizure.

As to creditors
holding secu-
rity for their
claims.
Their right to
vote, &c.

60. If a creditor holds security from the Insolvent, or from his estate, or if there be more than one Insolvent liable as partners, and the creditor holds security from, or the liability of one of them, as security for a debt of the firm, he shall specify the nature and amount of such security or liability in his claim, and shall therein on his oath put a specified value thereon; and the assignee, under the authority of the creditors, may either consent to the right to rank for such liability, or to the retention of the property or effects constituting such security or on which it attaches, by the creditor, at such specified value, or he may require from such creditor an assignment of such liability, or an assignment and delivery of such security, property or effects, at an advance of ten per centum upon such specified value, to be paid by him out of the estate so soon as he has realized such security, in which he shall be bound to the exercise of ordinary diligence; and in either of such cases the difference between the value at which the liability or security is retained or assumed, and the amount of the claim of such creditor, shall be the amount for which he shall rank and vote as aforesaid; and if a creditor holds a claim based upon negotiable instruments upon which the Insolvent is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment he shall be entitled to amend his claim and treat such liability as unsecured.

If the security
is on realty or
shipping.

61. But if the security consists of a mortgage upon real estate, or upon ships or shipping, the property mortgaged shall only be assigned and delivered to the creditor, subject to all previous mortgages, hypothecs and liens thereon, holding rank and priority before his claim, and upon his assuming and binding himself to pay all such previous mortgages, hypothecs and liens, and upon his securing such previous charges upon the property mortgaged, in the same manner and to the same extent as the same were previously secured thereon; and thereafter the holders of such previous mortgages, hypothecs and liens shall have no further recourse or claim upon the estate of the Insolvent; and if there be mortgages, hypothecs, or liens thereon subsequent to those of such creditor, he shall only obtain the property by consent of the subsequently secured creditors; or upon their filing their claims specifying their security thereon as of no value, or upon paying them the value by them placed thereon; or upon giving security to the assignee that the estate shall not be troubled by reason thereof.

Proceedings
on the filing of
a secured
claim.

62. Upon a secured claim being filed, with a valuation of the security, it shall be the duty of the Assignee to procure the authority

ity of the inspectors or of the creditors at their first meeting thereafter, to consent to the retention of the security by the creditor, or to require from him an assignment and delivery thereof; and if any meeting of inspectors or of creditors takes place without deciding upon the course to be adopted in respect of such security the Assignee shall act in the premises according to his discretion and without delay.

63. The amount due to a creditor upon each separate item of his claim at the time of the execution of a deed of assignment, or of the issue of a writ of attachment, as the case may be, and which shall remain due at the time of proving such claim, shall form part of the amount for which he shall rank upon the estate of the insolvent, until such item of claim be paid in full, except in cases of deduction of the proceeds or of the value of security, as hereinbefore provided; but no claim or part of a claim shall be permitted to be ranked upon more than once, whether the claim so to rank be made by the same person or by different persons; and the Assignee may at any time require from any creditor a supplementary oath declaring what amount, if any, such creditor has received in payment of any item of the debt upon which his claim is founded, subsequent to the making of such claim, together with the particulars of such payment; and if any creditor refuses to produce or make such oath before the Assignee within a reasonable time after he has been required so to do, he shall not be collocated in the dividend sheet.

Rank of several items of a creditor's claim.

Oath of creditor may be required.

64. If the Insolvent owes debts both individually and as a member of a co-partnership, or as a member of two different co-partnerships, the claims against him shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other after all the creditors of that other have been paid in full.

Insolvent owing debts as members of co-partnership

65. The creditors, or the same proportion of them that may grant a discharge to the debtor under this Act, may allot to the insolvent, by way of allowance, any sum of money, or any property they may think proper; and the allowance so made shall be inserted in the dividend sheet, and shall be subject to contestation like any other item of collocation therein, but only on the ground of fraud or deceit in procuring it, or of the absence of consent by a sufficient proportion of the creditors.

Allowance to insolvent, how made, &c.

66. No costs incurred in suits against the insolvent after due notice of an assignment, or of the issue of a writ of attachment in compulsory liquidation has been given according to the provisions of this Act, shall rank upon the estate of the insolvent; but all the taxable costs incurred in proceedings against him up to that time shall be added to the demand, for the recovery of which such proceedings were instituted; and shall rank upon the estate as if they formed part of the original debt.

As to costs in suits against Insolvent.

Privilege of
clerks, &c.,
for wages.

67. Clerks and other persons in the employ of the insolvent in and about his business or trade shall be collocated in the dividend sheet by special privilege for any arrears of salary or wages due and unpaid to them at the time of the execution of a deed of assignment or of the issue of a writ of attachment under this Act, not exceeding four months of such arrears; but such privileged amount may be increased by order of the creditors.

Notice of
dividend
sheet, and
payment.

68. So soon as a dividend sheet is prepared, notice thereof (Form M) shall be given by advertisement, and after the expiry of one judicial day from the day of the last publication of such advertisement, all dividends which have not been objected to within that period shall be paid.

Debts of in-
solvent for
which claims
are not filed.

69. If it appears to the assignee on his examination of the books of the Insolvent, or otherwise, that the Insolvent has creditors who have not taken the proceedings requisite to entitle them to be collocated, it shall be his duty to reserve dividends for such creditors according to the nature of the claims, and to notify them of such reserve, which notification may be by letter through the post, addressed to such creditors' residence as nearly as the same can be ascertained by the Assignee; and if such creditors do not file their claims 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 last dividend. •

Claims ob-
jected to, how
determined.

70. If any claim be objected to at any time, or if any dividend be objected to within the said period of one day, and any dispute arises between the creditors of the Insolvent, or between him and any creditor, as to the amount of the claim of any creditor, or as to the ranking or privilege of the claim of any creditor upon such dividend sheet, the Assignee shall proceed thereon as hereinafter provided, shall hear and examine the parties and their witnesses under oath (which oath the Assignee is hereby empowered to administer), shall take clear notes in writing of the parol evidence adduced before him, shall examine and verify the statements submitted to him, by the books and accounts of the Insolvent, and by such evidence, vouchers and statements as may be furnished to him, and shall make an award in the premises, and as to the costs of such contestation, which award shall be deposited in the Court, and shall be final, unless appealed from within three days from the date of its communication to the parties to the dispute.

Notice to be
given of
objections.
Award, how
made.

71. The Assignee shall not receive or notice any objection to any claim, dividend or collocation, unless such objection shall be filed before him in writing, stating distinctly the grounds of such objection, together with evidence of the previous service of a copy thereof on the claimant; and the claimant shall have three days thereafter to answer the same, which time, however, may be enlarged by the Assignee, with a like delay to the contestant to reply; and upon the completion of an issue upon such objection the Assignee shall fix a day for proceeding to take evidence thereon, and

and shall thereafter proceed therewith from day to day, unless he shall otherwise order, until the making of his award in the premises.

72. It shall be the duty of the inspectors and of the Assignee under their direction to examine the claims filed before the Assignee, and to obtain information as to their correctness, and when they consider it expedient that any claim, dividend or collocation be contested, they may order the contestation thereof at the expense of the estate; and such contestation may be made in their names or in the names of any creditor consenting thereto.

Inspectors may order contestation of claims.

73. The award of the assignee as to costs may be made executory by execution in the same manner as an ordinary judgment of the Court, by means of an order of the Judge, obtained upon the application of the party to whom costs are awarded, made after notice to the opposite party; and the creditors may by resolution authorize and direct the costs of the contestation of any claim or any dividend to be paid out of the estate, and may make such order either before, pending or after any such contestation.

As to costs awarded by Assignee.

74. If, at the time of the issue of a Writ of Attachment, or the execution of a Deed of Assignment, any immoveable property or real estate of the Insolvent be under seizure, or in process of sale, under any writ of execution or other order of any competent Court, such sale shall be proceeded with by the officer charged with the same, unless stayed by order of the Judge upon application by the guardian, interim Assignee or Assignee, upon special cause shewn, and after notice to the plaintiff; reserving to the party prosecuting the sale his privileged claim on the proceeds of any subsequent sale, for such costs as he would have been entitled to be paid by privilege out of the proceeds of the sale of such property, if made under such writ or order; but if such sale be proceeded with, the moneys levied therefrom shall be paid over to the Assignee for distribution, according to the rank and priority of the claimants thereon, and the officer charged with the execution shall make his return of such moneys to the Assignee and pay them over to him, and his return to the Court from which the writ issued, declaring that he has done so, shall be a valid and sufficient return upon such writ in so far as regards the moneys so paid over.

If there be property under seizure at commencement of proceedings.

75. All dividends remaining unclaimed at the time of the discharge of the Assignee shall be left in the bank where they are deposited, for three years, and if still unclaimed, shall then be paid over by such bank with the interest accrued thereon, to the Government of Canada, and if afterwards duly claimed shall be paid over to the persons entitled thereto, with interest at the rate of four per centum per annum from the time of the reception thereof by the Government.

Dividends unclaimed, how dealt with.

Balance payable to insolvent.

76. If any balance remains of the estate of the Insolvent, or of the proceeds thereof, after the payment in full of all debts due by the Insolvent, such balance shall be paid over to the Insolvent upon his petition to that effect, duly notified to the creditors by advertisement and granted by the Judge.

OF LEASES.

Lease more valuable than the rent to be sold : and subject to what conditions.

77. If the Insolvent holds under a lease, property having a value above and beyond the amount of any rent payable under such lease, the Assignee shall make a report thereon to the Judge, containing his estimate of the value of the estate of the leased property in excess of the rent ; and thereupon the Judge may order the rights of the Insolvent in such leased premises to be sold, after such notice of such sale as he shall see fit to order ; and at the time and place appointed such lease shall be sold, upon such conditions, as to the giving of security to the lessor, as the Judge may order ; and such sale shall be so made subject to the payment of the rent and to all the covenants and conditions contained in the lease, and all such covenants and conditions shall be binding upon the lessor and upon the purchaser, as if the purchaser had been himself lessee and a party with the lessor to the lease.

Other cases of lease, how dealt with.

78. If the Insolvent holds under a lease extending beyond the year current under its terms at the time of his insolvency, property which is not subject to the provisions of the last preceding section, or respecting which the Judge does not make an order of sale, as therein provided, or which is not sold under such order, the creditors shall decide at any meeting which may be held more than one month before the termination of the yearly term of the lease current at the time of such meeting, whether the property so leased should be retained for the use of the estate, only up to the end of the then current yearly term, or, if the conditions of the lease permit of further extension, also up to the end of the next following yearly term thereof, and their decision shall be final.

If the lessor claims damages for receiving any property before the end of the lease.

79. From and after the time fixed for the retention of the leased property for the use of the estate, the lease shall be cancelled and shall from thenceforth be inoperative and null ; and so soon as the resolution of the creditors as to such retention has been passed, such resolution shall be notified to the lessor, and if he contends that he will sustain any damage by the termination of the lease under such decision, he may make a claim for such damage, specifying the amount thereof under oath, in the same manner as in ordinary claims upon the estate, and the Assignee shall proceed forthwith to make an award upon such claim, in the same manner, and after similar investigation and with the same right of appeal, as is herein provided for in case of claims or dividends objected to.

How such damages shall be estimated.

80. In making such claim, and in any award thereupon, the measure of damages shall be the difference between the value of the

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the premises leased when the lease terminates under the resolution of the creditors, and the rent which the Insolvent had agreed by the lease to pay during its continuance; and the chance of leasing or not leasing the premises again, for a like rent, shall not enter into the computation of such damages; and if damages are finally awarded to the lessor he shall rank for the amount upon the estate as an ordinary creditor.

81. The preferential lien of the landlord for rent in the Pro-
vinces of Ontario, New Brunswick or Nova Scotia is restricted to
the arrears of rent due during the period of one year last previous
to the execution of a deed of assignment, or the issue of a Writ of
Attachment under this Act, as the case may be, and from thence so
long as the Assignee shall retain the premises leased.

Preferential
claim of
landlord
limited.

OF APPEAL.

82. There shall be an appeal to the Judge from the award
of an Assignee made under this Act, which Appeal shall be by
summary application, of which notice shall be given to the
opposite party and to the Assignee, within three days from the
day on which the award is notified to the party complaining of
it, and which shall be presented forthwith after the expiration of
the delay required for notice of presentation; and the Assignee
shall attend before the Judge at the time and place indicated in
such notice, and shall produce before him all evidence, notes of
evidence, books, or proved extracts from books, documents, vou-
chers, and papers having reference to the matter in dispute; and
thereupon the Judge may confirm such award, or modify it, or
refer it back to the Assignee for the taking of evidence, by such
order as will satisfy the ends of justice; and, pending any appeal,
the Assignee shall reserve a dividend equal to the amount of the
dividend claimed.

Appeal to the
Judge from
award of
assignee, and
proceedings
consequent
upon it.

83. If any of the parties to any appeal, contestation, matter or
thing upon which a Judge has made any final order or judgment
are dissatisfied with such order or judgment, they may in the
Province of Quebec move to revise the same or any appeal there-
from in like manner as from any final judgment of the Superior
Court, to the Court of Queen's Bench on the appeal side thereof;
in the Province of Ontario they may appeal therefrom to either of
the Superior Courts of Common Law or to the Court of Chancery,
or to any one of the Judges of the said Courts; in the Province of
New Brunswick to the Supreme Court of New Brunswick or to
any one of the Judges of the said Court; and in the Province of
Nova Scotia to the Supreme Court of Nova Scotia or to any one
of the Judges of the said Court; but any appeal to a single Judge
in the Provinces of Ontario, New Brunswick or Nova Scotia
may, in his discretion, be referred on a special case to be settled,
to the full Court, and on such terms in the mean time as he may
think necessary and just.

Appeal from
order of Judge

Judge may
refer it to the
full Court.

Conditions of
appeal.

84. Such appeal shall not be permitted, unless within five days from the day on which the order, or judgment is rendered, or on which, in the Province of Quebec the delay for moving to revise the same expires, if no motion in revision be made, the party desiring to appeal causes to be served upon the opposite party and upon the Assignee, an application in appeal, setting forth the proceeding before the Judge, and his decision thereon, and praying for its revision, with a notice of the day on which such application is to be presented, and also within the said period of five days causes security to be given before the Judge by two sufficient sureties, that he will duly prosecute such appeal, and pay all costs incurred by reason thereof by the respondent.

Security.

Costs on ap-
pellant not
proceeding
according to
his petition.

85. If the party appellant does not present his application on the day fixed for that purpose, the Court or Judge selected to be appealed to, as the case may be, shall order the record to be returned to the person or officer entitled to the custody thereof, and the party respondent may, on the following or any other day during the same term, produce before the Court, or within six days thereafter before the Judge, the copy of application served upon him, and obtain costs thereon against the appellant.

OF FRAUDS AND FRAUDULENT PREFERENCES.

Gratuitous
contracts
made within
three months
of insolvency
presumed
fraudulent and
void.

86. All gratuitous contracts or conveyances, or contracts or conveyance without consideration, or with a merely nominal consideration, respecting either real or personal estate made by a debtor afterwards becoming an Insolvent with or to any person whomsoever, whether such person be his creditor or not, within three months next preceding the date of the Assignment, or of the issue of the Writ of Attachment in compulsory liquidation, and all contracts by which creditors are injured, obstructed, or delayed, made by a debtor unable to meet his engagements, and afterwards becoming an Insolvent, with a person knowing such inability or having probable cause for believing such inability to exist, or after such inability is public and notorious, whether such person be his creditor or not, are presumed to be made with intent to defraud his creditors.

Certain others
voidable.

87. A contract or conveyance for consideration, respecting either real or personal estate, by which creditors are injured or obstructed, made by a debtor unable to meet his engagements with a person ignorant of such inability, whether such person be his creditor or not, and before such inability has become public and notorious, but within thirty days next before the execution of a deed of assignment or of the issue of a Writ of Attachment under this Act, is voidable, and may be set aside by any Court of competent jurisdiction, upon such terms as to the protection of such person from actual loss or liability by reason of such contract, as the Court may order.

within five days
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moving to revise
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88. All contracts, or conveyances made and acts done by a debtor, respecting either real or personal estate, with intent fraudulently to impede, obstruct or delay his creditors in their remedies against him, or with intent to defraud his creditors, or any of them, and so made, done and intended with the knowledge of the person contracting or acting with the debtor, whether such person be his creditor or not, and which have the effect of impeding, obstructing, or delaying the creditors of their remedies, or of injuring them or any of them, are prohibited and are null and void, notwithstanding that such contracts, conveyances, or acts be in consideration, or in contemplation of marriage.

All contracts made with intent to impede or defraud creditors, with the knowledge of party contracting, to be void.

89. If any sale, deposit, pledge, or transfer be made of any property real or personal by any person in contemplation of insolvency, by way of security for payment to any creditor, or if any property real or personal, moveable or immoveable, goods, effects, or valuable security, be given by way of payment by such person to any creditor, whereby such creditor obtains or will obtain an unjust preference over the other creditors, such sale, deposit, pledge, transfer, or payment shall be null and void, and the subject thereof may be recovered back for the benefit of the estate by the Assignee, in any Court of competent jurisdiction; and if the same be made within thirty days next before the execution of a deed of assignment, or the issue of a Writ of Attachment under this Act, it shall be presumed to have been so made in contemplation of insolvency.

Fraudulent preferential sales, &c., to be void.

And presumed fraudulent, if made within a certain time before assignment, &c.

90. Every payment made within thirty days next before the execution of a deed of assignment, or the issue of a Writ of Attachment under this Act, by a debtor unable to meet his engagements in full, to a person knowing such inability, or having probable cause for believing the same to exist, is void, and the amount paid may be recovered back by suit in any competent Court, for the benefit of the estate; Provided always that if any valuable security be given up in consideration of such payment, such security or the value thereof, shall be restored to the creditor before the return of such payment can be demanded.

Payments made under certain circumstances by a debtor to be void.

91. Any transfer of a debt due by the Insolvent, made within thirty days next previous to the execution of a deed of assignment or the issue of a Writ of Attachment under this Act, or at any time afterwards, to a debtor knowing or having probable cause for believing the Insolvent to be unable to meet his engagements, or in contemplation of his insolvency, for the purpose of enabling the debtor to set up by way of compensation or set-off the debt so transferred, is null and void as regards the estate of the Insolvent; and the debt due to the estate of the Insolvent shall not be compensated or affected in any manner by a claim so acquired; but the purchaser thereof may rank on the estate in the place and stead of the original creditor.

Transfers of debts of insolvent within thirty days of his insolvency to his debtors to enable them to set-off, void.

Purchasing goods on credit, &c., by person knowing himself unable to pay, how punishable.

92. Any person who purchases goods on credit or procures advances in money, knowing or believing himself to be unable to meet his engagements, and concealing the fact from the person thereby becoming his creditor, with the intent to defraud such person, or who by any false pretence obtains a term of credit for the payment of any advance or loan of money, or of the price or any part of the price of any goods, wares or merchandize, with intent to defraud the person thereby becoming his creditor, and who shall not afterwards have paid the debt or debts so incurred, shall be held to be guilty of a fraud, and shall be liable to imprisonment for such time as the Court may order, not exceeding two years, unless the debt or costs be sooner paid; and if such debt or debts be incurred by a partnership, then every member thereof who shall have known of the incurring, and of the intention to incur, such debt or debts, shall be similarly liable; provided always, that in the suit or proceeding taken for the recovery of such debt or debts, the defendant be charged with such fraud, and be declared to be guilty of it by the judgment rendered in such suit or proceeding.

If by a firm.

Proviso.

Fraud must be proved.

Award of imprisonment.

Proviso.

93. Whether the defendant in any such case appear and plead, or make default, the plaintiff shall be bound to prove the fraud charged, and upon his proving it, if the trial be before a jury, the Judge who tries the suit or proceeding shall immediately after the verdict rendered against the defendant for such fraud, (if such verdict is given), or if not before a jury, then immediately upon his rendering his judgment in the premises, adjudge the term of imprisonment which the defendant shall undergo; and he shall forthwith order and direct the defendant immediately to be taken into custody and imprisoned accordingly; but such judgment shall not affect the ordinary remedies for the revision thereof, or of any proceeding in the case.

OF COMPOSITION AND DISCHARGE.

Deed of composition, and executed by a certain proportion of creditors to bind all.

94. A deed of composition and discharge, executed by the majority in number of those of the creditors of an Insolvent who are respectively creditors for sums of one hundred dollars and upwards, and who represent at least three fourths in value of the liabilities of the Insolvent subject to be computed in ascertaining such proportion, shall have the same effect with regard to the remainder of his creditors, and be binding to the same extent upon him and upon them, as if they were also parties to it; and such a deed may be invoked, and acted upon under this Act although made either before, pending or after proceedings upon an assignment, or for the compulsory liquidation of the estate of the insolvent; the whole subject to the exceptions contained in section one hundred of this Act.

Form and effect of such deed.

95. Such deed of composition and discharge may be so made either in consideration of a composition payable in cash, or on terms of credit, or partially for cash and partially on credit; and the payment

credit or procures himself to be unable to pay from the person to defraud such term of credit for, or of the price or merchandise, with his creditor, and debts so incurred, shall be liable to pay, not exceeding the amount paid; and if such member of the intention to be liable; provided for the recovery of such fraud, and rendered in such

appear and plead, prove the fraud before a jury, the immediately after the fraud, (if such immediately upon the term of the deed; and he shall be liable to be taken such judgment thereon, or of

acted by the insolvent who dollars and value of the ascertaining regard to the extent upon; and such act although an assignment of the estate of the insolvent in section

be so made cash, or on credit; and the payment

payment of such composition may be secured or not according to the pleasure of the creditors signing it; and the discharge therein contained may be absolute, or may be conditional upon the condition of the composition being paid; and such deed may contain instructions to the Assignee as to the manner in which he is to proceed, and to deal with the estate and effects of the Insolvent, subsequent to the deposit of such deed with him, which instructions shall be obeyed by the Assignee; but if such discharge be conditional upon the composition being paid, and the deed of composition and discharge therein contained should cease to have effect, the Assignee shall immediately resume possession of the entire estate and effects of the Insolvent in the state and condition in which they shall then be; but the creditors holding claims which were proveable before the execution of such deed shall not rank, vote or be computed as creditors concurrently with those who have acquired claims subsequent to the execution thereof for any greater sum than the balance of composition remaining unpaid; but after such subsequent creditors shall have received dividends to the amount of their claims, then such original creditors shall have the right to rank for the entire balance of their original claims then remaining unpaid, and shall be computed for all purposes for which the proportions of creditors require to be ascertained, as creditors for the full amount of such last mentioned balance.

96. The re-conveyance by the Assignee to the Insolvent, or to any person for him of any part of his estate or effects, whether real or personal, if made in conformity with the terms of a deed of composition and discharge shall have the same effect (except as the same may be otherwise agreed by the conditions of such deed or re-conveyance), as if such property had been sold by the Assignee in the ordinary course, and after all the preliminary proceedings, notices and formalities herein required for such sale; and if such deed of composition and discharge be contested, and pending such contestation, any payment or instalment of the composition falls due under the terms of such deed, the payment thereof shall be postponed till after the expiration of ten days after final judgment upon such contestation; and if proceedings for revision or appeal be commenced, then until after the expiration of ten days after the judgment in revision or in appeal, as the case may be, and the deed of re-conveyance need not contain any further or more special description of the effects and property reconveyed than is required to be inserted in the deed of assignment, and may be enregistered in like manner and with like effect.

97. If the Insolvent procures and deposits with the Assignee a deed of composition and discharge, duly executed as aforesaid, the Assignee shall immediately give notice of such deposit by advertisement; and if opposition to such composition and discharge be not made by a creditor, within three juridical days after the last publication of such notice, by filing with the Assignee

If it be conditional upon payment of the composition.

Deed of re-conveyance by Assignee to Insolvent. Its effect.

If it be contested, and a payment of composition during the contestation. Forfeiture and registration of deeds.

Duty of assignee receiving a deed of composition.

a declaration in writing, that he objects to such composition and discharge, the Assignee shall act upon such deed of composition and discharge according to its terms; but if opposition be made thereto within the said period, or if made, be not withdrawn, then he shall abstain from taking any action upon such deed until the same has been confirmed, as hereinafter provided.

Effect of consent of proper number of creditors to a discharge.

98. The consent in writing of the said proportion of creditors to the discharge of a debtor absolutely frees and discharges him, after an assignment, or after his estate has been put in compulsory liquidation, from all liabilities whatsoever (except such as are hereinafter specially excepted) existing against him and provable against his estate, which are mentioned or set forth in the statement of his affairs exhibited at the first meeting of his creditors, or which are shewn by any supplementary list of creditors furnished by the Insolvent, previous to such discharge, and in time to permit of the creditors therein mentioned obtaining the same dividend as other creditors upon his estate, or which appear by any claim subsequently furnished to the Assignee, whether such debts be exigible or not at the time of his insolvency, and whether the liability for them be direct or indirect; and if the holder of any negotiable paper is unknown to the Insolvent, the insertion of the particulars of such paper in such statement of affairs or supplementary list, with the declaration that the holder thereof is unknown to him, shall bring the debt represented by such paper, and the holder thereof, within the operation of this section.

As to holders of negotiable paper unknown to insolvent.

Discharge without composition not to affect secondary liabilities.

99. A discharge without composition under this Act, whether consented to by any creditor or not, shall not operate any change in the liability of any person secondarily liable to such creditor for the debts of the Insolvent, either as drawer or endorser of negotiable paper, or as guarantor, surety or otherwise, nor of any partner or other person liable jointly or severally with the insolvent to such creditor for any debt; nor shall it affect any mortgage, hypothec, lien or collateral security held by any such creditor as security for any debt thereby discharged.

Discharge under this Act not to apply to certain debts, or liabilities.

100. A discharge under this Act shall not apply, without the express consent of the creditor, to any debt for enforcing the payment of which the imprisonment of the debtor is permitted by this Act, nor to any debt due as damages for assault or wilful injury to the person, seduction, libel, slander, or malicious arrest, nor for the maintenance of a parent, wife or child, or as a penalty for any offence of which the insolvent has been convicted, unless the creditor thereof shall file or claim therefor; nor shall any such discharge apply without such consent, to any debt due as a balance of account due by the insolvent as an Assignee, tutor, curator, trustee, executor or administrator under a will, or under any order of court, or as a public officer; nor shall debts to which a discharge under this Act does not apply, nor any privileged debts, nor the creditors thereof, be computed in ascertaining whether a sufficient proportion of the creditors of the insolvent have

such composition and deed of composition opposition be made be not withdrawn, upon such deed until provided.

portion of creditors and discharge him, been put in compulsion (except such as against him and proved set forth in the meeting of his creditors list of creditors charge, and in time obtaining the same which appear by any whether such debts and whether the holder of any the insertion of of affairs or support thereof is by such paper, is section.

s Act, whether ate any change such creditor or endorser of se, nor of any with the insol- ect any mort- such creditor

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have voted upon, done, or consented to any act, matter or thing under this Act; but the creditor of any debt due as a balance of account by the insolvent as assignee, tutor, curator, trustee, executor, administrator or public officer may claim and accept a dividend thereon from the estate without being, by reason thereof in any respect affected by any discharge obtained by the insolvent.

101. An insolvent who has procured a consent to his discharge or the execution of a deed of composition and discharge, within the meaning of this Act, may file in the office of the court the consent or deed of composition and discharge, and may then give notice (Form N.) of the same being so filed, and of his intention to apply by petition to the Court in the Provinces of Quebec or Nova Scotia, or in the Provinces of Ontario or New Brunswick to the Judge, on a day named in such notice (which however shall not be before the day on which a dividend may be declared under this Act), for a confirmation of the discharge effected thereby; and such notice shall be given by advertisement in the official *Gazette* for one month, and also for the same period, if the application is to be made in the Province of Ontario, New Brunswick or Nova Scotia, in one newspaper, and if in the Province of Quebec, in one newspaper published in French, and in one newspaper published in English, in or nearest the place of residence of the insolvent; and upon such application, any creditor of the insolvent or his Assignee under the authority of the creditors, may appear and oppose such confirmation, either upon the ground of fraud or fraudulent preference within the meaning of this Act, or of fraud or evil practice in procuring the consent of the creditors to the discharge, or their execution of the deed of composition and discharge, as the case may be, or of the insufficiency in number or value of the creditors consenting to or executing the same, or of the fraudulent retention and concealment by the insolvent of some portion of his estate or effects, or of the evasion, prevarication or false swearing of the insolvent upon examination as to his estate and effects, or upon the ground that the insolvent has not kept an account book shewing his receipts and disbursements of cash, and such other books of account as are suitable for his trade, or, that having at any time kept such book or books, he has refused to produce or deliver them to the Assignee, or that he is wilfully in default to obey any provision of this Act, or any order of the Court or Judge; and if any of the said grounds be proved, the confirmation of his discharge shall be refused and such discharge set aside and annulled; but in the Provinces of Ontario and Quebec, the omission to keep such books before the coming into force of the Insolvent Act of 1864, and in the Provinces of New Brunswick and Nova Scotia, such omission previous to the coming into force of this Act, shall not be a sufficient ground for contesting the confirmation of the discharge of an Insolvent; And provided further that any act on the part of the Insolvent, which might be held to be an act of fraud or fraudulent preference within the meaning of the Insolvent Act of 1864, or this Act, but which would not amount to fraud if the said

Confirmation of discharge, and on what conditions it shall be granted.

Creditors or Assignees may oppose on certain grounds.

Provido; as to non-keeping of certain books.

Further provision as to acts of fraud or preference, committed before certain periods.

Act

Act or this Act had not been passed, shall not be a ground for contesting the confirmation of the discharge of any Insolvent, if such act was done by the Insolvent, in the Province of Ontario or Quebec, before the coming in force of the Insolvent Act of 1864, or in the Province of Nova Scotia or New Brunswick, before the coming into force of this Act.

If the insolvent does not file the consent or deed, for confirmation within a certain time, a creditor may notify him to do so, and apply for an order annulling the deed.

102. If the insolvent does not deposit such consent or such deed of composition and discharge, as the case may be, in the court, and give notice of his application for a confirmation of such discharge, within one month from the time at which the same has been effected under this Act, and proceed therewith thereafter according to such notice, any creditor for a sum exceeding two hundred dollars, may cause to be served a notice in writing upon the insolvent, requiring him to file in the Court the consent, or the deed of composition and discharge, as the case may be; and may thereupon give one month's notice to the Insolvent (Form O.) of his intention to apply by petition to the Court or Judge who has authority under this Act to confirm such discharge, on a day named in such notice, for the annulling of the discharge; and on the day so named may present a petition to the Court or Judge, in accordance with such notice, setting forth the reasons in support of such application, which may be any of the reasons upon which a confirmation of discharge may be opposed; and upon such application, if the insolvent has not at least one week before the day fixed for the presentation thereof, filed in the office of the court the consent or deed under which the discharge is effected, the discharge shall be annulled without further inquiry except as to the service upon him of the notice to file the same; but if such consent or deed be so filed, or if upon special application, leave be granted him to file the same at a subsequent time and he do then file the same, the Court or Judge, as the case may be, shall proceed thereon as upon an application for confirmation of such discharge.

Proviso: if the deed be filed.

Powers of Court or Judge on application for confirmation of discharge, &c.

103. The Court or Judge, as the case may be, upon hearing the application for confirmation of such discharge, the objections thereto, and any evidence adduced, shall have power to make an order, either confirming the discharge or annulling the same according to the effect of the evidence so adduced; but if such evidence should be insufficient to sustain any of the grounds hereinbefore detailed as forming valid grounds for contesting such confirmation, but should nevertheless establish that the insolvent has been guilty of misconduct in the management of his business, by extravagance in his expenses, recklessness in endorsing or becoming surety for others, continuing his trade unduly after he believed himself to be insolvent, incurring debts without a reasonable expectation of paying them (of which reasonable expectation the proof shall lie on him, if such debt was contracted within thirty days of an assignment or the issue of a Writ of Attachment); or negligence in keeping his books and accounts; or if such facts be alledged by any contestation praying for the suspension of the discharge

of

of the insolvent, or for its classification as second class, the Court or Judge may thereupon order the suspension of the operation of the discharge of the insolvent for a period not exceeding five years or may declare the discharge to be of the second class, or both, according to the discretion of the Court or Judge.

104. Until the Court or Judge, as the case may be, has confirmed such discharge, the burden of proof of the discharge being completely effected under the provisions of this Act, shall be upon the insolvent; but the confirmation thereof, if not reversed in appeal, shall render the discharge thereby confirmed, final and conclusive; and an authentic copy of the judgment confirming the same shall be sufficient evidence as well of such discharge as of the confirmation thereof.

How the discharge shall be provable.

105. If, after the expiration of one year from the date of an assignment made under this Act, or from the date of the issue of a writ of attachment thereunder, as the case may be, the insolvent has not obtained from the required proportion of his creditors a consent to his discharge, or the execution of a deed of composition and discharge, he may apply by petition to the Court or Judge, having power hereunder to confirm his discharge if consented to, to grant him his discharge, first giving notice of such application, (Form P.) for one month in the manner hereinbefore provided for notice of application for confirmation of discharge.

Application to Court or Judge for discharge, if not obtained from creditors.

106. Upon such application, any creditor of the insolvent, or the assignee by authority of the creditors, may appear and oppose the granting of such discharge upon any ground upon which the confirmation of a discharge may be opposed under this Act, or may claim the suspension or classification of the discharge or both; and whether such application be contested or not it shall be incumbent upon the Insolvent to prove that he has in all respects conformed himself to the provisions of this Act; and he shall submit himself to any order which the Court or Judge may make, upon or without an application to that effect, to the end that he be examined touching his estate and effects and his conduct and management of his affairs and business generally, and touching each and every detail and particular thereof; and the Court or Judge may also require from the Assignee a report in writing upon the conduct of the Insolvent and the state of his books and affairs before and at the date of his insolvency; and thereupon the Court or Judge, as the case may be, after hearing the insolvent, and the opposant, if any, and any evidence that may be adduced, may make an order either granting the discharge of the insolvent or refusing it; or in like manner and under the like circumstances to those in and upon which the discharge could be suspended or classified as hereinbefore provided upon an application to confirm it, an order may be made suspending it for a like period, or declaring it to be of the second class, or both.

Proceedings on such application: and powers of the Court or Judge.

Suspension of discharge, or its classification as second class, on application of creditors.

107. At any time before judgment upon an application for obtaining a discharge, the creditors or the same proportion of them that may bind the remainder by a consent to a discharge, may file before the Court, or Judge before whom such application is pending, a declaration in writing, setting forth that it is their desire that the discharge of the Insolvent should (if granted) be suspended for a period therein named not exceeding five years, or that it should be classed as second class, or both; and thereupon if such Court or Judge should be of opinion that the Insolvent is not shewn to have done or omitted anything, the doing or omission of which would deprive him of the right to his discharge under this Act (but not otherwise) and shall therefore be of opinion to grant his discharge, such Judge shall declare such opinion, and shall thereupon grant such discharge, but shall suspend the same as required by such declaration of the creditors.

Discharge obtained by fraud, to be void.

108. Every consent to a discharge or composition, and every discharge or confirmation, of any discharge or composition, which has been obtained by fraud or fraudulent preference, or by means of the consent of any creditor procured by the payment or promise of payment to such creditor, of any valuable consideration for such consent, or by any fraudulent contrivance or practice whatever tending to defeat the true intent and meaning of the provisions of this Act in that behalf, shall be null and void.

EXAMINATION OF THE INSOLVENT AND OTHERS.

Examination of insolvent, and how conducted and recorded.

109. Immediately upon the expiry of the period of one month from the first insertion of the advertisement giving notice of the appointment of an assignee, a meeting of the creditors shall be held for the public examination of the insolvent, who shall be summoned to attend such meeting, the same being first duly called by advertisement; and at such meeting the insolvent may be examined on oath, sworn before the assignee, by or on behalf of any creditor present, in his turn; and the examination of the insolvent shall be reduced to writing by the assignee, and signed by the insolvent; and any question put to the insolvent at such meeting which he shall answer evasively or refuse to answer, shall also be written in such examination, with the replies made by the insolvent to such questions; and the insolvent shall sign such examination, or if he refuse to sign the same, his refusal shall be entered at the foot of the examination, with the reasons of such refusal, if any, as given by himself; and such examination shall be attested by the assignee and shall be filed in the office of the Court.

How attested.

Further examination of Insolvent.

110. The insolvent may also be from time to time examined as to his estate and effects upon oath, before the Judge, by the assignee or by any creditor, upon an order from the Judge obtained without notice to the Insolvent, upon petition, setting forth satisfactory reasons for such order;—and he may also be examined in like manner upon a *subpoena* issued as of course without such order, in any case in which a writ of attachment has been issued against

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against his estate and effects; which *subpœna* may be procured by the plaintiff, or by any creditor intervening in the action for that purpose, or by the assignee, at any time after the return of the writ of attachment.

111. The insolvent may also be examined on his application for a discharge or for confirmation of a discharge, or upon the application of any creditor for annulling a discharge; or upon any petition by him in the course of proceedings for the compulsory liquidation of his estate. Subsequent examination on application for discharge, &c.

112. Any other person who is believed to possess information respecting the estate or effects of the insolvent, may also be from time to time examined before the Judge upon oath, as to such estate or effects upon an order from the Judge to that effect, which order the Judge may grant upon petition setting forth satisfactory reasons for such order, without notice to the insolvent or to the person to be so examined. Other persons may be examined on order of the Judge.

113. The insolvent shall attend all meetings of his creditors, when summoned so to do by the assignee, and shall answer all questions that may be put to him at such meetings touching his business, and touching his estate and effects; and for every such attendance he shall be paid such sum as shall be ordered at such meeting, but not less than one dollar. Insolvent to attend meetings of creditors.

114. If it be made known to the Judge by the Assignee by petition substantiated under oath, that any probable cause exists therefor, the Judge may order the wife or husband of the Insolvent, as the case may be, to be examined as to the reception, use, retention or concealment by or on behalf of the Insolvent, or by or on behalf of the person so examined, or any other person, of any of the estate or effects of the Insolvent. Examination of wife or husband of Insolvent.

OF PROCEDURE GENERALLY.

115. All deeds of assignment, of transfer, of composition and of reconveyance, shall be executed in the manner in which deeds are usually executed in the Province wherein such deeds shall respectively bear date;—And if such deeds be executed in any part of Canada other than the Province of Quebec, according to the form of execution of deeds prevailing there, they shall have the same force and effect in the Province of Quebec as if they had been executed in that Province before a Notary; and if such deeds be executed in that Province before a Notary they shall have the same force and effect elsewhere in the Dominion as if they had been executed according to the law in force in such other Province; and copies of such deeds, certified as aforesaid, shall constitute before all courts and for all purposes, *prima facie* proof of the execution and of the contents of the originals of such deeds respectively, without production of the originals thereof. Form of deeds under this Act, and their effect in Provinces other than that in which they are executed.

To what assets certain sections shall apply.

Provide: as to certain Provinces; and as to costs.

Notices under this Act, how given.

How questions at meetings of creditors shall be decided.

Questions as to number and value of creditors voting, how decided.

Notice pending delay.

116. The operation of sections ten and twenty-nine of this Act, shall extend to all the assets of the insolvent, of every kind and description, although they are actually under seizure under any ordinary writ of attachment, or under any writ of execution, so long as they are not actually sold by the Sheriff or Sheriff's officer under such writ; but in the Provinces of Nova Scotia and New Brunswick this section shall not apply to any writ of execution in the hands of the Sheriff, at the time of the coming into force of this Act; and the rights, liens and privileges of the seizing or attaching creditor, for his costs upon any such writ, shall be the same as they were previous to the passing of this Act, in the Province in which such writ shall have issued.

117. Notices of meetings of creditors and all other notices herein required to be given by advertisement, without special designation of the nature of such notice, shall be so given by publication thereof for two weeks in the *Official Gazette*, also in the Province of Quebec in every issue during two weeks of one newspaper in English and one in French, and in the Provinces of Ontario, New Brunswick and Nova Scotia, in one newspaper in English, published at or nearest to the place where the insolvent has his chief place of business; and in any case, unless herein otherwise provided, the Assignee or person giving such notice shall also address notices thereof to all creditors and to all representatives of foreign creditors within Canada, and shall mail the same with the postage thereon paid, at the time of the insertion of the first advertisement.

118. All questions discussed at meetings of creditors shall be decided by the majority in number of all creditors for sums of one hundred dollars and upwards, present or represented at such meeting, and representing also the majority in value of such creditors, unless herein otherwise specially provided; but if the majority in number do not agree with the majority in value, the views of each section of the creditors shall be embodied in resolutions, and such resolutions with a statement of the vote taken thereon, shall be referred to the Judge, who shall decide between them.

119. If for any purpose it becomes necessary to ascertain the proportion of the creditors of an insolvent who have voted at any meeting or concurred in any act or document, and if it be found that the whole of the creditors holding claims against an insolvent for sums of one hundred dollars and upwards, do not represent the proportion in value of the liabilities of the insolvent subject to be computed in that behalf and required to give validity to such vote, act or documents such proportion may be completed by the votes or concurrence of creditors holding claims of less than one hundred dollars.

120. Whenever a meeting of creditors cannot be held, or an application made, until the expiration of a delay named herein, notice of such meeting or application may be given pending such delay.

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121. If the first meeting of creditors which takes place after the expiry of the period of one month from the advertisement of the appointment of an assignee be called for the ordering of the affairs of the estate generally, and it be so stated in the notices calling such meeting, all the matters and things respecting which the creditors may vote, resolve or order, or which they may regulate under this Act, may be voted, resolved or ordered upon and may be regulated at such meeting, without having been specially mentioned in the notices calling such meeting, notwithstanding anything to the contrary in this Act contained, due regard being had, however, to the proportions of creditors required by this Act for any such vote, resolution, order or regulation.

Certain things
may be done
at first meet-
ing, though
not mentioned
in notice.

122. The claims of creditors (Form Q) shall be furnished to the Assignee or interim Assignee as the case may be, in writing, and they shall be attested under oath, taken in Canada before the Assignee or before any Judge, Commissioner for taking affidavits, or Justice of the Peace, and out of Canada before any Judge of a Court of Record, any Commissioner for taking affidavits appointed by any Canadian Court, the Chief Municipal Officer for any town or city, or any British Consul or Vice-Consul, or before any person authorized by any statute of Canada or of any Province therein to take affidavits to be used in any part of Canada.

Form and
attestation of
claims, and
before whom
to be attested.

123. Any affidavit requiring to be sworn in proceedings in insolvency, may be sworn before any Commissioner for taking affidavits, appointed by any of the Courts of Law or of Equity in any of the said Provinces; or before any Judge having civil jurisdiction in any of the said Provinces; and such affidavit may be made by the party interested, or by his agent in that behalf having a personal knowledge of the matters therein stated.

Affidavits,
before whom
to be made.

124. The Statutes of set-off shall apply to all claims in insolvency and also to all suits instituted by an Assignee for the recovery of debts due to the insolvent, in the same manner and to the same extent as if the insolvent were plaintiff or defendant, as the case may be, except in so far as any claim for set-off shall be affected by the provisions of this Act respecting frauds or fraudulent preferences.

Set-off, how
allowed.

125. One clear day's notice of any petition, motion, order or rule, shall be sufficient if the party notified resides within fifteen miles of the place where the proceeding is to be taken, and one extra day shall be sufficient allowance for each additional fifteen miles of distance between the place of service and the place of proceeding; and service of such notice shall be made in such manner as is now prescribed for similar services in the Province within which the service is made.

Service of
papers under
this Act.

126. The Judge shall have the same power and authority in respect of the issuing and dealing with commissions for the examination of witnesses, as are possessed by the ordinary Courts of Record

Commissions
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Record in the Province in which the proceedings are being carried on, and may also on petition of either of the parties to a contestation before an Assignee, order the issue of such a commission by the Assignee.

Subpoenas to witness.

127. In any proceeding or contestation in insolvency, the Court or Judge, or the Assignee as the case may be, may order a writ of *subpoena ad testificandum* or of *subpoena duces tecum* to issue, commanding the attendance as a witness of any person within the limits of Canada.

Service of process, &c.

128. All rules, writs of subpoena, orders and warrants, issued by any Judge, Court or Assignee in any matter or proceeding under this Act, may be validly served in any part of Canada upon the party affected or to be affected thereby; and the service of them, or any of them, may be validly made in such manner as is now prescribed for similar services in the Province within which the service is made; and the person charged with such service shall make his return thereof and on oath, or, if a Sheriff or Bailiff in the Province of Quebec, may make such return under his oath of office.

Disobedience of writs and process, how punishable.

129. In case any person so served with a writ of *subpoena* or with an order to appear for examination, does not appear according to the exigency of such writ or process, the Court or the Judge on whose order or within the limits of whose territorial jurisdiction the same is issued, may, upon proof made of the service thereof, and of such default, if the person served therewith has his domicile within the limits of the Province within which such writ or process issued, constrain such person to appear and testify, and punish him for non-appearance or for not testifying in the same manner as if such person had been summoned as a witness before such Court or Judge, in an ordinary suit; and if the person so served and making default, has his domicile beyond the limits of the Province within which such writ or process issued, such Court or Judge may transmit a certificate of such default to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served may reside, and the Court to which such certificate is sent, shall thereupon proceed against and punish such person so having made default, in like manner as it might have done if such person had neglected or refused to appear to a writ of subpoena or other similar process issued out of such last mentioned Court; and such certificate of default signed by the Court, Judge or Assignee before whom default was made and copies of such writ, process and of the return of service thereof certified by the Clerk of the Court in which the order of transmission is made, shall be *prima facie* proof of such writ or process, service, return, and of such default.

Proof of default.

Expenses must be tendered to person sum-

130. No such certificate of default shall be so transmitted, nor shall any person be punished for neglect or refusal to attend for examination in obedience to any such subpoena or other similar process

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person was found, to defray the expenses of coming and attending
to give evidence, and of returning from giving evidence, had been
tendered to such person at the time when the writ of subpoena, or
other similar process, was served upon him.

moned as a
witness, &c.

131. The forms appended to this Act, or other forms in equiva-
lent terms, shall be used in the proceedings for which such forms
are provided; and in every contestation of a claim, collocation, or
dividend or of an application for a discharge, or for confirming or
annulling a discharge, the facts upon which the contesting party
relies, shall be set forth in detail, with particulars of time, place
and circumstance, and no evidence shall be received upon any fact
not so set forth; but in every petition, application, motion, con-
testation, or other pleading under this Act, the parties may state
the facts upon which they rely, in plain and concise language, to
the interpretation of which the rules of construction applicable to
such language in the ordinary transactions of life shall apply.

Forms under
this Act.

Construction
of statements.

132. No plea or exception alleging or setting up any discharge
or certificate of discharge, granted under the Bankrupt or Insol-
vent Law, of any country whatsoever beyond the limits of
Canada, shall be a valid defence or bar to any action instituted in
any Court of competent jurisdiction in Canada, for the recovery
of any debt or obligation contracted within such limits.

Foreign dis-
charges not to
bar debts con-
tracted in
Canada.

133. The rules of procedure as to amendments of pleadings,
which are in force at any place where any proceedings under this
Act are being carried on, shall apply to all proceedings under this
Act; and any Court or Judge, or Assignee, before whom any such
proceedings are being carried on, shall have full power and
authority to apply the appropriate rules as to amendments, to
the proceedings so pending before him; and no pleading or pro-
ceeding shall be void by reason of any irregularity or default
which can or may be amended under the rules and practice of the
Court.

As to amend-
ments in pro-
ceedings under
this Act.

134. The death of the Insolvent, pending proceedings upon a
voluntary assignment or in compulsory liquidation, shall not
affect such proceedings, or impede the winding up of his estate;
and his heirs or other legal representatives may continue the
proceedings on his behalf to the procuring of a discharge, or of the
confirmation thereof, or of both; and the provisions of this Act
shall apply to the heirs, administrators or other legal represen-
tatives of any deceased person who, if living, would be subject to
its provisions, but only in their capacity as such heirs, adminis-
trators or representatives, without their being held to be liable
for

Provision in
case of death
of insolvent.

Representa-
tives, how far
liable.

for the debts of the deceased, to any greater extent than they would have been if this Act had not been passed.

Costs; on what property and in what order chargeable.

135. The costs of the proceedings in Insolvency up to and inclusive of the notice of the appointment of the Assignee, shall be paid by privilege as a first charge upon the assets of the insolvent; the disbursements necessary for winding up the estate shall be the next charge on the property chargeable with any mortgage, hypothec or lien, and upon the unincumbered assets of the estate respectively, in such proportions as may be justified by the nature of such disbursements, and their relation to the property as being incumbered or not, as the case may be; and the remuneration of the assignee and the costs of the judgment of confirmation of the discharge of the insolvent, or of the discharge if obtained direct from the Court, and the costs of the discharge of the assignee being first taxed by the Judge at the tariff, or if there be no tariff at the same rate as is usual for uncontested proceedings of a similar character, after notice to the inspectors, or to at least three creditors, shall also be paid therefrom as the last privileged charge thereon.

Provision as to letters addressed to Insolvent by Post.

136. The Judge shall have the power, upon special cause being shewn before him under oath for so doing, to order the Postmaster at the place of residence of the insolvent, to deliver letters addressed to him received at such Post Office to the Assignee, and to authorize the Assignee to open such letters in the presence of the Prothonotary or Clerk of the Court of which such Judge is a member; and if such letters be upon the business of the estate the Assignee shall retain them, giving communication of them however to the insolvent on request; and if they be not on the business of the estate they shall be resealed, endorsed as having been opened by the Assignee and returned to the Post Office; and a memorandum in writing of the doings of the Assignee in respect of such letters, shall be made and signed by him and by the Prothonotary or Clerk, and deposited in the Court.

Provision as to cases in which the Judge or Assignee has a claim on the Estate.

137. If the Judge holds a claim against the estate of an insolvent he shall be *ipso facto* disqualified from acting as a Judge in any matter connected with such claim; and in such case the Judge competent to act in matters of insolvency, in any of the counties adjoining that in which the insolvent has his chief place of business, and who is not disqualified under this section, shall be the Judge who shall have jurisdiction in such matter, in the place and stead of the Judge so disqualified; and if the Assignee to any estate be a claimant thereon as a creditor, or be collocated for any charges or remuneration, or be the agent, attorney or representative of any claimant thereon, he shall not hear, award or determine upon any contestation of his own claim or collocation, or of the claim of the person represented by him, or of any dividend thereon, or upon any contestation or issue raised by him, or by the person represented by him; but in such case such contestation shall

shall be provided for by the Assignee, the Ass section, hours t the Ass not, an qualifie be com before stead of Assignee

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shall be decided by the Judge, subject to appeal, as hereinbefore provided; and upon a suggestion being filed before the Judge, or the Assignee, as the case may be, of his disqualification under this section, the Judge or Assignee shall be bound within twenty-four hours thereafter, to declare under his hand, by a writing filed with the Assignee, whether such Judge or Assignee is so disqualified or not, and if he does not, he shall be conclusively held to be so disqualified; and the validity or correctness of such declaration may be contested, in the case of the Judge, by summary petition before the Judge who would be competent to act in the place or stead of the Judge alleged to be disqualified, and in the case of the Assignee, by the Judge.

138. In the Province of Quebec, rules of practice for regulating the due conduct of proceedings under this Act, before the Court or Judge, and tariffs of fees for the officers of the Court, and for the Advocates and Attorneys practising in relation to such proceedings, shall be made forthwith after the passing of this Act, and when necessary repealed or amended, and shall be promulgated, under or by the same authority and in the same manner as the rules of practice and tariff of fees of the Superior Court, and shall apply in the same manner and have the same effect in respect of the proceedings under this Act, as the rules of practice and tariff of fees of the Superior Court apply to and affect the proceedings before that Court; and Bills of costs upon proceedings under this Act may be taxed and proceeded upon in like manner, as bills of costs may now be taxed and proceeded upon in the said Superior Court; but until such rules of practice and tariff of fees have been made, the rules of practice and tariff of fees in Insolvency, now in force in the said Province, shall continue and remain in full force and effect.

Rules of practice and Tariff of Fees in the Province of Quebec; how to be made.

Present rules, &c., to remain until altered.

139. In the Province of Ontario the Judges of the Superior Courts of Common Law, and of the Court of Chancery, or any five of them, of whom the Chief Justice of the Province of Ontario, or the Chancellor, or the Chief Justice of the Common Pleas, shall be one,—in the Province of New Brunswick, the Judges of the Supreme Court of New Brunswick, or the majority of them,—and in the Province of Nova Scotia, the Judges of the Supreme Court of Nova Scotia, or the majority of them,—shall forthwith make, and frame and settle such forms, rules and regulations, as shall be followed and observed in the said Provinces respectively, in the proceedings in insolvency under this Act, and shall fix and settle the costs, fees and charges which shall or may be had, taken or paid in all such cases by or to Attorneys, Solicitors, Counsel, and Officers of Courts, whether for the Officer or for the Crown as a fee for the fee fund or otherwise, and by or to Sheriffs, Assignees or other persons whom it may be necessary to provide for.

And in the other Provinces.

140. In the Province of Quebec every trader having a marriage contract with his wife, by which he gives or promises to give or pay or cause to be paid, any right, thing, or sum of money, shall

Registration of marriage contracts of traders in Quebec.

enregister

Consequence
of default.

Proviso.

Cer^l in words
in 29 Vic., c.
18, interpreted.

Certain words
in this Act
interpreted.

Other words
interpreted.
"Day."
"Official
Gazette."
"Creditor."

enregister the same, if it be not already enregistered, within three months from the execution thereof; and every person not a trader, but hereafter becoming a trader, and having such a contract of marriage with his wife, shall cause such contract to be enregistered as aforesaid (if it be not previously there enregistered,) within thirty days from becoming such trader; and in default of such registration the wife shall not be permitted to avail herself of its provisions in any claim upon the estate of such insolvent for any advantage conferred upon or promised to her by its terms; nor shall she be deprived by reason of its provisions of any advantage or right upon the estate of her husband, to which, in the absence of any such contract, she would have been entitled by law; but this section shall be held to be only a continuance of the second paragraph of section twelve of the Insolvent Act of 1864, and shall not relieve any person from the consequences of any negligence in the observance of the provisions of the said paragraph.

141. The words "any official assignee," used in the second section of the Act twenty-ninth Victoria, chapter eighteen, are hereby declared to have meant, and to mean, any official assignee whatever, and shall be construed as if they were followed by the words "resident or appointed, in any part of the Province of Canada." But this declaration shall not affect any contestation heretofore determined or now pending respecting the validity of any assignment heretofore made to an official assignee resident in a county or district different from that in which the domicile or place of business of the insolvent was situate at the time of such assignment.

142. The words "before Notaries" or "before a Notary" shall mean executed in notarial form, according to the law of the Province of Quebec; the words "the Judge" shall, in the Province of Quebec, signify a Judge of the Superior Court of the Province of Quebec, having jurisdiction at the domicile of the insolvent,—in the Provinces of Ontario and New Brunswick a Judge of the County Court of the County or Union of Counties in which the proceedings are carried on,—and in the Province of Nova Scotia, a Judge of Probate,—except in cases proceeding in the city of Halifax, in which case they shall mean a Judge of the Supreme Court of Nova Scotia; and the words "the Court," shall, in the Province of Quebec, signify the said Superior Court, and in the Provinces of Ontario and New Brunswick the County Court, and in the Province of Nova Scotia the Supreme Court of Nova Scotia, unless it is otherwise expressed or unless the context plainly requires a different construction.

143. The word "day" shall mean a juridical day; the words "Official Gazette" shall mean the Gazette which is used in any Province as the official medium of communication between the Lieutenant Governor and the people; the word "Creditor" shall be held to mean every person to whom the insolvent is liable, whether primarily or secondarily, and whether as principal or surety,

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surety, and who shall have proved his claim against the estate of an insolvent in the manner provided by this Act; but no proceeding, discharge or composition had or consented to previous to the passing of this Act, and not now the subject of dispute and in litigation on the ground that a creditor voting thereon or a party thereto had not proved his claim shall be held invalid by reason of any such creditor not having previously proved his claim as aforesaid, notwithstanding that such creditor or the claims he represents be requisite to complete the proportion necessary to give validity under this Act to such proceeding, discharge or composition; the word "collocated" shall mean ranked or placed in the dividend sheet for some dividend or sum of money; and all the provisions of this Act shall be held to apply equally to unincorporated trading companies and co-partnerships; and the chief office or chief place of business of such unincorporated trading companies and co-partnerships shall be their domicile or place of business as the case may be for the purposes of this Act: and the words "Board of Trade" in the said Act, are hereby declared to have meant and in this Act shall mean any body of persons openly exercising the ordinary functions of a Board of Trade or Chamber of Commerce whether incorporated or not.

"Collocated."
Application
to companies
and partner-
ships.

"Board of
Trade."

144. After the expiration of one year from the appointment of an Assignee, no suit or proceeding shall be instituted or commenced for the setting aside of any Act or proceeding preliminary to such appointment or of such appointment; nor shall any such appointment or the proceedings preliminary thereto be impeached, or the validity thereof put in issue by any pleading in any suit or proceeding; but after the expiration of the said period, as to all persons not previously contesting the same and until set aside by the decision of a Court of law or of equity, upon a previous contestation thereof, such appointment and the proceedings preliminary thereto, shall be conclusively presumed to be valid and sufficient.

Limitation of
proceedings
to set aside
anything done
under this Act.

OF IMPRISONMENT FOR DEBT

145. Any debtor confined in gaol or on the limits in any civil suit who may have made the assignment provided for in the second section of this Act; or against whom process for compulsory liquidation under this Act may have been issued, may at any time after the meeting of creditors provided for in the third Section of this Act, or the appointment of an Assignee under this Act, make application to the Judge of the County or District in which his domicile may be or in which the gaol may be in which he is confined, for his discharge from imprisonment or confinement in such suit; and thereupon such Judge may grant an order in writing directing the Sheriff or Gaoler to bring the debtor before him for examination at such time and place in such County or District as may be thought fit; and the said Sheriff or Gaoler shall duly obey such order, and shall not be liable for any action for escape in consequence thereof, or for any action for the escape of

Insolvent in
Gaol or on the
limits may
apply to
Judge for dis-
charge.

Proceedings
thereon.

of the said debtor from his custody, unless the same shall have happened through his default or negligence :

Examination
of insolvent
and witnesses.

Judge may
discharge him
if the exami-
nation be
satisfactory.

Minutes of
examination
to be kept

Postponement
in certain
cases.

As to any sub-
sequent
arrest.

Proviso.

2. In pursuance of such order the said confined debtor and any witnesses subpoenaed to attend and give evidence at such examination may be examined on oath at the time and place specified in such order before such Judge, and if on such examination it shall appear to the satisfaction of the Judge that the said debtor has *bonâ fide* made an assignment as required by the tenth Section of this Act, and has not been guilty of any fraudulent disposal, concealment or retention of his estate or any part thereof or of his books and accounts or any material portion thereof or otherwise in any way contravened the provisions of this Act, such Judge shall by his order in writing discharge the debtor from confinement or imprisonment, and on production of the order to the Sheriff or Gaoler, the debtor shall be forthwith discharged without payment of any gaol fees ; provided always that no such order shall be made in any suit unless it be made to appear to the satisfaction of such Judge that at least seven days notice of the time and place of the said examination had been previously given to the plaintiff in such suit, or his attorney and to the Assignee for the time being ;

3. The minutes of the examination herein mentioned shall be filed in the office of the Clerk of the Court out of which the process issued, and a copy thereof shall be delivered to the Assignee, and if during the examination, or before any order be made the Official Assignee or the appointed Assignee, or the creditor or any one of the creditors at whose suit or suits he shall be in custody, shall make affidavit that he has reason to believe that the debtor has not made a full disclosure in the matters under examination, the Judge may grant a postponement of such examination for a period of not less than seven days nor more than fourteen days, unless the parties consent to an earlier day ;

4. After such discharge, in case of any subsequent arrest in any civil suit as aforesaid for causes of action arising previous to the assignment or process for compulsory liquidation, the said debtor may, pending the further proceedings against him under this Act, be forthwith discharged from confinement or imprisonment in such suit, on application to any Judge on producing such previous discharge ; provided that nothing in this section contained shall interfere with the imprisonment of the said debtor, in pursuance of any of the provisions of this Act.

OFFENCES AND PENALTIES.

Assignees,
Guardians,
and Interim
Assignees, to
be deemed
agents for cer-
tain purposes.

146. Every Interim Assignee to whom an assignment is made under this Act, every guardian appointed under a writ of attachment in compulsory liquidation, and every Assignee appointed under the provisions of this Act, is an agent within the meaning of the seventy-sixth and following sections of the Act respecting

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Larceny

Larceny and other similar offences, and every provision of this Act, or resolution of the creditors, relating to the duties of an interim Assignee, guardian or Assignee, shall be held to be a direction in writing, within the meaning of the said seventy-sixth section; and in an indictment against an interim Assignee, guardian or Assignee under any of the said sections, the right of property in any moneys, security, matter or thing, may be laid in "the creditors of the insolvent (*naming him*), under the Insolvent Act of 1869," or in the name of any Assignee subsequently appointed, in his quality of such Assignee.

147. From and after the coming into force of this Act, any insolvent who shall do any of the acts or things following with intent to defraud, or defeat the rights of his creditors, shall be guilty of a misdemeanor, and shall be liable, at the discretion of the Court before which he shall be convicted, to punishment by imprisonment for not more than three years, or to any greater punishment attached to the offence by any existing statute :

Certain acts
by Insolvents
to be misdo-
meanors.

If he shall not upon examination fully and truly discover to the best of his knowledge and belief, all his property, real and personal, inclusive of his rights and credits, and how and to whom, and for what consideration, and when he disposed of, assigned or transferred thereof or of any part thereof, except such part has been really and *bonâ fide* before sold or disposed of in the way of his trade or business, if any, or laid out in the ordinary expenses of his family, or shall not deliver up to the Assignee all such part thereof as is in his possession, custody or power, (except such portion thereof as is exempt from seizure as hereinbefore provided,) and also all books, papers and writings in his possession, custody or power relating to his property or affairs;

Not fully dis-
covering or
not delivering
property,
books, papers,
&c.

If within thirty days prior to the execution of a deed of assignment, or the issue of a writ of attachment under this Act, he shall, with intent to defraud his creditors, remove, conceal or embezzle any part of his property, to the value of fifty dollars or upwards;

Removing
property.

If in case of any person having to his knowledge or belief proves a false debt against his estate, he shall fail to disclose the same to his Assignee within one month after coming to the knowledge or belief thereof;

Not denoun-
cing false
claims.

If he shall with intent to defraud, wilfully and fraudulently omit from his schedule any effects or property whatsoever;

False sched-
ule.

If he shall with intent to conceal the state of his affairs, or to defeat the object of this Act or of any part thereof, conceal, or prevent or withhold the production of any book, deed, paper or writing relating to his property, dealings or affairs;

Withholding
books, &c.

If he shall with intent to conceal the state of his affairs, or to defeat the object of the present Act, or of any part thereof, part with,

Falsely
books, &c.

with, conceal, destroy, alter, mutilate or falsify, or cause to be concealed, destroyed, altered, mutilated or falsified, any book, paper, writing or security or document relating to his property, trade, dealings or affairs, or make or be privy to the making of any false or fraudulent entry or statement in or omission from any book, paper, document or writing relating thereto;

Stating fictitious losses.

If he shall, at his examination at any time, or at any meeting of his creditors held under this Act, have attempted to account for any of his property by fictitious losses or expenses;

Disposing of goods not paid for.

If within the three months next preceeding the execution of a deed of assignment, or the issue of a writ of attachment in compulsory liquidation, he pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property, goods or effects the price of which shall remain unpaid by him during such three months.

How offences against this Act shall be tried.

148. All offences punishable under this Act shall be tried as other offences of the same degree are triable in the province where such offence is committed, save that the Jury empanelled to try the same shall be a special Jury, to obtain which the prosecuting officer is required and authorized to take such proceedings as in a civil case are necessary to obtain such a Jury.

Creditors taking consideration for granting discharge, &c.

149. If any creditor of an insolvent, directly or indirectly, takes or receives from such insolvent, any payment, gift, gratuity or preference, or any promise of payment, gift, gratuity or preference, as a consideration or inducement to consent to the discharge of such insolvent, or to execute a deed of composition and discharge with him, or if any creditor knowingly ranks upon the estate of the insolvent for a sum of money not due to him by the insolvent or by his estate, such creditor shall forfeit and pay a sum equal to treble the value of the payment, gift, gratuity or preference so taken, received or promised, or treble the amount improperly ranked for as the case may be, and the same shall be recoverable by the assignee for the benefit of the estate, by suit in any competent court, and when recovered, shall be distributed as part of the ordinary assets of the estate.

Punishment of insolvent receiving money &c., and not handing the same to Assignee.

150. If, after the issue of a writ of attachment in insolvency, or the execution of a deed of assignment, as the case may be, the insolvent retains or receives any portion of his estate or effects, or of his moneys, securities for money, business papers, documents, books of account, or evidences of debt, or any sum or sums of money, belonging or due to him, and retains and withholds from his Assignee, without lawful right, such portion of his estate or effects, or of his moneys, securities for money, business papers, documents, books of account, evidences of debt, sum or sums of money, the Assignee may make application to the Judge, by summary petition and after due notice to the insolvent, for an order for the delivery over to him of the effects, documents, or moneys so retained;

retained ; and in default of such delivery in conformity with any order to be made by the Judge upon such application, such insolvent may be imprisoned in the common gaol for such time, not exceeding one year, as such Judge may order.

151. The deeds of assignment and of transfer, or in the Province of Quebec, authentic copies thereof, or a duly authenticated copy of the record of appointment of an assignee, or a copy of the instrument of appointment of the interim Assignee when he becomes Assignee, certified by the Clerk or Prothonotary of the Court in which such instrument is deposited, under the seal of such Court, according to the mode in which the Assignee is alleged to be appointed, shall be *prima facie* evidence in all courts, whether civil or criminal, of such appointment, and of the regularity of all proceedings at the time thereof and antecedent thereto.

Certain documents to be evidence.

152. One per centum upon all moneys proceeding from the sale by an Assignee, under the provisions of this Act, of any immoveable property in the Province of Quebec, shall be retained by the Assignee out of such moneys, and shall, by such Assignee, be paid over to the sheriff of the district, or of either of the counties of Gaspé or Bonaventure, as the case may be, within which the immoveable property sold shall be situate, to form part of the Building and Jury Fund of such District or County.

Contribution to Building and Jury Fund in Quebec.

153. The Governor in Council shall have all the powers with respect to imposing a tax or duty upon proceedings under this Act, which are conferred upon the Governor in Council by the thirty-second and thirty-third sections of the one hundred and ninth chapter of the Consolidated Statutes for Lower Canada, and by the Act intituled : *An Act to make provision for the erection or repair of Court Houses and Gaols at certain places in Lower Canada*, (12 Vic., cap 112.)

Governor in Council to have certain powers.

REPEAL OF ACTS.

154. The Insolvent Act of 1864, and the Act to amend the same, passed by the Parliament of the late Province of Canada in the 29th year of Her Majesty's Reign, are hereby repealed, except in so far as regards proceedings commenced and now pending thereunder, and as regards all contracts, acts, matters and things made and done before this Act shall come into force, to which the said Acts or any of the provisions thereof would have applied if not so repealed, and specially such as are contrary to the provisions of the said Acts, having reference to fraud and fraudulent preferences, and to the enregistration of marriage contracts within the Province of Quebec ; and as to all such contracts, acts, matters and things, the provisions of the said Acts shall remain in force, and shall be acted upon as if this Act had never been passed ; Provided always that as respects matters of procedure merely, the provisions of this Act shall for the future supersede those of the said Acts even in cases commenced and now pending ; and all securities

Insolvent Act of 1864, and Act amending it repealed : saving certain proceedings and matters.

Proviso : Procedure under this Act to apply and supersede that under Act of 1864.

rities given under the said Acts shall remain valid, and may be enforced, in respect of all matters and things falling within their terms, whether before or after this Act shall come into force and specially all securities heretofore given by Official Assignees shall serve and avail hereafter as if given under this Act; and all other Acts and parts of Acts now in force in any of the said Provinces which are inconsistent with the provisions hereof are also hereby repealed.

Short title,
commence-
ment and du-
ration of Act.

155. This Act shall be called and known as "The Insolvent Act of 1869," and shall come into force and take effect on and after the first day of September next, and shall cease to have effect at the end of four years thereafter, save as regards proceedings then in progress.

FORM A.

INSOLVENT ACT OF 1869.

In the matter of _____ an Insolvent.

The Insolvent has made an assignment of his estate to me, and the Creditors are notified to meet at _____
in _____ on _____ the _____ day of _____
at (eight) o'clock _____ to
receive statements of his affairs, and to appoint an Assignee (Date)
and residence of Interim Assignee.

(Signature.)

Interim Assignee or Guardian.

(The following is to be added to the notices sent by post.)

The Creditors holding direct claims and indirect claims, maturing before the meeting, for one hundred dollars each and upwards, are as follows: (names of Creditors and amounts due) and the aggregate of claims under one hundred dollars is \$ _____

(date.)

(Signature.)

*Interim Assignee,
or Guardian.*

FORM

FORM B.

INSOLVENT ACT OF 1869.

In the matter of A. B., an insolvent.

Schedule of Creditors.

1. Direct Liabilities

Name.	Residence.	Nature of Debt.	Amount.	Total.
2. Indirect liabilities, maturing before the day fixed for the first meeting of creditors.				
Name.	Residence.	Nature of Debt.	Amount.	
3. Indirect liabilities, maturing after the day fixed for the first meeting of creditors.				
Name.	Residence.	Nature of Debt.	Amount.	
4. Negotiable paper, the holders of which are unknown.				
Date.	Name of Maker.	Names liable to Insolvent.	When due.	Amount.

FORM C.

INSOLVENT ACT OF 1869.

This assignment made between
first part, and
witnesses,

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(or)

On

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1869," the
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as Interim

at _____, in _____, at _____ o'clock,
this day, for the appointment of an Assignee to the Insolvent's
estate, such meeting was duly held, and _____ was duly
appointed thereat to be such Assignee (or no appointment of
Assignee was made at such meeting; or no meeting was held by
reason of no creditor attending such meeting; or the appointment
to be such Assignee made at the
said meeting became of no effect by reason of his refusal to accept
the same) by means whereof the said _____ (the Interim
Assignee) became Assignee to the said estate.

Place _____ date _____
Signatures of Chairman and of Creditors _____ or of
Interim Assignee.

The said (Interim Assignee) being duly sworn deposeeth that the
foregoing declaration is true: and he hath signed.
Sworn before me at
this _____

Judge }

FORM E.

INSOLVENT ACT OF 1869.

To (name _____ residence _____ and description
of Insolvent.)

You are hereby required, to wit, by A. B., a creditor for the sum
of \$ _____ (describe in a summary manner the nature of the
debt,) and by C. D., a creditor, &c., to make an assignment of your
estate and effects under the above Act, for the benefit of your
creditors.

place _____ date _____
(Signature of creditor or creditors.)

FORM F.

INSOLVENT ACT OF 1869.

CANADA,
Province of _____ }
District of _____ }

A. B.———, (name, residence and description.)

Plaintiff.

C. D.———, (name, residence and description.)

Defendant.

I, A. B———, (name, residence and description) being duly
sworn, depose and say :

I

1. I am the Plaintiff in this cause (or one of the Plaintiffs, or the clerk, or the agent of the Plaintiff in this cause duly authorized for the purposes hereof ;)

2. The defendant is indebted to the Plaintiff (or as the case may be) in the sum of dollars currency for, (state concisely and clearly the nature of the debt) ;

3. To the best of my knowledge and belief the defendant is insolvent within the meaning of the Insolvent Act of 1869, and has rendered himself liable to have his estate placed in compulsory liquidation under the said Act; and my reasons for so believing are as follows :

(state concisely the facts relied upon as rendering the debtor insolvent and as subjecting his estate to be placed in compulsory liquidation.)

And I have signed ; (or I declare that I cannot sign.)

this day of 186. }

and if the deponent cannot sign, add
—the foregoing affidavit having been
first read over by me to the deponent. }

(FORM G.)

INSOLVENT ACT OF 1869.

CANADA,
PROVINCE OF
District of

} VICTORIA, by the Grace of God, of the
United Kingdom of Great Britain and
Ireland, Queen, Defender of the Faith.

To the Sheriff of our District (or County) of

No.

GREETING :

We command you at the instance of
to attach the estate and effects, moneys and securities for money,
vouchers, and all the office and business papers and documents of
every kind and nature whatsoever,

of and belonging to

if the same shall be found in (name of district or other territorial jurisdiction) and the same so attached, safely to hold, keep and detain in your charge and custody, until the attachment thereof, which shall be so made under and by virtue of this Writ, shall be determined in due course of Law,

We command you also to summon the said

to be and appear before Us, in our

Court for

at

in the County (or District)

of

on the

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to show cause, if any he hath, why his estate should not be placed in liquidation under the Insolvent Act of 1869, and further to do

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and receive what, in our said Court before Us, in this behalf shall be considered ; and in what manner you shall have executed this Writ, then and there certify unto Us with your doings thereon, and every of them, and have you then and there also this Writ.

IN WITNESS WHEREOF, We have caused the Seal of our said Court to be hereunto affixed, at

this day of

in the year of our Lord, one thousand eight hundred and sixty-
in the year of our Reign.

(FORM H.)

INSOLVENT ACT OF 1869.

A. B.,
Plff.
C. D.,
Deft.

A writ of attachment has issued in this cause.

(Place date.)

(Signature,)

Sheriff.

(FORM I.)

INSOLVENT ACT OF 1869.

In the matter of

A. B. (or A. B. & Co.),
an insolvent.

I, the undersigned (*name and residence*), have been appointed assignee in this matter.

Creditors are requested to file their claims before me, within one month.

(Place date.)

(Signature)

Assignee.

(FORM K.)

INSOLVENT ACT OF 1869.

In the matter of

A. B.,
an Insolvent.

In consideration of the sum of \$ whereof quit ; C. D.,
assignee of the insolvent, in that capacity hereby sells and assigns
to

to E. F. accepting thereof, all claim by the Insolvent against G. H. of (*describing the Debtor*) with the evidences of debt and securities thereto appertaining, but without any warranty of any kind or nature whatsoever.

C. D., Assignee.

E. F.

(FORM L.)

This deed, made under the provisions of the Insolvent Act of 1869, the day of &c., between A. B. of &c., in his capacity of Assignee of the estate and effects of an insolvent, under a deed of assignment executed on the day of at in and of a release made and executed on the day of in , (*or under an order of the Judge made at on the day of*) of the one part, and C. D., of &c., of the other part, witnesseth : That he, the said A. B., in his said capacity, hath caused the sale of the real estate hereinafter mentioned, to be advertised as required by law, and hath adjudged (*or* and hath offered for sale pursuant to such advertisement, but the bidding therefor being insufficient did withdraw the same from such sale, and hath since by authority of the Creditors agreed to sell) and doth hereby grant, bargain, sell, and confirm the same, to wit : unto the said C. D., his heirs and assigns for ever, all (*in Ontario, Nova Scotia and New Brunswick, insert "the rights and interests of the Insolvent in"*) that certain lot of land, (*&c., insert here a description of the property sold*) : To have and to hold the same, with the appurtenances thereof, unto the said C. D., his heirs and assigns for ever. The said sale is so made for and in consideration of the sum of \$ in hand paid to the said C. D. to the said A. B., the receipt whereof is hereby acknowledged (*or of which the said C. D. hath paid to the said A. B., the sum of the receipt whereof is hereby acknowledged*) and the balance, or sum of \$ the said C. D. hereby promises to pay the said A. B., in his said capacity, as follows, to wit—(*here state the terms of payment*)—the whole with interest payable and as security for the payments so to be made, the said C. D. hereby specially mortgages and hypothecates to and in favour of the said A. B., in his said capacity, the lot of land and premises hereby sold. In witness, &c.

Signed, sealed, and delivered
in the presence of
E. F. |

A. B. [L. S.]
C. D. [L. S.]

FORM

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FORM

(FORM M.)

INSOLVENT ACT OF 1869.

In the matter of

A. B. (or A. B. & Co.)

an Insolvent.

A dividend sheet has been prepared, open to objection, until
the day of after which dividend
will be paid.

(Place.)

(date.)

Signature of Assignee.

(FORM N.)

INSOLVENT ACT OF 1869.

CANADA, } In the (name of Court)
PROVINCE OF } In the matter of A. B. (or A.
District (or County) of } B. & Co.), an Insolvent.

The undersigned has filed in the office of this Court, a consent
by his creditors to his discharge (or a deed of composition and
discharge executed by his creditors), and on the
day of next, he will apply to the
said Court (or to the Judge of the said Court, as the case may be)
for a confirmation of the discharge thereby effected.

(Place

date.)

(Signature of Insolvent, or of his Attorney *ad litem*.)

FORM O.

INSOLVENT ACT OF 1869.

CANADA, } In the (name of Court)
PROVINCE OF } In the matter of A. B., an Insolvent.
District (or County) of }

To the said Insolvent.

Take notice that the undersigned creditor hereby requires you
to file in the office of this Court, the consent of your creditors,
(or the deed of composition and discharge executed by them,) under which you claim to be discharged under the said Act; and
on the day of
next, at ten of the clock in the forenoon, or as soon as counsel
can be heard, the undersigned will apply to the said Court (or to
the Judge of the said Court, as the case may be) for the annulling
of such discharge.

(Place

date.)

(Signature of Creditor, or of his Attorney *ad litem*.)

FORM

FORM P.

INSOLVENT ACT OF 1869.

CANADA,	}	In the (<i>name of Court</i>)
PROVINCE OF		In the matter of A. B., (<i>or</i> A. B. &
District (<i>or County</i>) of		Co.) an insolvent.

On the day of next, the undersigned will apply to the said Court (*or* the Judge of the said Court, as the case may be) for a discharge under the said Act.
(Place, date.)

(Signature of the Insolvent, or his Attorney *ad litem*.)

FORM Q.

INSOLVENT ACT OF 1869.

In the matter of

A. B.,
An insolvent, and
C. D.,
Claimant.

I, C. D., of
depose and say : , being duly sworn in

1. I am the claimant (*or*, the duly authorized agent of the claimant in this behalf, and have a personal knowledge of the matter hereinafter deposed to, *or* a member of the firm of claimants in the matter, and the said firm is composed of myself and of E. F., of)

2. The insolvent is indebted to me (*or* to the claimant) in the sum of dollars, for (*here state the nature and particulars of the claim, for which purpose reference may also be made to accounts or documents annexed.*)

3. I (*or* the claimant) hold no security for the claim, (*or* I *or* the claimant) hold the following, and no other, security for the claim namely : (*state the particulars of the security.*)

To the best of my knowledge and belief, the security is of the value of dollars.

Sworn before me at	}	And I have signed.
this day of		

