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BILL.

An Act to facilitate the winding up of the
affairs of Incorporated Companies.

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HON. MR. MACDONALD.

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BILL.

An Act to facilitate the winding up of the affairs of Incorporated Companies.

WHEREAS it is expedient for the benefit of the Creditors, and also Preamble.
of the Members, of such Companies as are hereinafter mentioned,
to give them a speedy and inexpensive remedy for the winding up of the
affairs of such Companies, when unable to meet their pecuniary engage-
ments ; Therefore, Her Majesty, by and with the advice and consent of
5 the Legislative Council and Assembly of Canada, enacts as follows :

1. The word " Company," when used in this Act, shall be construed Meaning of
to mean any Incorporated Company, whether formed or subsisting be- "Company."
fore or after the passing of this Act, other than and excepting Railway
10 Companies incorporated by Act of Parliament, to which last mention-
ed Companies and to ordinary partnerships, this Act shall not apply.

2. The word " Court," wherever it occurs in this Act, shall be con- Meaning of
strued to mean the Court of Chancery, when proceedings shall be "Court."
taken under its provisions in Upper Canada, and the Superior Court for
15 Lower Canada, when proceedings shall be taken thereunder in Lower
Canada ; and the jurisdiction of such Courts respectively, shall be
determined by the section of the Province in which the chief place of
business of any Company to be wound up shall be situate ; Provided Proviso.
always, that the powers of a Curator appointed in one section of the
20 Province, as hereinafter provided, shall extend over any assets of the
Company, in respect of which he shall have been so appointed, which
may be found in the other section thereof, in which other section he shall
have all the rights and powers required to perform his duties in conform-
ity with this Act.

25 3. A Company may be wound up under this Act by the Court. When Com-
pany may be
wound up un-
der this Act.

1. Whenever the Company at a general meeting has passed a special
resolution, concurred in by a majority, in number and value, of the
shareholders therein, requiring the Company to be wound up ;

2. Whenever the Company has forfeited its Charter by non-user or
30 otherwise, or suspended its business for the space of a whole year, or
shall have become dissolved by effluxion of time ;

3. Whenever the Company is insolvent ;

4. Whenever three-fourths of the Capital of the Company has been
lost or become unavailable.

35 4. The return unsatisfied, in whole or in part, of any writ of execu- Evidence of
insolvency.
tion against any Company, addressed to the Sheriff of the County or
District in which the Chief place of business of such Company shall
be situate, shall be *prima facie* evidence of insolvency within the
meaning of this Act.

Service of process on Company.

5. Service of any notice, order, rule or writ, in, or incident to, or preliminary to any proceeding under this Act, against or in respect of any Company, may be made upon such Company, by leaving a copy thereof at the chief place of business of such Company, with any grown person in charge thereof, or elsewhere with the President or Secretary thereof; or if the Company have no known place of business, or be without any known President and Secretary, then, upon a statement to that effect being made under oath to the Court having the requisite jurisdiction, such Court shall order the publication for one month in some local newspaper, of such notice, order, rule, or writ, or the substance thereof respectively, which publication shall be held to be due service thereof. 5 10

Application for winding up of Company.

6. Any application for the winding up of any Company, shall be by petition, filed in the office of the Registrar, Clerk or Prothonotary of the Court, and shall be verified by affidavit or other sufficient evidence; and in cases where the Company is insolvent, such petition may be filed, either by a creditor whose debt has remained unsatisfied, after such proceedings as aforesaid taken to compel payment thereof, or by any member of the Company, liable to become a contributory towards the payment of its debt; but when any ground other than the non-payment of debt is alleged for the winding up of the Company, such contributory alone shall be entitled to make such application. 15 20

Notice of filing of Petition.

7. Notice of the filing of such petition, and of the day on which such petition is to be presented for hearing thereof before the Court, shall be served upon the Company, at least ten days before such presentation thereof, and shall also be given by advertisement, to be twice inserted in the *Canada Gazette*, and twice in some newspaper published at the place where the chief place of business of the Company is situate; or in case no newspaper be published at such place, then, in the newspaper whose office of publication is nearest thereto; Provided always, that the Court may, at the hearing of the petition, direct the same to stand over, and order such further notice to be given, as to the Court shall seem meet; Provided also, that the Court may, in its discretion, proceed upon the production of the *Canada Gazette*, with such notice as aforesaid, in case no better service, after due diligence, can, in the opinion of the Court, be effected within a reasonable time. 25 30 35

Proviso.

Proviso.

Order for the winding up of Company and appointment of Curator.

8. Upon the hearing of any petition for the winding up of any Company, filed by such creditor or contributory as aforesaid, the Court may make an order for the winding up of the Company, and shall therein fix a day for the appointment of a Curator to such Company, and shall therein require the creditors and members of such Company to appear before any Judge of such Court, on such day to give their advice as to such appointment; and such Judge shall, on such day, after hearing any suggestion made by any creditor or contributory, but without being bound by any such suggestion, nominate and appoint a Curator of such Company; and in the event of such Curator neglecting to put in security, as hereinafter provided, or refusing to accept such appointment, or afterwards becoming incompetent, by reason of death, absence from the jurisdiction, removal by the Court, or other cause to perform the duties thereof, another and other appointments of a Curator may be, from time to time, made in like manner to the first appointment. 40 45 50

Curator to give security and then to be vested with property of Company.

9. Such Curator shall give such description and amount of security for the due performance of his duties as the Court, or any Judge thereof in Chambers may determine, and may be called upon by the Court from time to time, to substitute and give, and he shall thereupon give 55

fresh or additional security, and upon the completion of such security shall become and be vested, in his capacity of Curator, with all moneys and securities for money, documents, papers, books of account, estate, effects and assets of the Company generally, and shall have power
 5 forthwith thereupon as such Curator, to take possession thereof, and in his said capacity to institute and maintain any kind of action, attachment or proceeding for obtaining and maintaining possession of such estate and effects and of every part and portion thereof, which
 10 lute and unconditional proprietor thereof; And a copy of the order appointing such Curator, authenticated in the manner usual in the Court wherein it shall be made, shall be *prima facie* evidence of such appointment and of such security having been given.

10. After the appointment of such Curator, all suits against the
 15 Company shall be stayed, unless the Court, on application to that effect by the Plaintiff, and after notice to the Curator, authorizes the plaintiff to proceed with such suit; and such order may be made subject to such provision as to future costs as the Court may think fit to make: and no member or officer of the Company shall, after such appoint-
 20 ment as aforesaid, dispose of any of the property or effects of the Company, and no subsequent transfer of any share or interest in the Company shall be valid.

Effects of appointment of curator on suits against Company, &c.

11. The Curator so appointed shall, as soon as possible without un-
 reasonable sacrifice thereof, convert the moveable assets into money
 25 and collect the outstanding debts and unpaid stock-subscriptions due to the Company, and for that purpose may sue or be sued in his name as such Curator, and may sell, in the manner he may deem most advantageous, all personal or moveable property of the Company, and subject to an order of the Court to be obtained in that behalf, may re-
 30 fer debts or claims to arbitration, or compound or compromise the same; and as to the immoveable property thereof, the same shall be sold by such Curator when so ordered by the Court, after such publications and notices, and after the expiry of such time as the Court in such order shall appoint, and when regularly made, such sale shall
 35 have the same effect as if made by the Company, and convey the same title as such Company could convey, and no other may be conveyed by any deed signed and sealed by the said Curator, or by any vesting order made by the Court.

Sale of real and personal property of Company.

12. The proceeds of the realization of the assets and debts of such
 40 Company shall, from time to time, be paid into Court with the privity of the Registrar, Clerk or Prothonotary of the Court, and an account current between the Company and the Curator, sworn to by such Curator, shewing the amount so paid in, shall at the same time be filed with the Registrar, Clerk or Prothonotary aforesaid, and the balance shown
 45 thereby paid in as aforesaid, at intervals not exceeding one month; and previous to the special order hereinafter mentioned, any creditor of the Company may file his claim, either in the hands of the Curator or in the office of the Court by which such Curator shall have been appointed; and such claim may be in effect in the form of Schedule (A)
 50 to this Act appended; and any claim so filed in the hands of the Curator shall be returned into the Court with the next subsequent statement of account to be made by such Curator.

Proceeds to be paid into Court, with account current sworn to by curator.

13. Whenever the amount of moneys realized from the assets of any
 Company shall appear to the Court to warrant a dividend thereof, the
 55 Court shall make an order to call in the creditors of the Company, and

Creditors to be called in. And proceeds to be distributed.

to require them to file their claims in the office of the Registrar, Clerk or Prothonotary of such Court, on or before a day to be fixed by such order; and notice of such order or the substance thereof shall be twice inserted in the *Canada Gazette*, and twice in some newspaper published in the County or District wherein the chief place of business of such Company shall have been situated; Provided, always, that in Lower Canada every such notice or the substance thereof shall be published in the *Canada Gazette*, and in such local newspaper or newspapers, both in the French and English languages; and after the expiration of the time so limited, the Court shall proceed to the distribution of the moneys so realized, according to the rights of the claimants thereon, in Lower Canada, in the manner recognized by law for the distribution of the moneys of a vacant estate in the hands of a Curator, and in Upper Canada in the manner in which such assets are, or but for this Act would be distributed by the Court of Chancery.

Curator to be an officer of the Court.

14. The Curator of any Company appointed in manner aforesaid shall be an officer of the Court appointing him, subject to the summary jurisdiction of that Court as to all matters, things and duties confided to and imposed upon him by this Act, and his accounts shall be subject to contest, the performance of his duties to be enforced, and his acts in his said capacity to be restrained and regulated in every respect, on summary application by petition or motion to the Court which appointed him, and he shall be liable to be removed by the Court for misconduct or want of sufficient security; Provided, always, that when the bringing or defending of any suit or the doing of any act in the winding up of any Company shall or may be attended with more cost than the Curator thereof shall consider it expedient to expend or to risk, and any application be made to compel him to bring or defend such suit, or to do such act, the Court may order such Curator to bring or defend such suit, or to do such act, as the case may be, but on the condition only that the applicant shall give good and sufficient security to such Curator for the payment to him of any costs which may be incurred by him in obedience to such order.

Disposal of surplus funds.

15. If there be any surplus of the funds realized from the assets of any Company, after the payment of all the creditors thereof, in full, the same shall first be devoted to the adjustment of the rights of the contributories among themselves, and afterwards shall be distributed *pro rata* among the contributories.

Court may make calls on contributories.

16. The Court may, at any time, and from time to time, after the appointment of such Curator as aforesaid, make calls on all or any of the contributories to the extent of their respective liabilities, for payment of all or any of the sum or sums for which they are liable, and in the proportion in which the contributories are so liable, and to the amount thereof which the Court may deem necessary to satisfy the debts of the Company, and the costs, charges and expenses of winding it up, and it may, in making such calls, take into consideration the probability of some assets not yet collected being realized, and some liabilities not yet ascertained becoming debts.

Set off against unpaid balance of stock.

17. No contributory to any Company, in process of being wound up under this Act, shall be entitled to set off any claim he may have against such Company by way of set off to the unpaid balances of stock held by him in such Company, unless such set off shall have been allowed and credited to him on the books of the Company on account of such unpaid balance, previous to the insolvency of the Company, and by express order of the Directors or Managers thereof.

18. No attachment at the suit of any person whomsoever of any effects or moneys in the hands of any Curator shall be valid; and any such writ of attachment which may be issued for such purpose shall be dismissed. No attachment in hands of curator to be valid.

5 19. An appeal from any judgment rendered under this Act shall be allowed in the same manner and to the same Court as appeals in ordinary cases instituted in the Court rendering such judgment are allowed or would lie, and may be made by such form of proceeding as the Court of Appeal shall for such cases prescribe. Appeals from judgments under this Act.

10 20. There shall be paid to the Curator such salary or remuneration, by way of per centage or otherwise, as the Court may direct. Remuneration of curator.

15 21. When the affairs of the Company have been completely wound up, the Court shall make an order declaring the Company to be dissolved from the date of such order, and thereupon the Company shall be dissolved accordingly. Dissolution of Company.

20 22. The Court may, as often as circumstances require, make such rules concerning the mode of proceeding to be pursued for winding up a Company, and such tariff of fees applicable to all proceedings under this Act, as from time to time may seem necessary or convenient; and until such rules and tariff are made it shall be competent to the Court to make any order it may deem just, and which shall not be inconsistent with this Act, for winding up any Company, and for the proceedings necessary therefor under this Act; and any power or direction contained in any such order shall be deemed to have been fully authorized by this Act. Court to make rules and tariff.

25 23. This Act shall not apply to or affect suite now pending, or to any Companies which have discontinued business, or which have been dissolved before the passing of this Act. Act not to effect pending suite.

30 24. Nothing in this Act contained shall affect any existing privilege or priority of one creditor or class of creditors over another, or be construed to operate any change in the liabilities of parties. Act not to affect privilege or priority among creditors.

SCHEDULE A.

Province of Canada, }
Canada. } In the [name of the Court.]

In re

The [name of Company.]

A. B., of (residence) (occupation), claims of the (name of Company) the sum of _____ dollars due him as follows:—
[Particulars of the claim which may refer to an account in detail annexed.]

The above named claimant, [or A. C., Agent or Clerk of the above named claimant,] being duly sworn, declares, that the foregoing claim is correct, and that the sum thereby demanded is justly due him by the Company,—and he hath signed—

Sworn before me at } A. B.
this day of }