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No. 6.

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4th Session, 3d Parliament, 14 Victoria, 1851.

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**BILL.**

An Act for the relief of Merchants,  
Traders and others.

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Received and read a first time, Wednesday, 21st  
May, 1851.  
Second reading, Monday, 2nd June, 1851.

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Hon. Mr. CAMERON (of Cornwall).

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TORONTO: PRINTED BY LOVELL AND GIBSON.

**BILL.**

An Act for the relief of Merchants, Traders, and others.

**W**HEREAS it is expedient that amicable modes of arrangement between debtors and their creditors should be facilitated, and that better means should be provided for carrying same into effect: Be it therefore enacted, &c.

*Preamble.*

That from and after the passing of this Act, it shall be lawful for any debtor who is unable to meet his engagements with his creditors, with the concurrence of one-third in number and value of his creditors, (certified by their signing his petition,) to present a petition to the Judge of the County Court of the county or united counties in which such debtor is residing at the time of presenting his petition, setting forth a full account of his debts, and the names, residences and occupations of his creditors, and also a full account of his estate and effects, whether in possession, reversion or expectancy, and of all debts and rights due to or claimed by him, and of all property of what kind soever held in trust for him, and also setting forth that he is unable to meet his engagements with his creditors, and the true cause of such inability, and also setting forth such proposal as he is able to make for the future payment or compromise of such debts or engagements, and that one-third in number and value of his creditors have assented to such proposal, and praying that such proposal (or such modification thereof as by the majority of his creditors should be determined,) should be carried into effect under the superintendence and control of the said Court, and that he, the said petitioning debtor, should, in the mean time, be protected from arrest, by order from the said Court.

*A debtor unable to meet his engagements may petition the County Judge with the consent of a certain portion of his creditors: what the petition shall contain.*

II. And be it enacted, That upon the presentation of the said petition, the Judge of the said Court shall privately examine into the matter of the said petition, and for that purpose shall have power to examine upon oath such petitioning debtor, and any creditor concurring in his petition, and any witness produced by such petitioning debtor, and if such Judge shall be satisfied of the truth of the several matters alleged in such petition, and that the debts of such petitioning debtor have been contracted *bona fide* and honestly, without fraud, breach of trust, and with reasonable probability at the time of contract of being able to pay the same, and that such petitioning debtor

*Judge to examine privately into the matter of such petition.*

And if satisfied, may order a meeting of the creditors.

has made a full disclosure of his debts and credits and estate and effects, and is desirous of making a *boná. fide* arrangement with all his creditors, and that his proposal to that effect is reasonable, it shall be lawful for such Judge to direct that a meeting of all the creditors of such petitioning debtor shall be convened at such time and place as the said Judge shall appoint, notice of which meeting and of the purpose thereof, and of the order under which it is to be held, shall be given personally to every creditor or left at his last place of abode or business by 10 or on behalf of such petitioning debtor, not less than fourteen days before the same is held.

Who shall preside at the meeting.

III. And be it enacted, That at such meeting of creditors, the creditor present, whose debt from such petitioning debtor is of the largest amount as stated in his said petition, shall preside, and report the resolutions thereof to the said Judge. 15

Agreement entered by a certain proportion of the creditors to bind the rest and the debtor.

IV. And be it enacted, That if at such meeting of creditors, the major part in number and value, or three-fourths in value or three-fourths in number, whose debts exceed twenty-five pounds, shall assent to the proposal of such petitioning debtor, or some modification thereof, and shall reduce the terms thereof to writing, and sign the same, such resolutions or agreement shall thenceforth be binding and of full force, as well against the said petitioning debtor as against all persons who were his creditors at the date of his said petition, and who had notice of the said meeting of creditors, provided however that such resolution or agreement shall not be valid unless one full third in number and value of all the creditors of such debtor were present at such meeting, either in person or by an authorized agent. 20 25 30

Such agreement to be filed within certain time : Debtor protected from arrest.

V. And be it enacted, That within one week after the passing of such resolutions or agreement, the same shall be filed and entered of record in the said Court, and the Judge thereof shall grant to the said petitioning debtor a certificate of such filing, and shall from time to time endorse on such certificate the protection of such debtor from arrest, and such debtor shall be free from arrest at the suit of any person being a creditor at the date of his said petition and having had such notice as aforesaid ; Provided however that no such petition shall be valid in favor of any such debtor who shall be proved to the satisfaction of such Judge to have been about to abscond from this Province, or who has concealed or is concealing any part of his estate or effects, nor against any creditor whose debt has been contracted by reason of any manner of fraud or breach of trust. 35 40 45

Temporary protection from arrest

VI. And be it enacted, That it shall be lawful for such Judge as aforesaid, upon the examination of such petition 50

as aforesaid, to grant to such petitioning debtor a limited and temporary protection from arrest, and such debtor shall accordingly be free from arrest from such time and within such limits and conditions as shall be specified in the said protection, and it shall be lawful for such Judge to require such debtor to give bail for his appearance at the several meetings of his creditors, and any petitioning debtor shall have such protection from arrest when going to, remaining in and returning from, his necessary attendance on the said Judge, or the said meetings of creditors, as is enjoyed by any party or witness attending any Court of Record.

may be granted.

Debtor to give bail.

VII. And be it enacted, That from and after the date of the filing of such resolution and agreement as aforesaid, all the estate and effects of such petitioning debtor shall vest in the trustee (if any such shall be appointed) by virtue of such resolutions, and without any deed, as fully as if such trustee were an assignee under the Statutes relating to Bankruptcy in force in England, and every such trustee may sue and be sued as if he were such assignee in bankruptcy.

Estate of Debtor to vest in any Trustee appointed under such agreement.

VIII. And be it enacted, That every such trustee as aforesaid, or petitioning debtor, if his estate and effects have been left in his own management without any trustee, once at least in every six months, or oftener if any two or more of the creditors of such debtor, whose debts amount to one-tenth of the amount of the debts of such debtor, require it, shall produce to the said Judge, on oath, a full and true account of all moneys, property and effects of such debtor, which have come to his hands and of his disposal thereof, and the said Judge shall examine the same, and certify the result of such examination, and if need be shall order payment to the creditors of such debtor according to the terms of such resolution or agreement as aforesaid.

Trustee or debtor to fylo accounts from time to time.

Judge may order payments.

IX. And be it enacted, That if at any time it shall appear to the said Judge, on the representation of such trustee as aforesaid, or of any two creditors as aforesaid, that such petitioning debtor has not made a true discovery of his estate and effects, or has not duly accounted for any subsequently acquired property, (if required by the true intent and meaning of the said resolution and agreement,) or has wilfully made any false return of creditors, it shall be lawful for the said Judge to summon such debtor to be examined before him on oath touching such matters, and such summons and examination shall be enforced in the same manner as is practised in England in the summoning and examination of bankrupts.

Debtor may be called up and examined on oath in certain cases.

X. And be it enacted, that if any difficulty shall arise in the execution of such resolution or agreement, it shall

How the agreement

may be annulled if difficulties arise in executing it.

be lawful for the said Judge to cause a special meeting of the creditors of such petitioning debtor to be assembled, and the resolution of the majority of the creditors at such meeting to confirm, alter or annul the whole or any part of the said original resolution or agreement shall be as valid as if it had been part of such original resolution or agreement; Provided, however, that if one-third in number and value of the creditors of such petitioning debtor do not attend such meeting in manner aforesaid, the resolution thereof shall not be valid unless the same is approved and confirmed by the said Judge.

Proviso.

When and how the trustee shall be discharged from his trust.

XI. And be it enacted, That so soon as the said resolution or agreement shall have been carried into effect, and the creditors of the said petitioning debtor shall have been satisfied, according to the terms of the same, the said Judge shall cause a meeting of the said creditors to be had before him, and on being satisfied that the trustee has fully performed his trust shall give to such trustee a certificate thereof under his hand and the seal of such Court, and such certificate shall be a full release and discharge to such trustee, both in law and equity, for all matters done by him as such trustee: Provided always, that it shall be lawful for such trustee, or the said petitioning debtor, to receive for his services in the execution of his said trust such sum of money as the majority of the said creditors in number and value at such last mentioned meeting shall appoint.

Proviso. Remuneration of trustee, &c.

Final discharge of debtor how and when granted.

XII. And be it enacted, That at or after such last mentioned meeting, the said Judge shall give to the said petitioning debtor a certificate under the hand of the said Judge and the seal of the said Court, of the fying of such petition, of the making of the said resolution or agreement, and that the same has been fully carried into effect; and such certificate shall from thenceforth operate to all intents and purposes as a full discharge of such debtor from all debts due by him at the date of his said petition, excepting only that no debt herein excepted from the operation of the Act shall be barred by the said certificate.

Court of Chancery to make Rules, &c. under this Act.

XIII. And be it enacted, That for the better carrying into effect the several purposes of this Act, it shall be lawful for the Court of Chancery of Upper Canada from time to time to make such rules, regulations and orders as the said Court shall think fit.

Extent of Act.

XIV. And be it enacted, That this Act shall extend to aliens, denizens and women, and shall be in force only in Upper Canada.