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No. 84.

1st Session, 8th Parliament, 27 Victoria, 1868.

BILL.

An Act to facilitate the remedy by Attachment of separate Creditors against co-partnership property.

Received and read, first time, Tuesday, 1st
Sept., 1868.

Second reading, Wednesday, 2nd Sept., 1868.

Hon. Mr. Ross.

QUEBEC:

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

An Act to facilitate the remedy of separate creditors against co-partnership property:

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble

1. A separate creditor of any one or more partners in a commercial firm may enforce his remedy against his debtor and the partnership, as follows: Remedy against the partnership.

If a Judgment has been recovered against one or more partners, the separate creditor may cause to be served on the co-partnership firm at their ordinary place of business, a copy of such Judgment, with a statement of the principal, interest and costs due thereon, and require payment from such co-partnership. Service of judgment.

2. If the amount of such Judgment, interest and costs, be not paid within fifteen days from the service thereof, or if the partnership be not dissolved, &c., and the other requirements in the 3rd, 4th & 5th sections of this Act be not fulfilled within the respective periods therein mentioned, then such Judgment shall *de plano* be executory in the same way as against the firm in which the individual debtor is a partner, and the real and personal property and effects of the firm may be sold and realized under such Judgment, as if such Judgment had been rendered against the other co-partners, and as if all the members of the firm had been defendants in the cause. Execution against partnership if this Act be not complied with.

3. It shall be competent for the firm, within fifteen days after service of such Judgment, and such firm may elect to dissolve the co-partnership, and within ten days thereafter to give public notice of such dissolution, in at least two newspapers in the locality where the business of the firm has been carried on, and to register such dissolution as required by law. Co-partnership may be dissolved.

4. Within three months after such dissolution, the members of the firm shall file with the Clerk or Prothonotary of the Court where such Judgment was recovered and in the cause, a final statement, under oath, shewing that the assets and effects of the firm have been finally realized, and that the interest of the separate partner has been liquidated and determined, and the firm shall in that case be bound to pay over such interest and share to the Judgment creditor, to an amount not exceeding his claim, or in default thereof, execution may issue against the firm for the amount of such share, as so ascertained. Debtor's share to be paid to creditor to amt of judgment.

5. If a final statement as required in the last section is not filed, or it be impossible fully to liquidate and wind up the affairs of the said partnership within the said period, then the partnership shall, within the like period of three months from the day of dissolution, be bound to produce and file, under oath, a true copy of the Deed, Articles, or Agreement in writing, of such partnership, or if there be no such Deed, If the partnership cannot be wound up within three months, the firm shall file certain statements.

Articles or Agreement, then a declaration under oath of the verbal agreement under which such partnership exists,—a statement showing the amounts invested by the partners respectively in the partnership—the assets thereof, giving separately and in detail an account of the real and personal property of the partnership—an inventory of the stock and merchandize on hand, in detail—of the debts due thereto, with the names, residences and occupations of the debtors respectively, the creditors of the partnership, with their names, residences and occupations, and the amount due to each respectively—a statement of the account of each partner with the partnership, made up to the date of the issuing of the writ of *saisie arrêt*, and showing the amounts drawn by each partner from, or paid out for him by the firm during the previous year, or such shorter period as the partnership may have subsisted—and a copy of the last balance sheet, to be made up to the date of filing such statement.

Execution
against the
firm.

6. After the filing of the papers and statements required by the fifth section, the Judgment creditor may obtain a writ of execution to sell the whole of the stock in trade, goods, wares, merchandize and effects of such firm; and also a writ of *saisie-arrêt* to seize the debts due to the firm in the hands of its debtors, and after realization of the personal property and effects, then a writ of execution against the real property of the firm, to the end that the whole of the co-partnership property and effects may be brought into Court, and distributed in due course of law; and all the provisions of law applicable to such several writs respectively; when employed for the attachment and selling of moveable or immoveable property in ordinary cases, shall apply thereto when issued under this Act.

Court or
Judge may
make rules,
etc., for pro-
ceedings un-
der this Act.

7. The Court, or any Judge in vacation, shall have power at any time to order the creditors of the firm to be notified of the proceedings, and to be called in; and shall also have power to make and pass such rules, orders and Judgments, as may from time to time be necessary to regulate the proceedings under this Act, and adapt the same to the ordinary procedure of such Court, and to regulate all notices, prescribe and direct all forms, and from time to time to give such other orders and directions as such Court or Judge may think necessary to carry out the objects of this Act.

On certain
allegations
and proof
thereof, the
Court may or-
der execution
against the
firm within
the three
months.

8. At any time during the period of three months accorded to the co-partnership for the bona fide and final liquidation thereof, the separate creditor may, by summary petition to the Court by which the Judgment was rendered, or to any Judge thereof in chambers, allege either that the separate partner against whom Judgment has been rendered has, subsequent to the dissolution, interfered with or carried on the business—or, that he has since the service of the Judgment withdrawn money from the concern, with the knowledge of some one of the partners—or that the liquidation of the affairs of the firm is being procrastinated or unnecessarily delayed by collusion between some of the members thereof—or that the partners have done or omitted to do some act or thing whereby the remedy of the separate creditor against the interest of the debtor in the concern has been or may unjustly be delayed or prevented—and on proof of any one of these allegations to the satisfaction of the Court or Judge—by summary process, in Chambers or in Court, such Judge or Court may order execution to issue against the co-partnership in due course of law.

9. The Court, or any Judge at any time may, on summary petition and without any formality, order any partner, manager, book-keeper, or clerk of the partnership to be summarily examined under oath, touching any statement or writing produced, or declaration made, and to produce any book of accounts, invoices or papers belonging to the partnership, which may be under the control of such person, or belonging to the partnership.

Examination
of partners,
clerks, etc.

10. The prothonotary or clerk shall furnish to the sheriff or bailiff in charge of any writ of execution, true copies of all the papers and statements filed under this Act, and of any supplementary papers or statements modifying, and of any judgment or order affecting the same, which shall be open to public inspection, *gratis*, until and upon the day of sale.

Certain pa-
pers to be fur-
nished to the
Sheriff, &c.

11. The creditors of the co-partnership shall be entitled to be paid out of the assets thereof by preference to the separate creditors of the several partners; and nothing in this Act shall affect the right of the other partners to receive their share, which may be realized from the assets of any firm after payment of the co-partnership debts in the same way as they could have done under a voluntary liquidation thereof.

Creditors of
firm to have
preference.
Partners en-
titled to their
shares.

12. This Act shall apply only to Lower Canada.

Act limited to
L. C.