

Laws of His Majesty's Province of Upper Canada, passed in the year 1828. York: Robert Stanton, 1828.

9 George IV – Chapter 11

An Act to repeal the Laws now in force respecting the late Pretended Bank of Upper Canada, and to make provision for settling the affairs of the said Institution. Passed 25th March, 1828.

Whereas a certain Act of the Parliament of this Province, passed in the Fourth Year of the Reign of His present Majesty, entitled, "*An Act vesting in the hands of certain Commissioners therein named, all the Stock, Debts, Bonds, and Property, of the Pretended Bank of Upper Canada, lately established at Kingston, for the benefit of the Creditors of that Institution,*" and a certain other Act of the Parliament of this Province, passed in the Fourth Year of His present Majesty's Reign, entitled, "*An Act to repeal part of an Act passed In the last Session of Parliament, entitled, 'An Act vesting in the hands of certain Commissioners therein named, all the Stock, Debts, Bonds, and Property, of the Pretended Bank of Upper Canada, lately established at Kingston, for the benefit of the Creditors of that Institution; and to make further provision for settling the affairs of the said Pretended Bank,*" have been found ineffectual; and it is expedient to provide other means for collecting the Debts contracted with the said Institution, for the benefit of the Creditors thereof:

Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of, and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the Fourteenth Year of His Majesty's Reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province;'" and by the authority of the same, That the said several Acts herein before recited be, and the same are, hereby repealed.

II. And be it further enacted by the authority aforesaid, That the holders of Stock in the said late Pretended Bank shall and may meet at the Court House in the Town of Kingston, in the Midland District, on the First Monday in May next after the passing of this Act, at or after the hour of Eleven in the forenoon of the same day, for the purpose of choosing some one person to be a Commissioner for the purposes hereinafter mentioned; and that the persons holding Certificates given for Notes of the said Pretended Bank by the Commissioners heretofore appointed for settling the affairs of the said Pretended Bank, shall and may meet at the Court House in the Town of Kingston aforesaid, on the Second Monday in May next after the passing of this Act, at or after the hour of Eleven in the forenoon of the same day, for the purpose of choosing some one other person to be a Commissioner for the purposes hereinafter mentioned.

III. And be it further enacted by the authority aforesaid, That at the respective Elections hereinbefore provided for, the holders of Stock, and Certificate holders, may vote by Proxy; such Proxy to be appointed by Power of Attorney, under the hand and seal of the Principal, that each Stockholder, and each Certificate holder, shall have one vote, and no more; and that the Commissioners shall be chosen at such Elections respectively, by a majority of the votes so to be given personally or by Proxy.

IV. And be it further enacted by the authority aforesaid, That the two Commissioners to be chosen as aforesaid, shall and may, within one week from the time of their being so chosen, appoint some one person to be a Commissioner with them for the purposes of this Act.

V. And be it further enacted by the authority aforesaid, That in case of vacancy by death, incapacity, removal from the District, or resignation, it shall and may be lawful for the surviving or remaining Commissioner or Commissioners, in case the Commissioner or Commissioners, so vacating his or their appointment or appointments, shall have been chosen at either of the Elections provided for by this Act, to call a meeting of the Stockholders, or of the holders of the certificates, according to the nature of the vacancy to be supplied, to be held at the Court House in the town of Kingston, at some day to be named by the said Commissioners; and of which public notice shall be given by advertisement in the several Newspapers in the Town of Kingston, at least two weeks before the time appointed for such meeting; and in case of vacancy of the Commissioner who shall have been appointed by the other two Commissioners in the manner hereinbefore mentioned, it shall and may be lawful for the two remaining Commissioners, and they are hereby required to appoint, within two weeks, a third Commissioner to supply such vacancy.

VI. And be it further enacted by the authority aforesaid, That the Act of any two Commissioners, who shall be appointed under this Act, shall be valid, so far as the authority of such Commissioners shall extend.

VII. And be it further enacted by the authority aforesaid, That the Commissioners heretofore appointed for settling the affairs of the late pretended Bank, shall, within one week after the appointment of the Commissioners under this Act, deliver, or cause to be delivered over, upon request, to the Commissioners who shall be constituted under this Act, all the books, papers, documents, matters, and things, whatsoever, remaining in their charge and appertaining to the said late pretended Bank, or the affairs thereof.

VIII. And be it further enacted by the authority aforesaid, That the Commissioners to be constituted under this Act may, from time to time, prosecute in and by the name of the Kingston Bank Commissioners, such actions at Law as may be necessary for the recovery of any debts due to the Institution, or to others, to the use and in behalf or account of the said Institution, by mortgage, bond, note or otherwise; and that all such debts, whether due by specialty or by simple contract, may, if the Plaintiff shall choose to sue in that form, be recovered in an action on an account stated, as between the Defendant and the parties

suing by the name aforesaid; and such specialty or other proof of debt may be received as evidence of an account stated.

IX. And be it further enacted by the authority aforesaid, That the statute of limitations shall not apply to bar or extinguish any debt due to the said late pretended Bank, provided the same shall be put in suit within one year from the passing of this Act.

X. And whereas from the sudden failure of the said Institution, and the consequent confusion in its affairs, which rendered it for a long time impracticable, to resort to the necessary legal remedy for the recovery of the debts then outstanding, it may have happened in some instances, that the indorsers of Notes, or drawers of Bills discounted at the said Institution have not received notice of non-payment or non-acceptance within the period which the Law requires. And it is expedient to prevent advantage being taken of such omission when it has not operated to the prejudice of such Indorses: Be it therefore further enacted by the authority aforesaid, That the omission to give any such notice as aforesaid, upon any demand that may have become due after the failure of the said Institution shall not bar a recovery against any Indorser, or Drawer unless it shall be satisfactorily proved, that such Indorser or Drawer, has by reason of such notice not being given, as the Law requires, been prejudiced in the means of recovery, against the party by whose non-payment or non-acceptance he had become liable.

XI. And be it further enacted by the authority aforesaid, That whenever any person, appearing to be indebted to the said Institution, shall have left this Province, since the failure of the said institution, and shall not be resident therein, it shall and may be lawful to serve process in any suit to be instituted under the authority of this Act, against such person, by leaving a copy of such process, at the last place of abode of such person within this Province, with any grown up person dwelling or living in such house, or by affixing a copy of such process in the Crown Office of this Province, eight days before the return thereof—and that a declaration in every such case, being filed in the Crown Office of this Province, and all other and subsequent proceedings in any such cause which in ordinary cases are served upon the Defendant, shall be considered to be served, by filing the same in the Crown Office at York, and the Office of Deputy Clerk of the Crown at Kingston, and on notice of such filing, inserted for two weeks in the Kingston Chronicle and Upper Canada Herald.

XII. And be it further enacted by the authority aforesaid, That no Bond, Mortgage, Note, Security, or undertaking of what kind or nature soever, made to the said institution, or to any person or persons to their use, shall be held to be invalid or irrecoverable on account of any alleged illegality, of the said Institution.

XIII. And be it further enacted by the authority aforesaid, That the Commissioners to be constituted under this Act, shall, within two weeks after their appointment, cause a notice of their place and hours of business, to be advertised in the Upper Canada Gazette, and in all other Newspapers in Upper Canada, and in the Montreal and Quebec Gazettes, in six successive numbers of each paper, calling upon all holders of Notes or Certificates or other

Creditors of the said late Institution, to present their claims within the period prescribed by this Act, or otherwise such claims will be forever barred and cancelled.

XIV. And be it further enacted by the authority aforesaid, That every claim upon the said Institution, unless it shall be presented to the Commissioners to be appointed under this Act, on or before the first day of November next, shall be for ever extinguished and barred.

XV. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the Commissioners to be constituted under this Act to exercise their discretion in regard to the giving a longer credit to any debtor or debtors to the said late Institution, and that they shall also have authority to accept of property, real or personal, or to receive Bills or Notes of the said late Institution, or certificates given for the same, in satisfaction of the whole or part of any debt which said Commissioners are authorized to collect, or to refer any such matter to arbitration, or make any compromise in regard to any such debt as they may think reasonable and proper.

XVI. And be it further enacted by the authority aforesaid, That if any person indebted to the said late Institution shall before the passing of this Act, have tendered payment of the debt, or any part thereof due by him, in Notes of the said late Institution, or certificates given for such Notes, no interest shall be charged in respect to such debt, or such part thereof as he shall have so tendered payment for, from the time of such tender having been so made.

XVII. And be it further enacted by the authority aforesaid, That the Commissioners shall make a Report to the Governor, Lieutenant Governor, or Person Administering the Government of this Province, on the first day of January, in every year of their proceedings under this Act, and of the state of the affairs of the said Bank to be laid before the Legislature at its next Session.

XVIII. And be it further enacted by the authority aforesaid, That the Commissioners who shall be constituted under this Act shall make half yearly dividends among the creditors of the said late Institution of the monies collected by them, first deducting therefrom their necessary disbursements in the execution of this Act; and that the first of such dividends shall be made at the expiration of twelve Calendar months after the appointment of the said Commissioners.

XIX. And be it further enacted by the authority aforesaid, That the Commissioners heretofore appointed for settling the affairs of the said late Institution, shall be allowed to make out an account against the Government of this Province, for all disbursements necessarily incurred by them in the execution of the duties imposed upon them by Law, which account shall be sworn to by them, and shall be accompanied by the proper receipts, or other vouchers, and that it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the Government of this Province, to issue his warrant in favor of the said Commissioners, for the amount to be allowed in such account; which warrant shall and may be discharged by the Receiver General out of the monies of this

Province remaining in his hands unappropriated, and the monies to be paid thereon shall be accounted for to the Commissioners of His Majesty's Treasury, in such manner and form as His Majesty shall be graciously pleased to direct.

XX. And be it further enacted by the authority aforesaid, That this Act shall be deemed to be a public Act, and as such shall be judicially noticed without specially shewing the same.