

The Provincial Statutes of Lower-Canada, Being the fourth session of the of the Special Council, begun and holden at the City of Montreal, in the said Province of Lower Canada, fourteenth day of February, 1839. Quebec: John Carleton Fisher & William Kemble, Law Printer to the Queen's Most Excellent Majesty, 1839.

2 Victoria – Chapter 36 (Session 4)

An Ordinance concerning Bankrupts, and the Administration and Distribution of their Estates and Effects.

Whereas it is expedient to provide means of discovering and securing the Estates and Effects of Bankrupts for the benefit of their Creditors, and of administering and distributing the same, and also to afford relief to such Bankrupts as shall, without any fraud or gross misconduct, have become unable to pay all their debts in full, and who shall have made a full disclosure and discovery of all their Estates and Effects, as hereinafter required:—Be it therefore Ordained and Enacted by His Excellency the Governor of the Province of Lower Canada, by and with the advice and consent of the Special Council for the affairs of the said Province, constituted and assembled by virtue of, and under the authority of an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the first year of the Reign of Her present Majesty, intituled, “An Act to make temporary provision for the Government of Lower Canada;” and it is hereby Ordained and Enacted by the authority of the same, that all Bankers, Brokers, and persons insuring Ships, or their freight, or other matters, against perils of the sea, Builders, Carpenters, Shipwrights, Keepers of Inns, Taverns, Hotels, or Coffee Houses, and all persons using the trade of Merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise in gross or by detail, and all persons, who either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of Goods or commodities, shall be deemed Traders, liable to become Bankrupt: Provided, that no Farmer, Grazier, common labourer, or workman for hire, or member of, or subscriber to, any incorporated Commercial or Trading Companies, established by Charter or Legislative Enactment, shall be deemed, as such, a Trader, liable, by virtue of this Ordinance, to become Bankrupt.

II. And be it further Ordained and Enacted by the authority aforesaid, that it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the Government of this Province, for the time being, to nominate and appoint seven persons to be Commissioners within this Province, for the purposes of this Ordinance, and to remove any one or more of the same, and in like manner to nominate and appoint another or others in the room of the person or persons so removed; and the said person or persons, so to be from time to time nominated and appointed, shall be, and they are hereby nominated and appointed, Commissioners for the purposes of this Ordinance.

III. And be it further Ordained and Enacted by the authority aforesaid, that any Trader residing in this Province, who shall desire to take the benefit of this Ordinance, may apply by

Petition to any one of the Commissioners to be named as aforesaid, residing in the District within which such Trader resides, or in which he has his usual place of business, setting forth his inability to pay all his debts, and his willingness to assign all his estate and effects for the benefit of his Creditors, and praying that such proceedings may be had in the premises, as in this Ordinance are provided, and if it shall appear to the satisfaction of the said Commissioner, that the debts due from such applicant amount to not less than two hundred pounds, lawful current money of this Province, the said Commissioner shall forthwith, by warrant under his hand and seal, appoint some suitable person as Messenger, to take possession of all the Estate, real and personal, of such Trader, excepting such as may be by law exempted from attachment, and of all the deeds, books of account, and papers of such Trader, and to keep the same safely until the appointment of Assignees as hereinafter provided.

IV. And be it further Ordained and Enacted by the authority aforesaid, that the said Messenger shall forthwith give public notice, by advertisement, in such newspapers as shall be designated by the Commissioner, and also such personal or other notice, to any persons concerned as the Commissioner shall prescribe, which notice shall state that a warrant has issued against the estate of such Trader, and that the payment of any debts, and the delivery of any property belonging to such Trader, to him, or for his use, and the transfer of any property by him, are forbidden by law and the Messenger shall, in the same notice, call a meeting of the Creditors of such Trader, to prove their debts, and to choose one or more Assignees of his estate, which meeting shall be held at some convenient time and place to be designated in the warrant, the time to be not less than ten days, and not more than thirty days after the issuing of the warrant; and the said Commissioner shall attend the said Meeting, and shall allow all the debts that shall be duly proved before him, and shall cause a list thereof to be made, which shall be certified by himself, and shall be recorded and filed with the other papers and proceedings in the case; and the Creditors shall then proceed, in the presence of the said Commissioner, to choose one or more Assignees of the estate of the Trader, liable by virtue of this Ordinance, to become a Bankrupt, the choice to be made by the greater part in value of the Creditors, according to the debts then proved: Provided that when the number of Creditors present shall amount to five, and less than ten, the votes of two, at least, shall be necessary for the choice, and when the number of Creditors shall amount to ten or more, the votes of three at least shall be necessary for the choice; and in case no choice shall be made by the Creditors at the said Meeting, the said Commissioner shall appoint one or more Assignees; and in case any Assignee so chosen, shall fail to express in writing his acceptance of the trust within four days, the Commissioner may fill any vacancy occasioned thereby.

V. And be it further Ordained and Enacted by the authority aforesaid, that all debts due and payable from such Bankrupt, at the time of the first publication of the notice of issuing the said warrant, may be proved and allowed against his estate assigned as aforesaid; and all debts then absolutely due, although not payable until afterwards, may be proved and allowed as if payable presently, with a discount, or rebate of interest, when no interest is payable by the contract, until the time when the debt would become payable; and all

monies due from such Bankrupt, on any bottomry, or respondentia bond, or on any policy of Insurance, may be proved and allowed, in case the contingency or loss should happen before the making of the first dividend in like manner as if the same had happened before the said first publication of the said notice, and in case the Bankrupt shall be liable for any debt in consequence of having made or endorsed any bill of exchange or promissory note, before the first publication of the said notice, or in consequence of the payment by any party, to any bill or note of the whole, or any part of the money secured thereby, or of the payment of any sum by any surety of the Bankrupt in any contract whatsoever, although such payment in either case shall be made after the said first publication, provided it be made before the making of the first dividend, such debt shall be considered for all the purposes of this Ordinance, as contracted at the time when such bill or note or other contract shall have been so made or endorsed, and may be proved and allowed, as if the said debt had been due and payable by the said Bankrupt before the said first publication, and also any claim or demand by or in right of the wife of the Bankrupt, founded on her contract of marriage with the Bankrupt, or for or in relation to her separate property; and all demands against the Bankrupt, for or on account of any goods or chattels wrongfully obtained, taken or withheld by him, may be proved and allowed as debts, to the amount of the worth of the property thus taken; and no debt other than those abovementioned, shall be proved or allowed against the estate assigned as aforesaid; and when it shall appear that there has been mutual credit given by the Bankrupt and any other person, or mutual debts between them, the account between them shall be stated, and one debt shall be set off against the other, and the balance of such account and no more, shall be allowed or paid on either side respectively; and when any Creditor shall have any hypothec or mortgage upon, or of any real estate belonging to the Bankrupt at the time of the first publication of the notice of the issuing of the said warrant, or any pledge of any personal estate of the Bankrupt, or any lien thereon, for securing the payment of any debt claimed by him, the property, real or personal, so liable or held as security, shall, if he require it, be sold, and the proceeds shall be applied towards the payment of his debt, and he shall be admitted as a Creditor for the residue thereof, if any, and such sale shall be made in such manner as the Commissioner shall order, and the Creditor and Assignee, respectively, shall execute all such deeds and papers as may be necessary or proper for effecting the conveyance; and if the Creditor shall not require such sale, and join in effecting the conveyance as aforesaid, he may release and deliver up to the Assignee the premises so held as security, and shall thereupon be admitted as a Creditor for the whole of his said debt; and if the said property shall not be either sold or released, and delivered up as aforesaid, the Creditor shall not be allowed to prove any part of his said debt; and every Creditor who has proved his debt, may appear, vote and act at all meetings of the Creditors, by his Attorney, duly constituted in like manner, as if he were personally present.

VI. And be it further Ordained and Enacted by the authority aforesaid, that the said Commissioner may, in his discretion, require proof on oath of any debt claimed before him, and may examine the party claiming the same, or the Agent who shall present the claim in his behalf, and also the Bankrupt, on their respective oaths or affirmations, on all matters relating to such claim; and any supposed Creditor, whose claim shall be wholly or in part

rejected by the Commissioner, may appeal from his decision, and have the said claim determined at law; and such appeal shall be entered in the Court of King's Bench in the Superior Term thereof, that shall be first held for the District in which the proceedings are had, next after the expiration of fourteen days from the time of claiming the appeal; but no such appeal shall be allowed, unless the same be claimed and notice thereof be given to the Commissioner, to be entered on the record of their proceedings, and also to the Assignees, or one of them, within ten days after the decision appealed from; and upon entering such appeal, the Creditor shall file in Court a statement in writing of his claim, setting forth the same substantially as in a declaration for the same cause of action at Law, and the Assignees shall plead or answer thereto in like manner, and the like proceedings shall be had, upon the joining of any issue of fact or law, or upon the default of either party, as in any action for the same cause commenced and prosecuted in the usual manner; excepting only that no execution shall be awarded against the Assignees for the amount of the debt, if any, recovered by the Creditor; and if the Assignees shall be dissatisfied with the allowance of any claim by the Commissioner, they may appeal from his decision, and have such claim determined at law; and such appeal shall be claimed, notified, heard and determined in like manner, and the like proceedings shall be had thereon in all respects as are before prescribed in the case of an appeal by a Creditor, and that from the judgment to be rendered in such Court of King's Bench upon such claims, there shall be an appeal or writ of error, as the case may be, to the Provincial Court of Appeals, and afterwards to Her Majesty in her Privy Council, in such cases as appeals and writs of error are now by law allowed from judgments rendered in the Courts of King's Bench within this Province, and in no other; and the judgment in such cases being certified to the Commissioner, the amount, if any, due to the claimant, shall be considered as ascertained thereby, and the list of debts shall be altered, if necessary, and made conformable thereto; and the party prevailing in such suit shall be entitled to costs, to be taxed and recovered, as in common actions, against the adverse party, which costs, if recovered against the Assignees, shall be allowed to them out of the estate of the Bankrupt.

VII. And be it further Ordained and Enacted by the authority aforesaid, that the said Commissioner shall, by an instrument under his hand and seal, or by a Notarial instrument, assign and convey to the person or persons chosen or appointed Assignees as aforesaid, all the estate, real and personal, of the Bankrupt, excepting such as may be by law exempted from attachment, with all his deeds, books and papers relating thereto; which assignment shall vest in the Assignees all the property of the Bankrupt, both real and personal, which he could, by any way or means, have lawfully sold, assigned, or conveyed, or which might have been taken in execution, or any judgment against him, at the time of the first publication of the notice of issuing the above mentioned warrant, although the same may then be attached on mesne process as the property of the said Bankrupt; and such assignment shall be effectual to pass all the said estate, and dissolve any such attachment; and the assignment shall also vest in the said Assignees all debts due to the Bankrupt, or to any person for his use, and all liens and securities therefor, and all his rights of action for any goods or estate, real or personal, and all his rights of redeeming any such goods or estate, and the Assignees shall have power to redeem all mortgages, conditional contracts, pledges

and liens of or upon any goods or estate of the Bankrupt, or to sell the same, subject to such mortgage or other incumbrance; and the Bankrupt shall likewise, at the expense of the estate, make and execute all such deeds and writings, and endorse all such bills, notes, and other negotiable papers, and draw all such checks and orders for monies deposited in Banks or elsewhere, and do all such other lawful, acts and things as the Assignees shall at any time reasonably require, and which may be necessary or useful for confirming the Assignment so made by the said Commissioner, and for enabling the Assignees to demand, recover, and receive, all the estate and effects assigned as aforesaid, especially such part thereof, if any, as may be without this Province, and the Assignees shall have the like remedy to recover all the said estate, debts and effects, in their own names, as the Bankrupt might have had if no such assignment had been made; and if at the time of such assignment, any action shall be pending, in the name of the Bankrupt, for the recovery of any debt, or other thing which might or ought to pass to the Assignees by the said assignment, the Assignees shall, if they require it, be admitted to intervene, and become a party to, and to prosecute such action in their own names, in like manner, and to the like effect, as if the same had been originally commenced by them as such Assignees; and in case of the death or removal of any Assignee, the surviving or remaining Assignee, or the new Assignees, as the case may be, shall, upon his or their motion, be admitted to prosecute the suit in like manner, and to the like effect, as if the same had been originally commenced by him or them; and in all suits prosecuted by the Assignees for any debt, demand, right, title, or interest due or belonging to the Bankrupt, the assignment made by the Commissioner to them shall be conclusive evidence of their authority to sue as such Assignees; and if the Bankrupt shall die, after the issuing of the said warrant, the proceedings shall notwithstanding, be continued and concluded in the like manner, and with the same validity and effect as if he had lived; and in such case, the allowance to the Bankrupt on the net produce of his estate, if any, shall become due according to the provision hereinafter contained; and if the same shall not have been paid to him in his lifetime, shall be paid to his executors, or administrators, and shall be disposed of, and distributed in like manner as any other property of which he may be possessed at the time of his decease.

VIII. And be it further Ordained and Enacted by the authority aforesaid, that the Messenger shall, as soon as may be after his appointment, demand and receive from the Bankrupt, and from all other persons, all the estate, in his or their possession respectively, which is hereinbefore ordered to be assigned, with all the deeds, books of account, and papers of the Bankrupt relating thereto; and the Bankrupt shall accordingly deliver to the Messenger such part of the said estate, and other things above specified as may then be within his possession or power, and shall disclose the situation of such parts thereof as may then be in the possession of any other person or persons, so as to enable the Messenger to demand and receive the same; and the Bankrupt shall also make a schedule, containing a full and true account of all his Creditors, with the place of residence of each Creditor, if known to him, and the sum due to each of them; and the said Schedule shall also set forth the nature of each debt, whether founded on written security, on account, or otherwise, and also the true cause and consideration thereof, and a statement of any existing mortgage, hypothec, pledge, or other collateral security given for the payment of the same, which schedule he

shall produce at the first meeting of his Creditors, to be delivered to the Assignees, who shall then be chosen; and the Bankrupt shall, at all times before the granting of the certificate as hereinafter provided, upon reasonable notice, attend and submit to an examination on oath, before the Commissioner, or before the Commissioner and the Assignees, upon all matters relating to the disposal of his estate, and to his trade and dealings with others, and his accounts concerning the same, and relating to all debts due or claimed from him, and to all other matters concerning his estate, and the due settlement thereof, according to law, such examination to be in writing, when so required by the Commissioner, and to be signed by the Bankrupt, and fyled with the other proceedings; and the Bankrupt shall receive from the Assignees, at the rate of five shillings per day, for his attendance on the Commissioner or the Assignees, when required as aforesaid; he shall also be allowed, out of his estate, for the necessary support of himself and his family, such sum as the Commissioner and Assignees may find to be necessary and equitable.

IX. And be it further Ordained and Enacted by the authority aforesaid, that the Commissioner shall appoint a second meeting of the said Creditors, to be held at such time, not more than three months after the date of the warrant to the Messenger, as the Commissioner shall think fit, regard being had to the distance at which the Creditors, or any of them may reside, at which meeting any Creditors who have not before proved their debts, shall be allowed to prove the same; and the Bankrupt shall then be allowed to amend the schedule of his Creditors, and to correct any mistake therein, and he shall then make and subscribe an oath before the said Commissioner, which shall be certified by him, and fyled in the case, in substance as follows:—“I, _____ do swear that the account of my Creditors, contained in the schedule made and signed by me, and now in the hands of the Assignees chosen by my Creditors, is, in all respects, just and true, according to the best of my knowledge and belief; and I do further swear, that I have delivered to _____ the Messenger appointed in that behalf, all my estate, (excepting such parts thereof as are by law exempted from attachment, and such as have been necessarily expended for the support of myself and of my family,) and all my books of accounts, and papers relating to my said estate, that were within my possession or power when the same were demanded of me by the said Messenger; that I have delivered to my Assignees all such of my said estate, books and papers, as have since come to my possession, and that if any other estate, effects, or other things, which shall or ought to be assigned and delivered to the said Assignees, shall hereafter come to my knowledge or possession, I will forthwith disclose or deliver the same to the said Assignees; and I do further swear, that there is not any part of my estate or effects made over, or disposed of, in any manner, for the future benefit of myself or my family, or in order to defraud my Creditors;’ and if it shall then appear to the satisfaction of the Commissioner, that the Bankrupt has made a full disclosure and delivery of all his estate, as hereinbefore required, and that he has in all things, conformed himself to the directions of this Ordinance, the Commissioner shall grant him a certificate thereof, and the Bankrupt shall be thereupon absolutely and wholly discharged from all his debts, which shall be at any time actually proved against his estate, assigned as aforesaid, and from all debts which are proveable under this Ordinance, and due to any persons who shall be resident within this Province, at the time of the first publication of the notice of the issuing of the warrant

mentioned in the third section of this Ordinance, and from all demands for or on account of any goods or chattels wrongfully obtained, taken or withheld by the Bankrupt, as mentioned in the fifth section of this Ordinance; and the said Bankrupt shall be also for ever discharged and exempted from arrest or imprisonment, in any suit, or upon any proceeding for, or on account of, any debt or demand whatever, which might have been proved against his estate as aforesaid; and the certificate to be granted by the Commissioner, as above provided, shall be in substance as follows:—

Province of }
Lower Canada }

‘To all to whom these presents shall come—I, one of the Commissioners for Bankrupts, in the Province of Lower Canada, residing at the _____ of _____ in the District of _____ in the said Province, send Greeting:—Whereas it hath been made to appear to me, that _____ of _____ in the District of _____ Merchant, whose estate has been assigned for the benefit of his Creditors, according to the provisions of an Ordinance, made and passed in the second year of the Reign of our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, intituled, ‘An Ordinance concerning Bankrupts, and the administration and distribution of their estates and effects,’ has made a full disclosure and delivery of all his estate as in the said Ordinance is required; and that he has in all things conformed himself to the directions of the said Ordinance, I do accordingly certify, that by force of the Ordinance aforesaid, the said _____ is absolutely and wholly discharged from all his debts, which have been or shall be proved against his estate, assigned as aforesaid,, and from all debts which are proveable under the said Ordinance, and due to any persons who were resident within this Province on the _____ day of _____ last, being the day of the first publication of the notice of the warrant issued for the seizure of the estate of the said _____ and from all demands against him, for or on account of any goods or chattels wrongfully obtained, taken or withheld by him, according to the form of the Ordinance aforesaid; and I do further certify, that the said _____ is, by force of the Ordinance aforesaid, far ever discharged and exempted from arrest and imprisonment, in any suit or upon any proceedings for or on account of any debt or demand whatever, which might have been proved against his estate, assigned as aforesaid. Given under my hand and seal on this _____ day of _____ in _____ the year _____.’”

Provided, however, that if one-half in number or in value of the Creditors, who shall be Creditors respectively, for not less, than twenty pounds currency, and who shall have duly proved their debts, shall, by writing under their hands, signify to the said Commissioner, their dissent and objection of the granting of such certificate, the same shall not be granted; and in such case, the Bankrupt shall not be entitled to his discharge, unless he shall obtain the same on appeal to the Court of King’s Bench, as hereinafter prescribed. And Provided further, that no discharge of any Bankrupt, under this Ordinance, shall release or discharge

any person who may be liable for the same debt, as a partner, joint contractor, endorser, surety, or otherwise, for or with the Bankrupt.

X. And be it further Ordained and Enacted by the authority aforesaid, that in case the Commissioner shall not see cause to grant such certificate, or if the granting thereof shall be prevented by the objection of the Creditors, as above provided, the Bankrupt may appeal to the Court of King's Bench, which shall be first held within and for the District in which the proceedings are had, next after the expiration of fourteen days, from the time of claiming the appeal, provided that such appeal be claimed, and notice thereof given to the said Commissioner, to be entered upon the record of the proceedings, within ten days after the decision appealed from; which said appeal shall be heard and determined by the said Court of King's Bench; and any of the Creditors may appear and object to the allowance of the certificate; and if, after a full hearing of all the parties, it shall appear to the satisfaction of the said Court, that the Bankrupt has made a full disclosure and delivery of all his estate, as hereinabove required, and that he has in all things conformed himself to the directions of this Ordinance, the Court shall cause a certificate thereof, in substance like that prescribed in the preceding section, to be made under the seal of the Court, and signed by the Prothonotary and Clerk thereof, and to be delivered to the said Bankrupt; which certificate shall have the same force and effect as herein provided, with regard to the said certificate, when granted by the Commissioner; and every Bankrupt so discharged, shall be allowed five per cent on the net produce of all his estate, that shall be received by the Assignees, in case such net produce, after such allowance made, shall be sufficient to pay the Creditors entitled to a dividend, the amount of fifty per cent on their debts respectively, and when the said dividend shall amount to sixty-two and a half per cent, he shall be allowed seven and a half per cent, and when the said dividend shall amount to seventy-five per cent, and upwards, he shall be allowed ten per cent, and so as the said allowance shall not exceed, in the whole the sum of two hundred pounds currency; and in all cases where the said dividend shall be less than fifty per cent, the Bankrupt shall be allowed such sum as the Assignees and Commissioner shall think fit, not exceeding three per cent, or fifty pounds in the whole.

XI. And be it further Ordained and Enacted by the authority aforesaid, that if the Bankrupt shall be in prison, either on mesne process, or in execution, in any suit or proceeding for, or on account of any debt or demand whatever, that is proveable against his estate, at any time before the granting of his certificate, and when his attendance may be required before the Commissioner or the Assignees, or at any meeting of his Creditors, as provided in this Ordinance, the said Commissioner may in his discretion, by warrant under his hand and seal, require the Sheriff or Gaoler, in whose custody the said Bankrupt may be, to produce such Bankrupt, for the purposes aforesaid, at such time and place as may be specified in the warrant; and in case the Bankrupt shall, by reason of imprisonment, or sickness, or any other cause which shall be deemed sufficient by the Commissioner, be unable to attend before the Commissioner, or the Assignees, or at any meeting of his Creditors, as provided in this Ordinance, then the said Commissioner, or some person to be deputed by him, shall attend the Bankrupt in prison, or elsewhere, if he be within this Province, in order to take his examination; and the examination thus taken, shall be of the same force and effect as if the

Bankrupt had attended in person before the Commissioner or the Assignees, or at the meetings aforesaid, and had there undergone the same examination; and if the Bankrupt shall be without this Province, and shall be unable to return, and give his personal attendance at any of the times, and for the purposes of this Ordinance above specified; and if it shall appear that such absence was not caused by any wilful default of the Bankrupt, and if he shall, as soon as may be, after the removal of such impediment, offer to attend and submit to an examination on oath, before the Commissioner and the Assignees, as hereinbefore provided, and shall do and perform all things by this Ordinance required, for the purpose of obtaining his certificate, he shall be entitled thereto, in like manner as if he had done all the same things at the times respectively first above prescribed; and if the Bankrupt shall, at the time of obtaining his certificate, be in prison, for any cause before mentioned in this section, he shall be discharged from such imprisonment, upon producing to the Sheriff or Gaoler, in whose custody the said Bankrupt may be, his certificate, granted pursuant to the provisions of this Ordinance.

XII. And be it further Ordained and Enacted by the authority aforesaid, that every certificate of discharge granted to a Bankrupt under this Ordinance, shall be of no effect, if he shall have wilfully sworn falsely, as to any material fact in the course of the proceedings under this Ordinance, or if he shall have fraudulently concealed any part of his estate or effects, or any books or writings relating thereto, or if after this Ordinance shall go into operation, he shall, in contemplation of his becoming Bankrupt, and of obtaining a discharge, under the provisions of this Ordinance, make any payment, or any assignment, sale or transfer, either absolute or conditional, of any part of his estate, with a view to give a preference to any Creditor, or to any person who is or may be liable as an indorser or surety for such Bankrupt, or to any other person who has or may have any claim or demand against him: Provided that this section shall not apply to any security given for the performance of any contract, when the agreement for such security is part of the original contract, and the security is given at the time of making such contract; and all such payments, assignments, sales, and transfers, shall, as to the other Creditors of such Bankrupt, be absolutely void; and the Assignees shall and may, by an action in their own names, recover from the Creditor so preferred, the money or other things, so paid, assigned, sold, or transferred to him, or the value thereof, for the use of the other Creditors; and the Creditor so preferred, if he shall have accepted such payment or security, knowing that the same was made or given by the Bankrupt, contrary to the provisions of this section, shall not be allowed to prove the debt on account of which such payment or security was made or given, nor to receive any dividend therefor, out of the estate assigned by force of this Ordinance.

XIII. And be it further Ordained and Enacted by the authority aforesaid, that the Assignees shall forthwith cause the said assignment to be recorded in the Office of the Prothonotary of the Court of King's Bench for the District in which the proceedings shall be had, and shall also give public notice of their appointment in such manner as the Commissioner shall order, and shall demand and receive from the Messenger, and from all other persons, all the estates in his or their possession respectively, which shall have been assigned or intended to be assigned, according to the provisions of this Ordinance; and they shall sell all the said

estate, real-and personal, which shall come to their hands, on such terms as they shall think most for the interest of the Creditors; and shall keep a regular account of all monies received by them as Assignees, to which every Creditor shall, at all reasonable times, have free resort; and the Assignees shall, as soon as may be, after receiving any monies belonging to the estate, deposit the same in some Bank, in their names as Assignees, or otherwise keep the same distinct and apart from all other monies in their possession; and they shall likewise, as far as practicable, keep all the goods and effects belonging to the estate separate and apart from all other goods in their possession, or designated by appropriate marks, so that all such monies, goods and effects, belonging to the estate, may be clearly and easily distinguished from other like things in the possession of the Assignees, and may not be exposed or liable to be taken as their property, or for the payment of their debts; and they shall be allowed, and retain out of the monies in their hands, all the necessary disbursements made by them in the discharge of their duty, and a reasonable compensation for their services, at the discretion of the Commissioner; and the Assignees shall have power, under the direction of the Commissioner, to submit any controversy that shall arise in the settlement of any demands against the estate of the Bankrupt, or of debts due to his estate, to the determination of one or more arbitrators, to be chosen by the Assignees and the other party to such controversy; and the Assignees shall likewise have power under the direction of the Commissioner, to compound and settle any such controversy by agreement with the other party thereto, as they shall think proper, and most for the interest of the Creditors, and it shall be in the power of the Creditors, by such a vote as is provided in the fourth section of this Ordinance, for the choice of Assignees, at any regular meeting called by order of the Commissioner for that purpose, which meeting may be called by the Commissioner at his discretion, and shall be called by him upon the application of a majority of the said Creditors, either in number or value, to remove all or any of the Assignees; and upon such removal, or upon any vacancy by death or otherwise, to choose one or more Assignees in his or their place; and all the estate of the Bankrupt, not before lawfully disposed of, shall be forthwith as effectually and legally vested in such new Assignee or Assignees, as if the original assignment had been made to him or them; and the former Assignee or Assignees, and his or their executors or administrators, shall, upon the request and at the expense of the estate in the hands of the new Assignee or Assignees, make and execute to him or them, all such deeds, conveyances, and assurances, and do all such other lawful acts and things as may be needful or proper to enable the new Assignee or Assignees to demand, recover, and receive all the said estate; and when only one Assignee shall be originally appointed, or when, by death or otherwise, the number shall be reduced to one, all the provisions in this Ordinance contained, in reference to several Assignees, shall apply to such one.

XIV. And be it further Ordained and Enacted by the authority aforesaid, that the Assignees shall, at such time as shall be appointed by the Commissioner, within six months from their appointment, call a meeting of all the Creditors of the Bankrupt, by a notice to be published in such manner as the Commissioner shall direct, at which meeting the Creditors who have not before proved their debts, shall be allowed to prove the same, and the Assignees shall produce to the Commissioner and the Creditors then present, fair and just accounts of all their receipts and payments touching the estate of the Bankrupt, and shall, if required by the

Commissioner, be examined on oath as to the truth of such accounts, and the said Commissioner shall thereupon make an order in writing under his hand, for a dividend of the said estate and effects, or of such part thereof, as he shall think fit, among such of the Creditors of the said Bankrupt as shall have proved their debts, in proportion to their respective debts, which order shall be recorded with the other proceedings in the case: Provided always, that all debts due by the Bankrupt to Her Majesty, or to any persons who, by the laws of this Province, (not repealed or altered by this Ordinance,) are or may be entitled to a priority or preference with respect to such debts out of the estate assigned as aforesaid, shall have the benefit of such priority or preference in like manner, as if this Ordinance had not been passed; and if, at the time of ordering such dividend it shall appear to the Commissioner probable, that there are just claims against the estate, which by reason of the distant residence of the Creditor, or for other sufficient reason, have not been proved, the Commissioner shall, in ordering such dividend, leave in the hands of the Assignees a sum sufficient to pay to every such Creditor, a proportion equal to what shall be then paid to the other Creditors, which sum shall remain thus unappropriated in the hands of the Assignees until the final dividend shall be declared, or until the Commissioner shall order its distribution.

XV. And be it further Ordained and Enacted by the authority aforesaid, that the said Assignees shall, at such time as shall be appointed by the Commissioner, within eighteen months after the appointment of the Assignees, make a second dividend of the said estate, in case the same was not wholly distributed upon the first dividend, and shall give notice of a meeting for that purpose of all the Creditors of the Bankrupt, in such manner as the Commissioner shall direct; at which meeting the Creditors who have not before proved their debts, shall be allowed to prove the same; and the accounts of the Assignees shall then be produced and examined, as provided in the preceding section, and shall be settled by the Commissioner; and such balance thereof as shall appear to be in their hands, shall by a like order of the Commissioner, be divided among all the Creditors, who shall then have proved their debts, in proportion to their respective debts: Provided that no Creditor, whose debt shall be proved at the time of the second, or any after dividend, shall be allowed to disturb any prior dividend, but he shall be paid so far only as the funds remaining unappropriated in the hands of the Assignees shall be sufficient therefor; and if at the time of appointing the meeting for the said second dividend, there shall remain in the hands of the Assignees any outstanding debts or other property due or belonging to the estate, which cannot, in the opinion of the Commissioner, be collected and received by the Assignees, without unreasonable or inconvenient delay, the Assignees may, under the direction of the Commissioner, sell and assign such debts or other property in such manner as shall be ordered by the Commissioner; and such second dividend shall be final, unless any suit relating to the estate be then depending, or any part of the estate be outstanding, or unless some other estate or effects of the said Bankrupt shall afterwards come to the hands of the Assignees, in which cases another dividend shall be made, by the order of the Commissioner, in the manner before provided, and further dividends shall be made in like manner as often as occasion shall require; and at every regular meeting of the Creditors, those who have not before proved their debts, shall be allowed to prove the same; and if, after the payment of

all debts proved.as aforesaid, with the interest due thereon, any surplus shall remain in the hands of the Assignees, the same shall be paid or reconveyed to, or revert in the Bankrupt, or his legal representatives.,

XVI. And be it further Ordained and Enacted by the authority aforesaid, that the Commissioner, at the commencement of the proceedings in each case under this Ordinance, shall appoint a Clerk who shall be sworn to the faithful discharge of his duty and the Clerk shall keep a record of all the regular meetings of the Creditors, and of all the proceedings thereat, and shall preserve all papers duly fyled in the course of the proceedings, and perform such other duties appertaining to his office, as shall be prescribed by the Commissioner; and the record of the proceedings in each case, with all the papers fyled therein, shall be enclosed together, and at the termination of the proceedings shall be deposited, with a list thereof, in the Office of the Prothonotary of the Court of King's Bench for the District where the said proceedings shall be had, and be there preserved under the care of the said Prothonotary; and the Commissioner may remove the Clerk for any cause that he. shall deem sufficient, and upon such removal, or upon the death, resignation, or. absence of the Clerk, may appoint another in his place; and the certificate of discharge, when, granted by the Commissioner, shall, be recorded at length by the Clerk with the other proceedings, and copies of all parts, of the said record, duly certified ,by the Prothonotary of the District, where the same shall be so deposited, shall in all cases be admissible as evidence, prima facie, of the facts therein stated and contained.

XVII. And be it further Ordained and Enacted by the authority aforesaid, that the Commissioner shall attend and preside at all meetings of the Creditors, and shall regulate the proceedings thereat, and he may adjourn any meeting from time to time as occasion shall require, and all things lawfully done at any such adjourned meeting, shall be of the like force and effect as if done at the original meeting; he shall also have power and authority to administer all oaths that shall be required in the course of the proceedings; and if any Creditor who shall reside more than ten miles from the place of meeting of the Creditors, shall be required to make oath in support of his claim, such oath may be administered by any Justice of the Peace, or other person duly qualified to administer oaths in the District where the proceedings are had.

XVIII. And be it further Ordained and Enacted by the authority aforesaid, that there shall be allowed and paid out of the estate and effects of the Bankrupt, the following costs for the respective services hereinafter mentioned, that is to say: To the Commissioner for receiving and allowing the original petition, and issuing his warrant thereon, fifty shillings; and two pounds six shillings and eight pence for every day which he may be employed in this duty, to be apportioned among the several causes, if there be more than one, on which he may act on the same day; to the Clerk, for every day's attendance upon or with the Commissioner, on any business arising in such causes, a sum not exceeding seven shillings and sixpence per day, to be apportioned as aforesaid, and such further compensation for keeping a record of the proceedings, and for any other services performed by him, as the Commissioner shall allow; to the Messenger, such compensation as the Commissioner shall see fit to allow,

according to the circumstances of each case/regard being had to the costs allowed to Sheriffs for like services; to every witness, the same allowance as is or may be usually allowed to witnesses in the Courts of King's Bench for the several Districts within the Province.

XIX. And be it further Ordained and Enacted by the authority aforesaid, that in case the Commissioner before whom any proceedings under this Ordinance may be pending, shall die, or shall, from any cause, be absent, or unable, at any time, to attend and perform any of the duties required of him, the same duties shall and may be performed by any other of the said Commissioners; in like manner as if the proceedings had been commenced before him. And no Commissioner, or of her of the said Officers, shall, in any way, be the Counsel or Attorney of any party, in relation to any matters connected with the proceedings under any assignments, over which they may have exercised any of the powers given in this Ordinance.

XX. And be it further Ordained and Enacted by the authority aforesaid, that the Courts of King's Bench for the several Districts within this Province, shall have a general superintendance and jurisdiction overall cases arising under this Ordinance, and may, from time to time, severally make such general rules and forms, as they shall judge necessary, to establish and maintain a regular and uniform course of proceedings therein in the said several Districts; and they shall also have power, in all cases that are not hereinbefore otherwise provided for, upon the petition of any party aggrieved by any proceedings under this Ordinance, to hear and determine the case, and to make such order and decree thereon as law and justice shall require; and all the powers granted in this section may be exercised, either by the said Courts sitting in the Superior Term, or by any two Justices thereof respectively in vacation, excepting the power of making general rules and forms as aforesaid, which latter power shall be exercised only in the Superior Terms of the said Courts.

XXI. And be it further Ordained and Enacted by the authority aforesaid, that if any Trader, liable by virtue of this Ordinance to become a Bankrupt, shall be arrested on mesne process, in any civil action, founded upon a demand, which, in its nature, is proveable against the estate of a Bankrupt, according to the foregoing provisions of this Ordinance, and shall not give bail therein, on or before the return day of such process, or shall fly, or abscond, for his personal safety, from such arrest; or if any such Trader shall be actually imprisoned for more than thirty days, either upon mesne process, or in execution in any civil action, founded on a debt or demand proveable against the estate of a Bankrupt, under the foregoing provisions of this Ordinance; or if any such. Trader, whose goods or estate are attached on mesne process, in any civil action, founded on any such debt or demand, shall not, on or before the last day of the Term of the Court to which such process is returnable, dissolve the attachment by giving security, or otherwise; or if any such Trader shall depart this Province, or abscond with an intent to defraud his Creditor or Creditors; or if any such Trader shall make, or cause to be made within this Province, any fraudulent grant or conveyance of any of his lands, household goods or chattels, or make, or cause to be made, any fraudulent gift, delivery, or transfer of any of his-goods or chattels, then, and in each of the cases aforesaid,

any Creditor having a demand against such Trader, to the amount of twenty-five pounds, for which a suit might then be brought and which is, in its nature, proveable against the estate of, a Bankrupt, according to the foregoing provision of this Ordinance, may within ninety days, and not alter, apply by petition, to any Commissioner for the District in which the said Trader resides, setting forth the said facts, and praying that a warrant may issue to take possession of the estate of the said Trader, and that, such further proceedings may be had as are herein above provided, for dividing and distributing the same among all the Creditors of such Trader; and if the facts set forth in such petition shall appear to be true to the Commissioner to whom the same shall be presented, he shall forthwith, by warrant under his hand and seal, appoint some suitable person as Messenger, to take possession of the estate, real and personal, of such Trader, in like manner as above provided in the third section of this Ordinance, with respect to the warrant therein mentioned; and the Messenger shall, in addition to the public notice above required in this behalf, give notice to the Trader of the issuing of the said warrant, in such manner as the Commissioner shall in the same warrant prescribe; and thereupon, the estate of the said Trader shall be taken, disposed of, and divided among his Creditors, in like manner as it would or ought to be, by force of a warrant issued according to the third section of this Ordinance; and all proceedings, after the execution of the warrant issued by force of this section, shall be conducted in the same manner as in this Ordinance is before provided, in reference to the proceedings commenced upon the petition of the Trader himself.

XXII. And be it further Ordained and Enacted by the authority aforesaid, that when two or more persons who are partners in trade become Bankrupt, a warrant may be issued in the manner provided in this Ordinance, either on the petition of such partners or of any one of them, or on the petition of any Creditor of the partners, upon which warrant all the joint stock and property of the Company, and also all the separate estate of each of the partners shall be taken, excepting such parts thereof as may be by law exempted from attachment; and all the Creditors of the Company, and the separate Creditors of each partner, shall be allowed to prove their respective debts, and the Assignees in such case shall be Chosen by the Creditors of the company, and they shall keep separate accounts of the joint stock or property of the company, and of the separate estate of each, member thereof, and after deducting out of the whole amount received by the Assignees, the whole of the expenses and disbursements paid by them, and such reasonable compensation for their, services as may be allowed by the Commissioner, the net proceeds of the joint stock shall be appropriated to pay the Creditors of the company, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate Creditors; and if there shall be any balance on the separate estate of any partner, after the payment of his separate debts, with the interest due thereon, such balance shall be added to the joint stock, for the payment of the joint creditors; and if there shall be any balance of the joint stock, after the payment of the joint debts, and interest as aforesaid, such balance shall be divided and appropriated to and among the separate estates of the several partners, according to their respective rights and interests therein, and as it would have been if the partnership had been dissolved without any Bankruptcy or insolvency; and the sum so appropriated to the separate estate of each partner, shall be applied to the payment of his separate debts; and

in all such proceedings against partners, each one of them shall be entitled to the allowance before provided for the maintenance of himself and his family; and the allowance on the net produce of the estates, as provided in the tenth section of this Ordinance, shall be computed on the joint estate, and also on each of' the separate estates, as if there had been a separate warrant against each, provided that the said partners shall not receive in the whole, more than two hundred pounds; and the certificate of discharge shall be granted or refused to each partner, as the same would or ought to be, if the proceedings had been against him alone; and in all other respects the proceedings against partners shall be conducted in like manner, as if they had been commenced and prosecuted against one person alone.

XXIII. And be it further Ordained and Enacted by the authority aforesaid, that no revendication of goods sold and delivered to the Bankrupt, without day or term of payment, shall be allowed to the vendors thereof, by reason of the non-payment of the price of the same, nor shall any vendor of goods be entitled to claim a preference on the proceeds of such goods, for the price thereof, by reason of their being, at the time of the bankruptcy, in the possession of the Bankrupt, in the same state and condition as when sold to him; but the vendor may, in case of the failure of the purchaser, stop in transitu, or reclaim the goods by him sold, and the price of which has not been paid to him, as provided by the law of England, and not otherwise.

XXIV. And be it further Ordained and Enacted by the authority aforesaid, that there shall be kept by the Prothonotary of the Court of King's Bench, far the several Districts in this Province, a register for the enregistration of contracts of marriage, made by Traders, liable by this Ordinance to become Bankrupt, and that every such Trader shall, within thirty days after the execution by him of any such contract of marriage, and every person who being already married, shall become a Trader, shall, within thirty days after he shall have commenced trading, cause his contract of marriage to be enregistered in the office of the Prothonotary of the Court of King's Bench for the District in which he shall reside at the time of the execution of such contract; in default whereof, the same shall be null and void, as against the Creditors of the said Bankrupt, and that, free access shall be allowed to all persons to inspect the said Register, upon payment of two shillings and six pence currency to the Prothonotary, for each inspection of any such contract of marriage, and no more; and no Trader, or other person aforesaid, who has made such contract of marriage, and who shall afterwards become Bankrupt, will be entitled to a certificate of discharge, under this Ordinance, unless he shew, by his books of accounts, regularly kept, or by written proof, or otherwise, to the satisfaction of the Commissioner, that when he executed the said, contract of marriage, his estate, real and personal, was equal in value, after the payment of all his just debts, to the sum or sums of money, lands, or things, thereby given or secured to, or for the use of his wife or future family, out of the property of him the said Trader.

XXV. And be it further Ordained and Enacted by the authority aforesaid, that in case any Bankrupt shall refuse, or unreasonably neglect, to execute any instrument which he shall be lawfully required, by virtue of this Ordinance, to execute, pursuant to an order of the Commissioner, or shall disobey any lawful order or decree of the Commissioner, in relation

to the settlement of his estate, pursuant to this Ordinance, the Commissioner shall issue his warrant to any Civil Officer, commanding him to arrest, and commit such Bankrupt to the Common Gaol, in the District where such Bankrupt may be found, or where he dwelt at the time of his bankruptcy; and the said Bankrupt shall remain in close custody, until he shall obey the order or decree of the said Commissioner, unless he shall be released therefrom by the Court of King's Bench, or some Justice thereof, on a writ of Habeas Corpus, pursuant to law; and any Assignee appointed by virtue of this Ordinance, who shall refuse, or unreasonably neglect, to execute any instrument which he shall be lawfully required by the Commissioner to execute, or shall disobey any lawful order or decree of the Commissioner in the premises, shall be liable to be committed to, and detained in, the Common Gaol of the District where he may be found, or where he dwelt at the time when he was appointed Assignee, until he shall obey the said order or decree, unless he shall be released therefrom in manner aforesaid.

XXVI. And be it further Ordained and Enacted by the authority aforesaid, that it shall and may be, lawful for the Commissioner, by writing under, his hand, to summon any witness or witnesses, to be examined on oath, to be taken before such Commissioner, touching and concerning the several matters hereinbefore mentioned, and to enforce the attendance, and compel such witness or witnesses, to answer all lawful questions by the like means as are used in ordinary Courts of Justice.

XXVII. And be it further Ordained and Enacted by the authority aforesaid, that any Bankrupt, or other person, who shall, in any examination before any Commissioner, or in any affidavit or deposition, authorized or directed by the present Ordinance, wilfully and corruptly, swear falsely, being convicted thereof, shall suffer the pains and penalties in force against wilful and corrupt perjury; and where any oath is hereby directed or required to be taken or administered, or affidavit to be made, by or to any party, such party, if a Quaker, shall or may, make solemn affirmation, and such Quaker shall incur such danger, or penalty, for refusing to make such solemn affirmation in such matters, when thereunto required, as is hereby provided against persons refusing to be sworn, and all Quakers, who shall, in any such affirmation, knowingly and wilfully affirm falsely, shall suffer the same penalties as are provided against persons guilty of wilful and corrupt perjury; and all persons before whom oaths or affidavits are hereby directed to be made, are respectively empowered to administer the same, and also such solemn affirmation, as aforesaid.

XXVIII. And be it further Ordained and Enacted by the authority aforesaid, that all the provisions of law, inconsistent with the provisions of this Ordinance, are hereby repealed, saving all rights which have accrued to any person by virtue of the same, which shall be judged and decided upon, in the same manner, as if this Ordinance had not been passed.

XXIX. And be it further Ordained and Enacted by the authority aforesaid, that this present Ordinance shall have no force or effect whatever, unless, and until the same shall be assented to by Her Majesty, her heirs or successors, in Her or their Privy Council, and such

assent shall have been announced by proclamation of the Governor, Lieutenant Governor, or person administering the Government, of this Province, duly, made within the same.

J. COLBORNE.

Ordained and Enacted by the authority aforesaid, and passed in Special Council, under the Great Seal of the Province, at the Government House, in the City of Montreal, the Thirtieth day of March, in the second year of the Reign of Our Sovereign Lady Victoria, by the Grace of God, of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, and in the Year of Our Lord, one thousand eight hundred and thirty-nine.

By His Excellency's Command,
W. B. LINDSAY,
Clerk Special Council.