

CAP. LIV.

An Act to consolidate and amend the Laws relating to absconding, concealed and absent Debtors.

Passed 26th April 1850.

I. **B**E it enacted by the Lieutenant Governor, Legislative Council and Assembly, That an Act made and passed in the twenty sixth year of the Reign of His Majesty King George the Third, intituled *An Act for relief against absconding Debtors* ;' also an Act made and passed in the twenty eighth year of the said Reign, intituled *An Act in addition to an Act, intituled 'An Act for relief against absconding Debtors* ;' also an Act made and passed in the fourth year of the Reign of His Majesty King George the Fourth, intituled *An Act in amendment of an Act for relief against absconding Debtors* ;' also an Act made and passed in the fourth year of the Reign of His late Majesty William the Fourth, intituled *An Act in addition to and in amendment of an Act passed in the twenty sixth year of the Reign of His late Majesty King George the Third, intituled 'An Act for relief against absconding Debtors* ;' also an Act made and passed in the ninth year of the Reign of Her present Majesty Queen Victoria, intituled *An Act to amend the Law relating to absconding Debtors* ; be and the same are hereby repealed: Provided always, that all proceedings, acts, matters and things had and done under and by virtue of the provisions of the said Acts hereby repealed, or any of them, so far as the same are in accordance with and are authorized by the said Acts hereby repealed, or any of them, shall be and remain as good, valid and effectual in every respect as if the said Acts were still in full force and effect; and provided also, that all proceedings now pending under and by virtue of the said Acts hereby repealed, or any of them, shall be continued, carried on and completed in every respect as if the said Acts hereby repealed were still in full force and effect.

Repeal of

26 G 3, c 13.

28 G 3, c 2.

4 G 4, c 14.

4 W 4, c 36.

9 V. c. 27.

Reservations:

Things done;

Proceedings had and pending.

II. And be it enacted, That whensoever it shall happen that any person being indebted within this Province shall either secretly depart the Province, or keep concealed within the same, any creditor to whom such person is indebted in the sum of twenty pounds or upwards, over and above all discounts, may make application to a Judge of the Supreme Court for the time being, and make affidavit in writing that such person is indebted to him in the sum of over and above all discounts, and that he doth verily believe that the said debtor is either departed the Province or concealed within it with intent to defraud him and other creditors (if any such there be,) of their just dues, or to avoid being arrested by the ordinary process of law; which departure or concealment shall also be proved to the satisfaction of such Judge by two witnesses; and on such affidavit and such other proof made, the said Judge shall forthwith issue his Warrant to the Sheriff of the City or County which contains the last usual place of residence of such debtor, or to the Sheriff of any or every other City or County, commanding such Sheriffs respectively to attach, seize and safely keep all the estate as well real as personal of the said debtor in his Bailiwick, of what kind or nature soever, with all evidences, books of account, vouchers and papers relating thereto; which Warrant the Sheriff to whom the same shall be directed and delivered is hereby authorized and commanded well and truly to execute, and with the assistance of two substantial freeholders, forthwith to make a just and true inventory of all such estate and effects as he shall seize and take by virtue thereof, and to return the same, signed by himself and the said two freeholders, to the Judge who issued the Warrant for taking and seizing thereof.

Debtors absconding, creditors may make oath before a Judge of the Supreme Court, and obtain a Warrant of attachment of the estate of such debtors.

III. And be it enacted, That the Judges of the Supreme Court, during Term time, may appoint three Commissioners in such remote parts of the Province as, in

Judges of the Supreme Court may appoint Commissioners to,

examine persons applying for Warrant of attachment.

Commissioners may issue the Warrants in the name of the Chief or senior Judge of the Court.

in the opinion of such Court, may require the same, for the purpose of taking the examination of the person applying for a Warrant against an absconding or concealed debtor's estate; which said Commissioners, or any two of them, when so appointed and sworn as hereinafter directed, may take the examination in writing of any person applying for such Warrant, and upon the proof required by this Act being duly made before them, or any two of them, of the debt due, and of the absconding or concealment of the debtor, to their satisfaction, to issue a Warrant against such debtor's estate in the name of the Chief or senior Justice of the said Supreme Court, and returnable therein, and in every respect agreeable to the form of the Warrant issued and adopted by the Judges of the same Court; which Warrant when so issued shall be as valid and effectual as if issued by a Judge of the said Court, and the same proceedings shall be had therein as if issued by a Judge of the said Court; provided always, that the said Commissioners taking such examination and issuing such Warrant, shall forthwith thereafter transmit the examination and proof upon which they issued such Warrant, to the Chief Justice, or in his absence to the next senior Judge of the said Court, with a memorandum of the date and time of issuing such Warrant, also of the name of the creditor at whose instance and of the person against whom such Warrant was issued.

Commissioners to be sworn to the faithful discharge of duty.

IV. And be it enacted, That before the said Commissioners or any of them, enter upon the duties of their said office, they shall be respectively sworn before the said Court, or one of the Judges thereof, or before a Commissioner of the said Court for taking affidavits, to the due and faithful discharge of the duties of their said office; which oath shall be endorsed on the back of the Commission or respective Commissions appointing them to such office.

Judges of the Inferior Court of Common Pleas and Mayor and Recorder of Saint John, authorized to put this Act in execution in their respective Counties, when debt to one creditor does not exceed £50.

V. And be it enacted, That the Judges of the Inferior Court of Common Pleas, and the Mayor and Recorder of the City of Saint John, and each and every of them, is hereby authorized and empowered to put this Act in execution in their respective Counties, where the debt or sum due to any one creditor applying for relief does not exceed fifty pounds; provided always, that where Warrants shall be issued by any Judge of the Supreme Court, and also by any Judge of any of the said Inferior Courts, against the estate of the same person, in such case any Judge of the Supreme Court shall award a Writ of *certiorari* to the Judge of such Inferior Court to remove the proceedings there before the Judge or Judges of the Supreme Court, that he or they may proceed upon both Warrants, or either of them.

Estate of persons indebted in forty shillings or upwards, who may depart from or reside out of the Province, subject to be seized, &c.

Proof required.

VI. And be it enacted, That the estate of every person who may depart from or who may reside out of this Province indebted in the sum of forty shillings or upwards, who have estates or effects in the Province, and who may remain out of it to prevent their creditors from recovering or getting hold of such estate or effects, may be subject and liable to be seized, proceeded against and sold for the payment and satisfaction of their debts, as near as may be in like manner as the estate of other debtors in and by this Act are made subject and liable to; provided always, that instead of the proof of the absconding or concealment of such debtor, the creditor or his attorney who shall apply for an attachment against the estate of any person so departed from or so residing out of the Province, shall make proof by one or more witnesses to the satisfaction of the Judge to whom application for such attachment shall be made, that such debtor departed from or remained out of the Province after the debt was contracted, and has not resided or been within this Province for the term of six months next preceding such application; and also provided, that in any such case no Trustees shall be appointed until

until the expiration of six months after such public notice as is hereinbefore in this Act in like cases required to be given.

VII. And be it enacted, That the Judge who shall issue any Warrant of attachment in pursuance of this Act, shall make report to the Court whereof he is a Judge, of the proof of the debt or demand made by the creditor on whose application such Warrant issued, of the issuing of such Warrant, of the notice thereon ordered, of the publication of such notice, of the appointment of Trustees, and of all other matters required of him by this Act to be done out of Court; and cause that report to be entered on the minutes of the said Court to be evidence of the facts so reported; and such report, or the record or entry thereof on the minutes of the said Court, shall be conclusive evidence of the facts so reported in all Courts of Record within this Province.

VIII. And be it enacted, That the Judge who shall make any such appointment of Trustees, shall at the request of the Trustees thereby appointed, or any one of them, endorse on such appointment an allowance that the same may be recorded, which allowance signed by the said Judge, if a Judge of the Supreme Court, shall be a sufficient warrant and authority to the Secretary of this Province, and all or any of the Clerks of the respective Cities or Counties within this Province, to record the same; and if such Judge be a Judge of an Inferior Court of Common Pleas, shall be a sufficient warrant and authority to the Clerk of the County whereof he is a Judge, to record the same; and any appointment of Trustees under the hand and seal of any Judge authorized to put this Act in execution, or the record thereof duly made in the said Secretary's Office, or in the Office of the Clerk of any City or County of this Province, shall be conclusive proof in all Courts within this Province, that the person against whose estate such Warrant issued, was at the time of issuing thereof an absconding, departed or concealed debtor within the meaning of this Act, and that the said appointment and the proceedings previous thereto were regular and according to the directions of this Act.

IX. And be it enacted, That any Judge who shall issue such Warrant of attachment pursuant to this Act, shall cause the affidavit of the creditor made before him, within thirty days after the taking of such affidavit, and such Warrant within thirty days after the return thereof by such Sheriff as shall return the same, together with the Sheriff's return thereof, to be delivered into the Office of the Clerk of the Court whereof he is a Judge, which Clerk shall mark thereon the day and year on which each of them respectively shall be filed in his Office, and shall preserve the same in such Office; and all Trustees hereafter to be appointed by virtue of this Act, who by virtue of such appointment shall sell and convey any messuages, lands, tenements or hereditaments, shall cause such appointment to be duly proved or acknowledged and allowed, so that the same may be recorded, and shall cause the same to be entered of record either in the Secretary's Office of this Province or in the Office of the Clerk of the City or County wherein such messuages, lands, tenements or hereditaments do lie; and every appointment of Trustees hereafter to be made in pursuance of this Act, or the record thereof made by such proper officer as aforesaid, or an office copy thereof attested by any such proper officer as aforesaid, in case such record shall have perished by fire or other accident, together with a legal title or conveyance from such Trustees proved or to be proved in due form as by law required, shall be a full, complete and perfect title for such messuages, lands, tenements or hereditaments, to such purchaser, his heirs and assigns, against such absconding, departed or concealed debtor, his heirs and assigns, and all other persons claiming or to claim by, from or under

No Trustees to be appointed until six months after public notice.

Judges issuing Warrants to report to the Court the proof of the debt, &c.

Judges appointing Trustees, to endorse a certificate authorizing the proper officers to record the same.

The appointment or record to be good proof in all Courts.

Judges issuing Warrants of attachment, to file the same together with the affidavits in the office of their respective Courts.

Trustees selling Real Estate to prove and record their appointment.

Appointment of Trustees and a legal conveyance from them a good title.

him, by virtue of any act, deed, matter or thing after such first public notice as aforesaid.

Sheriff seizing goods claimed by any person, to summon a Jury to try right of property.

If Jury find for the claimant, Sheriff to deliver up the goods.

Charges of seizure and inquest to be paid by the Trustees.

Decision of the Jury to be final, unless notice and action be given and brought within specified periods.

Return of inquisition.

Notice of attachment to be given in the Royal Gazette and of sale, unless the debtor return and pay his debts.

Perishable articles seized may be sold immediately, on application to the Judge.

After public notice of attachment, payment of moneys or delivery of effects to the

X. And be it enacted, That if any Sheriff shall by virtue of any Warrant hereafter to be issued in pursuance of this Act, through ignorance or want of proper information, take any property which shall be claimed by any other person as his property, such Sheriff shall thereupon summon and swear a Jury of twelve persons competent by law to serve as Petit Jurors, to inquire into and try the right of property thereof; and if such Jury shall upon such inquest find the right of such property to be in the person so claiming the same, or in any other than the person against whose estate such Warrant issued, such Sheriff shall forthwith, after such inquisition taken, deliver such property in the like good order and condition in which it was taken, to the person for whom the same shall be so found, or to his agent or assigns; and such Sheriff shall not in such case be liable to any prosecution for having taken such property through ignorance or for want of proper information; and all reasonable charges arising from such seizure and inquest as aforesaid, shall be allowed and certified by the Judge who issued such Warrant, and paid by the Trustees out of the estate of the absconding or concealed person against whose estate such Warrant issued, if the said property so claimed shall by such inquisition be found to be in any other than the person against whose estate such Warrant issued; but if the said property so claimed shall by such inquisition be found to be in the person against whose estate the Warrant issued, then all costs, charges and expenses accrued or arising by such claim or inquisition shall be paid by the person claiming the same, to be recovered by action of debt or assumpsit at the suit of the Trustees of the said estate.

XI. And be it enacted, That the decision of the Jury on any such inquisition shall in all cases be final and a good bar to any action brought by the party against whom such inquisition may be found, unless written notice to the contrary shall be given by the party failing on that inquisition, to the Sheriff within six days after the taking of such inquisition, and unless such action be brought within three calendar months from the time of taking the same; and that all inquisitions so taken by any Sheriff shall be returned in writing under the hands and seals of the Sheriff and Jury taking the same, and filed by him in the Court out of which such Warrant issued.

XII. And be it enacted, That the Judge who shall issue such Warrant shall immediately thereafter order notice to be given in the Royal Gazette published by the Queen's Printer in this Province, that on application to him, made by a creditor of such absconding or concealed person, he has directed all his estate, real and personal, within this Province, to be seized, and that unless he, by name, return and discharge his debts within three months after such public notice given, all his estate, real and personal, will be sold for the payment and satisfaction of his creditors.

XIII. And be it enacted, That in case any Sheriff shall by virtue of any Warrant to be issued in pursuance of this Act, seize and take any perishable goods or chattels, it shall and may be lawful for the Judge who issued such Warrant at his discretion to order a sale of such things perishable, and the moneys arising therefrom to be paid to the Trustees that shall be appointed to manage the estate of such absconding or concealed person mentioned in such Warrant, to be by such Trustees applied according to the directions and intention of this Act.

XIV. And be it enacted, That if any person indebted to any such absconding or concealed person, or having the custody or possession of any effects or other thing whatsoever of any such absconding or concealed person, shall after such first public notice

notice as aforesaid given, pay any debt or demand, or deliver any such effects or things whatsoever, to any such absconding or concealed person, his attorney, agents, factors or assigns, the person so paying such debt or demand, or delivering such effects or other things whatsoever, shall be deemed to have paid the same fraudulently, and is hereby made liable to answer the same or the value thereof to such Trustees as shall by virtue of this Act be appointed to receive and distribute the estate of such absconding or concealed person, towards the payment and satisfaction of his creditors; and if any person indebted to, or having the custody or possession of any effects or other things whatsoever of any absconding or concealed debtor, shall after such public notice as aforesaid given, be sued by him or by his order or procurement for any such debt, duty, demand, effects or thing, the person so sued may plead the general issue and give this Act and the special matter in evidence.

absconding debtor
to be deemed
fraudulent.

XV. And be it enacted, That all sales and conveyances of his estate, made by any such absconding or concealed person after such public notice as aforesaid given, and all powers of Attorney by him given for selling any estate or collecting any debts or demands, whether made after or before such first public notice as aforesaid given, shall be null and void as to all acts done or to be done after such first public notice given.

All sales, &c. by
the absconding
debtor after such
notice to be void.

XVI. And be it enacted, That if any person against whose estate such Warrant shall have issued, shall at any time before the appointment of Trustees for all the creditors of such debtor be made, either by himself, or by his attorney, by petition, offer to prove to the Court of which the Judge who issued such Warrant is a Judge, in open Court, that he the petitioner is resident within this Province, and was not at the time such Warrant issued, nor within thirty days preceding, nor at any time since, an absconding or concealed debtor, and thereby pray that the same may be heard and determined by the said Court, and shall at the same time execute and deliver to the creditor who obtained such Warrant a bond with good and sufficient security to be approved of by the said Judge, if in the Supreme Court in the sum of forty pounds, if in any of the Inferior Courts in the sum of twenty pounds, with a condition thereunder written, that if such person, by name, against whose estate such Warrant issued, shall well and truly pay or cause to be paid all the expenses the obligee may be put to in opposing such application, to be allowed by the Court issuing such Warrant, in case the person against whom such Warrant issued do not prove to the satisfaction of the said Court, at such time as the said Court may appoint for hearing the same, that he is then resident within this Province, and was not at the time such Warrant issued, nor within thirty days preceding the issuing thereof, nor at any time after, an absconding or concealed debtor within the meaning of this Act, then the said obligation to be void, otherwise to remain in full force and virtue, then and in every such case the Judge who issued such Warrant shall report his proceedings in the premises to the next Court whereof he is a Judge; which Court shall compel the parties and their witnesses to come into Court, and shall hear the proofs and allegations of the parties and their witnesses in a summary way, and thereupon determine whether the matter and things in such petition have been fully proved; and if such Court shall adjudge that the matters and things contained in such petition have been fully proved, then such Court shall grant a *supersedeas* to such Warrant, and the person against whose estate such Warrant did issue shall recover his costs (to be taxed by the said Court in open Court,) of the creditor who procured such Warrant to be issued, by action of debt or attachment out of the said Court, and shall also have an action of damage against the creditor on whose application

Court, on proof
that the party is,
or was, not an
absconding or con-
cealed debtor,
may grant a *super-
sedeas* to the
Warrant of attach-
ment.

Costs.

Damages.

application

Probable cause of suspicion to be a bar to an action.

If the absconding or concealed debtor does not return within three months, Trustees for all the creditors to be appointed.

Trustees to be sworn.

Trustees to notify their appointment, and require payment of debts and delivery of accounts.

A *supersedeas* to be granted if debtor return and discharge or compound for his debts.

Trustees to take the estate, &c. of the absconding party into their hands, and have power to sue for the same.

application such Warrant issued; provided always, that where the Court out of which such Warrant issued shall, on or immediately after granting such *supersedeas*, certify that there was probable cause of suspicion and no malice on the part of the applicant for such Warrant, then such certificate may be pleaded in bar to such action.

XVII. And be it enacted, That if such absconding or concealed debtor do not return within three months next after such public notice as aforesaid given, and discharge his debts, or otherwise compound with or satisfy his creditors, not having presented such petition and given such bond as aforesaid, or if such debtor shall have presented such petition, and the Court shall have adjudged and determined that the matter and things in such petition mentioned have not been fully and satisfactorily supported, or shall have refused to grant a *supersedeas* to such Warrant, that in either such case the Judge who issued the Warrant, or any one of the Judges of the same Court for the time being, may nominate and appoint three or more fit persons to be Trustees for all the creditors of such debtor; which Trustees shall be sworn well and truly to execute the trust by that appointment reposed in them, according to the best of their skill and understanding; which oath the Judge appointing the said Trustees shall administer: provided that on the appointment of any Trustees by a Judge of the said Supreme Court, under and by virtue of the provisions of this Act, in any of the Counties of this Province where no Judge of the said Supreme Court shall reside, any Judge of the Inferior Court of Common Pleas for such County may administer the oath to any Trustees so appointed by a Judge of the said Supreme Court, in manner and form as is directed in and by this Act.

XVIII. And be it enacted, That if such absconding or concealed debtor shall return within the time limited by this Act, and discharge his debts, or otherwise compound with or satisfy his creditors as aforesaid, such creditors being for the purposes of this section deemed to be such persons only as shall file their respective claims with the attorney of the creditor instituting the proceedings, then and in such case the Judge who issued the said Warrant, or any other Judge of the same Court, on satisfactory proof thereof by affidavit or otherwise, shall grant a *supersedeas* to such Warrant.

XIX. And be it enacted, That the said Trustees when so as aforesaid appointed, shall as soon as may be thereafter, cause public notice thereof to be given in the Royal Gazette published by the Queen's Printer in this Province, and thereby require all persons indebted to such absconding or concealed debtor, by a day to be named in the said notice, to pay all such sums of money or other debt, duty or thing which they owe to the said debtor, and deliver all other effects of such debtor which they may have in their hands, power or custody, to them the said Trustees, and that the said Trustees shall also by public advertisement in the said newspaper, desire all the creditors of such debtor by a certain time in such advertisement to be mentioned, to deliver to the said Trustees, or any one or more of them, their respective accounts and demands against such debtor.

XX. And be it enacted, That such Trustees, and each and every of them, when so appointed, may take into their hands all the estate of such absconding or concealed debtor for the management of whose estate or effects they were appointed, and every part or parcel thereof that shall have been seized as aforesaid, and all other his estate or effects which they the said Trustees may afterwards discover in any part of this Province, and all evidences, books of account, vouchers and papers relating thereto; and such Trustees immediately from their appointment, shall be vested with all the estate, real and personal, of such debtor, and they are hereby

hereby made capable to sue for, recover and receive all such estate, as well real as personal, debts due, effects or other things whatsoever which they shall find due, payable or belonging to such debtor; and such Sheriff as shall have taken any estate, real or personal, or any other matter or thing whatsoever, by virtue of any Warrant as aforesaid, shall deliver the same to such Trustees, or one of them, and such Trustees shall sell by public auction all such estate and effects of such debtor as shall come to their hands, (after fourteen days notice of each time and place of sale respectively,) and all estate and interest which such debtor had in the same, and deeds, releases, bills of sale, or other conveyances, for the same or any part thereof, from time to time to make and execute; which being so made and executed by them for such estate or effects, or any part thereof, shall be as good and effectual to transfer the property thereof, as if executed by the said debtor before such first public notice as aforesaid given, and shall be good and effectual in law against the said debtor, his heirs, executors, administrators and assigns, and all persons claiming under them or any of them by virtue of any act, deed, matter or thing after such first public notice as aforesaid given.

After fourteen days notice, to make sale.

Deeds executed to be valid.

XXI. And be it enacted, That if any person indebted to such absconding or concealed debtor, or having the custody of any goods, chattels or effects, or other thing of such debtor, shall conceal the same, and not deliver a just account thereof to such Trustees as aforesaid, or one of them, by the day for that purpose appointed, the person so concealing shall forfeit double the amount of the debt, or double the value of the goods, chattels, effects, or other thing or things so concealed, to be recovered by the said Trustees in any Court within this Province having jurisdiction to the amount of such forfeiture, and applied as hereinafter directed; which said Courts, or either of them, may by order for that purpose made on the application of the said Trustees, compel to come before them every person suspected of concealing, or of being concerned in concealing, the debts, goods, chattels and effects of the said debtor, and them respectively examine upon oath touching the premises, and may commit them or either of them if they refuse to be so examined, or being so examined, refuse to answer fully and satisfactorily to such Court, or refuse to obey the order and decision of such Court.

Persons indebted to, or in custody of goods of an absconding debtor, and not giving a just account thereof, to forfeit double the debt or value of goods.

XXII. And be it enacted, That any person (other than those who have the effects in their custody,) who shall discover any effects of any absconding or concealed debtor secreted, contrary to the true intent and meaning of this Act, so that they may be recovered by the Trustees of such debtor's estate, shall be entitled to ten per cent. on the value of all effects so discovered, recovered and received by the said Trustees, to be paid to the discoverer by the said Trustees out of the estate or effects of such debtor.

Persons discovering secreted effects, entitled to ten per cent. on the value thereof.

XXIII. And be it enacted, That the Trustees of any absconding or concealed debtor's estate, duly appointed, or any two of them, may settle and adjust all matters, contracts and accounts subsisting between such debtor and his debtors, and also between such absconding or concealed debtor and his creditors, and may examine any person upon oath concerning any matters, accounts or settlements between them or either of them, which oath the said Trustees, or any one of them, two of them being present, may administer.

Trustees empowered to settle all accounts, &c. and examine any persons upon oath.

XXIV. And be it enacted, That in case any controversy shall arise concerning any debt, matter or thing claimed by any creditor of such absconding or concealed debtor, or concerning any debt, due, duty, matter or thing claimed by the said Trustees from or against any person, as belonging to or in right of the effects or estate of such debtor, or concerning or relating to any contract or agreement entered into or made by such debtor previous to such public notice as aforesaid

Trustees empowered to settle controversies by referees.

first

first given, it shall and may be lawful for such Trustees to have every such controversy determined in the following manner, that is to say, the said Trustees may nominate two referees, not being creditors of such debtor, or to them known to be otherwise interested in such controversy, or related to any person interested in such controversy, and the other party in such controversy shall also nominate two indifferent persons to be referees, and their names shall be separately written on four pieces of paper, which shall be rolled up separately in the same manner and put into a box, and from thence one of the Trustees shall draw out three of the said pieces of paper, and the persons whose names are so drawn shall finally settle such controversy; and if any referees so appointed shall refuse or be incapable of acting in a reasonable time, a new choice shall be made in the manner aforesaid of another or others in the room of him or them so refusing or being incapable of acting as aforesaid; and in case any person who shall have any controversy with any such Trustees as aforesaid, shall refuse to nominate fit persons to be referees on his part, then such Trustees are hereby empowered to nominate referees for him so refusing, and to proceed to the final settlement of such controversy in manner aforesaid.

Trustees to convert
the estate into
money;

Collect the debts;

Call a general
meeting of the
creditors to adjust
accounts;

Make dividends;

Pay over surplus, if
any, to the debtor
or receiver
appointed by the
Court.

Creditors having
demands not due to
receive their pro-
portion upon rebate
of interest.

XXV. And be it enacted, That all Trustees hereafter to be appointed by virtue of this Act, shall proceed to convert the estate of such absconding or concealed debtor, for the management whereof they shall be appointed, into money, and collect the debts due to the same; and the said Trustees shall cause public notice to be given in the public newspaper before mentioned, requesting a general meeting of all such creditors as shall choose to attend, to examine and see the debts due to each person ascertained, at a certain time and place by such Trustees in their said notice to be appointed, which shall not be less than two nor more than three months after such notice given, nor more than one year and a half from the time of their first appointment; at which meeting, or at other subsequent meetings, to be continued by adjournment if necessary, when all accounts are fairly stated and adjusted, they shall proceed to make a distribution or division among the creditors in proportion to their respective just demands, of all such moneys as shall have come to their hands as Trustees of such estate, (of which all forfeitures by them recovered and received by virtue of this Act shall be considered as a part,) first deducting thereout all legal charges and commissions, in which payment no preference shall be allowed to debts due on specialties; and if the whole of such absconding or concealed debtor's estate shall not be then settled and distributed, such Trustees shall, within the space of one year thereafter, make a second dividend of all such moneys as shall have come to their hands after the first division, and so from year to year until a final settlement thereof, and a just and equal distribution of such estate shall have been made amongst the creditors of such debtor, in proportion to their respective just demands; and if any surplus shall remain after all just debts and legal charges and commissions are fully paid and satisfied, such surplus shall be paid or delivered to the said debtor, his executors, administrators or assigns; but in the event of no such person appearing or being present to whom such surplus should be paid or delivered, the said surplus shall in that case be paid or delivered to a receiver to be appointed by the Court wherein the proceedings have been had.

XXVI. And be it enacted, That any person who may have given credit to any such absconding or concealed debtor on a valuable consideration for any sum of money which shall not be due or payable at the time of any such division or distribution as aforesaid, but will become due or payable at some time after, shall and may nevertheless be admitted and considered as a creditor whose debts were then

then due, and shall receive a dividend of the estate of such debtor in the same proportion as other creditors, deducting thereout only a rebate of legal interest for what shall be received on such debt, to be computed from the actual payment thereof to the time such debt would have become due.

XXVII. And be it enacted, That if any creditor shall neglect or refuse to give notice of or deliver unto the said Trustees an account of his demand, or having any controversy relating to the estate of such absconding or concealed debtor, shall refuse to adjust or settle the same with the said Trustees in the manner in and by this Act directed, until after a division shall have been made of the moneys and effects in the hands of the said Trustees, no such creditor shall be entitled to any dividend, and the whole moneys then in hand to be divided shall be divided by the said Trustees among the other creditors; but in case the whole of such debtor's estate shall not be divided and settled at the first division, then if such creditor shall prove and deliver unto the Trustees his demand before the time appointed for the second division, or shall have settled such controversy as aforesaid with the said Trustees, then such creditor shall have his first dividend, or so much money as he would otherwise have been entitled to on the first division, before any second division shall be made.

Creditors neglecting, &c., to deliver accounts to be excluded from any dividend, except in case of a subsequent delivery and declaration of dividend.

XXVIII. And be it enacted, That any creditor residing out of the Province shall be entitled to all the privileges and benefits of this Act, and that the Attorney of every such creditor residing out of this Province, on producing a letter of Attorney from such creditor, duly authenticated, and legal proof of the debt due, shall and may in all respects act, do and proceed for and in behalf of such creditor in the same manner as such creditor might or could do for securing or recovering a debt from such absconding or concealed debtor, if such creditor were personally present.

Creditors not in the Province may act by Attorneys.

XXIX. And be it enacted, That such Trustees as shall be appointed by virtue of this Act, shall keep regular books of account of all moneys that shall come to their hands by reason of such their appointment, to which books every creditor interested in such moneys or estate may have recourse at all reasonable times; and that such Trustees and each of them shall be subject to such orders and directions for the more effectually putting this Act in execution, and finishing a distribution of such estate or effects as may come to their hands by virtue of such appointment, as shall from time to time be made and given in the Court by a Judge whereof such appointment of Trustees was made; and that such Trustees shall render into such Court a just and true account in writing of their proceedings and accounts in the premises by virtue of their appointment, duly attested to before any Judge of such Court, or any Commissioner authorized to take affidavits in such Court, which said accounts shall be filed with the Clerk of the said Court for the satisfaction of all persons concerned, and such Court or the major part of the Judges thereof shall and may make such order thereon as they may deem advisable, not being inconsistent with the provisions of this Act; and such Trustees of the estate of any such absconding or concealed debtor, shall and may retain and keep in their hands, for the trouble and services to be by them performed, five per cent. on the whole sum which shall come into their hands by virtue of such appointment, before each dividend made, over and above all necessary disbursements in the premises.

Trustees to keep accounts for the inspection of the creditors;

To be subject to the order of the Court the Judges whereof appointed them;

And render an account of their proceedings attested thereto in open Court.

Compensation.

XXX. And be it enacted, That if any person shall be sued for any matter or thing done in pursuance or by virtue of this Act, it shall and may be lawful for him to plead the general issue, and give the special matter in evidence; and also that this Act shall be beneficially construed for the creditors in all Courts of Record within this Province.

Special matter pleadable under general issue in actions brought for things done.

XXXI.

False swearing on
examination to be
deemed perjury.

XXXI. And be it enacted, That in case any person so to be examined as aforesaid under the provisions of this Act shall wilfully and knowingly swear falsely, the person so offending shall be liable to all the same pains and penalties as those who are convicted of wilful and corrupt perjury.

Discharge of Trus-
tees from office and
liabilities.

XXXII. And be it enacted, That when the account of the proceedings, and accounts of such Trustees are duly filed with the Clerk of such Court agreeably to the directions of this Act, and the same is and are satisfactory to such Court, the said Court shall be and is hereby authorized by rule or order to discharge such Trustees from their appointment, and from the performance of all further duties and liabilities thereunder.

Construction of Act

Number & gender.

"Estate."

"Property."

Trustees.

XXXIII. And be it enacted, That wherever throughout this Act words are used importing one matter, the singular number, or the masculine gender only, they shall be construed to mean several matters as well as one matter, several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject matter or context repugnant to such construction; and the word "Estate" shall be deemed and construed to mean the estate real as well as personal of every kind and description; and the word "Property" shall be deemed and construed to mean goods, chattels and effects of every description; unless there be something in the subject matter or context repugnant to such construction; and wherever throughout this Act anything is authorized to be done by the Trustees appointed under the provisions of this Act, it shall be deemed and construed to mean all the said Trustees, or any two of them, or the survivors or survivor of them, or the executors or administrators of such survivor or survivors.

CAP. LV.

An Act to authorize limited Partnerships in this Province.

Passed 26th April 1850.

Limited Partner-
ships, except
banking or insu-
rance, authorized.

I. **B**E it enacted by the Lieutenant Governor, Legislative Council and Assembly, That limited Partnerships for the transaction of mercantile, mechanical or manufacturing business within this Province, may be formed by two or more persons upon the terms and subject to the conditions and liabilities prescribed in this Act; but nothing herein contained shall authorize such Partnerships for the purpose of Banking or Insurance.

Such Partnerships
to consist of parties
to be designated
General Partners
& Special Partners.

II. And be it enacted, That the said Partnerships may consist of one or more persons who shall be called general Partners, and shall be jointly and severally responsible as general Partners now are by law; and if one or more persons who shall contribute to the common stock a specific sum in actual cash payments as capital, and who shall be called special Partners, and shall not be personally liable for any debts of the Partnership except in the cases hereinafter mentioned.

Parties to make a
certificate specifi-
ing the names and
distinguishing the
General and Special
Partners, with the
amount of capital,
nature of business,
&c.

III. And be it enacted, That the persons forming such Partnerships shall make and severally sign a certificate, which shall contain the name or firm under which said Partnership is to be conducted, the names and respective places of residence of all the general and special Partners, distinguishing who are general and who are special Partners, the amount of capital which each special Partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the Partnership is to commence, and when it is to terminate.

Partnership not to
be deemed formed
till the certificate be
acknowledged and
registered.

IV. And be it enacted, That no such Partnership shall be deemed to have been formed until a certificate made as aforesaid shall be acknowledged by all the Partners, before some Justice of the Peace, and recorded in the Registry of Deeds