

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1843. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1843.

6 Victoria – Chapter 4

An Act in addition to and in amendment of the Law of Bankruptcy. Passed 11th April 1843.

Whereas it is expedient to amend the Law of Bankruptcy;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That an Act made and passed in the fifth year of the Reign of Her present Majesty, intituled An Act relating to Bankruptcy in this Province, be and the same is hereby repealed, in so far as the same may be inconsistent or at variance with the provisions of this Act; provided always that the same shall continue in force in all other respects whatsoever.

II. And be it enacted, That all persons whosoever residing in this Province owing debts to the amount of not less than two hundred pounds, currency, shall be liable to become Bankrupts within the meaning of this Act, and may be declared Bankrupts upon such petition and proof or by such Declaration in writing of his Insolvency as by the said recited Act is required, and that the petition so to be made shall and may state that the person against whom such application is made, is owing debts to an amount to be in no case less than the said sum of two hundred pounds.

III. And be it enacted, That the amount of the debt or debts of any Creditor or Creditors petitioning for a Fiat in Bankruptcy, shall hereafter be as follows, that is to say, the single debt of such Creditor or of two or more persons being partners petitioning for the same shall amount to fifty pounds or upwards, and the debt of two Creditors so petitioning shall amount to seventy five pounds or upwards, and the debt of three or more Creditors so petitioning shall amount to one hundred and twenty pounds or upwards, and that every person who has given credit to any person for valuable consideration for any sum payable at a certain time, which time shall not have arrived when such person committed an act of Bankruptcy, may so petition or join in petitioning as aforesaid, whether he shall have had any security in writing for such sum or not.

IV. And be it enacted, That in all cases of any person filing a Declaration of Bankruptcy under the fourth Section of the said recited Act, a Fiat may be granted thereupon upon the application of the Bankrupt himself, as well as upon the application of Creditors: Provided always, that no Fiat shall be so granted until the Bankrupt shall file in the office of Register of the said Court of Chancery, in such form as the Master of the Rolls shall prescribe, Bond to the said Register, with two sufficient sureties to be approved of by the Commissioner, under the penalty of thirty pounds, conditioned for the payment of all costs chargeable against the said Bankrupt for and on account of the said proceedings.

V. And be it enacted, That in case of any person filing a Declaration of Insolvency in the office of the Register of the Court of Chancery of this Province, agreeably to the provisions of the fourth

Section of the said recited Act, the Royal Gazette containing the Advertisement of such Declaration having been filed, shall be deemed and taken to be evidence of the making and filing of such Declaration.

VI. And be it enacted, That if any person against whom a Fiat in Bankruptcy shall issue, shall not within thirty days after notice to be served on him in manner as provided for by the eighth Section of the said recited Act, surrender himself to the proper Commissioner and sign and subscribe such surrender to be made in writing, or submit to be examined before him from time to time upon oath, or being a Quaker, upon solemn affirmation, or shall not within the time aforesaid file such declaration as therein provided, desiring to contest the alleged Bankruptcy, or in case such Fiat of Bankruptcy after being so contested shall be confirmed by the Chancellor or Master of the Rolls, then if such Bankrupt shall not surrender or conform as aforesaid within thirty days after such Fiat confirmed, or if such Bankrupt upon examination shall not discover all his real or personal estate, and how, to whom, upon what consideration, and when he disposed of, assigned or transferred any of such estate, and all Books, Papers and Writings relating thereunto, except such part as shall have been really and bona fide before sold or disposed of in the way of his trade, or laid out in the ordinary expense of his family, or if such Bankrupt shall not upon such examination deliver up to the said Commissioner all such part of such estate, and all Books, Papers and Writings relating thereunto, as be in his possession, custody or power, excepting the necessary wearing apparel and furniture of himself and his family, in the discretion of the Commissioner; or if such Bankrupt shall remove, conceal or embezzle any part of such estate to the value of twenty pounds or upwards, or any Books of Account, Papers or Writings relating thereunto, with intent to defraud his Creditors, every such Bankrupt shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished in the manner provided for the punishment of certain other misdemeanors by the sixth Section of an Act made and passed in the fifth year of Her Majesty's Reign intituled An Act to amend the Law relating to the punishment of Offences: Provided always, that no Bankrupt shall be guilty of a misdemeanor under the provisions of this Section unless it shall be proved to the satisfaction of the Commissioners that personal notice of the granting of the Fiat had been served upon him.

VII. And be it enacted, That the Chancellor or the Master of the Rolls shall have power as often as he shall think fit from time to time to enlarge the time for the Bankrupt surrendering himself for such time as the Chancellor or Master of the Rolls shall direct, so that every such order be made five days at least before the day on which such Bankrupt was to surrender himself.

VIII. And be it enacted, That it shall and may be lawful for any person arrested upon any Warrant, as provided for in the tenth Section of the said recited Act, or for any person whose Books, Papers, Monies, Securities for Monies, Goods or Chattels have been seized under any such Warrant, to apply at any time after such arrest or seizure, to the Court of the Commissioner issuing such Warrant for an Order and Rule on the Petitioning Creditor named in such Fiat, to show cause why the person arrested should not be discharged out of custody, or why his Books, Papers, Monies, Securities for Monies, Goods and Chattels should not be delivered up to him, and that it shall be lawful for such Court to make absolute or discharge such Order or Rule, and to direct the costs of

the application to be paid by either party, provided that such Order may be discharged by the Court of Chancery on application by either party dissatisfied with any such Order.

IX. And be it enacted, That no action shall be brought against any person so appointed by any Commissioner for any thing done in obedience to his Warrant unless demand of the perusal of a Copy of such Warrant hath been made or left at the usual place of abode of such person or persons by his party or parties intending to bring such action, or by his or their Attorney or Agent, in writing, signed by the party or parties demanding the same, and unless the same hath been refused or neglected for six days after such demand; if after such demand and compliance therewith, any action be commenced against the person or persons so appointed as aforesaid, without making the Petitioning Creditor or Creditors Defendant or Defendants, if living, or producing and proving such Warrant at the Trial of such action, the Jury shall give their verdict for the Defendant, notwithstanding any defect of jurisdiction in the Commissioner, and if such action be brought against the Petitioning Creditor or Creditors, and the person so appointed as aforesaid, the Jury shall on proof of such Warrant give their verdict for the person so appointed as aforesaid, notwithstanding any defect in jurisdiction as aforesaid, and if the verdict shall be given against the Petitioning Creditor or Creditors, the Plaintiff or Plaintiffs shall recover his or their costs against him or them, to be taxed so as to include such costs as the Plaintiff or Plaintiffs are liable to pay to the person so appointed as aforesaid.

X. And be it enacted, That any such action so brought as aforesaid against the Petitioning Creditor or Creditors, either alone or jointly, with the person so appointed by the Commissioner as aforesaid, for anything done in obedience to his Warrant, proof by the Plaintiff or Plaintiffs in such action that the Defendant or Defendants, or any of them, are Petitioning Creditors shall be sufficient for the purpose of making such Defendant or Defendants liable in the same manner and to the same extent, as if the Act complained of in such action had been done or committed by such Defendant or Defendants.

XI. And be it enacted, That it shall be lawful for the respective Commissioners, by writing under their hands, to summon before them, any person known or suspected to have any of the estate of the Bankrupt in his possession, or who is supposed to be indebted to the Bankrupt, or any person whom the respective Commissioners or the Assignee to be appointed under any Fiat in Bankruptcy may believe capable of giving information concerning the person, trade, dealing or estate of such Bankrupt, or any information material to the full disclosure of the dealings of the Bankrupt, and it shall be lawful for the said Commissioner to require such person to produce any Books, Papers, Deeds, Writings or other Documents in his custody or power, which may appear to such respective Commissioners or Assignee necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the respective Commissioners or Assignee are authorized to inquire into, and if such person so summoned as aforesaid, shall not come before the Commissioner at the time and place appointed, having no lawful impediment made known to such Commissioner at the time appointed and allowed by him, it shall be lawful for such Commissioner, by Warrant under his hand and seal, to authorize and direct the person or persons therein named to apprehend and arrest such person and bring him before him to be examined as aforesaid.

XII. And be it enacted, That upon the appearance of any person so summoned or brought before the Commissioner as aforesaid, or if any person be present at any Court of the respective Commissioners, it shall be lawful for such Commissioner to examine every such person upon oath, either by word of mouth or by interrogations in writing, concerning the person, trade, dealing or estate of such Bankrupt, and to reduce into writing the answers of every such person; and such answers so reduced into writing, the party examined is hereby required to sign and subscribe ; and if any person shall refuse to be sworn or shall refuse to answer any lawful questions put to him by the said Commissioner touching any of the matters aforesaid, or shall not fully answer to the satisfaction of such Commissioner any such lawful questions, or shall refuse to sign and subscribe his examination so reduced into writing as aforesaid, not having any lawful objection allowed by such Commissioner, or shall not produce any Books, Papers, Deeds and Writings and other Documents in his custody or power, relating to any of the matters aforesaid, which such person was required by such Commissioner to produce, and to the production of which he shall not state any objection to be allowed by such Commissioner, it shall be lawful for such Commissioner to commit him to the Common Gaol of the County or City and County where such Commissioner shall then be, there to remain without bail until he shall submit himself to be sworn and full answers make to the satisfaction of such Commissioner to all such lawful questions as shall be put to him, and shall sign and subscribe such examination, and produce such Books, Papers, Deeds, Writings and other Documents as aforesaid, in his custody or power, to the production of which no such objection as aforesaid has been allowed; and any Sheriff, Gaoler or other person to whose custody such person shall be committed, shall be bound to receive and take charge of such person according to the terms of such commitment.

XIII. And be it enacted, That if any person be committed by any Commissioner for refusing to answer or not fully answering any question put to him by such Commissioner, such Commissioner shall, in the Warrant of commitment, specify every such question; provided that if any person committed by such Commissioner shall bring any Habeas Corpus or order to be discharged from such commitment, and there shall appear on the return of such Habeas Corpus any insufficiency in the form of the Warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for the Court or Judge before whom such party shall be brought by Habeas Corpus, and such Court or Judge is hereby required to commit such person to the same Prison, there to remain, unless he shall conform, unless it shall be shewn to such Court or Judge by the party committed, that he has fully answered all lawful questions put to him by such Commissioner, or if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such Court or Judge that he had a sufficient reason for the same: Provided also, that such Court or Judge shall, if required thereto by the party committed, in case the whole of the examination of the party committed shall not have been stated in the Warrant of commitment, inspect and consider the whole of the examination of such party, whereof any such question was a part, and if it shall appear from the whole examination, that the answer or answers of the party committed is or are satisfactory, such Court or Judge shall or may order the party so committed to be discharged.

XIV. And be it enacted, That in every action in respect of any such commitment brought by any Bankrupt or other person committed, the Court or Judge before which or whom such action shall be tried, shall if thereunto required by the Defendant or Defendants in such action, in case the whole of the examination of the party committed shall not be stated in the Warrant of commitment, inspect and consider the whole of such examination, and if upon such inspection and consideration it shall appear to such Court or Judge that the party was lawfully committed, the Defendant or Defendants in such action shall have the same benefit therefrom as if the whole of such examination had been therein stated.

XV. And be it enacted, That no Writ shall be sued out against, nor copy of any process served on any Commissioner for any thing done by him as such Commissioner, unless notice in writing of such intended Writ or Process shall have been delivered to him or left at his usual place of abode by the Attorney or Agent for the party intending to sue, or cause the same to be sued out or served, at least one calendar month before the suing out or serving the same, and such notice shall set forth the cause of action which such party has or claim to have against such Commissioner, and on the back of such notice shall be indorsed the name of such Attorney or Agent, together with the place of his abode, who shall receive no more than twenty shillings for preparing and serving such notice.

XVI. And be it enacted, That no such Plaintiff shall recover any verdict against such Commissioner, in any case where the action shall be grounded on any act of the Defendant or Commissioner, unless it be proved upon the trial of such action that such notice was given as aforesaid, but on default thereof such Commissioner shall recover a verdict and costs; and no evidence shall be permitted to be given by the Plaintiff on the trial of any such action, of any cause of action except such as is contained in the notice.

XVII. And be it enacted, That every such Commissioner may at any time within one calendar month after such notice, tender amends to the party complaining or to his Agent or Attorney, and if the same be not accepted, may plead such tender in bar of any action brought against him grounded on such Writ or Process, together with the plea of not guilty, and any other plea with leave of the Court; and if upon issue joined thereon the Jury shall find the amends so tendered to have been sufficient, they shall give a verdict for the Defendant, and if the Plaintiff shall become nonsuit, or shall discontinue his action, or if judgment shall be given for such Defendant on demurrer, such Commissioner shall be entitled to his costs; and if upon issue so joined the Jury shall find that no amends were tendered, or that the same were not sufficient, and also against the Defendant on such other plea or pleas, they shall give a verdict for the Plaintiff and such damages as they shall think proper, which he shall recover together with costs of suit; provided that if any Commissioner shall neglect to tender any amends or shall have tendered insufficient amends before the action brought, he may by leave of the Court where such action shall depend, at any time before issue joined, pay into Court such sum of money as he shall think fit, whereupon such proceedings shall be had in Court as in other actions where the Defendant is allowed to pay money into Court.

XVIII. And be it enacted, That every action brought against any person for any thing done in pursuance of this Act, shall be commenced within three calendar months next after the fact was committed, and the Defendant or Defendants in any such action may plead the general issue, and give this Act and the special matter in evidence at the trial, and that the same was done by authority of this Act, and if it shall appear so to have been done, or that such action was commenced after the time limited for bringing the same, the Jury shall find for the Defendant or Defendants.

XIX. And be it enacted, That when there has been mutual credit given by the Bankrupt and any other person, or when there are mutual debts between the Bankrupt and any other person, the Commissioner shall state the account between them, and one debt or demand may be set off against another, notwithstanding any prior act of Bankruptcy committed by such Bankrupt before the credit given to, or debt contracted by him, and what shall appear due on either side on the balance of such account and no more shall be claimed or paid on either side respectively, and every debt or demand provable against the estate of the Bankrupt may also be set off in manner aforesaid against such estate; provided that the person claiming the benefit of such set-off had not when such credit was given, notice of an act of Bankruptcy by such Bankrupt committed.

XX. And be it enacted, That no distress for rent made and levied after Fiat in Bankruptcy issued upon the goods or effects of any Bankrupt shall be available for more than one year's rent accrued prior to the date of the Fiat, but the landlord or party to whom the rent shall be due shall be allowed to come in as a Creditor under the Fiat for the overplus of the rent due, and for which the distress shall not be available.

XXI. And be it enacted, That the Assignee or Assignees shall keep an account wherein they shall enter all property of the Bankrupt received by them, and all payments made by them on account of the Bankrupt's Estate, which account every Creditor who shall have proved may inspect at all reasonable times; and it shall be lawful for the respective Commissioners at all times by writing under their hands, to summon the Assignees before them, and require them to produce all Books, Papers, Deeds, Writings and other documents relating to the Bankruptcy in their possession, and if such Assignee so summoned shall not come before the Commissioner at the time appointed, having no impediment made known to the Commissioner at the time appointed and allowed by him, it shall be lawful for such Commissioner by Warrant under his hand and seal directed to such person as he shall think fit, and to cause such Assignee to be brought before him, and upon his refusing to produce such Books, Deeds, Writings, Papers or documents as aforesaid, it shall be lawful for such Commissioner to commit the party so refusing to such prison as he shall think fit, there to remain without bail until such party shall submit himself to such Commissioner.

XXII. And be it enacted, That the respective Commissioners shall at a public meeting to be appointed not sooner than six calendar months from the date of the fiat, whereof and of the purport whereof not less than thirty days notice shall be given in one or more of the public Newspapers published in the County or City and County or District in which such Commissioner hath jurisdiction, and in case no such newspaper shall be published in such County, City and County or District, then in the Royal Gazette, to audit the Accounts of the Assignees; and the

Assignees at such meeting shall deliver upon oath a true statement in writing of all money received by them respectively, and when and on what account, and how the same shall have been invested or paid, and the Commissioner shall examine such statement and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such Assignees respectively, and shall inquire whether any sum appearing to be in their hands ought to be retained, and it shall be lawful for such Commissioner to examine the said Assignee upon oath, touching the truth of such Accounts, and in such Accounts the said Assignees shall be allowed to retain all such money as they shall have expended in their necessary proceedings under the fiat and all other just allowances.

XXIII. And be it enacted, That the Bankrupt after the appointment of Assignee, shall if thereto required, forthwith deliver up to him upon oath before a Master ordinary or extraordinary in Chancery, or Justice of the Peace, all Books of Account, Papers and Writings relating to his estate, in his custody or power, and discover such as are in the custody or power of any other person, and every such Bankrupt not in Prison or in custody shall at all times after such surrender attend such Assignee upon every reasonable notice in writing for that purpose given by such Assignee to him or left at his house, and shall assist such Assignee in making out the accounts of his estate, and such Bankrupt may at all seasonable times inspect his Books, Papers and Writings in the presence of his Assignee or any person appointed by him, and bring with him each time any two persons to assist him, and every such Bankrupt after he shall have obtained his Certificate, shall, upon demand in writing given to him or left at his usual place of abode, attend the Assignee to settle any accounts between his estate and any Debtor or Creditor thereof, or do any act necessary for getting in the said estate ; for which attendance he shall be paid not exceeding ten shillings per day by the Assignee out of the said estate.

XXIV. And be it enacted, That any Bankrupt who shall have duly surrendered and in all things conformed himself to the Laws in force at the time of issuing the Fiat in Bankruptcy against him, shall be discharged from all debts due by him when he became Bankrupt, and from all claims and demands made provable under such Fiat in case he shall obtain a Certificate of such conformity so signed and allowed, and subject to such provisions as hereinafter mentioned; and no Certificate of such conformity by any such Bankrupt shall release or discharge such Bankrupt from such debts, claim or demands, unless such Certificate shall be obtained, allowed and confirmed according to such provisions: Provided always, that no such Certificate shall release or discharge any person who was a partner with such Bankrupt at the time of his Bankruptcy, or was then jointly bound or had made any joint contract with such Bankrupt.

XXV. And be it enacted, That it shall be lawful for the Commissioner authorized to act in the prosecution of any Fiat in Bankruptcy already issued or hereafter to be issued, on the application of the Bankrupt named in such Fiat, to appoint a public sitting for the allowance of such Certificate to the Bankrupt named in such Fiat, whereof, and the purport whereof, sixty days notice shall be given in like manner as is before provided by the twenty second section of this Act; and at any such sitting, any of the Creditors of such Bankrupt may be heard against the allowance of such Certificates, but it shall not be requisite for such Certificate to be signed by any of the Creditors of such Bankrupt; and such Commissioner having regard to the conformity of the Bankrupt to the

Laws relating to Bankrupts, and to the conduct of the Bankrupt, as a Trader, before as well as after his Bankruptcy, shall judge of any objection against allowing such Certificate, and either find the Bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require: Provided always, That no Certificate shall be such discharge unless such Commissioner shall in writing, under hand and seal, certify to the Court of Chancery that Bankrupt has made a full discovery of the estate and effects, and in all things such conformed as aforesaid, and that there does not appear any reason to doubt the truthfulness of such discovery, and unless the Bankrupt make oath in writing that such Certificate was obtained fairly and without fraud, and unless the allowance of such Certificate shall, after such oath be confirmed by the Court of Chancery, against which confirmation any of the Creditors may be heard before such Court.

XXVI. And be it enacted, That any Special Commissioner appointed under and by virtue of the thirty first Section of the said recited Act, before entering upon his duties as such Commissioner, shall be sworn before the Clerk of the Peace of the County or City and County in which he may reside, to the faithful discharge of the same, and shall subscribe his name to a Roll to be kept by such Clerk of the Peace, on which shall be written the affidavit following, that is to say:

'I, A. B. do swear that I will faithfully, honestly and impartially, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as a Commissioner of Bankruptcy, under a fiat of Bankruptcy transmitted to me against [here insert the name of the Bankrupt,] by virtue of An Act relating to Bankruptcy in this Province, and of any Act or Acts made or to be made in addition to or alteration or amendment of the same.'

XXVII. And be it enacted, That it shall be lawful for the Commissioner, after the granting of the Fiat, to make such allowance to the Bankrupt out of his estate as shall in the discretion of the Commissioner be necessary to support the Bankrupt and his family.

XXVIII. And be it enacted, That whenever any Fiat of Bankruptcy shall have been granted under the provisions of the said Act, due notice thereof shall be published in the Royal Gazette of the granting of such Fiat by the Register of the Court of Chancery, the publication of such notice shall ipso facto divest the property of such Bankrupt in the same manner to all intents and purposes as the receipt of such Fiat by the Commissioner is declared, by the seventh section of the said recited Act, to divest such property; and the production of such Royal Gazette containing such notice, shall in all cases be evidence of such publication without other proof thereof.

XXIX. And be it enacted, That it shall be the duty of the Commissioner by a notice to be published as required by the eighth Section of the said recited Act, to call general meetings of the Creditors of the said Bankrupt at such time or times as he the said Commissioner may deem fit and meet, regard being had to the distance at which the Creditors or any of them reside, at which meeting proof may be received of any debt or debts not before proved; and at which meetings and at all other meetings the Commissioner shall attend and preside, and shall regulate the proceedings thereat, and may adjourn any meeting from time to time as occasion may require, and all things done at such adjourned meeting shall be of the like force and effect as if done at the original

meeting; at which meeting so to be called or adjourned meeting, the Bankrupt shall submit to such examination on oath as the Commissioner may require, and any other business may be transacted which may be deemed necessary by the Commissioner.

XXX. And be it enacted, That when any Bankrupt shall have been indebted at the date of the Fiat to any Servant or Clerk of such Bankrupt in respect of his wages or salary, it shall be lawful for the Commissioner upon proof thereof to order so much of such wages or salary as may be due not exceeding three months wages or salary, and not exceeding twenty pounds, to be paid to such Servant or Clerk out of the estate of the Bankrupt, and any such Servant or Clerk may prove any sum exceeding such amount against the estate of the Bankrupt.

XXXI. And be it enacted, That whenever any Bankrupt shall have been indebted at the date of the Fiat to any Labourer or Workman of such Bankrupt in respect of his wages, it shall in like manner be lawful for the Commissioner to order on like proof, so much of such wages so due not exceeding three week's wages or labor, and not exceeding five pounds, to be paid to such Workman or Labourer, who shall be at liberty to prove any further amount due to him against the estate.

XXXII. And be it enacted, That the said Court of Chancery shall and may from time to time make, establish, alter and amend rules and forms of practice and proceedings, as well for that Court in matters made cognizable before it by this Act or any other Act or Acts made or to be made relating to Bankruptcy in this Province, as for the guidance and direction of the several Commissioners appointed under and by virtue of the said Acts, and their several Courts, in such manner as the Court of Chancery shall see fit; provided that such rules and forms be in no wise repugnant to the said Acts.