

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1844. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1844.

7 Victoria – Chapter 31

An Act further to amend the Laws relating to Bankruptcy in this Province. Passed 13th April 1844.

Whereas it is considered expedient further to amend the Law relating to Bankruptcy,

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the fourth section of 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; and also the second, fourth and fifth sections of an Act made and passed in the sixth year of the same Reign, intituled *An Act in addition to and in amendment of the Law of Bankruptcy*; and also all other provisions in either of the said recited Acts which may relate to the voluntary Declarations of any person being deemed an Act of Bankruptcy, or the persons owing debts less than five hundred pounds in amount may become Bankrupts, be and the same are hereby repealed: Provided always, that when any Fiat in Bankruptcy may have been struck or granted before the passing of this Act, whether founded on the voluntary Declaration of an alleged Bankrupt or otherwise, proceedings may still be had and continued therein, and by, against or for such alleged Bankrupt, his person, estate or effects, in all respects the same and with the like force and effect to all intents and purposes as if no part of the said recited Acts had been repealed as aforesaid.

II. And be it enacted, That when and so soon as the proper Commissioner shall have received any Fiat and Documents as is provided in the said Acts, he shall forthwith endorse thereon the day and hour on which he received the same, and by warrant under his hand and seal shall appoint one fit and proper person to be a Provisional Assignee of the state and effects of the said alleged Bankrupt, and shall cause a copy of such Fiat to be served on such alleged Bankrupt, if he shall be found within the jurisdiction of such Commissioner, and if not so found, then to be left at the last place of abode or business of the said alleged Bankrupt, or delivered to his wife or some adult member of his family, or agent, together with a notice, setting forth the appointment of the said Provisional Assignee; and in case the said alleged Bankrupt shall, within the period of seven days after such service of the copy of the said Fiat and notice, file with the said Commissioner a Declaration in writing of his dissent to the said Fiat, and desire to contest such alleged Bankruptcy, that then the said Commissioner shall forthwith transmit such Declaration to the Chancellor or Master of the Rolls, who shall proceed to the determination of the question so in contest, as hereinafter directed; and if not within the said period of seven days after such service of the copy of the said Fiat and the said notice, file with the said Commissioner such Declaration, or when the said Chancellor or Master of the Rolls shall have determined and confirmed the said Fiat in Bankruptcy, that the said Commissioner shall, as soon as may be thereafter, cause public notice of the said appointment to be published by two several insertions in one or more of the Newspapers of the County, City and County, or District in which such Commissioner hath jurisdiction; and if there shall be no Newspaper printed in the said County, City and County, or District, then in the

Royal Gazette of this Province; and shall thereby require all persons all debted to the said Bankrupts by a certain day to be therein expressed, to pay all such sum or sums of money, debts or duties as they may owe to the said Bankrupt, and deliver up all other property and effects of the said Bankrupt in their possession, power or custody, to him, the said Assignee; and by the same notice shall require all the Creditors of the said Bankrupt, within three months from the day of the date of such notice, to deliver in and prove to the satisfaction of the said Commissioner, their respective claims and demands, whether the same be actually due or to become due against the said Bankrupt; and shall by such notice appoint two public meetings of the Creditors of such Bankrupt to be held, for the said Bankrupt to surrender and conform, the last of which meetings shall be on a day not less than thirty days, and not exceeding sixty days from the date of such advertisement, and shall be the day limited for such surrender: Provided always, that such Bankrupt shall and may, if so minded, before the expiration of time allowed for filing such Declaration of dissent, surrender to such Fiat, and such person shall be free from arrest or imprisonment by any Creditor in coming to surrender, and after such surrender, during the time limited and appointed for the last of such meetings so to be advertised as aforesaid, and such further time as shall be allowed him for finishing his examination, and for such time after finishing his examination until his Certificate be allowed and confirmed, or during any suspension of such allowance or any conditional allowance, as such Commissioner shall, from time to time, by indorsement upon the surrender of such Bankrupt, think fit to appoint, provided he was not in custody at the time of such surrender; and if such Bankrupt shall be arrested for debt, or on any escape warrant, in coming to a surrender, or shall, after his surrender, be so arrested within the time aforesaid, he shall on producing his summons, signed as required by this Act, to the Officer who shall arrest him, and giving such Officer a copy thereof, be immediately discharged.

II. And be it enacted, That whomever it shall be made to appear to the satisfaction of any Commissioner, or such Commissioner shall have reason to believe that any of the Creditors of the said Bankrupt reside in any part of the United Kingdom of Great Britain and Ireland, then notice shall be forthwith transmitted for publication in the London Gazette, calling upon such Creditors to appoint an Agent or Agents in this Province, and to deliver and prove to the satisfaction of the said Commissioner, their respective claims and demands as aforesaid against the said Bankrupt, within three months from the day of the date of the said notice so published in the London Gazette.

III. And be it enacted, That whenever any Bankrupt is in prison, or in custody under any process, attachment, execution, commitment or sentence, the Commissioner acting in the prosecution of the Fiat against him, may, by warrant under his hand and seal, directed to the person in whose custody such Bankrupt is confined, cause such Bankrupt to be brought before him at any meeting, either public or private; and if any such Bankrupt is desirous to surrender, he shall be so brought up, and the expense thereof shall be paid by and allowed to him out of the estate of such Bankrupt; and such person shall be indemnified by the warrant of the Commissioner, for bringing up such Bankrupt; provided the Assignee may appoint any persons to attend such Bankrupt from time to time, and to produce to him his books, papers and writings, in order to prepare an abstract of his Accounts, and a statement to shew the particulars of his estate and effects, previous to his final examination and discovery thereof.

IV. And be it enacted, That any Bankrupt who shall after such certificate shall have been confirmed, be arrested, or have any action brought against him for any debt, claim or demand, provable under the Fiat against such Bankrupt, shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he became Bankrupt, and may give this Act, and the special matter, in evidence; and such Bankrupt's Certificate, and the confirmation thereof, shall be sufficient evidence of the Bankruptcy, Fiat and other proceedings precedent to the obtaining such certificate; and if any such Bankrupt shall be taken in execution, or detained in prison for such debt, claim or demand, where judgment has been obtained before the confirmation of his certificate, it shall be lawful for any Judge of the Court wherein judgment has been so obtained, on such Bankrupt producing his Certificate, to order any Officer who shall have such Bankrupt in custody, by virtue of such execution, to discharge such Bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing.

VI. And be it enacted, That all claims made by any person against the estate of any Bankrupt, with an affidavit or affidavits verifying the same, shall be lodged with the Assignee of the Bankrupt's estate, at least forty eight hours before the time appointed for the holding of the public meeting at which such claim is to be adjudicated upon; and it shall be lawful for the Commissioner acting in the prosecution of any Fiat, to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt under such Fiat, or to require such further proof, and to examine such other persons in relation thereto, as he shall think fit.

VII. And be it enacted, That any person who at the time of the receipt of the Fiat by the proper Commissioner, shall be surety or liable for any debt of the Bankrupt, or bail for the Bankrupt, either to the Sheriff or to the action, if he shall have paid the debt, or any part thereof in discharge of the whole debt, although he may have paid the same after the receipt of the Fiat by the said Commissioner, if the creditor shall have proved his debt under the Fiat, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the said Fiat, which the Creditor possessed or would be entitled to, in respect of such proof; or if the creditor shall not have proved under the Fiat, such surety, or person liable, or bail, shall be entitled to prove his demand in respect of such payment as a debt under the Fiat, not disturbing former dividends, and may receive dividends with the other creditors.

VIII. And be it enacted, That it shall be lawful for the Commissioner, at the time appointed for the last examination of the Bankrupt, or any enlargement or adjournment, to adjourn such examination *sine die*; and in such case he shall be free from arrest and imprisonment for such time, not exceeding three months, as such Commissioner shall from time to time, by indorsement upon the summons of such Bankrupt, appoint, with like penalty upon any officer detaining such Bankrupt, after having been shewn such summons.

IX. And be it enacted, That all affidavits to be made or used in matters of Bankruptcy, or under or by virtue of any Act relating to Bankrupts, or of this Act, and whether before or after any Fiat in Bankruptcy, shall and may be sworn in this Province before the Chancellor, or Master of the Rolls, or any Judge of the Supreme Court or of the Inferior Court of Common Pleas, or Commissioner of the Estates and Effects of Bankrupts, or blaster in Ordinary or Extraordinary in the Court of

Chancery, or any Commissioner for taking affidavits to be read in the said Supreme Court, or in the United Kingdom of Great Britain and Ireland, or in any other of the British Dominions, before any Judge of any Superior Court, or Mayor or Chief Magistrate of any City, Town, or Borough, attested by a Notary, or in any Foreign Country before a British Minister, Consul or Vice Consul.

X. And be it enacted, That it shall be lawful for the several Commissioners authorized to act in the prosecution of any Fiat in Bankruptcy, in all matters within their respective jurisdictions, to take the whole or any part of the evidence, either viva voce on oath, or upon affidavits, to be sworn as aforesaid.

XI. And be it enacted, That it shall not be necessary to insert any notice in Bankruptcy in any of the Newspapers wherein the same may be required to be inserted by any of the provisions of this Act or of any of the Acts relating to Bankruptcy, oftener than in two successive Newspapers aforesaid, and that the matter of such notice may be made known, and also all adjournments of meetings, by a short memorandum thereof in the same Newspaper in which the first notice was published.

XII. And be it enacted, That whenever any appeal shall be made to the Chancellor or Master of the Rolls against any decision of any Commissioner, either by the Bankrupt or any Creditor or Creditors of such Bankrupt, the said Chancellor or Master of the Rolls is hereby authorized and required finally to decide on the matter of such appeal, and the said decision of such Commissioner to confirm, or reverse and set aside, and in the latter case to make such decree by granting a Certificate of discharge, absolute or conditional, or altering the one granted, or otherwise, as shall be agreeable to the justice of the case, and as shall be conformable to the Laws then in force relating to Bankruptcy in this Province.

XIII. And be it enacted, That any Creditor may continue any action or proceed on any judgment which may have been deemed to be waived or suspended by reason of his having proved the same debt for which such action may have been brought, in any case where a Certificate of discharge shall be finally refused the Bankrupt, any thing in the Acts relating to Bankruptcy to the contrary notwithstanding.

XIV. And be it enacted, That every Bond, heretofore made and executed by any person or persons, (with his or their sureties,) having applied to be made a Bankrupt under the provisions of the Bankrupt Laws of this Province, may be sued for and recovered with costs of suit in any Court of Record in this Province, in the name of the Officer to whom the same is given, or his successor in office, by order of any Commissioner before whom the prosecution of the Fiat is had, upon the application of any party interested therein, or at the instance of the Commissioner, whenever the costs of such proceedings, including therein the Solicitor's costs, shall be taxed and allowed by the said Commissioner, and when recovered shall be paid and applied by the Register to and among the different parties mentioned in such taxed bill, according to their several interests; provided that no greater sum shall be recovered in the said suit on the said Bond than the aggregate of such taxed bill, nor than the penalty of the Bond; and provided also, that wherever the said expenses

can be got from the estate of the Bankrupt in the hands of the Assignee, such Bond shall not be put in suit.

XV. And be it enacted, That so much of the Act relating to Bankruptcy in this Province, as relates to the Oath of Office to be made and taken by any Commissioner of Bankruptcy for any County or Counties or City and County in this Province, shall be and hereby is repealed, and in lieu thereof every such Commissioner shall take and subscribe the following Oath in the manner and before the Officer in the said Act prescribed, that is to say:--

'I, A. B., do swear that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge execute the several powers and trusts reposed in me as a Commissioner of Bankruptcy for the City and County of Saint John, (or County of as the case may be,) and such other County and Counties as may hereafter be united thereto 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. So HELP ME God.'

XVI. And be it enacted, That the time mentioned in the sixth section of the Act in addition to and in amendment of the Law of Bankruptcy, for the notice to be served on the Bankrupt, and for the surrender of the said Bankrupt, and for contesting the alleged Bankruptcy shall be seven days instead of thirty as therein specified.

XVII. And be it enacted, That the notice required to be given on the application of the Bankrupt for a Certificate of conformity shall be thirty days instead of the time specified in the twenty fifth section of the said Act in addition to and in amendment of the Law of Bankruptcy.