

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 32

An Act to afford relief to Persons unfortunate in business in certain cases. Passed 13th April 1844.

Whereas it is deemed expedient to make some further provision for the relief of Insolvent debtors, and for enabling them to make arrangements with their Creditors, by which they may obtain a discharge from their debts;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and after the passing of this Act it shall and may be lawful for any Debtor or joint Debtors finding himself or themselves unable to meet his or their engagements, to make application by Petition to His Honor the Master of the Rolls for the time being, for an order for a public meeting of the Creditors of such petitioning Debtor or Debtors, setting forth in such Petition a full statement of his or their affairs upon oath, shewing the amount of his or their liabilities in detail, with the names, additions and places of abode of the Creditors, and also a detailed schedule of his or their real and personal property (if any) and assets, distinguishing the good from the bad debts; and on such Petition, which shall be in duplicate, and one copy, to be filed with the Master of the Rolls, and the other with the Clerk of the Peace for the County in which such Debtor or Debtors reside, it shall and may be lawful for the said Master of the Rolls, and he is hereby required by order to be entered by the Registrar of the Court of Chancery in a Book to be by such Registrar kept for that purpose, to direct the Clerk of the Peace of the County, or City and County, in which such Debtor or Debtors shall reside, to call a public meeting of the Creditors of such Debtor or joint Debtors, within the Shire Town of the County, at such time and place as the Master of the Rolls shall in such orders direct and appoint.

II. And be it enacted, That on such order being granted and served by such petitioning Debtor or Debtors, on the Clerk of the Peace of the County, it shall and may be lawful for such Clerk of the Peace, and he is hereby required at the costs and charges of such petitioning Debtor or joint Debtors, forthwith to call a public meeting of the Creditors of such petitioning Debtor or Debtors, for the purpose of enabling such Debtor or Debtors to offer a composition to or make terms with his or their Creditors, and to render an exposition of his or their affairs, by publishing a copy of such order in the Royal Gazette of the Province, and the tune and place of such meeting, and Continuing the same therein for a period not exceeding sixty days nor less than twenty days, and also in one of the local newspapers in the County, or City and County, where such Debtor or Debtors reside, if any such paper be published, and also by posting up hand bills in six or more of the most public places of the County, or City and County, in which such Debtor or Debtors shall reside; at which meeting it shall be the duty of such Clerk of the Peace to attend and preside, and to take a minute or record of the proceedings thereof, the publication of the notices required by this Act, of the time and place of such meeting, being first made to appear by affidavit sworn before some Commissioner for taking affidavits in the Supreme Court, or Master or Master

Extraordinary in Chancery, and which affidavit shall also form part of the minutes or records of such meeting; and if at such meeting, due notice thereof being then and there proved, agreeably to the provisions of this Act, three fifths of the Creditors in number and amount, whose respective just claims upon such Debtor or Debtors shall be for debts of not less than ten pounds each, by themselves or Agents then present, shall accept the offer of such Debtor or Debtors, of a composition, or shall agree that such Debtor or Debtors shall assign to Trustees appointed by a majority of the Creditors then present, for the benefit of his or their Creditors, all his or their Estate and Effects, or agree to any other terms for discharging such Debtor or Debtors from his or their existing debts and liabilities, by signing a composition Deed, or other writing, shewing distinctly and clearly the terms of compromise and conditions upon, which the same are accepted and such Clerk of the Peace so presiding at such meeting, is hereby authorized, empowered and required, with the consent, and at the request of the majority of the creditors then present, to adjourn such meeting from day to day, or for any number of days, not exceeding six from the first day of such meeting, until the business of such meeting is got through with, by some arrangement being agreed upon in writing between such debtor or debtors and his creditors, signed by such three fifths of his creditors in number and amount then present, whose respective debts shall not be less than ten pounds each, as aforesaid, or until such meeting shall, by the voice of the majority of the creditors then present, be dissolved from the want of being able to agree upon any arrangement; in which case the said order so to be made by the Master of the Rolls for such meeting shall be declared and taken to be discharged, and all proceedings thereon at an end, the same as if no such order had been made; but in case any agreement or arrangement in writing shall be made between such debtor or debtors and his or their creditors, at such meeting, before the same is dissolved, and signed by such three fifths of his or their creditors as aforesaid, then such agreement or arrangement shall be deemed and held to and for the benefit of all the other bona fide creditors of such debtor or debtors, as well those who may sign the same, as others who may come in and claim the benefit thereof within the time hereinafter provided for; and such agreement, when so signed as aforesaid, shall be left in the hands of the Clerk of the Peace: so presiding at such meeting, whose duty it shall be forthwith to transmit the same, with all the minutes and a record of the proceedings at such meeting, to the Master of the Rolls, certified and sworn to by such Clerk of the Peace, as the true and correct agreement and minutes of the proceedings, he first making a true copy thereof, which shall be kept on the files in the Office of such Clerk of the Peace; and upon such agreement, with the minutes and record of the proceedings, being so duly transmitted to the Master of the Rolls by such Clerk of the Peace as above directed, under oath as aforesaid, it shall and may be lawful for the Master of the Rolls to make an order, that unless good cause be shewn to him to the contrary on or before a certain day (not less than twenty days), to be in such order named, he, the said Master of the Rolls, will make an order releasing and discharging the said debtor or debtors from all his or their existing debts and other liabilities upon and agreeably to the terms and conditions that shall have been so agreed upon at such meeting as aforesaid, save and except the composition or other terms and agreement forming the basis of such discharge and agreed to at such meeting in manner aforesaid, which order the said petitioning debtor or debtors shall cause to be published and continued in the Royal Gazette of the Province for two successive weeks previous to the day appointed in such order for shewing cause.

III. And be it enacted, That at the expiration of the said twenty days, or other period fixed by the Master of the Rolls, at which cause is to be shewn against such order, it shall and may be lawful for the said Master of the Rolls, and he is hereby required, unless good and sufficient cause shall be shewn to the contrary at the time limited for that purpose by any of the Creditors of such Debtor or Debtors, such as fraud, undue preference by secret compromise or otherwise, or want of due publication of the notice of the meeting of the Creditors before such Clerk of the Peace, or other Substantial irregularity, contrary to the provisions of this Act, to make an order for the discharge of such Debtor or joint Debtor from all debts and liability to his or their Creditors, contracted prior to the meeting of his or their Creditors as aforesaid, agreeably to and upon the terms and conditions that shall have been so agreed to by at least such three fifths as aforesaid, of his or their Creditors in number and amount, at such, meeting; Provided always, that such order shall be made upon the said Debtor or Debtors paying all the expenses of the meeting, and all other fees and expenses connected with and incurred in the necessary proceedings, to procure his or their discharge under this Act, agreeably to a scale to be fixed upon under this Act.

IV. And be it enacted, That when such order shall be so made by the Master of the Rolls, it shall operate as an effectual bar to all proceedings against such Debtor or joint Debtors, his or their persons and property, for the recovery of any thing beyond the amount agreed upon by not less than such three fifths as aforesaid, of the Creditors present at such meeting, in person or by Attorney, in number and amount, and which order shall and may be pleaded in bar in any: Court of Law or Equity in this Province, to any action or suit that shall be brought for the recovery of any thing beyond what shall at such meeting have been agreed upon in manner aforesaid, or for the enforcing of any matter or thing contrary to the True intent and meaning, of the terms provisions and conditions of what shall have been agreed upon at such meeting as aforesaid, and so transmitted by the Clerk of the Peace presiding at such meeting to the Master of the Rolls as aforesaid.

V. And be it enacted That it shall not be lawful for the said petitioning Debtor or joint Debtors, after any agreement by way of compromise, or other arrangement that shall or may have been made or entered into at any public meeting of the Creditors to be called under the provisions of this Act, to receive any debt or debts, or to make any settlement, or give any release or discharge of his or their debt or debts, or in any way to interfere with his or their real or personal property or assets, directly or indirectly, or to make any secret or other compromise with any of his or their Debtor or Debtors, Creditor or Creditors, contrary to the true intent and meaning of the terms and conditions of any arrangement, agreement or compromise, which shall or may have been agreed upon by and between such Debtor or Debtors and his or their Creditors at such meeting in manner aforesaid.

VI. And be it enacted, That if any such Petitioning Debtor or Debtors do or shall receive any debt or debts, or give any release or other discharge to any of his or their Debtors, or enter into arrangement, agreement or compromise with his or their Debtor or Debtors, Creditor or Creditors at or after any such public meeting of the Creditors of such Petitioning Debtor or joint Debtors, called under the provisions of this Act, contrary to the true intent and meaning of the agreement, compromise or arrangement that shall or may have been so agreed upon between such Debtor or

Debtors, and his or their Creditors at such public meeting, the same, that is, all such receipts of debts, releases, discharges, arrangements, agreements and compromises shall be utterly void and of none effect.

VII. And be it further enacted, That all sales and conveyances of his estate, lands, goods and chattels to him belonging, made by any such debtor or debtors after such first public notice as aforesaid given, for calling a meeting of his creditors under the provisions of this Act, and all Powers of Attorney by him given for selling any estate or effects, or collecting any debts or demands, whether such Power of Attorney be made after or before such first public notice as aforesaid given, and all levies, seizures and sales made by any Sheriff or other officer after such first public notice as aforesaid given, of any estates, lands, goods and chattels of any such debtor or debtors, under any execution or other legal process issued out of any Court of Judicature after such first order as aforesaid shall be made by the Master of the Rolls for calling such meeting of the creditors of such debtor or debtors as aforesaid, and also all arrests of the person or persons of any such debtor or debtors upon mesne process or execution for any debt after such first order shall be made as aforesaid, shall be null and void, to all intents, constructions and purposes whatsoever, as to all acts done or to be done after such first public notice given, any law, usage or custom to the contrary notwithstanding; Provided nevertheless, that nothing in this Act contained shall extend or be construed to extend to any debt due to Her Majesty, Her Heirs or Successors, or to restrain any landlord or other person or persons from his or their legal right of distress or lien for any rent actually due; and provided also, that nothing in this Act contained shall extend or be construed to extend to restrain any creditor or creditors of such debtor or debtors from any proceedings to recover or secure any debt or debts due to him, her or them, from such debtor or debtors, or to restrain the legal right of such debtor or debtors to the possession, sale or other disposition of any estate, lands, goods and chattels to him belonging, after the final close and dissolution of any such public meeting of his creditors, in case no arrangement or agreement shall be come to and made between him and his creditors at such said public meeting, for the liquidation of his debts, signed by such three fifths of his creditors as aforesaid, under the provisions of this Act, but in every such case the legal rights of such debtor or debtors over his estates, lands, goods and chattels, and all the legal right of his creditors against him, shall immediately revive, the same as if no such proceedings had been taken.

VIII. And be it enacted, That it shall and may be lawful for the Creditors, or any of them, of such Petitioning Debtor or Debtors at any public meeting called under the provisions of this Act, at which such Debtor or Debtors is and are hereby required to attend and be present, unless prevented by good and sufficient cause or causes to be shewn at such meeting by affidavit to be sworn before a Commissioner for taking affidavits in the Supreme Court, to the satisfaction of two thirds, in number and amount of the Creditors then present, to examine such petitioning Debtor or Debtors upon oath, which oath the Officer presiding at such meeting is hereby authorized to administer, as to all matters touching his or their affairs, the honesty and correctness of his or their conduct, and the extent of his or their liabilities, property and assets.

IX. And be it enacted, That a copy of the proceedings at any such public meeting of the Creditors of any Debtor or joint Debtors, held under the provisions of this Act, and so transmitted by such

Clerk of the Peace to the Master of the Rolls as aforesaid, and which shall be filed by the said Master of the Rolls in the Registrar's Office of the Court of Chancery, together with a copy of the Master of the Rolls order or orders made under the provisions of this Act, and certified by the Registrar of the Court of Chancery as true copies, shall be good evidence in any Court of Law or Equity in this Province, of the proceedings of such meetings, and of the services of the notices required under this Act, and of the orders made by the Master of the Rolls thereon, and of the allegations contained in the Debtor or Debtors' Petition to the Master of the Rolls for an order for a public meeting.

X. And be it enacted, That it shall and may be lawful for the said Master of the Rolls for the time being, and he is hereby required to make up a Table of Fees for all the services required, from the Clerk of the Peace and all other persons under this Act, and for carrying out the provisions thereof, including the Solicitor's fees, agreeably to which it shall be the duty of the Registrar of the said Court to tax all Bills of Costs for all the proceedings which shall take place under the provisions of this Act, and whom the said Debtor or joint Debtors taking advantage thereof, are required by the third section of this Act to pay before obtaining his or their order of discharge.

XI. And be it enacted, That if the petitioning Debtor or Debtors, or any other person or persons required under the provisions of this Act to make oath to any fact or facts, or to submit to be examined under oath, shall wilfully make any false statement on oath, or swear to any fact, matter or thing required to be sworn to under the provisions of this Act, or on such examination wilfully swear to any thing untrue or false, he, she or they so making such false statement, or falsely swearing on such examination, shall be and is hereby made liable to be prosecuted for wilful and corrupt perjury, as in other cases, and on conviction thereof, be liable to all the pains and penalties imposed by Law upon persons convicted of wilful and corrupt perjury.

XII. And be it enacted, That at every public meeting of Creditors called under the provisions of this Act, the Clerk of the Peace presiding shall lay before the meeting the copy filed with him as hereinbefore directed, of the petitioning Debtor or Debtors' Petition to the Master of the Rolls, and the statement accompanying the same, on which the order for such public meeting shall have been granted.

XIII. And be it enacted, That if at any public meeting of Creditors called under the provisions of this Act, any person or persons not named in such Debtor or Debtors' Petition as a Creditor or Creditors, shall attend in person or by Attorney, or if any of the Creditors of such petitioning Debtor or Debtors named and described as such in the said Petition, shall claim or contend at such meeting for a larger sum as due to him or them, than such Debtor or Debtors in his or their said Petition to the Master of the Rolls as aforesaid has named in such Petition as due to such Creditor or Creditors, it shall not be lawful for such Creditor or Creditors not named in such Petition, or for those claiming beyond the sum named in such Petition, and refusing to reduce their claim to the sum named in such Petition, to vote or rank as a Creditor or Creditors at such meeting until such Creditor or Creditors shaft by the affidavit, (or being a Quaker, by the solemn affirmation in writing,) of such Creditor or Creditors, or of some other credible person or persons, set forth the amount justly due to such Creditor or Creditors, over and above all discounts from such Debtor or

Debtors, which affidavit shall be sworn to before the Clerk of the Peace presiding at such meeting, who is hereby authorized to administer the same, or before some Commissioner for taking affidavits to be read in the Supreme Court.

XIV. And be it enacted, That if on the examination of the petitioning debtor or debtors at any public meeting of creditors called under the provisions of this Act, it shall appear, under oath as aforesaid, to the satisfaction of the Clerk of the Peace presiding at such meeting, that such petitioning debtor or debtors shall have included in his or their petition to the Master of the Rolls any person as a creditor who is not in truth and fact a creditor, or as a creditor for a lesser or greater amount than the sum named in such petition, or that such petitioning debtor or debtors shall have omitted in such petition the name and amount of any creditor or creditors who should have been included, it shall and may be lawful for the Clerk of the Peace presiding at such meeting, and he is hereby required to add to or diminish the list of creditors of such petitioning debtor or debtors, and also to increase or lessen the amount of the respective creditors' claims against such petitioning debtor or debtors, according to the facts, and to make such additions, omissions and alterations form part of the minutes of the meeting, and be certified accordingly; and every creditor or his agent in the list, when so corrected by such Clerk of the Peace there present, shall be entitled to vote and rank at such meeting according to the respective amounts of his debts in such list as corrected; but every such creditor, whose claim, if disputed, although so sworn to, and entered upon the list as aforesaid, shall not be allowed to take the benefit of any arrangement or agreement that may be made at any such meeting between such debtor and such three fifths of his creditors then present in number and amount as aforesaid, including any such creditor whose claim may be so disputed as aforesaid, until such creditor whose claim may be so disputed, shall establish the validity of such claim by the judgment of some Court in the Province competent to try the same in due course of Law, or by other creditors as aforesaid shall and may all be lawful for any such creditor, whose debt or debts may be so disputed, and who may be so required to establish the same, to proceed by action notailable at Law, or suit in Equity, as the case may require, according to the ordinary course of Law or Equity against such debtor or debtors, to trial and judgment, notwithstanding any order may be made by the Master of the Rolls for the discharge of any such debtor or debtors from his debts under the provisions of this Act: Provided nevertheless, that no execution against the property or person of any such debtor or debtors who shall have been so discharged, shall issue upon any such judgment so obtained, but that such creditor or creditors so obtaining such judgment or award in his favor shall then be entitled to come in with the other creditors to take the benefit of the arrangement that may have been so agreed to with such debtor or debtors as aforesaid, in due proportion according to the amount of such judgment or award in his favor, and costs.

XV. And be it further enacted, That every creditor of such debtor or debtors taking the benefit of this Act, who may not have signed the arrangement or agreement that may have been made at any such public meeting as aforesaid, shall be at liberty and have full right to come in and participate in any benefit to be derived by the other creditors, under the terms of such arrangement or agreement, in due proportion with the other creditors, by signifying his assent thereto at any time within one year after the making of any such arrangement or agreement, and that all and every the balance of any assets, property or effects that may be given up or assigned

over by any such debtor or debtors for the benefit of his or their creditors under the terms of any such arrangement or agreement, which shall remain undivided and paid in due proportion among the creditors, after the expiration of one year from the making of such agreement, shall then be divided and paid in due proportion to and among the bona fide creditors who may then have come in and assented to such arrangement or agreement: Provided always, that if on such final division among the creditors who may come in within one year as aforesaid, there should be any surplus after paying the creditors who may then have come in, twenty shillings in the pound on the respective amounts of their debts, such surplus shall be paid back to such debtor or debtors, his Executors, Administrators or Assigns.

XVI. And be it enacted, That every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and every word importing the plural number shall extend and be applied to one person or thing as well as to several persons or things, and every word importing the masculine gender only shall extend and be applied to a female as well as a male: Provided always, that those words and expressions occurring in this clause to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there may be any thing in the subject or context repugnant to such construction, and in which such construction could not reasonably be supposed to have been intended.