

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1845.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1845.

8 Victoria – Chapter 88

**An Act further to amend the Law relating to Bankruptcy. Passed 14th April 1845.**

Whereas it is expedient further to amend the Law relating to Bankruptcy;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That in cases where parties Plaintiff have or may become Bankrupt in any action, whether before or after Judgment, in all actions where the sum recovered may form part of the Estate of such Bankrupt, Execution may issue upon such Judgment against the person or property of the Defendant in such Judgment, or both, as the case may be, in the name of the original Plaintiff, in the same manner as if such Plaintiff had not become Bankrupt; provided that the Attorney issuing such Execution shall endorse thereon that such Execution is issued for the Assignee of such Bankrupt, when such is the case; provided that nothing herein contained shall operate to prevent the proceeding to Judgment and Execution in the name of the original Plaintiff for the benefit of any party beneficially interested in such proceeding, when such party shall have been so interested before granting of the Fiat.

II. And be it enacted, That in all cases of the sale of the interest of the Creditors in the outstanding debts of any Bankrupt or Bankrupts, it shall and may be lawful for the Commissioners to whom the Fiat is directed, to order such sale to be made in such and so many lots of the debts, and the interest of the Creditors therein, as he may in his discretion deem expedient, and on completion of such sale to grant a Certificate thereof to each purchaser or purchasers of such debt or debts, in all other respects subject to the provisions of the Laws now in force relating to Bankruptcy: Provided always, that the Commissioner shall have power to direct the Assignee in Bankruptcy to retain any particular debt or debts for the benefit of the Bankrupt's Estate, when the interest of the Creditors of the said Estate shall be promoted thereby.

III. And be it enacted, That the purchaser of any debt or debts shall be deemed and taken to be the Assignee of the Estate and Effects of the Bankrupt or Bankrupts of whose outstanding debt or debts he shall become the purchaser, for the purposes of any suit or action brought for the recovery of such debt or debts.

IV. And be it enacted, That in all suits or actions brought or to be brought by any purchaser for the recovery of such debt or debts, proof of the Fiat in Bankruptcy, and the production of the Certificate of the Commissioner in Bankruptcy, shall be deemed and taken in all respects to be good and sufficient evidence of his or their title to sue as such Assignee.

V. And be it enacted, That in all actions brought or to be brought by any person for the recovery of any personal property purchased from the Assignee of any Bankrupt's Estate, proof of the Fiat in Bankruptcy, of the Warrant appointing the Assignee in Bankruptcy, and of the Execution of the

assignment of the Assignee, of the personal property for the recovery whereof such action is brought, shall be deemed evidence of the title of the Plaintiff in such action, to recover the title and interest such Bankrupt had in the said personal property, at the time the title of the Bankrupt became divested out of him by operation of Law.

VI. And be it enacted, That the Fiat may be proved by the production thereof, or an examined copy thereof, or a copy certified by the Commissioner, on the ordinary proof of the hand writing of such Commissioner, and proof of the Warrant appointing the Assignee may be made in the same manner: Provided always, that nothing herein contained shall be construed to dispense with the proof of the Fiat by the production of the Royal Gazette, as now provided by Law.

VII. And be it enacted, That in cases where the interest of the Creditors in the outstanding debts shall be of small value, or in cases where no claims are proved, the Commissioner may, if he deem it advisable, after the lapse of twelve months from the date of the Fiat, order a sale of the said debts, having previously given due notice thereof in some Newspaper published in the County in which he resides, or if there be no such Newspaper, then in the Royal Gazette.

VIII. And be it enacted, That the Assignee, with the consent of the major part in value of the Creditors may compound with any debtor to the Bankrupt's Estate, and take any reasonable part of the debt in discharge of the whole, or may give time or take security for the payment of such debt, or may submit any dispute between such Assignees and any person concerning any matter relating to such Bankrupt's Estate to the determination of Arbitrators to be chosen by the Assignee and the party with whom they shall have such dispute, and the award of such arbitrators shall be binding on all the Creditors, and the Assignee is hereby indemnified for what he shall do according to the directions aforesaid; provided that in cases where delay shall be deemed injurious to the interests of the Creditors, the Assignee shall have power, with the consent of the Commissioner, testified in writing under his hand, to do any of the matters aforesaid without the assent of the Creditors.

IX. And be it enacted, That when one person shall purchase all the outstanding debts, the Assignee shall have power, by the order of the Commissioner, to sell or otherwise dispose of the Books of Account of the Bankrupt to such person, or in case no claim shall be proved against any Bankrupt within one year after the issuing of the Fiat, the Assignee shall, with the assent of the Commissioner testified in writing, have power to assign the said Books of any Bankrupt or Bankrupts to such Bankrupt or Bankrupts, together with the right to recover any sum or sums of money, debt or demand due thereon, and for which purpose the said Bankrupt or Bankrupts shall be restored to his first and former estate in the same.

X. And be it enacted, That in all actions brought or to be brought by the Assignee of any Bankrupt, or of the debt or debts of any Bankrupt, the Defendant or Defendants in such action may set off any debt, payment or demand which he or they could have set off in any action brought for the recovery thereof by such Bankrupt before the granting the Fiat in Bankruptcy, subject to the same rules and regulations in all respects as to pleading or giving notice thereof, or evidence as in other cases of mutual debts between Plaintiff and Defendant.

XI. And be it enacted, That the Register of the Court of Chancery shall have power, and he is hereby authorized to assign to such person as may be entitled thereto, any Bond heretofore given for securing the costs of proceeding in Bankruptcy, by endorsing and attesting it under his hand and seal, in presence of a credible witness, and the Assignee after such assignment shall have power to sue therefor and bring an action in his own name, and shall recover such sum as may be certified by the Commissioner to be due him for costs taxed by such Commissioner or expenses incurred in the prosecution of the Fiat in payment of Printers' bills, Assignee's fees, Commissioner's fees, Solicitor's fees, or any of the said charges and expenses not exceeding the whole penalty of the said Bond: Provided always, that the Certificate of the Commissioner certifying the amount of such costs or expenses shall be deemed evidence of such costs or expenses and the correctness thereof.

XII. And be it enacted, That every Certificate of conformity, whether absolute or conditional, ordered under the Acts relating to Bankruptcy, shall be confirmed, or the confirmation of the same shall be applied for agreeably to the provisions of the said Acts within six months from the time of such order; provided that in all cases where orders may already have been made for such Certificate, and the time aforesaid may have expired, three months further time shall be allowed in such cases from and after the passing of this Act; and if the said Certificate shall not be confirmed or the same applied for as aforesaid within such time, the said Certificate shall be deemed and taken to be finally refused within the meaning of the twenty fourth section of the Act made and passed in the fifth year of Her present Majesty's Reign, intituled *An Act relating to Bankruptcy in this Province*.

XIII. An be it enacted, That this Act shall be subject to the same rules of construction in all respects as are prescribed by the Act relating to Bankruptcy in this Province, which rules shall also apply to all the Laws now in force relating' to Bankruptcy.