

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1858.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1858.

21 Victoria – Chapter 17

**An Act to amend the Law for the relief of Insolvent Debtors. Passed 6th April 1858.**

Section.	Section.
1. Insolvent may apply specifically to the Clerk of Peace.	13. Debtor may apply to Judge for discharge after composition or assignment.
2. Clerk of the Peace to call meeting of Creditors.	14. Judge to discharge debtor from his debts unless cause be shewn.
3. Payments after notice to other than the Assignees deemed fraudulent.	15. Order for discharge, and other proceedings to be registered.
4. Clerk of the Peace to preside at meeting; examination of debtor.	16. Debtor, if a prisoner, to be discharged.
5. Creditors may be required to prove debts.	17. Creditor omitted by debtor, to participate on proof of debt.
6. Clerk of the Peace may compel attendance of witnesses, &c.	18. Debtor may retain effects to the value of £15.
7. Debtor, if a prisoner, may be brought up.	19. Fraudulent preferences to be void.
8. Debtor may offer a composition.	20. Bond to secure composition may be put in suit.
9. If composition be not accepted, Assignees may be chosen.	21. Copy of Bond and of Judge's order to be evidence.
10. Assignees to give notice of their appointment, and receive assignment of debtor's effects;	22. Penalty for false statement of affairs.
11. To be sworn, collect debts, &c. and distribute proceeds;	23. Act not to apply to Crown debts and distress for rent.
12. to be under direction of Supreme Court; to receive commission.	24. Fees and Forms.
	25. Limitation of Act.
	Schedule: Forms and Table of Fees.

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. When any debtor shall be owing debts to the amount of one hundred pounds, or upwards, and unable to pay the same, he may apply, by petition, to the Clerk of the Peace of the County in which he resides, setting forth, upon oath, in his application, a full statement of his real and personal property, assets and liabilities, the names and residences of his creditors, and the sums due to each of them, the nature of each debt, and whether founded on written security or otherwise.
2. The Clerk of the Peace, on such petition being filed, shall call a meeting of the creditors of such debtor, by giving three months public notice thereof (A) in a Newspaper published in the County where the debtor resides, if any be there published, if not, in the Royal Gazette, of the time and

place and object of such meeting ; and copies of such notice shall also be posted up for thirty days before the meeting in the offices of said Clerk, the Sheriff, and Registrar of Deeds respectively, of the said County.

3. If any person indebted to, or having the possession or control of any property of such debtor, shall, after publication of such notice as aforesaid, pay any debt, or deliver or dispose of any such property to any person but the assignees to be appointed as hereinafter provided, such payment or transfer shall be deemed fraudulent, and such person shall be liable for the same, or the value thereof, to the assignees; and all sales or conveyances of property, and all assignments of debts or rights of action by the debtor, after such publication, shall be void, but sales and levies made under any execution issued out of any Court after such publication, shall not be affected by this Act; but the provisions of this Section shall not extend or apply to any case where the composition offered by the debtor shall be accepted as hereinafter mentioned, or where no assignment shall be made as provided by the ninth Section of this Act.

4. The Clerk of the Peace shall preside at the meeting of the creditors, and after proof of the notice required by the second Section of this Act, shall exhibit to the creditors the petition filed by the debtor, who may then be examined under oath, by any creditor, his agent or attorney, or person interested, as to the subject matter of such application, and the state of his affairs; which examination, as also that of any creditor or witness produced, shall be taken down in writing by the said Clerk, and filed in his office, and the minutes of the proceedings shall be entered in a book kept by him for that purpose: such meeting may be adjourned from time to time as often as occasion requires.

5. Any person named in the petition filed by the debtor, or claiming to be a creditor, may be required to prove his debt: Debts not due at the time of the meeting may be treated as payable upon a rebate or discount of interest.

6. The Clerk of the Peace may on the application of the debtor, or any creditor or person interested, issue an order for the attendance of any witness, or the production of any books or papers before him, which order the party served therewith, on being paid or tendered his reasonable expenses, shall obey on pain of attachment (B), to be issued by the Judge of the Supreme Court on affidavit of the facts.

7. If the debtor shall be a prisoner confined in gaol at the time appointed for the meeting, the Clerk of the Peace may make an order, directed to the officer in whose custody the debtor may be, to bring such debtor before him, and such officer shall not be liable to any action for obeying such order, and such debtor shall be remanded forthwith by the order of the Clerk of the Peace.

8. The debtor may at such meeting offer a composition to his creditors, and if such composition be accepted by a majority in number and amount of the creditors then present, (whose debts have been proved or allowed,) or their agents duly authorized, a deed or instrument in writing setting forth the terms and conditions of such composition, shall then and there be entered into between such debtor and the said creditors; such composition shall be paid within one year, and

shall be secured by the bond (C) of the debtor with one or more sureties to the satisfaction of the Clerk of the Peace, with whom such bond shall be filed.

9. If the composition be not accepted as provided in the preceding Section, a majority of such creditors present at the meeting may choose two or more persons to be assignees of the estate of the debtor; and if no such choice be made the Clerk of the Peace shall appoint the assignees, and shall thereupon adjourn the meeting for seven days; if at such adjourned meeting the assignees so appointed shall not express in writing their acceptance of the trust, other assignees may be appointed in the manner before directed.

10. The assignees on their appointment shall forthwith give public notice thereof (D) in a Newspaper published in the County, if any, otherwise in the Royal Gazette; and upon such publication the debtor shall by deed assign to the said assignees, all his real and personal estate, (except as hereinafter excepted,) with all his deeds, books and papers relating thereto, which assignment shall vest in the said assignees all the property of the debtor, real and personal, and all debts due to the debtor, and the evidence thereof, and all liens and securities therefor, and all his rights of action; and such assignees may sue for and recover in their own names all the said estate, debts and effects.

11. The assignees shall be sworn before the Clerk of the Peace to the faithful discharge of their duty, and shall without delay convert the estate of the debtor into money, collect the debts, and distribute the proceeds thereof (after deducting all necessary expenses) among the creditors, in proportion to their respective debts: they shall enter in a book an account of all their transactions, which book shall be open at all times to the inspection of a creditor or person interested.

12. The assignees shall be subject to the orders and directions of the Supreme Court, in the performance of their duties under this Act: they shall be entitled to receive a commission of five per cent, on all moneys collected by them and paid over, and shall on the performance of their trust file with the Clerk of the Peace a full account of their proceedings, verified by affidavit.

13. Upon the execution of the composition deed, or the appointment of the assignees, as the case may be, the debtor may apply to a Judge of the Supreme Court, who shall on production of a copy of the proceedings of the meeting, certified by the Clerk of the Peace, make an order, that unless cause be shown on a certain day, the said debtor will be discharged from all his debts contracted before the said meeting, except the said composition; which order shall be published in the Royal Gazette for two successive weeks previous to the day appointed therein for showing cause.

14. It shall be the duty of the said Judge, unless sufficient cause be shown to the contrary by any of the creditors of such debtor, such as fraud, undue preference, insufficient proof of any claims, want of full disclosure of his estate, or of due publication of notice of the meeting of creditors, or other substantial irregularity, to make an order under his hand and seal discharging such debtor from all his debts contracted before the said meeting of creditors, except the said composition, (in cases where a composition has been accepted as provided by the eighth Section of this Act;)

provided that no such order shall be made without the production of a certificate from the Clerk of the Peace, that all fees due him on account of the proceedings, and the expenses of advertising the meeting, have been paid or satisfied.

15. The order for discharge shall be registered at full length by the Clerk of the Peace, with the other proceedings, and a certified or examined copy thereof shall be evidence of such order and of the proceedings of such meeting, in all Courts.

16. If at the time of obtaining such order for discharge, the debtor shall be in custody under process issued in any civil suit, the officer in whose custody he may be shall, on the production of such Judge's order, forthwith discharge such debtor.

17. If the name of any creditor shall be omitted from the statement filed, as provided by the first Section of this Act, such creditor may, at any time within six months after the first publication of notice of the meeting, give to the assignees the particulars of his debt, with notice of his intention, on a day to be therein named, to prove the same before the Clerk of the Peace; and if such debt shall be proved to the satisfaction of the Clerk of the Peace, such party shall be entitled to participate with the other creditors under the composition or assignment, as the case may be; and in no case shall the Clerk of the Peace or the assignees distribute the estate among the creditors until after the expiration of six months from the first publication of such notice as aforesaid.

18. Any debtor may retain wearing apparel, household furniture, and the tools or implements of his trade or calling, to the value of fifteen pounds in the whole, and the same shall not pass by the deed assignment.

19. If any debtor, in contemplation of insolvency, shall before the execution of the deed of assignment, as provided in the tenth Section of this Act, make any payment or transfer, to give a fraudulent preference to any creditor, such payment or transfer shall, as to his other creditors, be void, and the assignees may recover from the person so preferred the amount of such payment, or the value of property so transferred, or the property itself; provided such person, when accepting such preference, had reasonable cause to believe the said debtor made such payment or transfer with intent to give a fraudulent preference.

20. Any creditor may apply to a Judge of the Supreme Court, who, upon sufficient cause shewn, may make an order to put in suit the bond given to secure the payment of the composition agreed upon, which order shall vest in the creditor a right to bring an action on the bond in his own name and recovery may be had to the amount of the composition secured to such creditor: such bond may be put in suit at the instance of any other creditors as often as is necessary; provided that the several amounts to be recovered shall not exceed the penalty of the said bond: the successful party shall be entitled to costs.

21. A certified copy of the bond, and of the Judge's order, certified by the Clerk of the Peace, shall be evidence of such bond and order respectively in all Courts.

22. If any debtor shall wilfully make a false statement of his affairs in his petition filed with the Clerk of the Peace, or in his examination at the meeting of creditors, or shall fraudulently conceal or dispose of any property or debts, with intent to defraud his creditors, or to give an undue preference, he shall be guilty of a misdemeanor, and shall also be deprived of all benefit and relief under this Act.

23. This Act shall not apply to debts due to the Crown, nor restrain any landlord from distraining for arrears of rent, not exceeding one year's.

24. The Clerk of the Peace and Sheriff shall be entitled to receive, for his services under this Act, the Fees mentioned in the Schedule; and the several Forms in the Schedule contained, or Forms to the like effect, shall be sufficient.

25. This Act shall continue and be in force till the first day of May one thousand eight hundred and sixty.

Schedule.

(A)

In the matter of A. B. an Insolvent Debtor.

Notice is hereby given, that on the application of A. B., of \_\_\_\_\_ in the County of \_\_\_\_\_ made to me, pursuant to the directions of the Act of Assembly, 21st Victoria, Cap. I appoint \_\_\_\_\_ the \_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ in at \_\_\_\_\_ o'clock in the forenoon, as the time and place for a meeting of the creditors of the said A. B., for the purpose of examining into the state of his affairs, and considering the terms of a compromise to be offered by him under the said Act.

Dated the \_\_\_ day of \_\_\_\_\_ 185 \_\_\_\_

C. D., Clerk of the Peace.

(B)

Victoria, by the Grace of God, &c. To the Sheriff of the County of \_\_\_\_\_ Greeting:

Attach \_\_\_\_\_ and bring him before me to answer for a contempt in disobeying an order of the Clerk of the Peace of the County of \_\_\_\_\_ requiring the said \_\_\_\_\_ to give evidence (or produce papers, as the case may be) on the examination of A. B. an insolvent debtor.

Dated this \_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

[Judge's signature.]

(C)

Know all men by these presents, that we \_\_\_\_\_ are jointly and severally bound to the Clerk of the Peace for the County of \_\_\_\_\_ in the sum of [double the amount of the composition] to be paid to him, for which payment we bind ourselves jointly and severally, our heirs, executors, and administrators, by these presents. Sealed with our seals. Dated the \_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

The condition of this obligation is such, that if the above bounden [debtor] shall pay to the said Clerk of the Peace for the time being, or his assigns, on or before the \_\_\_ day of \_\_\_\_\_ next [the time for paying the composition] the sum of \_\_\_\_\_ being the amount mentioned in a composition deed between the said \_\_\_\_\_ [debtor] and his creditors, dated the \_\_\_ day of \_\_\_\_\_ and entered into at a meeting of the said creditors held pursuant to the Act of Assembly, 21 Victoria, Cap. \_\_\_\_\_ according to the terms and conditions of the said composition', then this obligation shall be void, otherwise to remain in full force.

Sealed and delivered  
 in presence of }

(D)

Notice is hereby given, that the undersigned have been appointed assignees of the estate and effects of A. B., an insolvent debtor, and have been duly sworn according to the directions of the Act of Assembly, 21 Viet. Cap. \_\_\_\_\_. All persons indebted to the said A. B. are required to pay to us forthwith all sums of money due from them, and to deliver to us the said property and effects; and all creditors of the said A. B. are required to deliver to us, on or before the \_\_\_ day of \_\_\_\_\_ next, [six months from the first publication of the notice of meeting of creditors] their respective claims and accounts against the said A. B.

Dated this \_\_\_ day of \_\_\_\_\_

C. D. }  
 E. F. } Assignees  
 G. H. }

TABLE OF FEES

Filing application for meeting,	-	-	-	£ 0	1	0
Notice of meeting and copies,	-	-	-	0	10	0
Presiding at the meeting and taking minutes,	-	-	-	1	3	4
For every additional sitting,	-	-	-	1	3	4
Order for witnesses' attendance,	-	-	-	0	2	6
Each copy,	-	-	-	0	1	0
Order to bring up debtor,	-	-	-	0	2	6
Bond to secure composition,	-	-	-	0	5	0
Assigning bond,	-	-	-	0	2	6
Entering proceedings in book, per folio,	-	-	-	0	0	6
Copies of all proceedings, when required, per folio,	-	-	-	0	1	0

SHERIFF'S FEES

For bringing up debtor on order,	-	-	0	5	0
Each day's attendance, -	-	-	0	10	0