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27 Victoria – Chapter 44

An Act to facilitate the winding up of the affairs of Incorporated Companies. Passed 13th April, 1864.

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Whereas it is expedient for the benefit of creditors, and also of the members of such Companies as are hereinafter mentioned, to give them a speedy and inexpensive means of winding up the affairs of such Companies when unable to meet their pecuniary engagements and liabilities;—

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

1. That the word "Company," when used in this Act, shall be construed to mean any incorporated Company, whether formed or subsisting before or after the passing of this Act, other than and excepting Railway Companies, to which last mentioned Companies and to ordinary Co-partnerships, this Act shall not apply.

2. The word "Court," whenever it occurs in this Act, shall be construed to mean the Supreme Court of Judicature or any Judge thereof, before which Court, or any Judge thereof, all and every of the proceedings under this Act may be had and taken; provided that any such proceeding of any Judge shall be subject to appeal to the whole Court in Term.

3. A Company may be wound up under this Act by the Court—

1st. Whenever the Company, at a general meeting, has passed a special resolution concurred in by a majority in number and value of the shareholders therein, requiring the Company to be wound up;

2nd. Whenever the Company has forfeited its charter by non-user or otherwise, or suspended its business for the space of a whole year, or shall become dissolved by effluxion of time;

3rd. Whenever the Company is insolvent;

4th. Whenever three fourths of the capital of the Company have been lost or become unavailable.

4. Every Company already formed shall within three months after the passing of this Act, and every Company hereafter to be formed shall within two months after its incorporation, fix and declare a chief place of business in this Province, and shall give notice thereof in the Royal Gazette, and shall file a certificate signed by the President of such Company, and under the seal of the Company, setting forth the place so fixed and declared, in the office of the Provincial Secretary; and the production of the Royal Gazette containing such notice, or a copy of the certificate so filed, certified by the Provincial Secretary, shall be sufficient evidence of such chief place of business being so fixed and declared.

5. The return unsatisfied in the whole or in part of any writ of execution against the Company, directed to the Sheriff of the County in which the chief place of business of said Company may be situated, shall be prima facie evidence of insolvency within the meaning of this Act.

6. Service of any notice, order, rule, or writ, in or incident to or preliminary to any proceeding under this Act against or in respect of any Company, may be made upon such Company by leaving a copy thereof at the chief place of business of such Company, with any grown person in charge thereof, or there or elsewhere with the President or Secretary thereof; and if the Company have no known place of business, or be without any known President or Secretary, then upon a statement to that effect being made under oath to the Court having the requisite jurisdiction, such Court shall order the publication for one month in the Royal Gazette of such notice, order, rule, or writ, or the substance thereof respectively, which publication shall be held to be due notice thereof.

7. Any application for the winding up of any Company shall be by Petition to the Court, and shall be verified by affidavit or other sufficient evidence; and in cases when the Company is insolvent, such petition may be filed either by a creditor whose debt has remained unsatisfied after such

proceedings as aforesaid taken to compel payment thereof, or by any member of the Company liable to become a contributory towards the payment of its debt; but when any ground other than the non-payment of debt is alleged for the winding up of the Company, such contributory alone shall be entitled to make such application.

8. Notice of such petition, with a copy of the same, and affidavit of verification and of the day on which such petition is to be presented for hearing thereof before the Court, shall be served upon the Company at least ten days before such presentation thereof, and shall also be given by advertisement to be twice inserted in the Royal Gazette, and twice in some newspaper (if any) published in the County in which the chief place of business of the Company is situated; provided always, that the Court may at the hearing of the petition direct the same to stand over, and order such further notice to be given as to the Court shall seem meet; and provided also, that the Court may in its discretion proceed upon the production of the Royal Gazette with such notice as aforesaid, in case no better service, after due diligence can, in the opinion of the Court, be effected within a reasonable time.

9. Upon hearing of any Petition for the winding up of any Company, filed by such creditor or contributory as aforesaid, the Court may make an order for the winding up of the Company, which order shall be forthwith published in the Royal Gazette, and shall therein fix a day for the appointment of a Curator to said Company, and shall therein require the creditors and members of such Company to appear before the Court on such day, to give their advice as to such appointment; and such Court shall on such day, after hearing any suggestion made by any creditor or contributory, but without being bound by any such suggestion, nominate and appoint a Curator of such Company, and in the event of such Curator neglecting to put in security as hereinafter provided, or refusing to accept such appointment, or afterwards becoming incompetent by reason of death, absence from the jurisdiction, removal by the Court, or other cause, to perform the duties thereof, an other and like appointment of a Curator may from time to time be made in like manner as the first appointment.

10. Such Curator shall give such description and amount of security for the due performance of his duties as the Court may determine, and may be called upon by the Court from time to time to substitute and give, and he shall thereupon give fresh or additional security; and upon the completion of such security shall become and be vested, in his capacity of Curator, with all moneys and securities for money, documents, papers, books of account, estate, effects and assets of the Company generally; and shall have power forthwith thereupon as such Curator to take possession thereof, and in his said capacity to institute and maintain any kind of action, attachment or proceeding for obtaining and maintaining possession of such estate and effects, and of every part and portion thereof, which could be instituted or maintained by such Curator, if he were the absolute and unconditional proprietor thereof; and a copy of the order appointing such Curator, authenticated by the seal of the Supreme Court, shall be *prima facie* evidence of such appointment and of such security having been given.

11. The Curator shall give twelve weeks notice of his appointment, and of the order for winding up, in the Royal Gazette, and shall in such notice call upon all persons owing the Company to pay

up, and all creditors to file with him their claims against the Company, verified by oath, and in Form A in the Schedule of this Act, written within three months from the first publication of such notice; and the dividends from time to time to be ordered, shall be paid to those creditors whose accounts may have been filed at the time mentioned in such notice; other creditors may file their claims, but shall only be entitled to the dividends thereafter ordered, unless on the final distribution there shall be sufficient assets to pay all the liabilities and the expenses of winding up the affairs of the Company.

12. After the appointment of such Curator, all suits against the Company shall be stayed, unless the Court, on application to that effect by the plaintiff, and after notice to the Curator, shall authorize the plaintiff to proceed with such suit, and such order may be made subject to such provision as to future costs as the Court may think fit to make; and no member or officer of the Company, after such appointment as aforesaid, shall dispose of any of the property or assets of the Company, and no subsequent transfer of any share or interest in the Company shall be valid.

13. No transfer of any share or claim in any Company, made by any shareholder or contributory within three months next before the application upon which an order for winding up such Company shall be granted, shall relieve any shareholder or contributory from liability to the Company or its Curator, for all calls which may be made by order of the Court for unpaid stock, or for which, by virtue of the Charter or Act of incorporation, he would have been liable had he not transferred the same.

14. Upon application by the Curator, the Court may from time to time order such calls to be made, by a per centage paid to the Curator on all unpaid stock in the Company, as shall appear to be necessary towards paying the liabilities of the Company, and the expenses of winding up its affairs, and notice of such calls shall be advertised in the Royal Gazette.

15. Whenever the Court shall make an order for any call upon stockholders or contributories against unpaid stock, the Curator may sue any stockholder or contributory in an action of debt in his own name for the amount of such call, before any Court having jurisdiction to the amount of such call, and proof of the amount of such shareholder's or contributory's stock; and the order of the Court, or a copy thereof under the hand of the Clerk of the Pleas, or of any Judge of the Court, shall be *prima facie* evidence of the debt, and he shall have judgment and execution for the amount and costs, in the same manner in all respects as for a debt due to himself personally, but for the benefit of the estate.

16. The Curator appointed shall as soon as possible, without unreasonable sacrifice thereof, convert the moveable assets into money, and collect the outstanding debts and unpaid stock subscriptions due to the Company, and for that purpose may sue or be sued in his own name as Curator, and may sell in the manner he may deem most advantageous, all personal or moveable property of the Company, and, subject to an order of the Court to be obtained in that behalf, may refer debts or claims to arbitration, or compound or compromise the same; and as to the immoveable property thereof, the same shall be sold by such Curator when so ordered by the Court, after such publication and notices, and after the expiration of such time as the Court in such

order shall appoint, and when regularly made, such sale shall have the same effect as if made by the Company, and shall convey the same title as such Company could convey, and no other title may be conveyed by any deed signed and sealed by the said Curator, or by any vesting order made by the Court.

17. The Curator shall file semi-annually with the Clerk of the Court a statement of the assets in his hands, and of the claims filed with him, verified by affidavit; and if at any time between the periods of such filing, he shall have sufficient assets to pay ten per centum on the claims filed, he shall make a special return thereof so verified, to the end that the Court may order a dividend to be paid to the creditors.

18. Whenever the amount of moneys realized from the assets of any Company shall appear to the Court to warrant a dividend thereof, the Court shall make an order for such dividend as the moneys so realized will warrant, which shall immediately thereafter be notified by the Curator in a local newspaper, if any, and if not, then in the Royal Gazette, and shall be paid to such creditors respectively on demand.

19. The Curator of any Company appointed in manner aforesaid shall be an officer of the Court appointing him, subject to the summary order and rule of that Court as to all matters, things and duties confided to and imposed upon him by this Act; and his accounts shall be subject to contest, the performance of his duties to be enforced, and his acts in his said capacity to be restrained and regulated in every respect on summary application by petition or motion to the Court which appointed him, and he shall be liable to attachment or removal by the Court for misconduct, or for want of sufficient security; provided always, that when the bringing or defending of any suit, or the doing of any act in the winding up of any Company, shall or may be attended with more costs than the Curator thereof shall think it expedient to lay out or risk, and any application be made to compel him to bring or defend such suit, or to do such act, the Court may order such Curator to bring or defend such suit or to do such act, as the case may be, but on the condition only that the applicant shall give good and sufficient security to such Curator for the payment to him of any costs which may be incurred by him in obedience to such order.

20. If there be any surplus of the funds realized from the assets of any Company, after the payment of all the creditors thereof in full, the same shall first be devoted to the adjustment of the rights of the contributories among themselves, and afterwards shall be distributed pro rata among the contributories.

21. The Court may at any time, and from time to time, make calls on any of the contributories to the extent of their respective liabilities, for payment of all or any of the sum or sums for which they are liable, and in the proportion in which the contributories are so liable, and to the amount thereof which the Court may deem necessary to satisfy the debts of the Company, and the costs, charges and expenses of winding it up; and it may, in making such calls, take into consideration the probability of some assets not yet collected being realized, and some liabilities not yet ascertained becoming debts.

22. No contributory to any Company in process of being wound up under this Act, shall be entitled to set off any claim he may have against such Company by way of set off to the unpaid balances of stock held by him in such Company, unless such set off shall have been allowed and credited to him on the books of the Company on account of such unpaid balance, previous to the application for the order to wind up such Company, and by express order of the Directors or Managers thereof.

23. There shall be paid to the Curator such salary or remuneration, by way of per centage or otherwise, as the Court may direct.

24. When the affairs of the Company have been completely wound up, the Court shall make an order declaring the Company to be dissolved from the date of such order, and thereupon the Company shall be dissolved accordingly.

25. The Court, as often as circumstances may require, may make such rules concerning the mode of proceeding to be pursued for winding up a Company, and may establish such table of fees, applicable to all proceedings under this Act, as from time to time may appear meet and necessary; and until such rules and such table of fees are made, it shall be competent to the Court to make any order it may deem just, and which shall not be inconsistent with this Act, for winding up any Company, and for the proceedings necessary therefor under this Act, and any power or direction contained in any such order, shall be deemed to have been fully authorized by this Act.

26. This Act shall not apply to or affect suits now pending, or to any Companies which have discontinued business, or which have been dissolved before the passing of this Act.

27. Nothing in this Act contained shall affect any existing privilege or priority of one creditor or class of creditors over another, or be construed to operate any change in the liabilities of parties.

SCHEDULE A.

New Brunswick, ss.

In the Supreme Court.
In the matter of [name the Company.]

A.B. of _____ in the County of _____ claims of the [name the Company] the sum of _____ due him as follows:—

[Particulars of claim, which may refer to an Account in detail annexed.]

The above claimant (or C.D., Agent, or Clerk, as the case may be) maketh oath and saith that the foregoing claim is correct and true, and that the sum of _____ thereby demanded is justly due him by the said Company.

Sworn to, &c.

A.B.
or
C. D.