



A N N O N O N O

VICTORIÆ REGINÆ.

C A P. X X X.

An Act to continue and amend the Bankrupt Laws now in force in this Province.

[9th June, 1846.]

WHEREAS it is expedient to continue, with certain amendments and provisions, the Act hereinafter mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the Act passed in the seventh year of Her Majesty's Reign, and intituled, *An Act to repeal an Ordinance of Lower Canada, intituled, 'An Ordinance concerning Bankrupts, and the Administration and Distribution of their Estates and Effects,' and to make provision for the same object throughout the Province of Canada*, shall be and is hereby continued, and shall remain in force until the first day of June next, and thence until the end of the then next Session of the Provincial Parliament; and no longer, subject to the amendments and provisions hereinafter made, which shall apply to and affect all proceedings to be had, or things to be done after the passing of this Act, although such proceedings or things may relate to cases in which the Commission of Bankruptcy shall have issued before the passing hereof; but the said provisions shall not apply to or affect any proceeding had or thing done or any decision given, before the passing hereof, in any such case, save and except in so far as it may, in either section of this Province, be held that they or any of them may be inferred from those in the said Act, as the legal consequences thereof; and to be therefore only declaratory of the existing law; and their enactment in this Act shall not be construed to prevent such inference, if without this Act it could have been fairly made.

Preamble.

Act 7 Vict. c. 10, continued with amendments, to 1st June, 1847, and to the end of the next Session.

II. And be it enacted, That (except as hereinbefore excepted) the following provisions of this Act shall have force and effect, upon, from and after the first day of July next, one thousand eight hundred and forty-six, and not before.

Commencement of this Act.

III. And be it enacted, That if in any case wherein, by virtue of the Act of the Legislature of Lower Canada, passed in the ninth year of the Reign of His late Majesty,

Not appearing when called in the manner

Majesty,

provided by the Act of L. C. 9 Geo. 4, c. 28, to be an Act of Bankruptcy.

Majesty, King George the Fourth, and intituled, *An Act to facilitate the proceedings against the Estates and Effects of Debtors in certain cases*, a notice shall have been inserted by order of the proper Court, in a public newspaper and in the manner by the said Act provided, for a Trader Debtor to appear in such Court within two months, and await the judgment of the Court, then, if such Trader Debtor shall not appear, either in person or by attorney, within the time specified in such notice, and show reasonable cause why the Court should not proceed to judgment in the suit or action, the default of such Trader so to appear shall be an act of Bankruptcy.

Bond under sects. 5 & 8 of 7 Vict. c 10, to be void after a certain lapse of time without action.

IV. And be it enacted, That the Bond given under the provisions of the fifth and eighth sections of the first above cited Act, to pay whatever sum shall be recovered in any action which shall have been or shall thereafter be brought for the recovery of any demand or residue of a demand, shall be null and void against the sureties, after the lapse of one year from the date thereof, unless the action for the recovering of such demand or residue shall have been brought within the said period of one year.

Proof must be made that the party is a trader, before a Commission can issue.

V. And be it enacted, That in addition to the proof of the Act of Bankruptcy required by the twenty-second section of the Act first above cited, before any Commission of Bankruptcy can issue, it shall also be requisite that it be proved to the satisfaction of the Judge or Commissioner, by the oath of at least one credible witness, not being a Creditor, that the party alleged to have committed the act of Bankruptcy is a Trader within the meaning of the said Act.

Sheriff authorized to break open doors, &c, where Bankrupt's effects may be, and to seize such effects wherever found.

VI. And be it enacted, That the Commission of Bankruptcy shall be sufficient warrant and authority to the Sheriff to whom it shall be directed to break open any house, chamber, shop, warehouse or door, or any trunk, chest, desk or other thing, in any place where the Bankrupt or any of his effects shall be reputed to be, or the Sheriff shall have reasonable cause to suspect they are, and to seize upon and secure the effects of such Bankrupt, wherever they shall be found in his possession, or in the possession of any other person.

Ten days before advertisement of final dividend, Assignee to file an account between himself and estate.

VII. And be it enacted, That ten days before a final dividend shall be advertised under any Bankrupt's estate, the Assignee shall file in the record of proceedings in such case a Debtor and Creditor account between the said Assignee and such estate, showing also the monies remaining uncollected under such estate and the cause thereof, a copy of which account shall be delivered to any Creditor applying for the same, who shall have proved a debt under such Commission of Bankruptcy, upon his application, and on payment of a reasonable remuneration for the same.

Rights of the Lessor, &c, under leases made to persons afterwards becoming Bankrupt.

VIII. And be it enacted, That the lessor of any lands or real property under a lease originally made for more than one year, to a Trader subsequently made a Bankrupt, shall be paid his rent in full to the end of the then current yearly term, provided the Commission issue three months before the expiration of the said yearly term, from and out of the net proceeds of the personal effects of the Bankrupt in and upon the said lands and real estate at the date of the said Commission, after payment of the expenses incident thereto; if the other estate of

of the Bankrupt be insufficient for the payment of the said expenses or part thereof; and at the expiration of the said yearly term the lease shall be cancelled by the Bankruptcy, unless the Assignee shall declare his option to continue the lease according to its tenor, for the benefit of the Creditors, in which case the lessor shall receive the present value of his rent to the end of the term, which said present value shall be calculated on the rent stipulated to be paid by the lease, and the unexpired term of the lease may be sold or otherwise dealt with by the Assignee as the other property of the Bankrupt.

Lease to be cancelled unless the Assignee declare his option to continue it.

IX. And be it enacted, That any Bankrupt entitled to any lease, or agreement for a lease, shall not, if the Assignee accepts the same, be liable to pay any rent accruing after the date of the Commission, or to be sued in respect to any subsequent nonobservance or nonperformance of the conditions, covenants or agreements therein contained: and if the Assignee decline the same, shall not be liable as aforesaid, in case he deliver up such lease or agreement to the lessor or the person agreeing to grant a lease, within fourteen days after he shall have had notice that the Assignee shall have declined as aforesaid; and if the Assignee shall not (upon being required) elect whether he will accept or decline such lease or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, shall be entitled to apply by petition to the Judge or Commissioner, who may order him to elect and to deliver up such lease or agreement in case he shall decline the same, and the possession of the premises, or may make such other order therein as he shall think fit.

Assignee must elect whether he will accept or decline any lease or agreement for a lease.

Bankrupt discharged from further payment under it if he deliver it up as hereby required.

X. And be it enacted, That if any Bankrupt shall have entered into any agreement for the purchase of any estate or interest in land, the vendor thereof or any person claiming under him, if the Assignee of such Bankrupt shall not (upon being thereto required) elect whether he will abide by and execute such agreement or abandon the same, shall be entitled to apply by petition to the Judge or Commissioner, who may thereupon order him to deliver up the said agreement, and the possession of the premises to the vendor or person claiming under him, or make such other order therein as he shall think fit.

Case of Bankrupt having agreed to purchase land, provided for.

XI. And be it enacted, That the Judge or Commissioner shall have full power and authority to require and compel any witness summoned before him under the thirty-sixth section of the Act first above cited, (which word "witness" shall be held to mean every person, without any exception, whom the said Judge or Commissioner shall believe capable of giving any information concerning the several matters which may arise in any Bankruptcy, or to give evidence in such matter, any law, usage or custom to the contrary thereof notwithstanding,) to produce any and all books, papers, writings, plans or other documents whatsoever which may be in the custody or power of such witness, and may appear to such Judge or Commissioner requisite to the verification of the evidence of such witness, or to the full disclosure and understanding of any matter or thing which such Judge or Commissioner is authorized to inquire into.

Judge or Commissioner may compel the production of papers, &c., in the power of any witness.

Who shall be deemed a witness.

XII. And, in amendment of the forty-first section of the said Act, in so far only as regards any person or persons against whom a Commission of Bankruptcy may issue after the passing of this Act—Be it enacted, That at the second general meeting

Sect. 41 of 7 Vict. c. 10, amended, as to persons becoming Bankrupts hereafter.

In what case and how composition may be offered and proceedings upon such offer.

meeting of Creditors, after the Creditors who may not have proved their debts at the first general meeting, but who are then able to prove their said debts, shall have proved the same, and after the Bankrupt shall have taken and subscribed the oath prescribed by the fortieth section of the said Act, such Bankrupt or his friends, (and in case of a Company, one or more of the partners thereof) may offer a composition to the Creditors on the whole debts (including those debts not proved) with security for the payment of the same, and if the majority of the Creditors in number and value, present at such meeting, shall resolve that the offer and security be entertained for consideration, the Judge or Commissioner shall order a meeting to be held not sooner than twenty days and not later than sixty days from the time of the making of such offer of composition for the purpose of deciding on such offer, and the Assignees shall forthwith advertise, in the Canada Gazette, that an offer of composition has been made and entertained and that it will be decided upon at the meeting ordered to be held for that purpose, and shall specify the hour, day and place, and also (so far as may be possible) transmit by post letters to each of the Creditors claiming upon the estate, or mentioned in the Bankrupt's Schedule of his Creditors, containing a notice of such resolution and of the day and hour at which and place where the said meeting is to be held, and specifying the offer and security proposed, and giving an abstract of the state of the affairs and of the valuation of the estate, so far as the same can be done, to enable the Creditors to judge of the said offer and security; and if any Assignee fail to perform the duties imposed upon him by this section of this Act, he shall be liable to dismissal from his office, upon Petition to the Judge or Commissioner, and be condemned to pay costs and have no claim for any commission or remuneration, but no such failure or neglect, on the part of the Assignee, shall prevent or retard the composition between the Bankrupt and his Creditors, as hereinafter provided for.

Penalty on assignee failing to perform his duty in such case.

If a certain number of Creditors accept the offer made by the Bankrupt, a bond with sureties to be lodged with Clerk of the Bankrupt Court.

Bankrupt to make a declaration.

Objections may be heard and determined.

Composition may be approved and de-

XIII. And be it enacted, That, if at the meeting ordered to be held for the purpose of deciding upon the offer of composition, at least two-thirds in number and at least four-fifths in value of the Creditors having each proved debts to the amount of twenty pounds or upwards, shall accept the said offer and security, a bond for the payment of the composition, executed by the Bankrupt or his friends, as the case may be, and the proposed surety or sureties shall be lodged with the Clerk of the Bankrupt Court, after having been previously acknowledged before the said Judge or Commissioner by the said Bankrupt and his surety or sureties, and the Bankrupt shall make and subscribe a Declaration, or if required by any Creditor an oath, that he has made a full and fair surrender of his Estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement, or transaction to obtain the concurrence of any creditor to the said offer and security: and, if the Judge or Commissioner, after hearing any objections that may be made by any of the creditors, shall find that the offer with the security has been duly made, and is reasonable, and has been assented to by at least two-thirds in number and at least four-fifths in value of all the Creditors of the said Bankrupt, who have each proved debts to the amount of twenty pounds or upwards, and if the said Judge or Commissioner be satisfied with the said oath or declaration, he shall approve of the proposed Composition, and shall pronounce a deliverance, discharging the Bankrupt of all debts due by him at the date of the Commission, and from all claims

claims and demands proveable under the Commission, and shall declare the Commission of Bankruptcy at an end, and the Bankrupt re-invested in his estate (reserving always the claims of the Creditors for the said Composition against the Bankrupt and his surety and sureties,) and the Bond executed as aforesaid shall remain of record in the Court of Bankruptcy from which the Commission against the Bankrupt issued; and the deliverance so pronounced shall operate as a complete discharge and acquittance to the Bankrupt in the terms thereof, but shall not release or discharge any person who was partner with the Bankrupt at the time of his Bankruptcy, or who was bound either as a debtor or surety, or otherwise, for any of the debts included in the said Composition, unless such persons be expressly mentioned in the said offer of composition, in order to be discharged thereby: and the said Bond so executed and fyled as aforesaid shall be available to all the creditors mentioned in the Schedule of the Bankrupt's Creditors as well to those who may not have proved as to those who shall have proved their debts; Provided always, that no composition and deliverance as aforesaid shall operate as a discharge, or in any way defeat or affect any debt due by the Bankrupt not included by him in the Schedule of debts due by him; and provided also, that the Judge or Commissioner pronouncing any such deliverance shall determine the amount of compensation to be paid to the Assignee for his services, and the Bankrupt and his surety or sureties shall be jointly and severally liable for the due payment of all the costs of the proceedings in the Court of Bankruptcy, which, if such composition had not been made would have been payable from and out of the Bankrupt's Estate, and also for the due payment of the compensation due to the Assignees: and the Judge or Commissioner shall attach such conditions to the delivery of the Estate to the Bankrupt, as may appear to him to be necessary to secure the punctual payment of the said costs and compensation; and provided also, that if the Judge or Commissioner refuse to sustain the offer of composition, he shall, in his judgment respecting the same, specify the grounds of refusal and an appeal in the usual course shall lie at the instance of any of the Creditors or of the Bankrupt himself to the Court of Review.

liverance pronounced.

Effect of such deliverance.

Proviso as to debts not in the Schedule.  
Proviso as to fees of assignee and costs.

Conditions to be attached to deliverance.  
Proviso: reasons of disallowing offer to be assigned.

XIV. And be it enacted, That the forty-second section of the said Act shall be and is hereby repealed, and it shall be lawful for the Governor from time to time to appoint in each District of this Province a proper person to be and act as Clerk in all matters of Bankruptcy, and under all Commissions of Bankruptcy issued in such District; and the Clerk who shall have been appointed before this Act shall come into force, in any case of Bankruptcy, shall forthwith deliver over all papers filed in the course of the proceedings in such case or in any way relating to the same and in his custody, to the Clerk to be appointed in and for the said District, and may be committed by the Judge or Commissioner for contempt if he shall fail to obey any order made in that behalf; and it shall be the duty of such Clerk to keep a record of all regular meetings of Creditors in every case of Bankruptcy in his District, and of all the proceedings thereat, and to preserve and keep all papers duly filed in the course of the proceedings, and perform all such other duties appertaining to his office as shall be prescribed by the Judge or Commissioner, (or a majority of them if there be more than one,) and the record of the proceedings in each case and of the Certificate of Discharge, and copies of all such papers or proceedings in the custody of the said Clerk, or any part thereof, signed by him and certified by the Judge or Commissioner (or one of the Commissioners)

Sect. 42, of 7 Vict. c. 10, repealed, and a Clerk to be appointed to act instead of the Clerks appointed under the said section; and to receive papers, &c from them.

His duties.

Use of certified copies of proceedings in evidence.

Commissioners) shall be deemed authentic and shall be admitted as evidence, *prima facie*, of the facts therein stated and contained, in all Courts in this Province.

Acts of one Judge or Commissioner in any case to bind the rest in the same District.

XV. And be it enacted, That in every District for which there shall be more than one Judge or Commissioner authorized to issue Commissions of Bankruptcy, any official act done, or any judgment given, or order made in any case in Bankruptcy, by one or more of such Judges or Commissioners shall bind the rest, and shall not be subsequently set aside, altered or inquired into by them or any of them, or otherwise than by the proper Court of Review; but the Judges or Commissioners sitting in each case at any time, shall take up and continue the proceedings therein, from the point to which they shall have been brought by the Judges or Commissioners who shall have then last sat in such case.

Recital.

XVI. And whereas there are cases in Bankruptcy commenced under the Ordinance of Lower Canada concerning Bankrupts repealed by the Act hereby amended, by the Commissioners of Bankrupts appointed to execute the same, and also in cases commenced by the said Commissioners under the said Act, in which all the proceedings prescribed by the said Ordinance and Act have been had and completed, save and except the performance of certain Ministerial Acts by, or the affixing of the signatures of such Commissioners to the Certificates authorized by the said Ordinance and Act, and in respect to which Ministerial Acts and affixing of signatures the Commissioners of Bankrupts under the said Act have no power or jurisdiction, and the said Commissioners under the said Ordinance by reason of their removal from office and by lapse of time have been unable to perform such Ministerial Acts or to affix such signatures: Be it enacted, That it shall be lawful for any person having heretofore held the office of Commissioner of Bankrupts, under the said Ordinance, to do and perform any Ministerial Acts which may be necessary to complete and terminate such proceedings, and to grant and affix his signature to such Certificates in all cases in which such person (having then power in his discretion so to do) intended to perform, or would have performed such Ministerial Act, or intended to grant and would have granted, or affixed his signature to such Certificate and Certificates before such removal from office or lapse of time, and all such Ministerial Acts and Certificates wherever made and executed within the limits of Lower Canada, shall be good and valid, and shall avail in like manner and as if the same had been performed or made and granted previously to such removal from office of such person or to such lapse of time, and shall be confirmed by the Court of Review where confirmation may be required.

Certain merely Ministerial Acts may be performed by persons having been Commissioners of Bankrupts although they may have ceased to be so.

Contempt of Court how punished.

XVII. And be it enacted, That the Judges or Commissioners sitting in Bankruptcy, shall have full power to punish by attachment and commitment to prison; all acts of wilful neglect or refusal to obey any lawful order of any Judge or Commissioner so sitting.

Punishment of persons insulting Judge or Commissioner, &c.

XVIII. And be it enacted, That if any person shall wilfully insult any Judge or Commissioner, during his sitting or attendance in Court, or shall wilfully interrupt the proceedings of any Bankrupt Court, the Judge or Commissioner may impose on such offender, a fine not exceeding ten pounds currency; and in default of payment, may, by warrant under his hand and seal, cause such fine to be levied by distress and sale of the goods and chattels of the offender, and in default of sufficient

sufficient distress, may commit such offender to gaol, for a term not exceeding one calendar month.

XIX. And be it enacted, That the Common Gaols in the several Districts of this Province shall be the Prisons of the Courts of Bankruptcy and of Review in and for the said Districts respectively; and that all Sheriffs, Gaolers and their Deputies and Officers, Constables and Peace Officers shall aid, assist and obey the said Courts, in the exercise of their jurisdiction when thereunto required.

Common Gaols to be the prisons of the Bankrupt Courts.

XX. And be it enacted, That if any Bankrupt, after the passing of this Act, shall be found not to have kept and produced proper books of account exhibiting from time to time the state of his affairs and business, in the manner and form in which such books of account are kept by Traders using the same calling or business as such Bankrupt, he shall not be deemed to have made a full discovery of his estate and effects; and the want or non-production of such books of account shall be a valid cause for the disallowance or non-confirmation of his Certificate.

A Bankrupt must have kept regular books to entitle him to his Certificate.

XXI. And be it enacted, That it shall not be lawful for any Judge or Commissioner to grant a Certificate for the discharge of any Bankrupt against whom a Commission of Bankruptcy shall issue after the passing of this Act, unless it be proved to the satisfaction of such Judge or Commissioner that four-fifths in number and in value of the Creditors of the Bankrupt who shall respectively have proved debts under the Commission to the value of twenty pounds or upwards, have consented to the granting of such Certificate, and the proof of such consent shall be in writing.

Certificate not to be granted to a Bankrupt, unless assented to by four-fifths in number and value of the Creditors proving debts over £20.

XXII. And be it enacted, That whenever any Commission of Bankruptcy shall have issued in any part of this Province, or whenever any Bankrupt shall be refused his Certificate by any Judge or Commissioner, under any Commission remaining in force, then and in such case it shall not be lawful for any other Judge or Commissioner in any part of this Province to issue any second or other Commission until the said first Commission shall be superseded, nor to grant any Certificate to such Bankrupt on such second or other Commission, if issued before the passing of this Act.

No new Commission to issue or be acted upon until the former Commission be superseded or Certificate granted.

XXIII. And be it enacted, That any Bankrupt who shall refuse or wilfully neglect to execute all such deeds and writings, to indorse all such bills, notes or negotiable papers, or to draw such checks and orders for monies deposited, or to do any other such lawful act or thing as the Assignee of the estate shall, at any time, reasonably require, and which may be necessary for enabling him to demand, recover and receive all the estate and effects of such Bankrupt, shall be held not to have delivered up all that part of his estate in his possession, custody or power, and shall be deemed guilty of felony, and shall be liable to be punished in the manner in and by the fifty-first section of the said Act provided.

Punishment of Bankrupts refusing to execute deeds, &c. required by the assignee.

XXIV. And in amendment of the thirty-third section of the said Act—Be it enacted, That all sales of the real property of any Bankrupt shall be made at the place where the sittings of the Judge or Commissioner are held, or at such other place as the said Judge or Commissioner shall appoint; and that the place of sale

Place of sale of Bankrupt's real property.

sale shall be mentioned in every notice of sale of the real estate of a Bankrupt, nor shall any such property be sold until at least four months after notice of the place of sale shall have been so given.

Titles to estates sold under Commission.

XXV. And be it enacted, That no title to any real or personal estate sold or to be sold under any Commission, or under any order in Bankruptcy, shall be impeached by the Bankrupt, or any person claiming under him, in respect of any defect in the suing out of the Commission, or in any of the proceedings under the same; and that no such title after this Act shall come into operation, shall be so impeached for any other cause, unless the Bankrupt or person claiming under him as aforesaid shall have commenced proceedings to supersede the said Commission and duly prosecuted the same, within twelve calendar months from the issuing thereof.

Persons delivering property of the Bankrupt, or paying debts due to him to his Assignee, indemnified.

XXVI. And be it enacted, That all persons from whom the Assignees shall have received any real or personal estate either by judgment or decree, are hereby discharged in case the Commission be afterwards superseded, from all demands which may thereafter be made in respect to the same by the person or persons against whom such Commission issued and all persons claiming under him or them; and all persons who shall, without action or suit *bonâ fide* deliver up possession of any real or personal estate to the Assignee, or pay any debt claimed by him, are hereby discharged from all claims of any such person or persons as aforesaid in respect to the same, or any persons claiming under him or them; unless proceedings to supersede the Commission have been commenced and proceeded in before such payment or settlement of account.

Sec. 73, of 7 Vict. c. 10, repealed.

XXVII. And be it enacted, That the seventy-second section of the Act first above cited shall be and is hereby repealed.

The Bankrupt may be examined either before or after obtaining his Certificate; and punished if he refuses to answer or to subscribe his examination.

XXVIII. And be it enacted, That it shall be lawful for the Judge or Commissioner, by writing under his hand, to summon any Bankrupt before him whether such Bankrupt shall have obtained his Certificate or not; and in case he shall not appear at the time appointed (having no lawful impediment made known and allowed at such time) it shall be lawful for the Judge or Commissioner, by warrant under his hand and seal, to authorize and direct any person or persons he shall think fit to apprehend and arrest such Bankrupt and bring him before the Judge or Commissioner; and upon the appearance of such Bankrupt, or if he be present at any meeting of his Creditors, it shall be lawful for the Judge or Commissioner to examine him upon oath, either orally or by interrogatories in writing; touching all matters relating to his trade, dealing or estate, or which may tend to disclose any secret grant, conveyance or concealment of his lands, tenements, goods, money or debts, and to reduce his answers to writing, and such examination so reduced to writing shall be signed and subscribed by the said Bankrupt, and if the Bankrupt shall refuse to answer any question put to him by the Judge or Commissioner touching any of the matters aforesaid, or shall not fully answer to the satisfaction of the Judge or Commissioner any such question, or shall refuse to sign and subscribe his examination so reduced to writing as aforesaid (not having any lawful objection allowed by the said Judge or Commissioner,) it shall be lawful for the said Judge or Commissioner, by warrant under his hand and seal, to commit him to the

Common



Common Gaol of the District, there to remain without bail until he shall submit himself to the said Judge or Commissioner, to be sworn and full answers to make to the satisfaction of the said Judge or Commissioner to such questions as shall be put to him, and shall sign and subscribe his examination.

XXIX. And be it enacted, That it shall be lawful for the Judge or Commissioner, in manner aforesaid to summon or cause to be brought before him, all persons connected with or related to any Bankrupt in whatever degree, the wife excepted, any law, usage or custom to the contrary notwithstanding, and in manner aforesaid to examine them or any of them for the finding out and discovery of the estate, goods, chattels or money or debts due to such Bankrupts of concealed, kept or disposed of by them in their own person, or by their own act, or by the Bankrupt or any other person; and they shall, for refusing to appear or to be sworn, or to answer, or to sign or subscribe their examination, or for not fully answering to the satisfaction of the Judge or Commissioner, be respectively liable to the penalty and constraint to which the Bankrupt is liable in the like case.

How any of the Bankrupt's relatives, except his wife, may be examined, and punished for not answering, &c.

XXX. And be it enacted, That any person who at the issuing of the Commission 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 Commission issued) shall, if the Creditor shall prove the debt under the Commission, be entitled to stand in the place of such Creditor, as to the dividend and all other rights under the said Commission, which such Creditor possessed or would be entitled to in respect of such proof; or if the Creditor shall not have proved under the Commission, such surety or person liable or bail shall be entitled to prove his demand in respect to such payment, as a debt under the Commission, (not disturbing the former dividends,) and may receive dividends with the other Creditors, although he may have become such surety, liable or bail as aforesaid, after an act of Bankruptcy committed by such Bankrupt; Provided, that such person had not, when he became such surety, bail, or so liable as aforesaid, notice of any act of Bankruptcy by such Bankrupt committed.

Rights of persons having paid any debt of the Bankrupt as his Bail, &c.

Proviso.

XXXI. And be it enacted, That no action for any dividend shall be brought against the Assignee of the estate of any Bankrupt, by any Creditor who shall have proved under the Commission; but if the Assignee shall refuse to pay any such dividend, the Judge or Commissioner may, on petition, order the payment thereof, with interest for the time it shall have been withheld, and the costs of the application; and if such order be not forthwith complied with, the Judge or Commissioner may, by his warrant, commit such Assignee to the Common Gaol of the District, until the order be obeyed, or the money made by distress and sale of the goods and chattels of such Assignee, which distress and sale may be made under the warrant of the Judge or Commissioner: Provided that in that part of the Province formerly Upper Canada, no Assignee shall be appointed who shall not be a resident householder in the District in which the Commission of Bankruptcy shall be issued.

Remedy against Assignee not paying dividends declared.

XXXII. And be it enacted, That if any Bankrupt shall, before the issuing of the Commission, have contracted any debt payable upon a contingency which shall

Debts depending on a contingency, how proveable, &c.

shall not have happened before the issuing of such Commission, the person with whom the debt has been contracted may, if he think fit, apply to the Judge or Commissioner to order the Assignee to retain the same in his hands until the arrival of such contingency, or until it shall be ascertained that it cannot arrive, and such person may, after such contingency shall have happened, prove in respect of such debt, and receive dividend with the other creditors, not disturbing any former dividends: Provided such person had not, when such debt was contracted, notice of any act of Bankruptcy by such Bankrupt committed; and if it shall be ascertained that such contingency cannot arrive, the sum shall be applied for the general benefit of the Creditors, in the same manner as other assets of the Bankrupt's estate.

Proviso as to notice. If the contingency cannot arrive.

Creditors having suits pending against the Bankrupt must relinquish the same before proving, &c.

And the Bankrupt must be released if in Gaol at the suit of the Creditor proving.

Effect of proving.

Proviso as to costs.

Proviso, if the Commission be afterwards superseded.

If any debt proved in the ordinary manner be disputed by the Assignee or Creditors, the Judge or Commissioner may hear evidence and decide.

XXXIII. And be it enacted, That no Creditor who has brought any action or instituted any suit against any Bankrupt in respect of a demand prior to the Bankruptcy, or which might have been proved as a debt under the Commission against such Bankrupt, shall prove a debt under such Commission, or have any claim entered upon the proceedings under such Commission, without relinquishing such action or suit; and in case such Bankrupt shall be in prison or custody at the suit of or detained by such Creditor, he shall not prove or claim as aforesaid, without giving a sufficient authority in writing for the discharge of such Bankrupt; and the proving or claiming a debt under a Commission by any Creditor, shall be deemed an election by such Creditor to take the benefit of such Commission, with respect to the debt so proved or claimed: Provided that such Creditor shall not be liable to the payment to such Bankrupt or the Assignee of his estate, of the costs of the action or suit so relinquished by him; and that where any such Creditor shall have brought any action or suit against such Bankrupt, jointly with any person or persons, his relinquishing such action or suit against the Bankrupt shall not affect such action or suit against such other person or persons: Provided also, that any Creditor who shall have so elected to prove or claim as aforesaid, may, if the Commission be afterwards superseded, proceed in the action as if he had not so elected, and in bailable action or actions in which a Writ of *Capias ad Respondendum* may issue in Lower Canada, shall be at liberty to arrest the Defendant *de novo*, if he has not put in bail below or perfected bail above in Upper Canada or bail to the action in Lower Canada, or if the Defendant has put in or perfected such bail shall have recourse against such bail by requiring (in Upper Canada) the bail below to put in and perfect bail above within the first eight days in Term, after notice in the Canada Gazette of the superseding such Commission, and by suing, in either portion of the Province, the bail upon the recognizance, if the condition thereof be broken.

XXXIV. And be it enacted, That whenever it shall appear to the Assignee, or to two or more Creditors who have each proved debts to the amount of twenty pounds or upwards, that any debt proved under the Commission, on authentic or notarial deed or otherwise, or for any amount, is not justly due either in whole or in part, such Assignee or Creditors may make representation thereof to the Judge or Commissioner, and it shall be lawful for the said Judge or Commissioner to summon before him and examine upon oath any person who shall have so proved as aforesaid, together with the Bankrupt, and any person whose evidence may appear to the Commissioner to be material, either in support of or in opposition to

to any such debt; any law, usage or custom to the contrary notwithstanding: and if the Judge or Commissioner, upon the evidence given upon both sides, or (if the person who shall have so proved as aforesaid shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced by the Assignee or Creditors as aforesaid, shall be of opinion that such debt is not due either wholly or in part, the said Commissioner shall be at liberty to expunge the same either wholly or in part from the proceedings: Provided, that the Assignee or Creditors requiring such investigation shall, before it is instituted, sign an undertaking, to be filed in the proceedings, to pay such costs as the Judge or Commissioner shall adjudge, to the Creditor who has proved such debt as aforesaid, such costs to be recovered by petition: Provided also, that either party may appeal against the determination of the Judge or Commissioner to the Court of Review.

Proviso as to costs of the contestation.

Proviso: appeal given.

XXXV. And be it enacted, That, in that part of the Province of Canada heretofore called Upper Canada, if, at any time within one month after any Trader shall have given a confession of judgment, or a Warrant of Attorney to confess Judgment, or a *cognovit actionem*, a Commission of Bankruptcy shall issue against such Trader, then such Confession, Warrant of Attorney or *cognovit actionem*, shall be deemed to have been obtained by fraud, and shall be void as against the Assignee under such Commission.

Confessions of Judgments, &c., given in U. C. within a certain time before Bankruptcy to be void.

XXXVI. And be it enacted, That whenever any Circuit Judge or Commissioner in his discretion may see fit, it shall be lawful for such Judge or Commissioner to authorize and direct, and he is hereby, on reasonable cause shewn, required to authorize and direct any and all Assignees to institute any and all actions or suits at law or other proceedings, either at law or in equity, necessary to be instituted or taken in the name of such Assignee or Assignees, although the said proceedings may have for their object solely the benefit and interest of one or other particular Creditor or Creditors: Provided always, that such Creditor requiring any action, proceedings or suit to be instituted, shall give such reasonable security for the costs of the said suit, action or proceedings as the said Judge or Commissioner may direct or order.

Commissioner may direct Assignees to institute actions at law, &c. though only part of the Creditors be interested.

Proviso: costs to be secured.

XXXVII. And be it enacted, That it shall be the duty of the Circuit Judges, acting as Commissioners of Bankrupts for each of the said Districts of Quebec and Montreal, under this Act, forthwith to prepare general Rules and Orders for regulating the forms of proceedings and the practice to be observed in matters of Bankruptcy, not otherwise provided for by this Act, or by the Act hereby amended, and it shall also be their duty forthwith to prepare a Tariff of Fees and Costs, to be allowed and taxable on all matters coming before them; and the said Rules and Orders and the said Tariff shall be submitted to the Judges of the Court of Queen's Bench for the said District of Quebec or of Montreal, for which such Circuit Judges may have been appointed, for the approval and sanction of the said Judges; and it shall be the duty of the said Judges of the said Court of Queen's Bench for each District respectively, and they are hereby required, within ten days from and after the time at which the said Rules and Tariff may be submitted to them by the said Circuit Judges, to approve of or reject the same; and the said Judges of the said Court of Queen's Bench shall have power, if they see fit

Circuit Judges acting as Commissioners of Bankrupts in the Districts of Quebec and Montreal, to prepare general rules and orders, &c. and tariff.

To be approved or rejected by Court of Q. B.

Court of Q. B. may modify such rules, tariff, &c.

When confirmed they shall have force of law.

fit, to change, alter or modify the said Rules and Tariff, or either of them, when so submitted to them, and also at all other times whatsoever, and the said Rules and Orders, when so confirmed by the said Judges of the Court of Queen's Bench, shall become and be Rules of Practice for the regulation of all matters in Bankruptcy, and the Costs so to be fixed as aforesaid shall be taxable by the said Circuit Judges on all proceedings to which the same may respectively apply, and shall and may be recovered as provided for by the seventy-first section of the Act hereby amended.

The District Judges in the District of Gaspé, to be Commissioners of Bankrupts.

XXXVIII. And whereas doubts have arisen as to whether the District Judges in the District of Gaspé have jurisdiction in matters of Bankruptcy; for the removal of such doubts—Be it enacted, That each of the said District Judges shall be, and he is hereby declared to be, in virtue of his office as such District Judge, a Commissioner of Bankrupts in and for the said District; and as such shall have such and the same jurisdiction, power and authority, as are possessed, exercised or enjoyed by any Commissioner of Bankrupts or Circuit Judge in that part of this Province called Lower Canada, by virtue of the said Act hereinbefore in part recited, or of this or any other Act or Law whatsoever.

Duty of persons having in their charge records, &c., relating to Commissions of Bankruptcy issued against estate of persons residing in the District of Gaspé.

XXXIX. And be it enacted, That it shall be the duty of all and every person and persons having in his or their charge, custody or possession, any records or papers relating to any Commission of Bankruptcy, heretofore issued by competent authority, against the estate and effects of any person or persons residing in the said District of Gaspé, or to the proceedings had under such Commission, forthwith to transmit the same to the District Judge residing in the County in which the Bankrupt or Bankrupts resided at the time when such Commission was issued; and such District Judge is hereby authorized and required to receive the same, and thereupon to appoint a Clerk into whose custody he shall transfer the records and papers relating to such case, on his signing a declaration in writing that he will faithfully discharge his duty as such Clerk; and thenceforward such and the same proceedings may and shall be had, and the same jurisdiction, whether original or appellate, may and shall be exercised under and in pursuance of and in relation to such Commission, and in such and the same manner and form precisely as the same would, could or might have been had or exercised respectively in virtue of the said Act hereinbefore in part recited, if the said District of Gaspé had continued after the passing of the said Act to form part of the District of Quebec, and the jurisdiction, power and authority hereby given, had been expressly given by the said Act to the said District Judges.

Court of Queen's Bench at Quebec to be a Court of Review in cases of Bankruptcy in Gaspé.

XL. And inasmuch as the said District Judges are members of Her Majesty's Court of Queen's Bench for the District of Gaspé, and it is therefore expedient to provide some other tribunal to which appeals may lie from their judgments, adjudications and orders in matters of Bankruptcy: Be it therefore enacted, That Her Majesty's Court of Queen's Bench for the District of Quebec shall be and the same is hereby declared to be the Court of Review in all cases and matters of Bankruptcy now pending as aforesaid, or which may arise hereafter within the said District of Gaspé, and as such shall have such and the same powers, jurisdiction and authority, in all such cases and matters respectively, as if the same had

had arisen or were to arise within the District of Quebec ; any law, usage or custom to the contrary thereof in any wise notwithstanding.

XLI. And be it enacted, That the eighty-fifth section of the Act first above cited, shall be and is hereby extended to the words and expressions used in this Act, and shall serve for the due interpretation thereof.

Sec. 85, of 7  
Vict. c. 10, ex-  
tended to  
words used in  
this Act.

XLII. And be it enacted, That this Act shall be in force until the first day of June next, and from thence until the end of the then next ensuing Session of Parliament, and no longer.

Duration of  
this Act.

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