

Laws of His Majesty's Province of Upper Canada, passed in the year 1829. York: Robert Stanton, 1829.

10 George IV – Chapter 7

An Act to make more effectual provision for settling the affairs of the late pretended Bank of Upper Canada. Passed 20th March, 1829.

Whereas a certain Act of the Parliament of this Province, passed in the Fourth year of the Reign of His present Majesty, entitled, "*An Act vesting in the hands of certain Commissioners therein named, all the Stock, Debts, Bonds and Property of the pretended Bank of Upper Canada, lately established at Kingston for the benefit of the Creditors of that Institution,*" and a certain other Act of the Parliament of this Province passed in the Fourth year of His present Majesty's Reign, entitled, "*An Act to repeal part of an Act passed in the last Session of Parliament entitled, 'An Act vesting in the hands of certain Commissioners therein named, all the Stock, Debts, Bonds and Property of the pretended Bank of Upper Canada, lately established at Kingston for the benefit of the Creditors of that Institution, and to make further provision for settling the affairs of the said pretended Bank;'*" and a certain other Act of the Parliament of this Province, passed in the last Session, entitled, "*An Act to repeal the Laws now in force respecting the late pretended Bank of Upper Canada, and to make provision for settling the affairs of the said Institution:*" And whereas sundry of the Debtors of the said pretended Bank have, by Petitions to the Legislature, complained of grievous injuries sustained by them through the provisions of the before recited Acts: And whereas it is the true end and design of Legislation to promote and secure as far as possible universal justice, it is expedient and just to provide other means for a final, amicable and equitable settlement of the affairs of the said Institution: Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of, and under the authority of an Act passed in the Parliament of Great Britain, entitled, "*An Act to repeal certain parts of an Act passed in the Fourteenth year of His Majesty's Reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North-America, and to make further provision for the Government of the said Province,*" and by that authority of the same, that the said several Acts hereinbefore recited be; and the same are hereby repealed.

II. And be it further enacted by the authority aforesaid, That Hugh Christopher Thomson, Henry Smith and John Strange, be and are hereby appointed to act as Commissioners to settle the affairs of the late pretended Bank, lately established at Kingston, and in case of vacancy by death, removal from the District, or resignation of any one of them, it shall and may be lawful for the remaining Commissioners to appoint another person of their mutual choice, to supply such vacancy, in one week from the time of its occurrence.

III. And be it further enacted by the authority aforesaid, That the Commissioners heretofore appointed for settling the affairs of the late pretended Bank, shall, within two weeks after the passing of this Act, and demand made, deliver over, or cause to be delivered over, upon such demand, to the Commissioners hereinbefore named, all the Books, Papers, Documents, matters

and things whatsoever, remaining in their charge and appertaining to the said late pretended Bank, or the affairs thereof.

IV. And be it further enacted by the authority aforesaid, That the Commissioners aforesaid may from time to time prosecute in, and by the name of the Kingston Bank Commissioners, such actions at Law as may be necessary for the recovery of any debts due to the Institution, or to others to the use and in the behalf or account of the said Institution, by Mortgage, Bond, Note, or otherwise, and that all such debts, whether due by specialty, or by simple-contract, may if the Plaintiff shall choose to sue in that form, be recovered in an action on an account stated, as between the Defendant and the parties suing by the name aforesaid, and such specialty, or other proof of debt, may be received as evidence of an account stated: Provided always, that upon request made by any Debtor of the said Institution, it shall be incumbent upon the said Commissioners to refer such debt or demand to arbitration, that the said Commissioners and the Debtor, before appointing men of their respective choice, shall agree upon some person as the third man in the arbitration, and in case they do not agree in the choice of such person, it shall and may be lawful for the Commissioners to write the names of three persons not being Debtors or Creditors, of said Institution, or otherwise interested, on slips of paper, and for the Debtor to do the same, when the whole shall be put into a box and shook together, and one drawn therefrom by an indifferent person; and the person whose name shall be so drawn, shall be the third arbitrator, to act in conjunction with the two to be named by the Commissioners and Debtor respectively, in considering and deciding upon all matters and things set before them, and their award, or the award of any two of them delivered in writing shall be final, and to all intents and purposes binding on the parties.

V. And be it further enacted by the authority aforesaid, That the Statute of Limitations shall not apply to bar or extinguish any debt due to the late pretended Bank, providing the same shall be put in suit within one year from the passing of this Act.

VI. And be it further enacted by the authority aforesaid, That whenever any person appearing to be indebted to the said Institution shall have left this Province since the failure of the said Institution, and shall not be resident therein, it shall and may be lawful to serve process in any suit, to be instituted under the authority of this Act, against such persons by leaving a copy of such process at the last place of abode of such person within this Province, with any grown up person dwelling or living, in such house, or by affixing a copy of such process in the Crown Office of this Province eight days before the return thereof, and that a declaration in every such case being filed in the Crown Office of this Province, and all other and subsequent proceedings in any such case, which in ordinary cases are served upon the Defendant, shall be considered to be served by filing the same in the Crown Office at York, and the Office of Deputy Clerk of the Crown at Kingston, and on notice of such filing inserted for two weeks in the Kingston Chronicle and Upper Canada Herald.

VII. And be it further enacted by the authority aforesaid, That no Bond, Mortgage, Note, Security or undertaking of what kind soever, made to the said Institution, or to any person or persons to their use, shall be held to be invalid or irrecoverable, on account of any alleged illegality of the said Institution.

VIII. And be it further enacted by the authority aforesaid, That the Commissioners to be constituted under this Act, shall within two weeks after their appointment, cause notice of their place and hours of business to be advertised in the Upper Canada Gazette, and in all other Newspapers in Upper Canada, and in the Montreal and Quebec Gazettes, in three successive numbers of each Paper, calling upon all holders of Notes or Certificates, or other Creditors of the said late Institution, to present their claims within the period of Six Months, or otherwise such claims will be for ever baned and cancelled.

IX. And be it further enacted by the authority aforesaid, That every claim upon the said Institution, unless it shall be presented to the Commissioners to be appointed under this Act, on or before the first day of November next, shall be for ever extinguished and barred.

X. And be it further enacted by the authority aforesaid, That it shall and may be lawful, to and for the Commissioners to be constituted under this Act, to exercise their discretion in regard to the giving a longer credit to any Debtor or Debtors to the said late Institution, and that they shall also have authority to accept of property real or personal, or to receive Bills or Notes of the said late Institution, or Certificates given for the same in satisfaction of the whole or part of any debt which said Commissioners are authorised to collect, or make any compromise in regard to any such debt as they may think reasonable and proper.

XI. And be it further enacted by the authority aforesaid, That if any person indebted to the said late Institution, shall before the passing of this Act have tendered payment of the debt or any part thereof, due by him in Notes of the said late Institution, or Certificates given, for such Notes, no interest shall be charged in respect to such Debt, or such part thereof as he shall have so tendered payment for, from the time of such tender having been so made.

XII. And be it further enacted by the authority aforesaid, That the Commissioners shall make a report to the Governor, Lieutenant Governor, or person administering the Government of this Province, on the 1st day of January in every year, of their proceedings under this Act, and of the state of the affairs of the said Bank, to be laid before the Legislature at its next Session.

XIII. And be it further enacted by the authority aforesaid, That the Commissioners who shall be constituted under this Act, shall make dividends among the Creditors of the said late Institution of the Monies collected by them, as often as they shall have sufficient to divide Two Shillings in the Pound, first deducting therefrom their necessary disbursements in the execution of this Act.

XIV. And be it further enacted by the authority aforesaid, That the said Commissioners shall have authority after receiving such payment or compromise as they may deem reasonable and proper, to release and discharge any Bonds, Mortgages, Specialties, Notes or Securities of any kind whatsoever, given by any person or persons to the Commissioners heretofore appointed for the settlement of the affairs of the said Institution or to the said pretended Bank, or to any person or persons, for the use, benefit or security of the said Institution, whether it be expressed in such

Bond, Mortgage, Specialty, Note or Security, that the same was given for the use, benefit or security of the said Institution or not.

XV. And be it further enacted by the authority aforesaid, That the claim of the Agent appointed by the late Directors of the said Bank, for settling the affairs and examining the Books and Accounts of the said Bank, shall be ascertained by the said Commissioners, and the amount so ascertained to be due to the said Agent for the services performed by him, shall be payable from and out of the first Monies which shall come into the hands of the said Commissioners, applicable to the payment of the Debts of the said Bank.

XVI. And be it further enacted by the authority aforesaid, That the Act of any two Commissioners who shall be appointed under this Act, shall be valid so far as the authority of such Commissioners shall extend.

XVII. And be it further enacted by the authority aforesaid, That this Act shall be deemed to be a Public Act, and as such shall be judicially noticed without specially shewing the same.