

Provincial Statutes of Canada, passed in the year 1845. Montreal: Stewart Derbishire & George Desbarats, 1845.

8 Victoria – Chapter 48

An Act for the relief of Insolvent Debtors in Upper Canada, and for other purposes therein mentioned. (29th March, 1845.)

Whereas it is expedient to repeal a certain Act passed in the Seventh year of the Reign of Her present Majesty, intituled, “An Act to abolish imprisonment in execution for Debt, and for other purposes therein mentioned,” and to protect from all process against the person, such persons as have become indebted without any fraud or gross or culpable negligence, so as nevertheless their estates may be duly distributed among their creditors: 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and it is hereby enacted by the authority of the same, That the said above recited Act be, and the same is hereby repealed; and if any person not being a trader within the meaning of the Statute now in force relating to Bankrupts, or not having been such trader before the passing of the said Act, or if any person having been a trader before the passing of the said Act, but excluded from the operation thereof or being such trader but owing debts amounting in the whole to less than one hundred pounds, shall give notice according to the Schedule to this Act annexed, to one-fourth in number and value of his creditors, and shall cause the same notice to be inserted twice in the Canada Gazette, and twice in some newspaper circulating within the District wherein he resides, he may present a petition for protection from Process to any Judge or Commissioner in Bankruptcy in the District wherein he may have resided twelve calendar months, which petition shall have annexed to it a full and true Schedule of his debts, with the names of his creditors and the date of contracting the debt, and the security (if any) given for the same, and also the nature and amount of his property, with the debts owing to him, with their dates and the names of his debtors, and the nature of the securities (if any) which he may have received for such debts, and which petition shall also set forth any proposal which he may have to make for the payment in whole or in part of his debts; and it shall thereupon be lawful for the said Judge or Commissioner in Bankruptcy to give, upon the filing of such petition, a protection to the petitioner from all Process whatever, either against his person or his property of any description, which protection shall continue in force, and all Process be stayed until the appearance of the petitioner as hereinafter provided; and upon the presentation of any such petition, all the estate and effects of the petitioner shall forthwith become vested in the Official Assignee who shall be nominated by the Judge or Commissioner acting in the matter of the said petition, and such Official Assignee shall and may forthwith take possession of so much thereof as can be reasonably obtained and possessed without suit; and the said Official Assignee shall hold and stand possessed of the same in the manner as Assignees hold and possess estates and effects under and by virtue of the Statute relating to Bankruptcy.

II. And be it enacted, That every such petition for protection from Process shall be in the form specified in the Schedule hereunto annexed (A No. 2) and such petition and the Schedule required to be annexed thereto shall be verified by an affidavit of the petitioner in the form specified in the Schedule hereunto annexed (A No. 3) and such affidavit shall be sworn in the manner as affidavits in matters of Bankruptcy may be sworn by any law now in force relating to Bankrupts, and shall be annexed to such petition at the time of filing the same; and if such petition and affidavit shall not be in the form herein prescribed, such petition shall be dismissed.

III. Provided always and be it enacted, That nothing herein contained shall be held or construed to hinder or prevent the said Insolvent from being arrested or held to bail, under the authority of any Judge's order for that purpose, in like manner as may now by law be done, notwithstanding any protection which may be granted under the authority of this Act.

IV. And be it enacted, That any Judge or Commissioner in Bankruptcy to whom any such petition shall be presented, shall make from time to time such order as he may think right, touching the notice of meetings and examination to be given to creditors, and the publication of such notice, and shall on the day notified by any such notice proceed to examine upon oath the petitioner, and any creditor who may attend such examination, or any witness whom the petitioner or any creditor may call, and the said Judge or Commissioner may adjourn the examination from time to time; and the choice of the creditors' assignee shall take place at such sitting, or any adjournment thereof, and shall be made by the majority in number and value of the creditors who may attend, by themselves or their attorneys duly authorized by letters of attorney in that behalf, before the Judge or Commissioner on such day, provided that the Judge or Commissioner shall have power to reject any person so chosen who shall appear to him unfit to be such Assignee as aforesaid, or to remove any Assignee; and upon such rejection or removal, a new choice of another Assignee shall be made in like manner, and the said Judge or Commissioner shall have power to summon to be examined before him any debtor or debtors of such petitioner or any creditor of such petitioner, or any other person whose evidence may appear necessary for the purposes of the enquiry; and if it shall appear to the said Judge or Commissioner that the allegations in the petition and the matters in the Schedules are true, and that the debts of the petitioner were not contracted by any manner of fraud or breach of trust, or that there is any prosecution against the petitioner whereby he had been convicted of any offence, or without having at the time of becoming indebted reasonable assurance of being able to pay his debts, and that such debts were not contracted by reason of any judgment in any proceeding for breach of the Revenue Laws, or in any action of breach of promise of marriage, seduction, criminal conversation, libel, slander, assault and battery, malicious arrest, malicious suing out of fiat in Bankruptcy, or malicious trespass, and that the petitioner has made a full discovery of his estate, effects, debts and credits, and has not parted with any of his property since the presenting of his petition, it shall then be lawful for the said Judge or Commissioner to cause notice to be given, that, on a certain day to be named therein, he will proceed to make an order, unless cause be shewn to the contrary, which order shall be called a final order, and shall be for the protection of the person of the petitioner from all Process, and for the vesting of his estate and effects in an Official Assignee to be named by such Judge or Commissioner, together with an Assignee to be chosen by the majority in number and value of the creditors who may attend before the Judge or Commissioner on such day, or for the carrying info

effect such proposal as the petitioner shall have set forth in his petition: Provided that the consideration of such final order may be adjourned from time to time by the Judge or Commissioner without any further notice: Provided always, that it shall be lawful for the said Judge or Commissioner, if he shall think fit, to direct in such final order, some allowance to be made for the support of the petitioner out of his estate and effects.

V. And be it enacted, That as to any person who was a trader within the meaning of the said Act relating to Bankrupts before the passing thereof, and who is excluded from the operation, having before the passing thereof failed in his said business, under such circumstances, as in the event of such failure having taken place after the passing of the said Act relating to Bankrupts, he could have availed himself of the provisions thereof, such order to be called a final order as aforesaid, shall, in addition to its effect as stated in the next preceding clause, operate as a discharge of all debts due up to the day of his filing his petition under the provisions of this Act, as fully and completely and to the same extent as if such Trader had obtained a certificate under the fifty-ninth clause of the said Act relating to Bankrupts.

VI. And be it enacted, That at the first examination of the petitioner it shall be lawful for the Judge or Commissioner to renew the order for protection, and to renew it from time to time until the final order for protection and distribution.

VII. And be it enacted, That it shall be lawful for the Judge or Commissioner, by Warrant under his hand and seal, to commit to prison any petitioner who shall appear to have prevaricated or made any false statement before him, for such time as he shall think fit, not exceeding one calendar month; and touching all persons other than the petitioner who shall be examined before him, or being lawfully summoned shall refuse or neglect to attend, the said Judge or Commissioner shall have the same powers in respect of commitment as he has by any law now in force relating to Bankrupts.

VIII. And be it enacted, That from and after the issuing of the final order, the whole estate present and except in the case mentioned in the fifth section the future estate, as well real as personal, and all the effects, and all the credits of the petitioner shall become absolutely vested in the Official Assignee and Assignee chosen by the creditors, without any deed or conveyance, which Assignees shall hold the same as fully as if the petitioner had been made a Bankrupt and they had been Assignees under the commission issued against him, and shall sue and be sued as if they had been Assignees under such commission; and as often as any such Assignee shall die, or be lawfully removed and a new Assignee duly appointed, all estate, real and personal, and such effects and credits as were or remain vested in such deceased or removed Assignee shall vest in the new Assignee, either alone or jointly with the existing Assignees, as the case may require, without any deed or conveyance for that purpose, and every such Assignee shall be deemed to be an officer of the Court in which the petition shall be filed, and shall be liable as such to the control thereof: Provided always, that the property of the petitioner, shall in every case be possessed and received by the Official Assignee alone, save where it shall be otherwise ordered by the Judge or Commissioner: Provided also, that it shall be lawful for the Vice Chancellor of Upper Canada, from time to time to make such orders, rules and regulations for the security of the property of

the petitioner as he may judge reasonable and proper: Provided always, that no other estate, real or personal, effects or credits of any such petitioner other than that of which he shall be possessed or entitled to at the date of the final order, shall be liable to or applicable in satisfaction of the debts mentioned in and discharged by the fourth Section of this Act: Provided always, and be it enacted, that where, according to any law now in force, any conveyance or assignment of any real or personal property of a petitioner would require to be registered, enrolled, or recorded in any Registry Office of this Province, then in any such case such certificate of the appointment of an Assignee or Assignees as is provided by the fiftieth Section of an Act passed in the seventh year of the Reign of Her present Majesty, intituled, "An Act to repeal an Ordinance of Lower Canada, intituled, 'An Ordinance concerning Bankrupts and the administration or distribution of their estates and effects, and to make provision for the same object throughout the Province of Canada,'" shall be registered in the Registry Office or place wherein such conveyance or assignment as last aforesaid would require to be registered, enrolled, or recorded; and the Registry hereby directed shall have the like effect to all intents and purposes as the Registry, enrollments or recording of such conveyance or assignment as last aforesaid would have had; and the title of any purchaser of any such property as last aforesaid for valuable consideration, who shall have duly registered, enrolled, or recorded his purchase deed previous to the Registry hereby directed, shall not be invalidated by reason of such appointment of an Assignee or Assignees as aforesaid, in the vesting of such property in him or them consequent thereupon, unless the certificate of such appointment shall be registered as aforesaid within two months from the date of such appointment.

IX. And be it enacted, That the said Assignees shall be entitled, except in cases where a final discharge shall be authorized, to claim and demand from the said petitioner, at any time after the said final order, any estate and effects acquired by him at any time after such order shall have been made, and all such estate and effects, of what kind soever and wheresoever situate, shall be absolutely vested in such Assignees upon their filing a copy of their claim served upon the petitioner personally, or by leaving it at the place of residence mentioned in his notice of petition, and they shall hold the same in like manner as they held the estate and effects of the petitioner transferred by force of the final order, as hereinbefore provided: Provided always, that no Assignee of any Insolvent shall be authorized by virtue of this Act to take possession of any estate or effects which the Insolvent shall have acquired or become possessed of after making the final order herein mentioned, except under the authority of an order of the Judge or Commissioner, made for that purpose, and then only to the extent and at the time and in the manner directed by such order, and after giving such notices and doing such acts, matters and things, as by the rules, orders and regulations, made under the authority of this Act, shall be required and directed in that behalf.

X. And be it enacted, That upon such petition being filed the Judge or Commissioner shall possess the like power and authority touching the seizure of the property of such petitioner, (except as herein otherwise directed,) and also to compel the attendance of and to examine such petitioner and his wife, and every person known or suspected to have any of the property of such petitioner in his possession, or who is supposed to be indebted to such petitioner, and any person

whom the said Judge or Commissioner believes capable of giving any information concerning the person, trade, business or calling, dealings or property of such petitioner, or any information material to the full disclosure of the dealings of such petitioner, and to enforce both obedience to such examination and the production of books, deeds, papers, writings, and other documents, as by any law now in force relating to Bankrupts, or possessed by any Court authorized to act in the prosecution of fiats in Bankruptcy, touching the seizure of property and the examination of any Bankrupt or other person under a fiat in Bankruptcy.

XI. And be it enacted, That any prisoner in execution upon any judgment obtained in any action for the recovery of any debt, either not being a trader within the meaning of the Statute relating to Bankrupts, or being a trader within the meaning of the said Statute owing debts amounting on the whole to less than one hundred pounds, may be a petitioner for protection from process under this Act, and every such petitioner, to whom an interim order for protection shall have been given, shall not only be protected from process as provided by this Act, but also from being detained in prison in execution upon any judgment obtained in any action for the recovery of any debt mentioned in his Schedule; and if any such petitioner, being a prisoner in execution, shall be detained in prison in execution upon any such judgment, it shall be lawful for the Judge or Commissioner to order any Officer who shall have such petitioner in custody by virtue of such execution, to discharge such petitioner out of custody as to such execution, without exacting any fee, and such Officer shall hereby be indemnified for so doing, and no Sheriff, Gaoler, or other person whatsoever, shall be liable to any action as for the escape of any such prisoner by reason of such his discharge; and such petitioner so discharged shall be protected by his interim order from all process for such time as the said Judge or Commissioner shall, by such interim order or any renewal thereof, think fit to appoint until the making of the final order for protection in the same manner as if such petitioner had not been a prisoner in execution: Provided always, that after the time allowed by any such interim order, or any renewal thereof, (as the case may be,) shall have elapsed, such petitioner shall not by such discharge be protected from being again taken in execution upon such judgment, but such judgment shall remain in full force and effect, notwithstanding such discharge.

XII. And be it enacted, That whenever any such petitioner is a prisoner under any Process, Attachment, Execution, Commitment or Sentence, and is not entitled to his discharge in manner aforesaid, the Commissioner may, by Warrant under his hand, directed to the person in whose custody such petitioner is confined, cause such petitioner to be brought before him for examination, at any sitting of the Court, either public or private, and the expense of bringing such petitioner shall be paid out of his estate, and such person shall be indemnified by the Warrant of the Judge or Commissioner for bringing up such petitioner.

XIII. And be it enacted, That if any petitioner for protection from Process shall die after the filing of his petition, the Judge or Commissioner may proceed in the matter of such petition, for the discovery and distribution of his property, as he might have done if the petitioner were living.

XIV. And be it enacted, That the wearing apparel, bedding, and other necessaries of the petitioner and his family, and the working tools and implements of the petitioner, not exceeding in the whole

the value of twenty pounds, may be excepted by the petitioner in his petition from the operation of this Act, and in such case shall be altogether excluded from the operation of this Act: Provided always, that such excepted articles, with the values thereof respectively to be ascertained and appraised, if the said Judge or Commissioner shall think fit, in such manner as he shall direct, be fully and truly described by the petitioner in his Schedule, but otherwise the exception thereof shall be of no force as to any part of the same.

XV. And be it enacted, That until an Assignee shall be chosen by the Creditors of any petitioner for protection from Process, the Official Assignee nominated by the Judge or Commissioner upon the filing of the petition of such petitioner shall be enabled to act, and shall be deemed to be to all intents and purposes a sole Assignee of the property of such petitioner, and, if the said Judge or Commissioner shall so order, may sell or otherwise dispose of such property or any part thereof, and make such allowance out of the property of such petitioner for the support of himself and his family, as the said Judge or Commissioner shall direct; and the property vested in any Official Assignee alone or jointly with any Assignee chosen by creditors under this Act, shall not remain in such Official Assignee alone or jointly with such Assignee chosen by creditors, if such Official Assignee shall re-sign or be removed from his office, nor in the heirs, executors, or administrators of such Official Assignee, nor in the surviving Assignee alone, in case of the death of such Official Assignee, but all such property shall in every such case go to and be vested in the successor in office of such Official Assignee alone, or jointly with the Assignee chosen by the creditors (if any), as the case may be; and whenever any such petitioner shall have been or shall be dismissed, all sales and dispositions of property and payments duly made, and all other acts theretofore done by any Assignee or any person or persons acting under his authority, or by any messenger or other person under the authority of the Judge or Commissioner, according to the provisions of this Act, shall be good and valid, but the property of the petitioner shall otherwise in such case revert to such petitioner: Provided however, that no action or suit shall be prosecuted or commenced against such Assignee, messenger, or other person or persons acting as aforesaid, except to recover any property of such petitioner detained after an Order made by the said Judge or Commissioner for the delivery thereof and the demand made thereupon.

XVI. And be it enacted, That all powers vested in any petitioner for protection from Process whose estate shall under the provisions of this Act have been vested in an Assignee or Assignees, which such petitioner might legally execute for his own benefit, shall be hereby vested in such Assignee or Assignees, to be by such Assignee or Assignees executed for the benefit of the creditors of such petitioner, under this Act, in such manner as such petitioner might have executed the same.

XVII. And be it enacted, That in all cases in which such petitioner shall be entitled to any lease or agreement for a lease, and his Assignee or Assignees shall accept the same, and the benefit thereof, as part of such petitioner's property, the said petitioner shall not be liable to pay any rent accruing after the filing of his petition, nor be in any manner sued after such acceptance in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements therein contained: Provided, that in all such cases as aforesaid it shall be lawful for the lessor, or person agreeing to make such lease, his heirs, executors, administrators, or assigns, if the said Assignee or Assignees shall decline, upon his or their being required so to do, to determine

whether he or they will or will not accept such lease or agreement for a lease to apply to the Judge or Commissioner, praying that he or they may either so accept the same or deliver up such lease or agreement for a lease and the possession of the premises demised or intended to be demised; and the Judge or Commissioner shall thereupon make such order as in all the circumstances of the case shall seem meet and just, and such order shall be binding on all parties.

XVIII. And be it enacted, That it shall be lawful for the Assignee or Assignees of any such petitioner, and such Assignee or Assignees shall be hereby empowered to sue from time to time, as there may be occasion, in his or their own name or names for the recovery, obtaining, and enforcing of any property or rights of such petitioner, but in trust for the benefit of the creditors of such petitioner, according to the provisions of this Act, and to give such discharge and discharges to any person or persons who shall be respectively indebted to such petitioner as may be requisite; and to make compositions with any debtors or accountants to such petitioner where the same shall appear necessary, and to take such reasonable part of any such debts as can upon such composition be gotten in full discharge of such debts and accounts, and to submit to arbitration any difference or dispute between such Assignee or Assignees and any person or persons for or on account or by reason of any matter, cause or thing relating to the property of such petitioner: Provided nevertheless, that no such composition or submission or arbitration shall be made nor any suit in equity be commenced by any such Assignee or Assignees without the consent in writing of the major part in value of the creditors of such petitioner, who shall meet together pursuant to a notice of such meeting to be published at least fourteen days before such meeting in the Upper Canada Gazette, and also in some newspaper usually circulated in the neighbourhood of the place where such petitioner had his last usual residence before the fying of his petition, nor without the approbation of the said Judge or Commissioner.

XIX. And be it enacted, That in all matters wherein creditors shall vote, or wherein the assent or dissent of creditors shall be exercised in pursuance of, or in carrying into effect this Act, every creditor shall be accounted such in respect of such amount only as upon an account fairly stated between the parties, after allowing the value of mortgaged property, and other such available securities and liens shall appear to be the balance due; and that all disputes arising in such matters, concerning any such amount, shall, upon application duly made in that behalf, be examined into by the said Judge or Commissioner, who shall have power to determine the same: Provided always, that the amount, in respect of which, any such creditor shall vote in any such matter shall not be conclusive of the amount of his or her debt, for any ulterior purposes in pursuance of the provisions of this Act.

XX. And be it enacted, That if any such petitioner shall, at the time of fying his petition, or at any time before such petitioner shall become entitled to his final Order according to this Act, have any Government stocks, funds, or annuities, or any of the stock or shares of, or in any public company in Upper Canada, standing in his own name, in his own right, it shall be lawful for the said Judge or Commissioner, whenever he shall deem fit so to do, to order all persons whose act or conduct is thereto necessary, to transfer the same into the name of such Assignee or Assignees as aforesaid; and all such persons whose act or consent is so necessary, as aforesaid, shall be hereby indemnified for all things done or permitted, pursuant to such Order.

XXI. And be it enacted, That whenever any Assignee shall die, resign, or be removed, or a new Assignee shall be duly appointed, no action at law or suit in equity shall be thereby abated, but the Court in which any action or suit is depending may, upon the suggestion of such death, resignation or removal and new appointment (if any) allow the name or names of the surviving or new Assignee to be substituted in the place of the former, and such action or suit shall be prosecuted in the name or names of the said surviving or new Assignee, in the same manner as if he had originally commenced the same.

XXII. And be it enacted, That if any petitioner for protection from process shall at the time of fying his petition, by the consent and permission of the true owner thereof, have in his possession, order or disposition, any goods or chattels whereof such petitioner was reputed owner, or whereof he had taken upon him the sale or disposition as owner, the same shall be deemed the property of such petitioner, so as to become vested in the Assignee or Assignees for the time being of the estate and effects of such petitioner.

XXIII. And be it enacted, That no distress for rent made and levied, after the fying of any petition for protection from Process upon the goods or effects of the petitioner, shall be available for more than one year's rent accrued prior to the filing of such petition, but that the landlord, or party to whom the rent shall be due, shall and may be a creditor for the overplus of the rent due, and for which the distress shall not be available, and entitled to all the provisions made for creditors by this Act.

XXIV. Provided always, and it is hereby further enacted, That if any suit or action be brought against any petitioner for or in respect of any debt contracted before the date of fying his petition, it shall be a sufficient plea in bar of the said suit or action, that such petition was duly presented and a final Order for protection and distribution made by a Judge or Commissioner duly authorized, whereof the production of the Order signed by the Judge or Commissioner, with proof of his handwriting, shall be sufficient evidence.

XXV. And be it enacted, That the like evidence of the appointment of As-signees shall be received as sufficient to prove such appointments, in all courts and places whatsoever, as is received by the laws now in force relating to Bankrupts, to prove such appointments.

XXVI. And be it enacted, That it shall be lawful for any creditor or Official Assignee or other Assignee, at any time after the final Order shall have been made, except in the cases mentioned in the fifth Section of this Act, to give one month's notice to the petitioner, either by personal service, or if lie cannot be found, by service at the place of his residence mentioned in his notice of petition, that such creditor intends to apply by motion to the said Judge or Commissioner, or in case of his death, resignation or removal, to the Judge or Commissioner appointed to succeed him, that the final Order be rescinded, as far as relates to the protection of the petitioner's person from Process, and as far as relates to the effect, of such Order in bar of suits and actions; and the said Judge or Commissioner shall, upon hearing the matter of such motion and any evidence in support of it, and what the petitioner has to allege against it, and any evidence against it, and upon examining

the petitioner, if he shall desire to be examined, or if the Judge or Commissioner shall think fit, proceed to make such rescinding Order as is herein-before mentioned, if he sees reason to believe that the petitioner had not, before the making of (he Order sought to be rescinded, made a full disclosure of his estate, effects and debts, or had, since the making of such Order, not given notice to the Assignees of any property after acquired by him; provided that on any such motion by a creditor, the Official and other Assignee shall he duly served with a month's notice to attend the said Judge or Commissioner; and provided further, that the notice of the hearing and motion shall be given twice in the Canada Gazette, and twice in the same paper in which the notice of the petition had been given, or in some other paper circulating in the same district: And provided always, that the said Judge or Commissioner, in case he shall refuse to make the rescinding Order, shall, if he think tit, order the petitioner's costs of the motion to be paid by the creditor making the motion, or by the Assignee chosen by the creditors, in case he shall make the motion, but not out of the petitioner's estate and effects.

XXVII. And be it enacted, That if the petitioner shall, before or after the fying of his petition, in contemplation of his becoming insolvent, or being in insolvent circumstances, voluntarily convey, assign, transfer, charge, deliver or make over any estate, real or personal, security for money, bond, bill, note, money, goods or effects whatsoever, to any creditor or creditors or to any person or persons in trust for or to, or for the use, benefit or advantage of any creditor or creditors, or to any person who is or may be liable as surety for such petitioner, every such conveyance, assignment, transfer, charge, delivery and making over, shall be deemed fraudulent and void, as against any Assignee or Assignees of the estate and effect of such petitioner, appointed under the provisions of this Act: Provided always, that no such conveyance, assignment, transfer, charge, delivery or making over, shall be so deemed fraudulent and void, if made at any time prior to three Calendar months before the filing of the petition, and not with the view and intention by the party so conveying, assigning, transferring, charging, delivering or making over, of petitioning the Court for protection from Process.

XXVIII. And be it enacted, That in all cases where any petitioner, for protection from Process, whose estate shall have been vested in an Assignee or Assignees, under the provisions of this Act, shall have issued any Warrant of Attorney to con-fess judgment, or shad have given any Cognovit actionem, or Bill of Sale, whether for a valuable consideration or otherwise, no person shall, alter the filing of the petition of such petitioner, avail himself of any execution, issued upon any judgment obtained or to be obtained upon such Warrant of Attorney or Cognovit actionem, either by seizure or sale of the property of such petitioner, or any part thereof, or sale of such property theretofore seized, or any part thereof, or avail himself of such Bill of Sale; but that any person or persons to whom any sum or sums of money shall be due in respect of any such Warrant of Attorney or Cognovit actionem, or of such Bill of Sale, shall and may be a creditor or creditors for the same under this Act.

XXIX. And be it enacted, That the final Order to be made under the provisions of this Act, shall protect the person of the petitioner from being taken or detained under any Process whatever in the cases hereinafter mentioned, that is to say: from all Process in respect of the several debts and sums of money due or claimed to be due, at the time of filing the petition from such petitioner, to

the several persons named in the Schedule as creditors, or as claiming to be creditors for the same respectively, or for which such persons shall have given credit to such petitioner before the time of filing such petition, and which were not then payable, or in respect of the claims of any other persons not known to such petitioner at the time of making the final Order, who may be endorsees or holders of any negotiable securities set forth in such Schedule: Provided always, that every such final Order may be made without specifying therein any such debt or debts or sum or sums of money, or claims as aforesaid, and such final Order shall be in the form specified in Schedule (A. No. 4.)

XXX. And be it enacted, That if any such petitioner, being a prisoner in execution at the time of filing his petition, shall be detained in prison for any debt or claim, in respect of which he is protected from process by his final order, it shall be lawful for the Judge or Commissioner to order any Officer who shall have such petitioner in custody by virtue of such execution, to discharge such petitioner without exacting any fee, and such Officer shall be hereby indemnified for so doing.

XXXI. Provided always, and be it enacted, That if on the day for the first examination of the petitioner, or at any adjournment thereof, it shall appear to the Judge or Commissioner that the debts of the petitioner, or any of them, were contracted by any manner of fraud or breach of trust, or by any prosecution whereby he had been convicted of any offence, or without having at the time a reasonable or probable expectation of being able to pay such debt or debts, or that such debts, or any of them, were contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious suing out a fiat of Bankruptcy, or malicious trespass, or that the petitioner has parted with any of his property since the presenting of his petition, the Judge or Commissioner shall not be authorized in any such case to name any day for making such final Order, or to renew such interim Order; and in every such case wherein such petitioner shall have been a prisoner in execution, and discharged out of custody by order of the Judge or Commissioner under the provision herein in that behalf contained, such petitioner shall be remanded by an Order from the Judge or Commissioner to his former custody; but if none of the matters aforesaid shall so appear, and the Judge or Commissioner shall be satisfied that the petitioner has made a full discovery of his estate, effects, debts and credits, it shall then be lawful for the Judge or Commissioner to cause notice to be given that on a certain day to be therein named, he will proceed to make such final Order, unless cause be shewn to the contrary.

XXXII. And be it enacted, That every sum of money that shall be payable by way of annuity or otherwise, at, any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever, shall be deemed and taken to be debts within the meaning of this Act: Provided always, that every person who would be a creditor of any petitioner for protection from Process for such sum or sums of money, if the same were presently due, shall be admissible as a creditor of such petitioner for the value and no more of such sum or sums of money so payable as aforesaid, which value, the Judge or Commissioner authorized to act in the matter of the petition shall, upon application at any time made in that behalf, ascertain, regard being had to the original price given for such sum or sums of money, deducting therefrom such diminution in the value

thereof as shall have been caused by the lapse of time since the grant thereof to the time of filing such petition; and such creditor shall be entitled in respect of such value to the benefit of all the provisions made for creditors by this Act, without prejudice, nevertheless, to the respective securities of such creditor, excepting as respects the effect of the final Order which shall be obtained by such petitioner under the provisions of this Act.

XXXIII. And be it enacted, That it shall be lawful for the Judge or Commissioner, at the time appointed for making the final Order for protection from Process, or at any adjournment thereof, to adjourn the consideration of such final Order, sine die.

XXXIV. And be it enacted, That if, for any of the causes in that behalf afore-said, no day be named for making the final Order, or if the consideration of such final Order be adjourned sine die, or such final Order be refused, the Judge or Commissioner shall have the power, after the expiration of such time subsequent to the filing of the petition, as, having regard to all the circumstances of the insolvency and the conduct of the petitioner as an insolvent debtor, before and after his insolvency, the Judge or Commissioner shall think just, and after hearing the petitioner or any of his creditors, or his or their Counsel or Attorneys, to make an Order to protect the petitioner from being taken or detained under any Process whatever for or in respect of the several debts and sums of money due, or claimed to be due, at the time of filing his petition, from the said petitioner to the several persons named in his Schedule as creditors, or as claiming to be creditors, for the same respectively, or for which such persons should have given credit to the said petitioner before the time of filing his petition, and which were not then payable, and as to the claims of all other persons not known to the said petitioner at the time of making such Order, who may be endorsers or holders of any negotiable security set forth in the said Schedule.

XXXV. And be it enacted, That if such petitioner shall be taken or detained under any Process whatever for any debt or claim in respect of which he is protected from Process, by such Order as last aforesaid, it shall be lawful for the Judge or Commissioner to order any Officer who shall have such petitioner so in custody to discharge such petitioner therefrom, without exacting any fee, and such Officer shall be hereby indemnified for so doing.

XXXVI. And whereas it may sometimes happen that a debt of, or claim upon, or balance due from a petitioner for protection from Process, may be specified in his Schedule so sworn to as aforesaid, at an amount which is not exactly the actual amount thereof, without any culpable negligence or fraud or evil intention on the part of the said petitioner: Be it enacted, That in such case the Judge or Commissioner shall allow the Schedule to be amended in that behalf; and in every case in which an amendment of the Schedule shall be allowed, the said petitioner shall be entitled to every benefit and protection of this Act; and the creditor in that behalf shall be entitled to all the benefit of all the provisions made for creditors by this Act, in respect of the actual amount of such debt, claim or balance, and neither more nor less than the same, to all intents and purposes, such error in the said Schedule notwithstanding.

XXXVII. And be it enacted, That whenever, after an Audit, there shall appear to the Judge or Commissioner to be in the hands of (the Official Assignee any balance wherewith a dividend may

be made, proceedings shall be had forthwith, under the direction of the Judge or Commissioner, for making such dividend, and also, when it shall appear necessary, for correcting and ascertaining the list of creditors entitled to receive the same; and notice of any sitting of the Court ordered to be held for such ascertaining of debts, or for an Audit, or for declaring a dividend thereupon, or for all such purposes, shall be given for such time and in such manner as the Judge or Commissioner shall from time to time direct; and such dividend shall be made amongst the creditors of the petitioner, whose debts shall be admitted in his Schedule, sworn to by the petitioner, and amongst such other creditors (if any) who shall prove their debts in pursuance of any Order of the Judge or Commissioner, to be made in that behalf, in proportion to the amount of the debts so admitted, or so admitted and proved, as the case may be: Provided always, that if the petitioner, or any creditor or assignee, shall object in whole or in part to any debt tendered to be so proved as aforesaid, or to any debt mentioned in the Schedule of the petitioner, or if any person whose demand is stated in such Schedule, but is not admitted therein, to the extent of such demand, shall claim to be admitted as a creditor to the extent of such demand or for more thereof than is so admitted, the said objections and claims shall, upon application duly made, be examined into by the Judge or Commissioner, and the decision of the Judge or Commissioner thereupon shall be conclusive with respect to the title of such creditor or creditors, to his or their share of such dividend: Provided always, that if in any case it shall appear expedient, it shall be lawful at any time for the Judge or Commissioner, by notice as may be directed in that behalf, to cause all or any of the creditors to prove their debts, in such manner as the Judge or Commissioner shall require, and to decide upon such debts and the right, to receive dividends thereupon, and to do all things requisite thereto, as aforesaid.

XXXVIII. And be it enacted, That if at the expiration of twelve Calendar months from the filing of any petition for protection from Process, there shall remain any outstanding debts or other property, due or belonging to the estate of the petitioner, which cannot, in the opinion of the Judge or Commissioner, be collected and received without unreasonable or inconvenient delay, it shall be lawful for the Assignees, under the direction of the Judge or Commissioner, to sell and assign such debts and other property in such manner as shall be ordered by the Judge or Commissioner.

XXXIX. And be it enacted, That it shall be lawful for the Judge of the District Court in each and every District, together with any oilier Commissioner or Commissioners in Bankruptcy, in the District of which he is Judge, if there be any, from time to time to make such orders, rules and regulations as he or they shall think fit, for the better carrying this Act into execution, and particularly for regulating and appointing the duties of the Official Assignees and of the other Assignees, the auditing of their accounts, the collecting of the debts, and the realizing of the estate and effects of the petitioner, and the notification of the time of hearing petitions or motions in the Gazette or otherwise; which orders, rules and regulations shall upon being approved by the Court of Review in matters of Bankruptcy, be binding upon all persons whomsoever.

XL. And be it enacted, That it shall and may be lawful for the said Judge or Commissioner, to enforce the performance of any order, rule or regulation, made in conformity to the next preceding clause, and in his discretion, to fine and imprison, or either, for any wilful non-

observance of the same, and to compel the payment of any costs which he is authorized to order, by Attachment, in the same manner, and as fully as a Judge of the District Court may do acting as such Judge.

XLI. And be it enacted, That it shall and may be lawful, for Her Majesty's Court of Queen's Bench, to regulate and establish a Table of Costs for any matter done under this Act.

XLII. And be it enacted, That from and after the passing of this Act, it shall be lawful for the Judge or Commissioner authorized to act in the matter of any petition for protection from Process to direct remuneration to the Official Assignee for his services in the matter of such petition, but nevertheless so as such remuneration shall in no case exceed the rate of ten pounds per centum on the sum received as the proceeds of the property of the petitioner.

XLIII. And be it enacted, That any petition for protection from Process and any proceeding in the matter of such petition purporting to be signed by any such Judge or Commissioner as aforesaid, or a copy of such petition or other proceeding purporting to be so signed, shall, in all cases, be receivable in evidence of such proceedings having respectively taken place.

XLIV. And be it enacted, That from and after the passing of this Act, no person shall be arrested or held to bail to any civil suit, where the cause of action shall not amount to ten pounds of lawful money of this Province; and where the cause of action shall amount to ten pounds and upwards, it shall not be lawful for the plaintiff to proceed to arrest the body of the defendant or defendants, unless an affidavit be first made by such plaintiff, his servant or agent of such cause of action, and the amount justly and truly due to the said plaintiff from the said defendant; and also, that such plaintiff, his servant, or agent, hath good reason to believe, and doth verily believe, that the defendant is immediately about to leave Upper Canada, with intent and design to defraud the plaintiff of the said debt: and in all cases in which the party has been held to special bail, it shall not be necessary to make or file any further or other affidavit, before suing out a Capias ad Satisfaciendum, upon the judgment obtained on the same action, but when the party has not been held to special bail a Writ of Capias ad Satisfaciendum may issue after judgment upon an affidavit of the same form as is hereby required to be made, for the purpose of suing out a Capias on Mesne Process, or upon affidavit by the plaintiff, his servant or agent, that he hath reason to believe that the defendant hath parted with his property or made some secret or fraudulent conveyance thereof, in order to prevent its being taken in execution.

XLV. Provided always, and be it enacted, That the provisions of this Act and all the matters and things herein contained, shall be construed to apply, and be in force only in that part of this Province which was formerly Upper Canada.

XLVI. Provided always, and be it enacted, That this Act may be altered or repealed by any Act to be passed during the present session of Parliament.

XLVII. And be it enacted, That this Act shall be and continue in force for two years from the passing thereof, and from thence to the end of the then next ensuing session of Parliament, and no longer.

SCHEDULE.

(A. No. 1.)

I, A. B., at present, and for _____ months past, residing at _____ in the Township of in the District of _____ and being (here set forth the description of the Debtor and his profession or calling, if any) do hereby give notice that I intend to present a Petition to _____ Commissioner in Bankruptcy for the District of _____ praying to be examined touching my debts, estate and effects, and to be protected from all Process, upon making a full disclosure and surrender of such estate and effects for payment of my just and lawful debts; and I hereby further give notice, that the time when the matter of the said Petition shall be heard is to be advertised in the Canada Gazette, and in the _____ newspaper, one month at the least after the date hereof. As witness, my hand, this day of _____ in the year _____.

(A.

(A. No. 2.)

FORM OF PETITION FOR PROTECTION FROM PROCESS.

To the Judge of the District Court of the District of _____ or to A. B., Commissioner in Bankruptcy for the District of _____.

The humble Petition of (insert at full length the name address, and quality of the Petitioner, and also the trade or business, or (if more than one) the trades or businesses which he carries, or has carried on, during his twelve months' residence within the District of the Court)

SHEWETH:

That your Petitioner is not a trader within the meaning of the Statute now in force relating to Bankrupts (or was a trader and failed before the passing of the said Statute) or (if a trader and having failed since the passing of the said Statutes, strike out the word "not " and add after word "Bankrupts " the words "but owing debts amounting in the whole to less than one hundred pounds.")

That your Petitioner has resided twelve calendar months within the District of this Honorable Court, that is to say, (insert the places and periods of residence.)

That your Petitioner has become indebted to divers creditors, whose names are inserted in the Schedule A, (or as the case may be) to this his Petition annexed, and that he is unable to pay his debts in full.

That your Petitioner has examined the said Schedule, and that such Schedule contains a full and true account of your Petitioner's debts and the claims against him, with the names of his creditors and claimants, and the dates of contracting the debts and claims severally, as nearly as such dates

can be stated, die nature of the debts, claims, and securities (if any) given for the same, and that there is reasonable ground in his belief for disputing so much of the debts as are thereby mentioned as disputed; and also a true account of the nature and amount of his property, and an inventory of the same, and of the debts owing to him, with their dates as nearly as such dates can be stated, and the names of his debtors, and the nature of the security (if any) which he has for such debts; and that the said Schedule also contains a balance sheet of so much of his receipts and expenditure as is required by this Honorable Court in that behalf, and doth fully and truly describe the wearing apparel, bedding, and other such necessaries of your Petitioner and his family, and his working tools and implements.

That your Petitioner has not parted with or changed any of his property (except for the necessary support of himself and his family, and the necessary expenses not exceeding _____ pounds) of this his Petition, or in the ordinary course of trade) at any time within three months of the date of fying this his Petition, or at any time with a view to this Petition.

That your Petitioner is desirous that his estate should be administered under the protection and direction of this Honorable Court, and that he verily believes such estate is of the value of _____ pounds at the least, unencumbered, and beyond the value of his wearing apparel and other matter, which your Petitioner is authorized to except by law, and that the same is available for the benefit of his creditors.

That your Petitioner submits to this Honorable Court the proposal for the payment of his debts contained in the said Schedule. (Omit this paragraph if no special proposal.)

That your Petitioner is ready and willing to be examined from time to time touching his estate and effects, and to make a full and true disclosure and discovery of the same.

Your Petitioner, therefore, prays such relief in the premises as, by the Statute now in force for the relief of Insolvent Debtors, may be adjudged by this Honorable Court.

And your Petitioner shall ever pray, &c. &c.

Signed by the said Petitioner, on the _____ day of _____, 18____, in the presence of Attorney or Agent in the matter of the said Petition.

(A. No. 3.)

AFFIDAVIT VERIFYING PETITION AND SCHEDULE.

A. B., of _____ the Petitioner named in the Petition hereunto annexed (if the Petitioner affirm, alter accordingly,) maketh oath and saith—That the several allegations in the said Petition, and the several matters contained in the Schedule hereunto annexed, are true.

Sworn, &c.

(A. No. 4.)
FINAL ORDER FOR PROTECTION FROM PROCESS.

In the Insolvent Court for the District of _____.

In the matter of the Petition of _____ of _____ of _____ in the _____ of _____ an Insolvent Debtor, and not being a trader within the meaning of the Statute now in force relating to Bankrupts (or being a trader, and having failed before the passing of the said Statute, or, and being a trader within the meaning of the Statute now in force relating to Bankrupts, and having failed, since the passing of the said Statute, but owing debts amounting in the whole to less than one hundred pounds); Be it remembered that the said _____ having presented his Petition for protection from Process to this Honorable Court, and such Petition having been duly fyled in Court, and the said Petitioner having duly appeared and been examined touching his debts, estate and effects; and it appearing that the said _____ by virtue of the Statutes in that case made and provided, is entitled to the protection of his person from being taken or detained under any Process whatever, in respect of the several debts and claims hereinafter mentioned, a final Order is hereby made to protect the person of the said _____ from being taken or detained under any Process whatever, in respect of the several debts or sums of money due or claimed to be due after the time of fying his Petition, from the said Petitioner to the several persons named in his Schedule as creditors or as claiming to be creditors, for the same respectively, or for which such persons shall have given credit to the said Petitioner before the time of fying his Petition, and which were not then payable and as to the claims of all other persons not known to the said Petitioner at the time of making this Order, who may be endorsees or holders of any negotiable security set forth in his said Schedule; and it is hereby directed, that the proposal of the said Petitioner, set forth in his Petition, for the payment of his debts, be carried into effect in the following manner, that is to say: (here state particularly the manner in which the same is to be carried into effect.)

Given under my hand, this _____ of _____ 18_____.

(Signed,)

Commissioner.