

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbshire & George Desbarats, 1849.

1 Victoria – Chapter 45

An Act to facilitate Actions against Persons Associated for Commercial Purposes, and against Unincorporated Companies. 30th May, 1849.

Whereas difficulties exist in bringing Actions against persons associated as Partners for trading purposes, or against unincorporated Companies or Societies formed for like purposes, by reason of the difficulty for parties doing business with such Partnerships, Companies or Societies, to ascertain the names, surnames, residence and addition of all the persons so associated as aforesaid, and great expense and inconvenience are thereby incurred: 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 all persons associated in Partnership for trading purposes in Lower-Canada, shall cause to be delivered to the Prothonotary of the Court of Civil Jurisdiction, in each District, and to the Registrar of each County, in which they shall carry on business, a declaration in writing, signed by the several members of the said Copartnership, when all such members shall, at the time of making the same, be in the said Province; and if any of the said members be absent at the time, then by the members present, in their own names and for their absent co-members, under their special authority to that effect, and containing the names, surnames, addition and residence of each and every Partner as aforesaid, and the name, style or firm under which they carry on or intend to carry on such business, and stating also the time during which the Partnership has existed, and declaring that the persons therein named are the only members of such Partnership; and such declaration shall be filed within Sixty days after the passing of this Act, if such Partnership shall have been or shall be formed before the time when this Act shall come into force and effect, and within Sixty days after the formation thereof if it shall be formed after the said Act shall come into force and effect; and a like declaration shall be filed in like manner when and so often as any change or alteration shall take place in the members of such Partnership, or in the name, style or firm under which they intend to carry on their business—under a penalty of Fifty pounds against each and every member of any Partnership with regard to which the requirements of this section shall not have been complied with, to be recovered before any Court having jurisdiction in civil cases to the amount of such penalty, by any person suing as well in his own behalf as on behalf of Her Majesty; and one moiety of such penalty shall belong to the Crown for the uses of the Province, and the other moiety to the party suing for the same, unless the suit be brought (as it may be) on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty for the uses aforesaid.

II. And be it enacted, That the said Prothonotary and Registrar shall enter each such declaration as aforesaid, in a book to be by them kept for that purpose, which shall be at all times, during

office hours, open to the inspection of the public, gratuitously; and for registering each such declaration the Prothonotary and Registrar shall each be entitled to demand from the person delivering it to him the sum of Two shillings and Six pence if it shall not contain more than two hundred words, and at the rate of Six pence per hundred words, for all above the number of two hundred: and such declaration shall be in the form or to the effect of the Schedule to this Act annexed.

III. And be it enacted, That the allegations made in the declaration aforesaid, shall not be controvertible as against any party, by any person who shall have signed the same, nor as against any party not being a member of the Partnership, by any person who shall have signed the same or who was really a member of the Partnership therein mentioned at the time such declaration was made; nor shall any such Signer or Partner be deemed to have ceased to be a Partner until a new declaration shall have been made and filed by him or his Copartners, or any of them, as aforesaid, stating such alteration in the Partnership; but nothing herein contained shall exempt from liability any person who, being a Partner, shall not have been mentioned in the declaration, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and if judgment be recovered against them, any other Partner or Partners may be sued jointly or severally, in an action on the original cause of action, upon which such judgment was rendered—nor shall any thing in this Act be construed to affect the rights of any Partners with regard to each other, except that no such declaration as aforesaid shall be controverted by any signer thereof.

IV. And be it enacted, That after the expiration of sixty days from the passing of this Act, if any persons shall be or shall have been associated as Partners for the purposes of trade in Lower-Canada, and no declaration shall have been filed under this Act with regard to such Partnership, then any action which might be brought against all the members of the Partnership, may also be brought against any one or more of them, as carrying on or as having carried on trade, jointly with others, (without naming such others in the Writ or declaration) under the name and style of their said Copartnership firm; and if judgment be recovered against him or them, any other Partner or Partners may be sued jointly or severally on the original cause of action on which such judgment shall have been rendered: Provided always, that if any such action be founded on any obligation or instrument in writing in which all or any of the Partners bound by it shall be named, then all the Partners named therein shall be made parties to such action: Provided always, and be it declared and enacted that the service of any Summons or Process for any claim or demand upon any existing Copartnership liability at the office or place of business of any such existing Copartnership carrying on business within this Province, is and shall be held and deemed to have the same and equal effect as a service made upon the members of the said Copartnership, personally, and any judgment rendered against any member of such existing Copartship, for a partnership debt or liability, shall and may be executory by Process of Execution against all and every the Partnership, Stock, Property and Effects in the same manner, and to the same extent as if such judgment had been rendered against such Copartnership.

V. And be it enacted, That the word "Partnership" in this Act, shall include any unincorporated Society, Company, or Association for trading purposes; and the word "Action" shall include any proceeding at Law to which any such Partnership shall be a party.

VI. And be it enacted, That this Act shall apply only to Lower-Canada.

Schedule.

Province of Canada, }
District of _____ }

We, _____ of _____ in _____, (Grocers,) hereby certify that we have carried on and intend to carry on trade and business, as (Grocers,) at _____, in partnership under the name or firm of _____ (or, as the case may be,) I, (or we,) the undersigned, of _____, hereby certify that I (or we) have carried on and intend to carry on trade and business as _____, at _____, in partnership with C. D. of _____, E. F. of _____, and that the said partnership hath subsisted since the _____ day of _____, one thousand _____, and that we (or I or we, and the said C. D. and E. F.) are and have been since the said day, the only members of the said Partnership. Witness our (or any of our) hands at _____, this _____ day of _____, one thousand eight hundred and _____.

(Or as the case may be.)