

NEW INSOLVENCY LAW.

THE FULL TEXT OF THIS IS GIVEN BELOW.

"An Act Respecting Assignments and Preferences by Insolvent Persons"—A Law Which is Designed to Prevent Fraudulent Assignments.

Be it enacted by the Lieutenant-Governor and legislative assembly as follows:

1. In case any person, being at the time insolvent or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or by sion with a creditor or creditors, gives a confession of judgment, cognovit actionem or warrant of attorney to confess judgment to defeat or delay his creditors, wholly or in part, or with the intent thereby to give one or more of the creditors of any such person a preference over his other creditors, every such confession, cognovit actionem or warrant of attorney to confess judgment shall be deemed and taken to be null and void as against the creditors of the party giving the same and shall be invalid and ineffectual to support any judgment or writ of execution.

2. (1) Subject also to the provisions of section 3 of this act, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums, or bonuses, in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is insolvent or on the eve of insolvency, with intent to defeat, delay or prejudice his creditor or any one or more of them, shall as against the creditor or creditors injured, delayed or prejudiced, be utterly void.

(2) Subject also to the provisions of section 3 of this act, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, notes or securities, or of shares, dividends, premiums, or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is insolvent or on the eve of insolvency, with intent to give such creditor an unjust preference over his other creditors, or over any one or more of them, shall, as against the creditor or creditors injured, delayed, prejudiced or postponed, be utterly void.

(a) Subject to the provisions of said section 3 of this act, in such transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor, or over any one or more of them, it shall, in or with respect to any suit or proceeding which, within sixty days thereafter is brought, had or taken to impeach or set aside such transaction, be presumed to have been made with the intent aforesaid, and to be an unjust preference within the meaning hereof, whether the same be made voluntarily or under pressure.

(b) Subject to the provisions of said section 3, if such transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor, or over any one or more of them, it shall, if the debtor, within sixty days after the transaction, makes an assignment for the benefit of his creditors, be presumed to have been made with the intent aforesaid, and to be an unjust preference within the meaning hereof, whether the same be made voluntarily or under pressure.

(3) Where a gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, is made to or for any surety or endorser of any promissory note or bill of exchange, in respect of which such suretyship was entered into or such indorsement given, and the person giving the preference within the meaning of the foregoing sub-section, the same shall be void in cases where it would have been void if given to or for a creditor.

3. (1) Nothing in the preceding section shall apply to any assignment made to the Sheriff of the County in which the debt or debts or carries on business or to another assignee resident within the Province of New Brunswick with the consent of the creditors as hereinafter provided, for the purpose of paying rateably and proportionately and without preference any priority all the creditors of the debtor of their just debts: nor any bona fide sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; nor to any payment of money to a creditor, nor to any bona fide gift, conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind as above mentioned which is made in consideration of any present actual bona fide advance of money, or which is made in consideration of any present actual bona fide sale and delivery of goods or other property; provided, that the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

(a) In case of a valid sale of goods, securities or property and payment or transfer of the consideration or part thereof, by the purchaser to a creditor of the vendor under circumstances which would render void such a payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made.

(2) Every assignment for the general benefit of creditors which is not void under

section 2 of this Act, but is not made to the Sheriff nor to any other person with the prescribed consent of creditors shall be void as against a subsequent assignment which is in conformity with this Act, and shall be subject in other respects to the provisions of this Act until and unless a subsequent assignment is executed in accordance with this Act.

(3) In case a payment has been made which is void under this Act and any valuable security was given up in consideration of the payment, the creditor shall be entitled to have the security restored or its value made good to him before or as a condition of the return of the payment.

(4) Nothing herein contained is to affect the Act for the protection of wage earners, or to prevent a debtor providing for payment of wages due by him in accordance with the provisions of the said Act, nor shall anything herein contained affect any payment of money to a creditor where such creditor, by reason or on account of such payment, has lost or been deprived of or has in good faith given up any valuable security which he held for the payment of the debt so paid unless the valuable security is restored to the creditor (nor to the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not thereby lessened in value to the other creditors. Nor shall anything herein contained invalidate a security given to a creditor for a preexisting debt where, by reason or on account of the giving of the security an advance in money is made to the debtor by the creditor in the bona fide belief that the advance will enable the debtor to continue his trade or business and to pay his debt in full.

(5) The debtor may in the first place, with the consent of the majority of his creditors having claims of \$100, and upwards, computed according to the provisions of section 19, make a general assignment for the benefit of his creditors to some person other than the Sheriff and residing in this Province.

(6) No person other than a permanent and bona fide resident of this Province shall have power to act as assignee under an assignment within the provisions of this Act nor shall any such assignee have power to appoint a deputy or to delegate his duties as assignee to any person who is not a permanent and bona fide resident of this Province; and no charge shall be made or recoverable against the assignor or his estate for any services or other expenses of any such assignee, deputy or delegate of any assignee who is not a permanent and bona fide resident of this Province as aforesaid.

Every assignment made under this Act for the general benefit of creditors shall be valid and sufficient if it is in the words following, that is to say: All my personal property which may be seized and sold under execution, and all my real estate, credits and effects; or it is in words to like effect; and an assignment so executed shall vest in the assignee all the real and personal estate, rights, property, credits and effects, whether vested or contingent, belonging at the time of the assignment to the assignor, except such as are by law exempt from seizure or sale under execution; subject however as regards lands, to the provisions of the registry law as to the registration of conveyances.

5. If any assignor or assignors, executing an assignment under this Act for the general benefit of his or their creditors, owes or owe debts both individually and as a member of a co-partnership or as a member of two different co-partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted and shall only rank upon the other after all the creditors of that other have been paid in full.

6. (1) A majority in number and value of the creditors who have proved claims to the amount of \$100 or upwards, may at their discretion substitute for the Sheriff or for an assignee under an assignment to which subsection 2 of section 3 of this Act applies, a person residing in the County in which the debtor resided or carried on business at the time of assignment. An assignee may also be removed and another assignee may be appointed by the Judge of the Supreme Court sitting in Equity or of the County Court of the County where the assignment is registered.

(2) Where a new assignee is appointed the estate shall forthwith vest in him without a conveyance or transfer. The new assignee may register an affidavit of his appointment in the office in which the original assignment was filed, and such an affidavit may also be registered under the Registry Act. The registration of the affidavit under the Registry Act shall have the same effect as the registration of a conveyance.

7. (1) Save as aforesaid in the next preceding sub-section, the assignee shall have an exclusive right of suing for the recission of agreements, deed and instruments or other transactions made or entered into in fraud of creditors or made and entered into in violation of this Act.

(2) If at any time any creditor desires to cause any proceeding to be taken, which in his opinion would be for the benefit of the estate, and the assignee under the authority of the creditors or inspectors refuses or neglects to take such proceeding after being duly required so to do, the creditor shall have the right to obtain an order of a Judge of the Supreme Court sitting in Equity authorizing him to take the proceeding in the name of the assignee but at his own expense and risk, upon such terms and conditions as to the indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from the proceeding shall belong exclusively to the creditor instituting the same for his benefit; but it, before such order is granted, the assignee shall signify to the Judge his readiness to institute the proceeding for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding if instituted within such time shall appertain to the Estate.

8. If the person to whom any gift, conveyance, assignment, transfer, delivery or payment as in section 2 of this Act is mentioned, has been made, shall have sold or disposed of the property which was the subject of such gift, conveyance, assignment, transfer, delivery or payment or any part thereof, the moneys or other proceeds realized therefor may be seized and recovered in any action under the last preceding section as fully and effectually as the property if still remaining in the possession or control of such person could have been seized or recovered.

9. An assignment for the general benefit of creditors under this Act shall take precedence of all judgments and of all executions not completely executed by payment, subject to the costs where there is but one execution in the Sheriff's hands; or to the lien, if any, of the creditor, for his costs, who has the first execution in the Sheriff's hands.

10. No advantage shall be taken or gained by any creditor by any mistake, defect or imperfection in any assignment under this Act, for the general benefit of creditors if the same can be amended or corrected, and if there be any mistake, defect or imperfection therein the same shall be amended by any Judge of the Supreme Court sitting in Equity, or of the County Court aforesaid, on application of any creditor or of the assignor or of the assignee, on such notice of giving to other parties concerned as the Judge shall think reasonable, and the amendment when made shall have relation back to the date of the said assignment.

11. (1) The Assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors in case of the creditors failing to provide therefor, subject to the review of the County Court of the County in which the assignment is registered, or the Judge thereof if complained of by the Assignee or any of the creditors.

(2) In case no remuneration is voted to the Assignee, by the creditors or the inspectors, the amount shall be fixed by the said Judge.

12. (1) No assignment for the general benefit of the creditors under this act shall be within the operation of "The Bills of Sale Act, 1893," but a notice of the assignment shall as soon as conveniently may be, be published at least once in the "Royal Gazette" and in one newspaper at least having a general circulation in the County in which the property assigned is situated (if any newspaper is published in the County) not less than twice.

(2) A counterpart of copy of every such assignment shall also within five days from the execution thereof be registered (together with an affidavit of a witness thereto of the due execution of the assignment of which the copy filed purports to be a copy) in the office of the Registrar of Deeds of the County where the Assignor is a resident in New Brunswick, resides at the time of the execution thereof, or, if he is not a resident, then in the office of the Registrar of Deeds of the County where the personal property so assigned, is, or where the principal part thereof (in case the same includes property in more counties than one) is at the time of the execution of the assignment, and such Registrars shall file all such instruments presented to them respectively for that purpose, and shall endorse thereon the time of receiving the name in their respective offices, and the same shall be kept there for the inspection of all parties interested therein. The said Registrars respectively shall number and enter such assignments and be entitled to the same fees for services in the same manner as if such assignments had been registered under the Act respecting mortgages and sales of personal property.

13. (1) If the said notice is not published in the regular number of the "Royal Gazette" and of such newspaper as aforesaid which shall respectively be issued first after five days from the execution of the assignment by the assignor or if the assignment is not registered as aforesaid within five days from the execution thereof, the assignor shall be liable to a penalty of \$25.00 for each and every day which shall pass after the issue of the number of the newspaper in which the notice should have appeared until the same shall have been published, and a like penalty for each and every day which shall pass after the expiration of five days from the execution of the assignment by the assignor until the same shall have been registered.

(2) The assignee shall be subject to a like penalty for each and every day which shall pass after the expiration of five days from the delivery of the assignment to him, or of five days after his assent thereto, the burden of proving the day of such delivery or assent being upon the assignee.

(3) Such penalties may be recovered by action of debt in any Court of competent jurisdiction at the suit of any person suing for the same; one-half of the penalty shall go to the party suing; and the other half for the benefit of the estate of the assignor.

(4) In case of an assignment to the Sheriff he shall not be liable for any of the penalties imposed in this section unless he is paid or tendered the cost of advertising and registering the assignment nor shall he be compelled to act under the assignment until the costs in that behalf are paid or tendered to him.

14. In case the assignment be not registered and notice thereof published as aforesaid, the assignor shall be liable to a Judge of the Supreme Court sitting in Equity, or of the County Court aforesaid, to compel the publication and registration thereof, and the Judge shall make his order in that behalf and with or without costs or upon the payment of costs by such person as may in his discretion direct to pay the same.

15. The omission to publish or register as aforesaid, or any irregularity in the publication or registration, shall not invalidate the assignment.

16. It shall be the duty of the assignee to immediately inform himself, by reference to the debtor and his books of account, of the names and residences of the debtors and creditors and within five days from the date of assignment to call a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estates, by mailing prepaid and registered to every creditor known to him a circular calling a meeting of creditors to be held in his office, or other convenient place to be named in the notice, not later than twelve days after the mailing of such notice, and by all other means in the Royal Gazette, and all other meetings to be held shall be called in like manner.

17. (1) In case of a request in writing, signed by a majority of the creditors having claims duly proved of \$100 and upwards, computed according to the provisions of section 10 of this Act, it shall be the duty of the assignee two days after receiving such a request, to call a meeting of the creditors at a time not later than twelve

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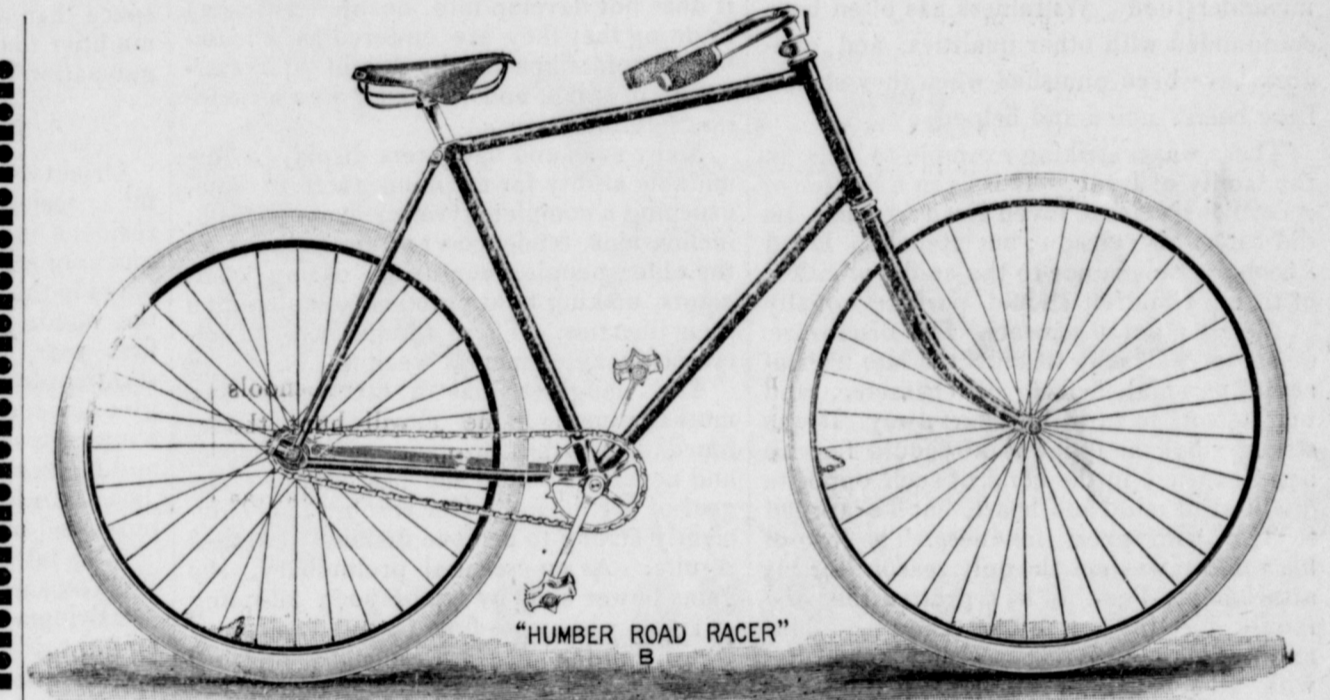
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days after the assignee receives the request in case of default the assignee shall be liable to a penalty of \$5.00 for every day after the expiration of the time for the calling of the meeting until the meeting is called.

(2) In case a sufficient number of creditors do not attend the meeting mentioned in section 16 of this Act, or fail to give directions with reference to the disposal of the estate, the Judge of the County Court of the County where assignment is registered may give all the necessary directions in that behalf.

18. At any meeting of creditors the creditors may vote in person or by proxy authorized in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim stating the amount and nature thereof.

19. (1) Subject to the provisions of section 6, all questions discussed at meeting of creditors shall be decided by the majority of votes, and for such purposes the votes of creditors shall be calculated as follows:

For every claim of over \$100 and not exceeding \$200, 1 vote.

For every claim of over \$200 and not exceeding \$300, 2 votes.

For every claim of over \$300 and not exceeding \$1000, 3 votes.

For every additional \$1000 or fraction thereof, 1 vote.

(2) No person shall be entitled to vote on a claim acquired after the assignment, unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable.

(3) In case of a tie, the assignee, or if there are two assignees, the assignee appointed by the creditors, or by the judge, if none has been appointed by the creditors, shall have the casting vote.

(4) Every creditor in his proof of claim shall state whether he holds any part thereof, and if such security is on the estate of the debtor or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon, and the assignee under the authority of the creditors may either consent to the right of the creditor to rank for the claim after deducting such valuation, or he may require from the creditors an assignment of the security at an advance of ten per cent. of the specified value to be paid out of the estate as soon as the assignee has realized such security and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate.

(5) If a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section and shall put a value on the liability of the

party primarily liable thereon as being in security for the payment thereof, but after maturity of such liability and its non-payment he shall be entitled to amend and revalue his claim.

20. Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particulars of his claim, proved by affidavit, and such vouchers as the nature of the case admits of.

(2) In case a person claiming to be entitled to rank on the estate assigned does not within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim as provided by this and the preceding section of this Act, the judge of the County court of the County wherein the debtor at time of making the assignment resided or carried on business may, upon summary application by the assignee or by any other person interested in the debtor's estate, (of which application at least three days' notice shall be given to the person alleged to have made the default in making a claim as aforesaid) order that the claim within a time to be limited by the order the person making default shall no longer be deemed a creditor of the estate assigned and shall be wholly barred of any right to share in the proceeds thereof, and if the claim is not so proved within the time so limited or within such further time as the said Judge may by subsequent order allow, the same shall be wholly barred and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor.

(3) A person whose claim has not accrued due, shall nevertheless be entitled to prove under the assignment and to vote at meetings of the creditors, but in ascertaining the amount of any such claim, a deduction for interest shall be made for the time which is to run until the claim becomes due.

(4) At any time after the assignee receives from any person claiming to be entitled to rank on the estate, proof of his claim, notice of contestation may be served by the assignee upon the claimant. Within thirty days after receipt of the notice, or such further time as the Judge of the County Court of the County in which the assignment is registered may on application allow, an action shall be brought by the claimant against the assignee to establish the claim and a copy of the writ in the action served on the assignee, and in default of such action being brought and writ served within the time aforesaid the claim to rank on the estate shall be forever barred.

(a) The notice by the assignee shall contain the name and place of business of one of the attorneys of the Supreme Court of New Brunswick upon whom service of the writ may be made and service upon such

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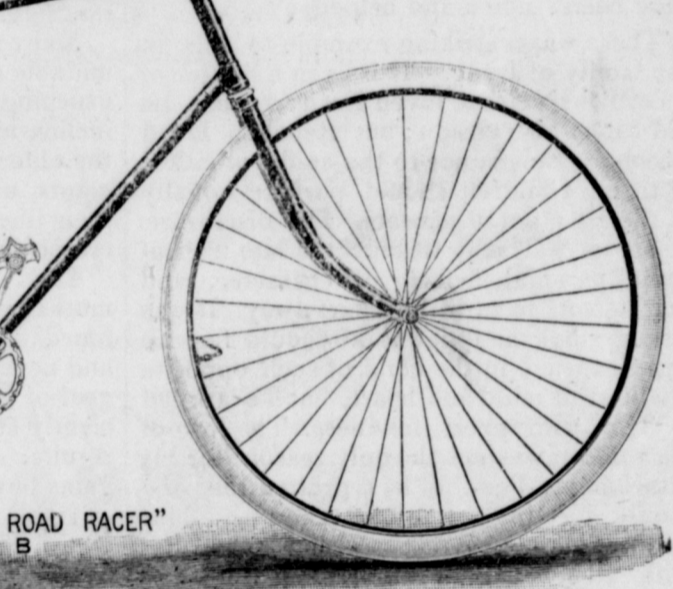
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attorneys shall be deemed sufficient service of the writ.

21. The property and assets of any such estate shall not be removed out of the Province without order of the County Court Judge of the County in which the assignment is registered and the proceeds of the sale and all moneys received in account of any estate shall be deposited by the assignee in one of the incorporated banks within this Province, and shall not be withdrawn or removed without the order of such County Court Judge, except in payment of dividends and other charges incidental to the winding up of the estate; and any assignee or other person acting in his stead or on his behalf, violating the provisions of this section shall be liable to a penalty of \$500, which may be recovered in an action of debt in any Court of competent jurisdiction by any persons on whom the penalty shall go to the person suing therefor, and the other half shall belong to the estate of the assignor; and default of payment of the said penalty and all costs which may be incurred, the party in default shall be disqualified from acting as assignee of any estate when such default continues.

22. Upon the expiration of one month from the first meeting of the creditors or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than three months, assignee shall prepare and keep constantly accessible to the creditors accounts and statements of his doings as such assignee and of the position of the estate, and he shall declare dividends of the estate whenever the amount in his hands will justify a division thereof and also whenever he is requested by the inspectors.

23. So soon as a dividend sheet is prepared notice of them shall be given by letter posted to each creditor, enclosing an abstract of receipts and disbursements, showing what interest has been received by him for money in his hands, together with a copy of the dividend sheet, noting thereon the claims objected to and stating whether any reservation has or has not been made thereafter and after enquiry of eight days from the day of mailing such notice abstract and dividend sheet aforesaid dividends on all claims not objected to within that period shall be paid.

24. The law of set-off shall apply to all claims made against the estate, and also to all actions instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant as the case may be, except in so far as the claim for set-off shall be affected by the provision of this or any other Act respecting fraudulent preferences.

25. Any affidavit authorized or required under this Act may be sworn before a Commissioner for taking Affidavits to be read in the Supreme Court, or before a Justice of the Peace, or if sworn out of New Brunswick, before a Notary Public.