



BY AUTHORITY.

ANNO QUINQUAGESIMO OCTAVO VICTORIÆ REGINÆ

CAP. 6.

An Act respecting Assignment and Preferences by Insolvent Persons

Passed 5th March, 1895.

BE it enacted by the Lieutenant Governor and Legislative Assembly, as follows:—

1. In case any person, being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or by collusion 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 intent thereby to give one or more of the creditors of any such person a preference over his other creditors, or over any one or more of such 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 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 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 in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency with intent to defeat, delay or prejudice his creditors, 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 in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, to or for a creditor, 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, 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, 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 indorser of any promissory note or bill of exchange, who would upon payment by him of the debt, promissory note, or bill of exchange, in respect of which such suretyship was entered into, or such endorsement given, become a creditor of the person giving the preference within the meaning of the foregoing sub-Section, the same shall be void in cases where it would be 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 debtor resides, 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 ratably and proportionately, and without preference or priority, all the creditors of the debtor their just debts; nor to 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* payment in money, or by way of security for 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 lender under circumstances which would render void such a payment or transfer by the debtor personally and directly, the 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,