



BY AUTHORITY.

THE FIRST YEAR OF THE REIGN OF HIS MAJESTY
KING EDWARD VII.

CAP. XXI.

An Act to consolidate and amend Chapter 44 of the Consolidated Statutes relating to Absconding, Concealed or Absent Debtors.

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| <p>Sec.</p> <p>1. When Creditor may make affidavit; form; how verified; Judge or Commissioners may issue Warrant; form; to whom delivered; how executed; priority.</p> <p>2. Commissioners; how appointed; duty.</p> <p>3. Case of person carrying on business in, but not resident of Province; affidavit; contents.</p> <p>4. Warrant and affidavit to be filed; when; with whom; duty of Clerk.</p> <p>5. Sheriff ignorantly taking property claimed by another; proceedings; costs.</p> <p>6. Finding of Jury conclusive; exception; inquisition to be returned and filed.</p> <p>7. Notice of seizure of estate of debtor; sale of perishable property.</p> <p>8. No person indebted to or having property of debtor, to pay or deliver to any but Trustee; liability; if sued by debtor; pleadings.</p> <p>9. After notice acts of debtor affecting estate to be void.</p> <p>10. Before appointment of Trustees debtor may apply for supersedeas; procedure; Witnesses; attachment against; when; costs; supersedeas and certificate of probable cause; effect.</p> <p>11. Trustees; when and how appointed; oath; allowance (I); effect of; effect of appointment or certified copy.</p> <p>12. If debtor return and discharge debts; Judge shall grant supersedeas; if debtor dispute claim; procedure; when service of summons stay of proceedings.</p> <p>13. If party appear Judge may make order for arbitration; powers of arbitrators; procedure; award; effect of when debtor complies with.</p> <p>14. Judge may extend time for making award.</p> <p>15. Service of order (K); effect of.</p> <p>16. If Warrant not superseded, award null and void.</p> | <p>Sec.</p> <p>17. Trustees on their appointment to give notice.</p> <p>18. Trustees; powers and duties; sale of estate of debtor.</p> <p>19. Any person concealing debt or property of estate; double liability; persons selling property of debtor under alleged security; demand to account; Judge may compel an account and examination on oath; power to commit.</p> <p>20. Persons discovering property of debtor so that it may be recovered entitled to 10 per cent.; by whom paid.</p> <p>21. Adjustment of accounts by Trustees; power to examine on oath; in case of dispute may apply to Judge to appoint arbitrators whose decision final.</p> <p>22. Trustees to convert estate into money; call meeting of creditors; when; notice; distribution; if estate not all realized in 6 months a second dividend in 6 months and so until estate closed.</p> <p>23. If creditors claim not passed at the first meeting, but procure same to be passed, he shall receive dividend.</p> <p>24. Creditor residing out of Province entitled to benefit of Act.</p> <p>25. Trustees to keep books open to inspection; subject to order of Judge; remuneration; when estate closed satisfactorily Trustees to be discharged by Judge.</p> <p>26. Any person sued for anything done under this Act may plead general issue, etc.</p> <p>27. "Judge" means Judge of Supreme Court.</p> <p>28. All Trustees, etc. subject to summary jurisdiction of Court and liable to imprisonment for disobedience, etc.</p> <p>29. Fees as in Supreme Court and to be taxed by a Judge.</p> <p>30. Proceedings in case of death, resignation or removal of Judge to continue before another Judge.</p> <p>31. Statutes repealed. Schedules</p> |
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Passed 3rd April, 1901.

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

1. If any person severally or any persons jointly indebted in the sum of forty dollars above all discounts, shall depart from or keep concealed within this Province, with intent to defraud his or their creditors, the creditor may make the affidavit (A); the departure or concealment of the debtor or debtors to be verified by affidavit under oath of two witnesses of whom the creditor may be one, stating the reasons for their belief to the satisfaction of a Judge, or Commissioners, whereupon such Judge or Commissioners may issue a warrant (B) to one or more of the Sheriffs; and any such Sheriff to whom it shall be delivered shall forthwith execute the same, and deliver the property or proceeds of what may be sold to the Trustees, and the warrant on delivery to the Sheriff shall have priority over all other processes not actually executed.

2. The Supreme Court, without fee, may appoint for every County two or more Commissioners, who shall be sworn to perform their duty, the oath to be endorsed on the Commission (C), and any two of whom may, in the absence of a Judge, receive the application by affidavit, and issue the warrant in the name of a Judge, with the same effect as if issued by him. The Commissioners issuing the warrant shall forthwith transmit the examination and proof to such Judge, with a memorandum of the date of its issue.

3. The estate of any person or persons jointly or severally

indebted to the amount aforesaid, which person or persons shall not at the time of contracting the said debt or at the time fixed for payment thereof, be resident in the Province otherwise than by reason of carrying on business therein and in respect of which business, if any, the debt of the petitioning creditor shall have been contracted, and who shall not, if severally indebted, or one of whom shall not, if jointly indebted, be within the Province for one month next preceding the application; or who, being a resident or residents of the Province after the contracting of the debt shall, if severally indebted, or both of whom shall, if jointly indebted, be absent from the Province for six months next preceding the application, may be proceeded against by the creditor or his attorney in like manner as nearly as possible as absent or concealed debtors, except that such absence or departing may be proved by the creditor or one witness, who shall also make oath that there is danger that the property of the said debtor or debtors may be removed from this Province before execution would be issued in an ordinary action.

4. The Judge shall file the affidavit within thirty days after the taking thereof, and the warrant and return thereon within the like time after such return, with the Clerk of the Court out of which the warrant issued, who shall mark on the affidavit and warrant the time of the filing of each respectively.

5. If any such Sheriff shall, through ignorance take property claimed by any other person, he shall summon a jury of seven persons to try the right thereof, and shall deliver the property according to the verdict, and in such case shall not be liable to any prosecution for the taking; the cost and charges to be paid by the Trustees out of the estate of the debtor, on the certificate of a Judge, if the jury find the property in the claimant. If the verdict be otherwise, the Trustees shall recover their costs, charges and expenses from the claimant, by attachment upon the order of a Judge.

6. The decision of the jury shall be conclusive, unless the unsuccessful party shall within six days after the inquisition, give notice in writing to the Sheriff to the contrary, and shall commence his action within three months. Such inquisition shall be returned under the hands of the Sheriff and jury taking the same, and by him filed in the Court out of which the warrant issued.

7. The Judge who issued the warrant shall immediately thereafter order notice (D) to be given in the Royal Gazette, and may direct all perishable property seized to be sold, and the proceeds paid over to the Trustees, when appointed, to be applied to the benefit of the estate.

8. If any person indebted to or having the custody of any property of an absconding, concealed or absent debtor, shall after the first public notice as aforesaid, pay any debt, or deliver any such property to any person but the Trustees, he shall be deemed to have acted fraudulently, and shall be liable to answer the same, or the value thereof, to the Trustees when appointed, for the benefit of the estate; and if any such person be sued by the debtor, or by his procurement, he may plead the general issue and give the special matter in evidence.

9. After such public notice all sales and conveyances, powers of attorney, and all other Acts by such debtor affecting such estate, shall be void.

10. Before the appointment of Trustees, the debtor may by petition (E), apply to the Judge who issued the warrant, verifying the same on oath, who may make an order directing the parties and their witnesses to appear before him; that he may hear and determine the matter in a summary way. If any witness neglect to appear, on proof of the service of the order and payment or tender of his expenses, the Judge may grant an attachment (F) against him, upon bearing the parties he shall grant a supersedeas of the warrant or dismiss the application, and he may award costs to the successful party, to be recovered by attachment. If he grant the supersedeas, and certify that there was probable cause for the proceeding, and no malice, the same shall be a bar to any action against the creditor.

11. If the debtor do not return within three months after the first publication of such notice and satisfy his creditors, or such warrant shall not have been superseded, any Judge may appoint (G) three or more fit persons to be Trustees for all the creditors, who shall be sworn to the faithful discharge of their duty; the oath (H) to be endorsed on the appointment; and also grant the allowance (I) thereon, which shall be the authority to any Registrar of Deeds of the County where lands or goods may be seized, to register the same; such appointment when received by such Registrar, or any copy thereof certified by him, shall be conclusive proof in all Courts that the facts and proceedings previous thereto were true and regular.

12. If the debtor return within the time limited aforesaid, and satisfy the creditors who shall have filed their respective claims with the attorney of the creditor who instituted the proceedings, a Judge on being satisfied by proof that such debtor has so returned and satisfied such creditors, shall grant a supersedeas to such warrant. If such debtor claim to have a set off to any claim so filed, or the amount of any such claim or its validity be disputed by such debtor, and the parties are unable to adjust such mutual claims or settle such dispute, a Judge may, on application of such debtor, at any time before the expiration of the three months limited in the notice, grant a summons calling upon the opposite party to shew