

cause why such mutual or disputed claims should not be submitted to arbitration, as provided in Section thirteen of this Act. If the opposite party do not appear on the return of such summons, the Judge on being satisfied that the same has been duly served on him, his attorney or agent, may make an order that notwithstanding the claim filed by such party be not satisfied by such debtor, a supersedeas to such warrant may be granted, and the same shall be granted accordingly, though the three months from the notice may have then elapsed. The summons if served on the attorney of the creditor who instituted the proceedings, shall act as a stay of all further proceedings until it is disposed of.

13. If on the return of the summons provided for in the last preceding Section the opposite party appears, and the Judge is satisfied that the debtor bona fide claims to have a set-off, or disputes the amount or validity of the claim filed, as the case may be, he shall make an order (K) appointing one or three persons as he may deem best, arbitrators, whose award, or the award of two where three are appointed, shall be final and conclusive; such arbitrators shall have all the powers and authorities conferred upon arbitrators appointed by consent of parties, and they shall file their award when made, with the Clerk of the Court out of which the warrant issued, and they shall have full power to determine the cost of the arbitration and by whom the same shall be paid. If the debtor pay to the opposite party or his attorney, or to the attorney of the creditor who instituted the proceedings, the amount of such award (should any sum be awarded against him), and in other respects obey the same, at any time after one week after the same is filed, as aforesaid, notwithstanding the said three months limited in the notice may have sooner expired, he shall, on complying with the other requirements of this Act, in such cases, be entitled to have the warrant superseded, and the same shall on application be so ordered.

14. A Judge may, on application of the arbitrators or a majority of them named in any such order, and good cause shown, from time to time extend the time for making the award by endorsing such extension on the order.

15. If the order (K) be served on the attorney of the creditor who instituted the proceedings, it shall be a stay of all further proceedings in the matter until one week after the award of the arbitrators shall be filed; and no Trustees shall be appointed until the expiration of that time, notwithstanding the three months limited in the notice (D) may have sooner expired.

16. In case the warrant be not superseded, the award made under the provisions of Section thirteen shall be null and void, and shall be in no way binding on the parties or any of them, or any evidence in any Court for or against them or any of them.

17. The Trustees on their appointment shall forthwith cause public notice thereof (L) to be given in the Royal Gazette.

18. The estate of such debtor shall, from the time of such public notice in the Royal Gazette ordered by the Judge, vest in the Trustees when appointed (unless the warrant be superseded) and they shall take the same into their hands, with all evidence relating thereto, and sue for and recover the same in their own names, and after fourteen days' notice of the time and place of sale, shall sell by public auction all such estate, and execute all conveyances necessary to perfect such sales.

19. Any person having or concealing any debt due, or property belonging to the estate, and not delivering a just account thereof to the Trustees according to their notice, shall forfeit in any such case double the amount of such debt, or double the value of such property, which forfeiture may be recovered by them and shall be a part of the estate. And any person or persons or bodies corporate having, either before or after the passing of this Act, under any claim or security, or alleged claim or security, taken, sold or disposed of property of the debtor, shall upon request by the Trustees deliver to them a just and true account of such claim or security, or alleged claim or security, and account to them for the proceeds if liable so to do. The Judge issuing the warrant, on application of the Trustees, may by order compel any person concealing or suspected of concealing any such debts or property, or having under any claim or security, or alleged claim or security, taken, sold or disposed of property of the debtor, to appear before him for examination on oath touching the premises, and may upon refusal to answer or obey the order of such Judge, commit him.

20. Any person other than those mentioned in the next preceding Section, who shall discover any concealed property of such debtor, so that it may be recovered by the Trustees, shall be entitled to ten per cent. on the value thereof, to be paid by the Trustees out of the estate.

21. The Trustees, or any two of them, may adjust all accounts and matters between the debtors and his debtors or his creditors, and may examine on oath any person respecting the same; and if any dispute arise between any of them in either case, on application made to him therefor, any Judge may order any such matter in dispute, and at any time, arising between the parties or any of them, or between the Trustees and the debtor, to be heard, settled and determined by one or more arbitrators to be named by such Judge, whose award in the premises shall be final.

22. The Trustees shall convert the estate into money, and

within six months from their appointment, by a three months' notice in the Royal Gazette, call a general meeting of the creditors to examine and pass the accounts of the estate which may be adjourned as often as necessary, and when passed, making allowance for all legal charges and commissions, shall distribute the residue without preference among the creditors in proportion to their respective demands, including therein debts not then due on rebate of interest. If the whole estate be not settled the Trustees in six months thereafter shall make a second dividend in like manner of all moneys received by them after the first division, and so on every six months until the estate be closed; and remaining surplus shall be paid to the debtor or party legally entitled thereto.

23. If after the first, and before the second distribution, any creditor whose account or claim was not then filed and passed, shall procure the same to be passed, he shall be paid whatever proportion he would have been entitled to on the first distribution, as if his account had been previously passed, the same to be deducted from the fund then in hand, and the residue to be distributed among all the creditors, and the Trustees shall proceed in like manner until the estate is closed.

24. Any creditor residing out of the Province shall be entitled to all the benefits of this Act; and the attorney of such creditor producing a power from him duly authenticated, with legal proof of the debt, may in all respects act for such creditor as if he were personally present.

25. The Trustees shall keep a book containing a true account of all moneys received and disbursed by them, and of their proceedings to be open to the inspection of every creditor. The Trustees to be subject to such orders touching the estate as a Judge may at any time make, and shall render to him a copy on oath of such account and proceedings, to be filed with the Clerk of the Court of which he is Judge, for the information of all persons concerned, he making such order thereon as is reasonable and just, not inconsistent herewith. The Trustees may retain for their services five per cent. on the whole sum by them received before each dividend, besides all necessary disbursements; and when such accounts are satisfactory to the Judge, he shall by order discharge the Trustees from their appointment, and all liabilities connected therewith.

26. If any person be sued for anything done in pursuance of this Act, he may plead the general issue, and give the special matter in evidence, and this Act shall receive a liberal construction in favor of the creditors.

27. The word "Judge" in this Act, shall mean any Judge of the Supreme Court, or any Judge of any County Court.

28. All Trustees, Parties, Sheriffs, Public Officers, and Ministers of the Law, shall be subject to the summary jurisdiction of the Court out of which the warrant issued, or of the Judge thereof, and the performance of their duties may be compelled and enforced by such Court or Judge under the penalty of imprisonment as for contempt of Court or disobedience thereto and in case of Trustees, they may be removed in the discretion of the Court or Judge, and others appointed in lieu of those removed, in whom all the estate, rights and property vested in the Trustees so removed shall thereupon vest.

29. The fees to be paid to the attorneys, clerks, witnesses and sheriffs for any thing done under and by virtue of this Act shall be the same as in corresponding proceedings in the Supreme Court, as near as may be, and shall in all cases be taxed by the Judge.

30. Whenever it shall happen that a Judge before whom any proceedings shall have been taken under this Act, shall by reason of death, resignation or otherwise, cease to hold his office, or is absent from the Province for two weeks, such proceedings may be continued, and any other proceedings in the matter may be instituted and carried on by and before any other Judge.

31. Chapter 44 of the Consolidated Statutes, the Act 44 Victoria, Chapter 22, the Act 59 Victoria, Chapter 43, and all other Acts or parts of Acts inconsistent herewith are hereby repealed.

#### SCHEDULE

##### (A)

In the Court.

A. B., of \_\_\_\_\_ in the County of \_\_\_\_\_, (Merchant), maketh oath and saith that C. D., of \_\_\_\_\_ in the County of \_\_\_\_\_, (Trader), is indebted to him over and above all discounts in the sum of \_\_\_\_\_ dollars, and that he believes that the said C. D., is either departed the Province, or concealed within it, with intent to defraud him and other creditors, (if any), of their just dues, or to avoid being arrested by process of law. (In case of an absent debtor proceed from\* as follows) was not at the time of contracting the said debt or at the time fixed for payment thereof, (as the case may be), resident in this Province otherwise than by reason of carrying on business therein; that such debt was contracted by the said C. D., in respect of such business; and he said C. D., has not been within this Province within three months next preceding this application by reason whereof the said C. D. avoids being arrested by process of law and there is danger that the property of the said debtor may be removed from this Province.