

1914

c 134 Assignments and Preferences Act

Ontario

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CHAPTER 134.

An Act respecting Assignments and Preferences by Insolvent Persons.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Assignments and Preferences Act*. 10 Edw. VII. c. 64, s. 1.

Interpretation.

2. In this Act,

"Judge."

"Judge" shall mean a Judge of the County or District Court of the county or district in which the assignment is required to be registered. 10 Edw. VII. c. 34, s. 2.

Where judge disqualified.

3. Where a Judge is disqualified to act in a matter arising under this Act a Judge of the County or District Court of an adjoining county or district shall have jurisdiction to act in his place. 10 Edw. VII. c. 64, s. 3.

NULLITY OF CERTAIN JUDGMENTS AND TRANSFERS.

Nullity of certain confessions of judgment, etc., etc.

4. Every confession of judgment, *cognovit actionem* or warrant of attorney to confess judgment given by a 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 with intent thereby to defeat, hinder, delay or prejudice his creditors wholly or in part, or to give one or more of his creditors a preference over his other creditors, or over any one or more of them, shall be null and void as against the creditors of the person giving the same and shall be ineffectual to support any judgment or execution. 10 Edw. VII. c. 64, s. 4.

Nullity of gifts, transfers, etc., made with intent to defeat or prejudice creditors.

5.—(1) Subject to the provisions of section 6 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, hinder, delay or prejudice his creditors, or any one or more of them, shall, as against the creditor or creditors injured, delayed or prejudiced, be null and void.

(2) Subject to the provisions of section 6 every such gift, conveyance, assignment or transfer, delivery over or payment made by a 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, to or for a creditor with the 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 null and void.

Unjust preferences.

(3) Subject to the provisions of section 6 if such a 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 and with respect to any action or proceeding which, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction be presumed *prima facie* to have been made with the intent mentioned in subsection 2, and to be an unjust preference within the meaning hereof whether the same is made voluntarily or under pressure.

When there is presumption of intention if transaction has effect of unjust preference.

If action brought.

(4) Subject to the provisions of section 6 if such a 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 *prima facie* to have been made with the intent mentioned in subsection 2, and to be an unjust preference within the meaning hereof whether the same be made voluntarily or under pressure.

Idem.

If assignment made.

(5) The word "creditor" in the fifth and sixth lines of subsection 2, in the second and third lines of subsection 3, and in the second and third lines of subsection 4, shall include any surety and the endorser 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 was given, become a creditor of the person giving the preference within the meaning of these subsections. 10 Edw. VII. c. 64, s. 5.

"Creditor" for certain purposes to include surety and endorser.

ASSIGNMENTS FOR GENERAL BENEFIT OF CREDITORS.

6.—(1) Nothing in the next preceding section shall apply to an assignment made to the sheriff of the county or district in which the debtor resides or carries on business or, with the consent of a majority of his creditors having claims of \$100 and upwards computed according to the provisions of section 25, to another assignee resident within Ontario, for the purpose of paying rateably 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 an innocent purchaser or person; nor to any payment of money to a creditor, nor

Assignments for benefit of creditors and *bona fide* sales, etc., protected.

to any *bona fide* conveyance, assignment, transfer or delivery over of any goods or property of any kind, which is made in consideration of a present actual *bona fide* payment in money, or by way of security for a present actual *bona fide* advance of money, or which is made in consideration of a present actual *bona fide* sale or delivery of goods or other property where the money paid, or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

Transfer to
creditor of
consideration
for sale
invalid.

(2) In the case of a valid sale of goods or other 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 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.

Effect of
assignment
not in
accordance
with Act.

(3) Every assignment for the general benefit of creditors, which is not void under section 5, 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 thereof until and unless a subsequent assignment is executed in accordance therewith.

Security
given up
upon void
payment to
be returned.

(4) Where 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.

Exceptions.

(5) Nothing herein shall

Wages.
Rev. Stat.
c. 143.

(a) affect *The Wages Act*, or prevent a debtor providing for payment of wages due by him in accordance with the provisions of that Act,

Surrender of
securities.

(b) 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 valid security which he held for the payment of the debt so paid unless the security is restored or its value made good to the creditor,

Exchange of
securities.

(c) apply 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, or

Certain
securities
to be valid.

(d) invalidate a security given to a creditor for a pre-existing 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 debts in full. 10 Edw. VII. c. 64, s. 6.

7. No person other than a permanent and *bona fide* resident of Ontario shall be assignee under an assignment within the provisions of this Act, nor shall any assignee delegate his duties as assignee to or appoint as deputy any person who is not a permanent and *bona fide* resident of Ontario; 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 Ontario. 10 Edw. VII. c. 64, s. 7. Residence of assignee.

8. Every assignment made under this Act for the general benefit of creditors, if the property is described in the words "all my personal property which may be seized and sold under execution and all my real estate, credits, and effects," or in words to the like effect, shall vest in the assignee all the real and personal estate, rights, property, credits, and effects, whether vested or contingent, belonging to the assignor at the time of the assignment, except such as are by law exempt from seizure or sale under execution, subject, however, as regards land, to the provisions of *The Registry Act* and *The Land Titles Act*. 10 Edw. VII. c. 64, s. 8. Form of assignment for general benefit of creditors.
Rev. Stat. c. 124, 126.

[As to the preferential lien of a landlord, see *Landlord and Tenant Act*, R.S.O. c. 155.]

9. Every assignment for the general benefit of creditors, whether it is or is not expressed to be made under or in pursuance of this Act, and whether the assignment does or does not include all the real and personal estate of the assignor, shall vest the estate, whether real or personal or partly real and partly personal, thereby assigned in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned shall be subject to all the provisions of this Act, and the same shall apply to the assignee named in such assignment. 10 Edw. VII. c. 64, s. 9. All assignments for general benefit of creditors to be subject to this Act.

10. If an assignor executing an assignment under this Act for the general benefit of his creditors owes debts both individually and as a member of a partnership, or as a member of different partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full. 10 Edw. VII. c. 64, s. 10. How claims are to rank where different estates.

11.—(1) A majority in number and value of the creditors who have proved claims to the amount of \$100 or upwards may substitute for the sheriff, or for an assignee under an assignment to which subsection 3 of section 6 applies, a per- Appointment of substituted assignee.

son residing in the county or district in which the assignor resided or carried on business at the time of the assignment.

Removal,
substitution or
addition.

(2) An assignee may be removed and another substituted, or an additional assignee appointed by the Judge.

Death of
assignee.

(3) Where an assignee dies a new assignee may be appointed in the manner provided by subsection 2.

Effect on
estate.

(4) Where a new or additional assignee is appointed the estate shall vest in him or in him jointly with his co-assignee without a conveyance or transfer, and he shall register a verified copy of the resolution of the creditors or of the order appointing him in the office in which the assignment was registered.

Registration.

(5) A verified copy of the resolution or of the order may be registered in the proper registry or land titles office and the registration thereof shall have the same effect as the registration of a conveyance. 10 Edw. VII. c. 34, s. 11.

Rights of
assignee.

12.—(1) Except as in this section is otherwise provided the assignee shall have the exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors or in violation of this Act.

Right of
creditor in
certain cases
if assignee
refuses.

(2) Where a 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 required so to do the creditor shall have the right to obtain an order of the Judge 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 indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from the proceeding shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit, but if, before such order is obtained, the assignee signifies 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 belong to the estate. 10 Edw. VII. c. 64, s. 12.

Following
proceeds of
property
fraudulently
transferred.

13.—(1) In the case of a gift, conveyance, assignment or transfer of any property, real or personal, which is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made shall have sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds may be seized or recovered in any action by a person who would be entitled to seize and recover

the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and such right to seize and recover shall belong not only to an assignee for the general benefit of the creditors of the debtor but, where there is no such assignment, to all creditors of the debtor.

(2) Where there is no assignment for the benefit of creditors, and the proceeds are of such a character as to be seizable under execution, they may be seized under the execution of any creditor and shall be subject to the provisions of *The Creditors' Relief Act*. Taking proceeds under execution. Rev. Stat. c. 81.

(3) Where there is no assignment for the benefit of creditors, and whether the proceeds are or are not of such a character as to be seizable under execution, an action may be brought therefor by a creditor, whether an execution creditor or not, on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the proceeds available for the general benefit of the creditors. Creditor suing on behalf of himself and other creditors.

(4) This section shall not apply as against innocent purchasers of the property. 10 Edw. VII. c. 64, s. 13. Protection of innocent purchasers.

14. An assignment for the general benefit of creditors under this Act shall take precedence of attachments, garnishee orders, judgments, executions not completely executed by payment, and orders appointing receivers by way of equitable execution subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands or to the lien, if any, for his costs of the creditor, who has the first execution in the sheriff's hands. 10 Edw. VII. c. 64, s. 14. Assignments to take precedence of attachments, etc.

15. Where the Crown has a claim in respect of estreated bail against the estate of a person who makes an assignment for the benefit of his creditors the Lieutenant-Governor in Council may waive any preference in respect of such claim which the Crown has against such estate by virtue of its prerogative right. 2 Geo. V. c. 17, s. 29. Waiver of claims by Crown.

16. No advantage shall be obtained by any creditor by reason of 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 any such mistake, defect or imperfection shall be amended by the Judge on the application of the assignee or of any creditor of the assignor, and on such notice to other parties concerned as the Judge shall think reasonable, and the amendment, when made, shall have relation back to the date of the assignment, but not so as to prejudice the rights of innocent purchasers. 10 Edw. VII. c. 64, s. 15. Amendment by judge.

Publishing
notice of
assignment.

17.—(1) A notice of the assignment shall forthwith, after the delivery thereof to him or his assent thereto, be published by the assignee at least once in the *Ontario Gazette* and not less than twice in one newspaper having a general circulation in the county or district in which the property assigned is situate.

Registering
assignment.

(2) The assignment or a copy thereof shall also, within five days from the execution thereof, be registered by the assignee, together with an affidavit of a witness thereto of the due execution of the assignment, in the office of the clerk of the County or District Court of the county or district in which the assignor, if a resident in Ontario, resided at the time of the execution thereof, or if not a resident then in the office of the clerk of the County or District Court of the county or district where the personal property so assigned or where the principal part thereof is at the time of the execution of such assignment; and the clerk shall number and enter such assignments and endorse thereon the time of receiving the same, and the same shall be open for the inspection of all persons desiring to inspect the same.

Fees of clerk.

Rev. Stat.
c. 135.

(3) The clerk shall be entitled to the same fees for services as if the assignment had been registered under *The Bills of Sale and Chattel Mortgage Act*.

Provisional
County of
Haliburton.

(4) For the purposes of subsection 2 the Provisional County of Haliburton shall be deemed part of the County of Victoria. 10 Edw. VII. c. 64. s. 16.

Penalty for
neglecting
publication
or registra-
tion.

18.—(1) If the notice is not published as provided by the next preceding section, or if the assignment is not registered within five days from the delivery thereof to the assignee or his assent thereto, the assignee shall incur a penalty of \$10 for each and every day during which the default continues.

Onus of proof
of delivery
or assent.

(2) The burden of proving the time of such delivery or assent shall be upon the assignee.

Liability of
sheriff.

(3) Where the assignment is made to a sheriff he shall not incur the penalty unless he has been paid or tendered the cost of advertising and of registering the assignment, nor shall he be bound to act under the assignment until his costs in that behalf are paid or tendered to him. 10 Edw. VII. c. 64. s. 17.

Compelling
publication
and
registration.

19. If the assignment is not registered, or notice thereof is not published, the Judge may, upon the application of any person interested in the assignment, by order enforce the registration of the assignment or the publication of the notice. 10 Edw. VII. c. 64. s. 18.

(As to costs of order see *The Judges Orders Enforcement Act*, R.S.O. c. 79.)

20. The omission to publish or register as required by section 17 shall not, nor shall any irregularity in the publication or registration, invalidate the assignment. 10 Edw. VII. c. 64, s. 19.

DUTIES AND POWERS OF ASSIGNEE AND INSPECTOR.

21.—(1) It shall be the duty of the assignee immediately to inform himself, by reference to the assignor and his records of account, of the names and residences of the assignor's creditors, and, within five days from the date of the 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 estate by mailing prepaid and registered to every creditor known to him a notice calling the meeting to be held in his office or some other convenient place to be named in the notice not later than twelve days after the mailing thereof, and by advertisement in the *Ontario Gazette*.

(2) All other meetings to be held shall be called in like manner. 10 Edw. VII. c. 64, s. 20.

22.—(1) The creditors at any meeting may appoint one or more inspectors who shall superintend and direct the proceedings of the assignee in the management and winding up of the estate, and may also at any subsequent meeting for that purpose revoke the appointment of any inspector.

(2) Where the appointment of an inspector is revoked where an inspector dies, resigns his office or leaves Ontario the creditors at any meeting may appoint another inspector to take his place.

(3) An inspector shall not directly or indirectly purchase any part of the stock-in-trade, debts or other assets of the assignor. 10 Edw. VII. c. 64, s. 21.

23.—(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 25, it shall be the duty of the assignee, within two days after receiving such request, to call a meeting of the creditors for a day not later than twelve days after he receives the request, and in case of default the assignee shall incur a penalty of \$25 for every day after the expiration of the time limited for calling the meeting until it is called.

(2) In case a sufficient number of creditors do not attend the meeting mentioned in section 21, or fail to give directions with reference to the disposal of the estate, the Judge may give such directions as he may deem necessary for that purpose. 10 Edw. VII. c. 64, s. 22.

24. 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. 10 Edw. VII. c. 64, s. 23.

Scale of
votes.

25.—(1) Subject to the provisions of section 11 all questions at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:

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

For every claim of or over \$200 and not exceeding \$500,
2 votes.

For every claim of or over \$500 and not exceeding \$1,000,
3 votes.

For every additional \$1,000 or fraction thereof, 1 vote.

Upon claims
acquired
after
assignment.

(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.

Casting vote.

(3) In case of a tie the assignee or, if there are two assignees, the assignee nominated for that purpose by the creditors, or by the Judge if none has been nominated by the creditors, shall have a casting vote.

Valuing
securities.

(4) Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the assignor, or on the estate of a third person for whom the assignor 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 creditor ranking for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at an advance of ten per cent. upon 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.

Right to re-
value in cer-
tain cases.

(5) If a creditor's claim is based upon a negotiable instrument upon which the assignor 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 person primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment, he shall be entitled to amend his claim and revalue his security.

(6) Where a person claiming to be entitled to rank on the estate holds security for his claim, or any part thereof, of such a nature that he is required by this Act to value the same, and he fails to value such security the Judge, upon summary application by the assignee or by any other person interested in the estate, of which application at least three days' notice shall be given to the claimant, may order that, unless a specified value be placed on such security and notified in writing to the assignee within a time to be limited by the order, the claimant shall, in respect of the claim, or the part thereof for which the security is held, in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds of such estate.

When creditor holding security fails to value same.
Powers of Judge thereon.

(7) If a specified value is not placed on such security, and notified in writing to the assignee according to the exigency of the order, or within such further time as the Judge may by subsequent order allow, the claim, or the part, as the case may be, shall be wholly barred as against such estate but without prejudice to the liability of the assignor therefor.

Consequences of neglect of order.
Liability of assignor.

10 Edw. VII. c. 64, s. 24.

PROOF OF CLAIM.

26.—(1) Every person claiming to be entitled to rank on the estate shall furnish to the assignee particulars of his claim proved by affidavit and such vouchers as the nature of the case admits of.

Proof of claim.

(2) Where a person claiming to be entitled to rank on the estate 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 sections the Judge, upon summary application by the assignee or by any other person interested in the estate, of which application at least three days' notice shall be given to the claimant, may order that, unless the claim be proved to the satisfaction of the Judge within a time to be limited by the order, the claimant shall no longer be deemed a creditor of the estate and shall be wholly barred of any right to share in the proceeds thereof.

Limiting time for proof of claim.

(3) If the claim is not so proved within the time so limited, or within such further time as the 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 assignor therefor.

Consequences of neglect to prove claim.

(4) The two next preceding subsections shall not interfere with the protection afforded to assignees by section 56 of *The Trustee Act*.

Not to interfere with Rev. Stat. c. 121.

(5) A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and to vote

Creditor may prove claim not due.

at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due. 10 Edw. VII. c. 64, s. 25.

Contestation
of claim.

27.—(1) 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 of the claim may be served by the assignee upon the claimant.

Limitation.

(2) Within thirty days after the receipt of the notice, or within such further time as the Judge may 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, or of the summons in case the action is brought in a Division Court, shall be served on the assignee; and in default of such action being brought and writ or summons served within the time limited the claim to rank on the estate shall be forever barred.

Service on
solicitor of
assignee.

(3) The notice by the assignee shall contain the name and place of business of a solicitor upon whom service of the writ or summons may be made; and service upon him shall be deemed sufficient service. 10 Edw. VII. c. 64, s. 26.

Procedure
where assignee
is satisfied but
assignor
desires to
dispute.

28.—(1) If the assignee is satisfied with the proof adduced in support of a claim, but the assignor disputes the same, the assignor shall do so by notice in writing to the assignee, stating the grounds upon which he disputes the claim; and such notice shall be given within ten days after the assignor is notified in writing by the assignee that he is satisfied with the proof adduced, and not afterwards unless by leave of the Judge.

Where
Assignee does
not require
action to be
brought.

(2) If upon receiving such notice of dispute the assignee does not deem it proper to require the claimant to bring an action to establish his claim he shall notify the assignor in writing of the fact, and the assignor may thereupon, and within ten days of his receiving such notice, apply to the Judge for an order requiring the assignee to serve a notice of contestation.

Conditions.

(3) The order shall be made only if, after notice to the assignee, the Judge is of opinion that there are good grounds for contesting the claim.

Where deci-
sion of
assignee shall
be final.

(4) If the assignor does not make such an application the decision of the assignee shall, as against him, be final and conclusive.

Decision of
judge on
validity of
claim

(5) If upon the application the claimant consents in writing the Judge may, in a summary manner, decide the question of the validity of the claim.

Intervention
by assignor
at trial of
action.

(6) If an action is brought by the claimant against the assignee the assignor may intervene at the trial, either personally or by counsel, for the purpose of calling and examining or cross-questioning witnesses. 10 Edw. VII. c. 64, s. 27.

29.—(1) No property or assets of an estate assigned under the provisions of this Act shall be removed out of Ontario without the order of the Judge, and the proceeds of the sale of any such property or assets, and all moneys received on account of any estate shall be deposited by the assignee in an incorporated bank within Ontario, and shall not be withdrawn or removed without the order of the Judge, except in payment of dividends and charges incidental to winding up the estate. Retention of assets in the Province and deposit of moneys.

(2) An assignee or any person acting in his stead who violates the provisions of this section shall incur a penalty of \$500. Penalty.

(3) One-half of the penalty shall go to the person suing therefor and the other half shall belong to the estate. Application of penalty.

(4) In default of payment of the penalty and all costs incurred in any action or proceeding for the recovery thereof, within the time limited by the judgment, the Court in which the action is brought may order that such assignee or person may be imprisoned for any period not exceeding thirty days, and such assignee or person shall be disqualified from acting as assignee of any estate while such default continues. 10 Edw. VII. c. 64, s. 28. Imprisonment in default of payment of penalty.

30. Upon the expiration of one month from the first meeting of creditors, or as soon as may be thereafter, and afterwards from time to time at intervals of not more than three months, the 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. 10 Edw. VII. c. 64, s. 29. Accounts to be kept accessible.

31. 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 any claim for set-off shall be affected by the provisions of this or any other Act respecting frauds or fraudulent preferences. 10 Edw. VII. c. 64, s. 30. Set-off.

32. As large a dividend as can with safety be paid shall be paid by every assignee within twelve months from the date of the assignment, and earlier if required by the inspectors; and thereafter a further dividend shall be paid every six months, and more frequently if required by the inspectors, until the estate is wound up and disposed of. 10 Edw. VII. c. 64, s. 31. Dividends when to be paid.

33. So soon as a dividend sheet is prepared notice thereof shall be given by registered letter to each creditor, inclosing an abstract of receipts and disbursements, showing what interest has been received by the assignee 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 therefor; and after the expiry of eight days from the date of mailing such notice, abstract and dividend sheet, dividends on all claims not objected to within that period shall be paid. 10 Edw. VII. c. 64, s. 32.

Distributing
moneys and
determining
claims.
Rev. Stat. c. 81.

34.—(1) The assignee may take the proceedings authorized by section 33 of *The Creditors Relief Act* to be taken by a sheriff, and in that case sections 33 and 34 of that Act shall apply *mutatis mutandis* to proceedings for the distribution of money and determination of claims arising under an assignment made under this Act, with the substitution of "assignee" for "sheriff"; but this section shall not relieve the assignee from mailing to each creditor the abstract and other information required by section 33 of this Act to be sent to creditors so far as the same is not contained in the list sent by him under section 33 of *The Creditors Relief Act*.

Rev. Stat. c. 81.

To what judge
application
to be made.

(2) A Judge of the County or District Court of the county or district where the assignment is required to be registered shall be the Judge to whom applications under this section shall be made. 10 Edw. VII. c. 64, s. 33.

Remuneration
of assignee.

35. 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 the creditors fail to provide therefor, subject to review by the Judge upon complaint of the assignee or of any creditor. 10 Edw. VII. c. 64, s. 34.

Where remun-
eration not
fixed before
the final
dividend.

36. Where the remuneration of the assignee has not been fixed under the next preceding section before the final dividend the assignee may insert in the final dividend sheet, and retain as his remuneration, a sum not exceeding five per cent. of the cash receipts, subject to review by the Judge; but no application by the assignee to review the allowance shall be entertained unless the question of his remuneration has been brought before a meeting of creditors competent to decide the same before the preparation of the final dividend sheet. 10 Edw. VII. c. 64, s. 35.

Remuneration
of inspectors.

37.—(1) An assignee shall not make any payment or allowance to an inspector beyond his actual and necessary travelling expenses in and about his duties as inspector, except under the authority of a resolution of the creditors passed at a meeting regularly called, fixing the amount thereof, and in the notice calling the meeting the fixing of the remuneration of the inspectors shall be specially mentioned as one of the subjects to be brought before the meeting.

Limit of
allowance.

(2) An inspector shall not be allowed more than four dollars a day besides actual travelling expenses. 10 Edw. VII. c. 64, s. 35.

EXAMINATION OF ASSIGNOR AND OTHERS.

38.—(1) Upon a resolution passed by a majority vote of the creditors present or represented at a meeting of creditors regularly called, or upon the written request of a majority of the inspectors, or upon an order made by the Judge, the assignee may examine upon oath before a Master, Local Master, Local Registrar, Deputy Clerk of the Crown, Judge of the County or District Court, Special Examiner, Official Referee or any other person named in the order, the assignor or any person who is or has been his agent, clerk, servant, officer or employee of any kind, touching the estate and effects of the assignor, and as to the property and means he had when the earliest of his debts or liabilities existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him; and the person examined may be required by the assignee to produce upon such examination any property, book, document or paper in his custody, power or control.

Examination
of assignor
or employees.

(2) Unless otherwise ordered the examination shall take place in the county or district within which the person to be examined resides.

Where exam-
ination to
take place.

(3) The Rules and procedure of the Supreme Court as to the examination of a judgment debtor, or any clerk or employee or former clerk or employee of a judgment debtor, shall, so far as may be, apply to an examination held under subsection 1. 10 Edw. VII. c. 64, s. 37.

Procedure on
examination.

39. Any person who has or is believed or suspected to have in his possession or power any book, document or paper of any kind relating in whole or in part to the assignor, his dealings or property, and who refuses or fails to produce the same for the inspection of the assignee within four days after demand in writing by the assignee, may by order of the Judge be examined before the Judge or any of the officers mentioned in section 38 touching such book, document or paper; and he shall be subject to the same consequences, in the case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make such production, as are mentioned in section 41. 10 Edw. VII. c. 64, s. 38.

Examination
of persons
having cus-
tody of
property of
assignor.

40. If the assignor does not attend for examination and does not allege a sufficient excuse for not attending or, if attending, he refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination that the assignor has concealed or made away with his property in order to defeat or defraud his creditors or any of them, the Judge may order the assignor to be committed

When assign-
nor does not
attend or
refuses
to answer
questions.

to the common gaol of the county or district in which he resides for any period not exceeding twelve months. 10 Edw. VII. c. 64, s. 39.

Compelling
attendance
and produc-
tion of
books.

41. Any person other than the assignor liable to be examined shall be subject to the same consequences, in case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make production, as a witness in an action in the Supreme Court. 10 Edw. VII. c. 64, s. 40.