

F346.611
R861 in

SUPERIOR COURT

for Lower Canada.

RULES, ORDERS,

AND

TARIFF OF FEES,

IN

INSOLVENCY.

1864.

P 346.611
R 861 in

PROVINCE OF CANADA, } IN THE SUPERIOR COURT
Lower Canada, to wit : }
DISTRICT OF MONTREAL. } FOR LOWER CANADA.

Monday, the seventeenth day of October, one thousand eight hundred and sixty-four.

PRESENT :—

The Honorable Mr. Justice BADGLEY.

The following Rules and Orders, made by the Chief Justice and Justices of the Superior Court for Lower Canada, under and by virtue of the Provincial Statute, 27th and 28th Victoria, chapter 17, for the regulation of proceedings under the Insolvent Act of 1864, were on this day read and published in open Court, as follows :—

RULES AND ORDERS

AND

TARIFF OF FEES,

Made by the Judges of the Superior Court for Lower Canada, under and by virtue of the Statute 27 and 28 Vict., cap. 17, intituled : "An Act respecting Insolvency."

1. There shall be assigned in the Court-House of each Judicial District at which the sittings of the Superior Court are held, two rooms for matters in Insolvency, one in which the sittings of the Judge shall be held, and the other for the Office of the Clerk in Insolvency.

2. All judicial proceedings in Insolvency shall be had and conducted in the said Court Room alone, and not elsewhere; and the sittings of the Judge shall commence at 11 A.M., or at such other hour as the Judge or Judges in each District shall hereafter appoint, and shall continue till the business of the day shall be completed, or until the Judge shall adjourn the same.

3. The Clerk's Office shall be kept open every juridical day, from 9 A.M. to 4 P.M., and shall be attended during that time by a Clerk appointed by the District Prothonotary, and who shall be known as "The Clerk in Insolvency."

RULES AND ORDERS.

4. To ensure regularity of proceedings at the sittings of the Judges, the business shall be conducted in the following order:—

1. Meetings of Creditors.
2. Motions.
3. Rules Nisi.
4. Petitions, except as hereinafter mentioned.
5. Proceedings on applications for discharge of Insolvents.
6. Proceedings on applications for discharge of Assignees.
7. Appeals.

5. Proceedings before a Judge or Court may be conducted by the Insolvent himself, or by any party having interest therein, or by their Attorney *ad litem*, admitted to practice in Lower Canada, and by no other person.

6. All Motions, Petitions and Claims, and all papers in the nature of pleadings in Insolvency shall be intituled: In Insolvency, for the District of.....In the matter of.....Insolvent, and..... Claimant, Petitioner or Applicant, (as the case may be,) and they must be plainly written, without interlineations or abbreviations of words; and the object or purpose thereof shall be plainly and concisely stated. They shall also be subscribed by the Petitioner, Applicant or Claimant, or by his Attorney *ad litem* for him. And they shall be subject to the ordinary rules of procedure of the Superior Court in respect of similar papers, as regards the names and designations of the parties, and the mode in which they shall be docketed and filed.

7. No paper of any description shall be received or filed in any case, unless the same shall be properly numbered and intituled in the case or proceeding to which it may refer or belong; and be also endorsed with the general description thereof, and with the name of the party or his Attorney *ad litem* filing the same.

8. In all appealable matter in dispute, the pretensions of the parties shall be set forth in writing, in a clear, precise and intelligible manner, and the notes of the verbal evidence taken before the Assignee shall be plainly written, shall be signed by the witness, if he can write and sign his name, and shall be certified by the Assignee as having been sworn before him. And in the event of an appeal, the Assignee shall make and certify a transcript from his Register, of the proceedings before him in the matter appealed from. And he shall also make and certify a list of the documents composing such proceedings and appertaining thereto, and shall annex such transcript and list to such documents with a strong paper or parchment cover, before producing the record before the Judge, as required by the said Act.

9. All proceedings before a Judge or Court shall be entered daily, in order of date, in a docket of proceedings, to be kept by the Clerk for each case: and shall, from time to time, and until the close of the Estate, be fairly transcribed in Registers suitable therefor, which shall be kept and preserved by the Prothonotary, in the same manner as the Registers of proceedings of the Superior Court.

RULES AND ORDERS.

10. No Demand, Petition or Application of which notice is required to be given, either by the provisions of the said Act or by an order of the Judge or Court, shall be heard until after such notice shall have been given, and due return thereof made and filed in the case.

11. Except when otherwise limited and provided by the said Act, and upon good cause shewn, the proceeding after notice given thereof, may be enlarged by the Judge or Court whenever the rights of parties interested may seem to require it for the purposes of justice.

12. Whenever a particular number of days is prescribed for the doing of an Act in Insolvency, the first and last day shall not be computed, nor any fractions of a day allowed; and when the last day shall fall upon a Sunday or Holiday, the time shall be enlarged to the next juridical day.

13. All affidavits of indebtedness made by a creditor, or by the clerk or agent of such creditor, shall set forth the particulars and nature of the debt, with the same degree of certainty and precision as is required in affidavits to hold to bail in civil process in the Courts of Lower Canada.

14. All Writs of Attachment issued under the said Act, shall, as issued, be numbered and entered successively by the Clerk in a Book, to which there shall be an Index, and to which access for examination or extract shall be had *gratis*, at all times during office hours.

15. Every such Writ shall describe the parties thereto, in the same manner as they are described in the said affidavits of debt; and the Declaration accompanying the said Writ, shall be similar in its form to the Declarations required to be filed in ordinary suits in the Superior Court.

16. No such Writ shall issue until after the affidavit of debt upon which the Writ is founded, shall have been duly filed in the Clerk's Office.

17. All services of Writs, Rules, Notices, Warrants and proceedings in Lower Canada, except otherwise specially prescribed by the said Act, may be made by Bailiffs of the Superior or Circuit Courts, whose certificate of service shall be in the form required for service of process in the said Courts; or by any literate person, who shall certify his service by his affidavit; and in either case, the manner, place and time of such service shall be described in words, and also the distance from the place of service to the place of proceeding.

18. All services of Writs, Rules, Notices, Warrants or other proceedings, shall be made between the hours of 8 A. M. and 7 P. M., unless otherwise directed by a Judge or Court upon good cause shewn.

19. Writs of Attachment need not be called in open Court, but shall be returned on the return day into the Clerk's Office, and shall be there filed for proceedings thereon, as may be advised or directed.

RULES AND ORDERS.

20. Every day, except Sundays and Holidays, shall be a juridical day for the return of said Writs, and for juridical and Court proceedings.

21. The Sheriff to whom the Writ of Attachment shall be directed, shall not be required to make any detailed Inventory or *procès-verbal* of the effects or articles by him attached under such Writ; but a full and complete Inventory of the Insolvent's Estate, so attached by the Sheriff, shall be made by the Assignee or person who shall be placed in possession thereof as guardian under such Writ; by sorting and numbering the books of account, papers, documents and vouchers of the Estate, and entering the same, with the other assets and effects thereof, in detail, in a book for the same, which shall be called "The Inventory of the Estate of.....," and which shall be filed by the said Assignee or person in possession, on the return day of the said Writ, as required by the said Act; and the said Inventory shall be open for examination or extract at all times during office hours, *gratis*.

22. Immediately upon the execution of the voluntary deed or instrument of assignment to the Assignee, he shall give notice thereof by advertisement in the form D of the said Act, requiring, by such notice, all Creditors of the Insolvent to produce before him, within two months from the date thereof, their claims, specifying the security therefor, with the vouchers in support of such claims, as required by such notice.

23. The Clerk shall prepare for the Judge or Court, a list of matters pending, or ready and fixed for proceeding on each day, following therein the order of procedure prescribed by the 4th Rule, which list shall be communicated to the Judge on the previous day.

24. The record of proceedings in each case shall at all times during office hours, be accessible, at the Clerk's Office, to Creditors and others in interest in such cases, for examination or extract therefrom, *gratis*. And in like manner the minutes of meetings of Creditors, and the register of proceedings, together with the claims made and the documents in the possession of the Assignee, shall also be accessible to Creditors and others interested in the case, at convenient hours, daily, to be appointed by the said Assignee.

25. The Assignee shall, from time to time, under order of date, and within twenty-four hours after the proceedings had before him, file in the said Clerk's Office, a clear copy under his signature as such Assignee, of such proceedings, together with a copy of the several Newspapers and Official Gazette, in which he shall have caused notices of such proceedings to be advertised, which said copy and newspapers shall form part of the record of proceedings of the particular case.

26. The Assignee shall, on the third juridical day of each month, after he shall have commenced to deposit Estate moneys in a Bank or Bank Agency, as required by the said Act, file of record in the case an account of the Estate, shewing the balance thereof in his hands, or under his control, made up to the last day of the preceding month.

RULES AND ORDERS.

And no moneys so deposited, shall be withdrawn without a special order of the Court, entered in the docket of proceedings in the case, or upon a dividend sheet prepared and notified, as required by the said Act, or unless otherwise ordered by the Creditors, under the powers conferred upon them by the said Act.

27. Every want of compliance with these rules in proceedings in Insolvency shall be *à peine de nullité*, and the proceeding in which the irregularity has occurred if objected to, on the ground of such want of compliance, shall be null and have no effect.

MONTREAL, 10th October, 1864.

(Signed,) EDW'D BOWEN, *Ch. Justice Superior Court.*
J. SMITH, *J. S. C.*
E. SHORT, *J. S. C.*
W. BADGLEY, *J. S. C.*
J. S. McCORD, *J. S. C.*
A. LAFONTAINE, *J. S. C.*
A. POLETTE, *J. S. C.*
J. A. BERTHELOT, *J. S. C.*
S. C. MONK, *A. J. S. C.*
J. T. TACHEREAU, *A. J. S. C.*

TARIFF OF FEES IN INSOLVENCY.

PROCEEDINGS FOR COMPULSORY LIQUIDATION.

ON BEHALF OF PLAINTIFF, IF NOT CONTESTED.

	\$ cts.
To the Prothonotary for Writ of Attachment.....	1 80
Do Copy of Writ	0 30
Sheriff for Warrant.....	2 50
Copies, each	0 50
Ali proceedings by the Sheriff or his Agent or Messenger in the seizure and return, exclusive of Mileage	2 00
Guardian, per day.....	1 00
For Making up Inventory and Statements, to be subject to taxation by the Judge.	
Prothonotary on return of Writ	5 00
Crier's Fee on Return.....	0 80
Prothonotary for copy of order for Meeting.	0 50
Prothonotary for Meeting	1 00
Copy of Judgment appointing Official Assignee.....	0 50
Attorney's Fee for conducting proceedings to appointment of Official Assignee	30 00

IF CONTESTED, ADDITIONAL FEES :

To the Prothonotary on Inscription.....	2 00
On every Witness examined for Plaintiff, exceeding two in number	0 30
For each subsequent deposition exceeding 400 words in length, for every 100 words.....	0 10
Attorney's Fee, additional	20 00
Counsel Fee at Enquête, additional.....	10 00

ON CLAIMS :

To the Attorneys—	
For every chirographary claim, without security.....	1 00
“ “ with security.....	2 00
For every hypothecary claim, if not contested	5 00
Additional on every claim contested, without Enquête—	
To Claimant's Attorney	10 00
To Contestant's Attorney	10 00
With Enquête—	
To Claimant's Attorney	25 00
To Contestant's “	20 00

TARIFF OF FEES IN INSOLVENCY.

	\$ cts.
To the Assignee—	
On every chirographary claim and hypothecary claim, not contested	0 10
For every witness examined on the contestation of a claim.	0 25
On inscription of contestation for argument.	2 00
On Contestations of Dividend Sheet—	
The same fees and disbursements to Counsel and to Assignee as on Contestation of Claim.	
On applications for discharge by the Court, for confirmation of discharge, or for annulling discharge:	
To the Applicant's Attorney—	
If not contested.	15 00
If contested, without Enquête	25 00
If contested, with Enquête.....	35 00
To the Respondent's Attorney—	
If contested, without Enquête	15 00
If contested, with Enquête.....	25 00
To the Prothonotary—Filing Application	2 00
" Every Deposition.	0 30
" All words over 400 in each Deposition, per 100	0 10
All necessary disbursements for advertisements and notices.	

ON PETITIONS, OTHER THAN PETITIONS IN APPEAL OR IN
CONTESTATION OF PROCEEDINGS FOR COMPULSORY
LIQUIDATION.

To the Petitioner's Attorney on every Petition, not contested.	5 00
If contested, without Enquête	10 00
If contested, with Enquête.....	15 00
To the Respondent's Attorney—	
If contested, without Enquête	8 00
If contested, with Enquête.....	12 00
To the Prothonotary—	
Filing Petition	2 00
Copy of Order.....	0 50
If contested, on filing Contestation.....	2 00
If there be an Enquête, for every Deposition	0 30
For all words over 400 in any Deposition, per 100.....	0 10

ON PETITIONS IN APPEAL TO A JUDGE:

To the Assignee for transcript of record and making up record and attendance before the Judge.....	5 00
To the Prothonotary—Filing Petition	2 00
" Remission of Record.....	1 00
To the Attorney for the Petitioner—	
If not contested	10 00
If contested.....	20 00
To the Attorney for the Respondent.....	15 00

ON BEHALF OF THE DEFENDANT—IF NOT CONTESTED:

Attorney's Fee on Appearance	10 00
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TARIFF OF FEES IN INSOLVENCY.

§ cts.

IF CONTESTED—ADDITIONAL FEES:

To the Prothonotary on filing Petition in contestation	6 00
On every Witness examined for Defendant, exceeding two in number	0 30
For each subsequent deposition exceeding 400 words in length, for every 100 words	0 10
Attorney's Fee	20 00
Counsel Fee at Enquête.....	10 00
To the Attorneys, Prothonotaries and Bailiffs, Fees and disbursements on all Rules, Motions, Copies of Rules, Judgments and Orders, Commissions <i>rogatoires</i> , and other incidental matters according to the same rates as are allowed by the present Tariff in first class actions in the Superior Court.	

ON VOLUNTARY ASSIGNMENTS:

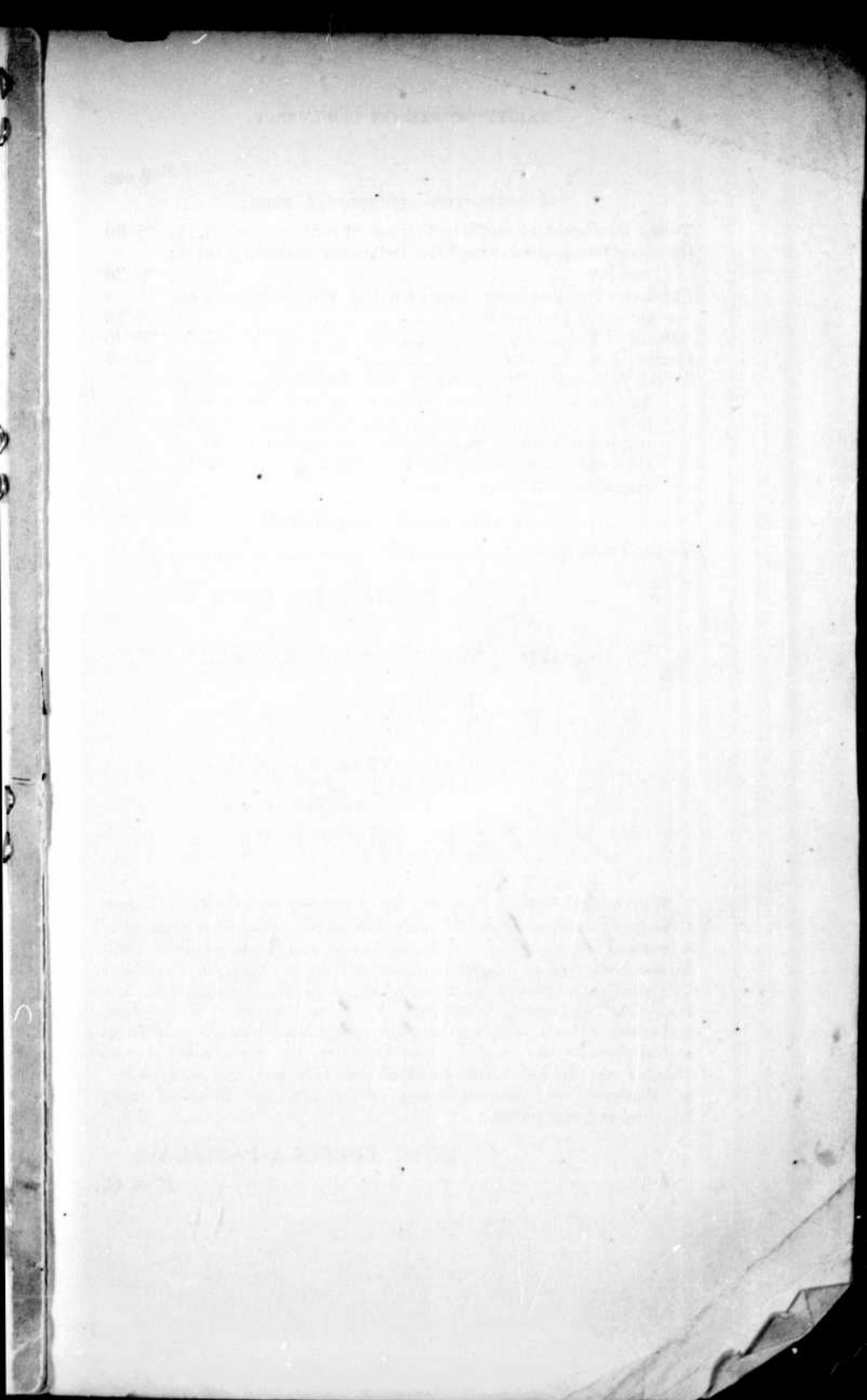
To the Prothonotary for filing Deed	2 00
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MONTREAL, 10th October, 1864.

(Signed,) EDW'D BOWEN, *Ch. Justice.*
 J. SMITH, *J. S. C.*
 E. SHORT, *J. S. C.*
 W. BADGLEY, *J. S. C.*
 J. S. McCORD, *J. S. C.*
 A. LAFONTAINE, *J. S. C.*
 A. POLETTE, *J. S. C.*
 J. A. BERTHELOT, *J. S. C.*
 S. C. MONK, *A. J. S. C.*
 J. T. TACHEREAU, *A. J. S. C.*

WE, the undersigned Prothonotary of the Superior Court for Lower Canada, District of Montreal, do hereby certify that the foregoing is a true and exact copy of the Rules, Orders and Tariff of Fees made by the Judges of the Superior Court for Lower Canada, under and by virtue of the Statute 27 and 28 Vic., chap. 17, intituled "An Act respecting Insolvency," taken from the original deposited in our office, and which were homologated and duly promulgated by the publishing and reading of the same in open Court on the seventeenth day of October, one thousand eight hundred and sixty-four, and enregistered at Montreal this thirty-first day of October, one thousand eight hundred and sixty-four.

MONK, COFFIN & PAPINEAU,
P. S. C.



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