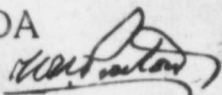


THE LAW OF BANKRUPTCY  
IN CANADA

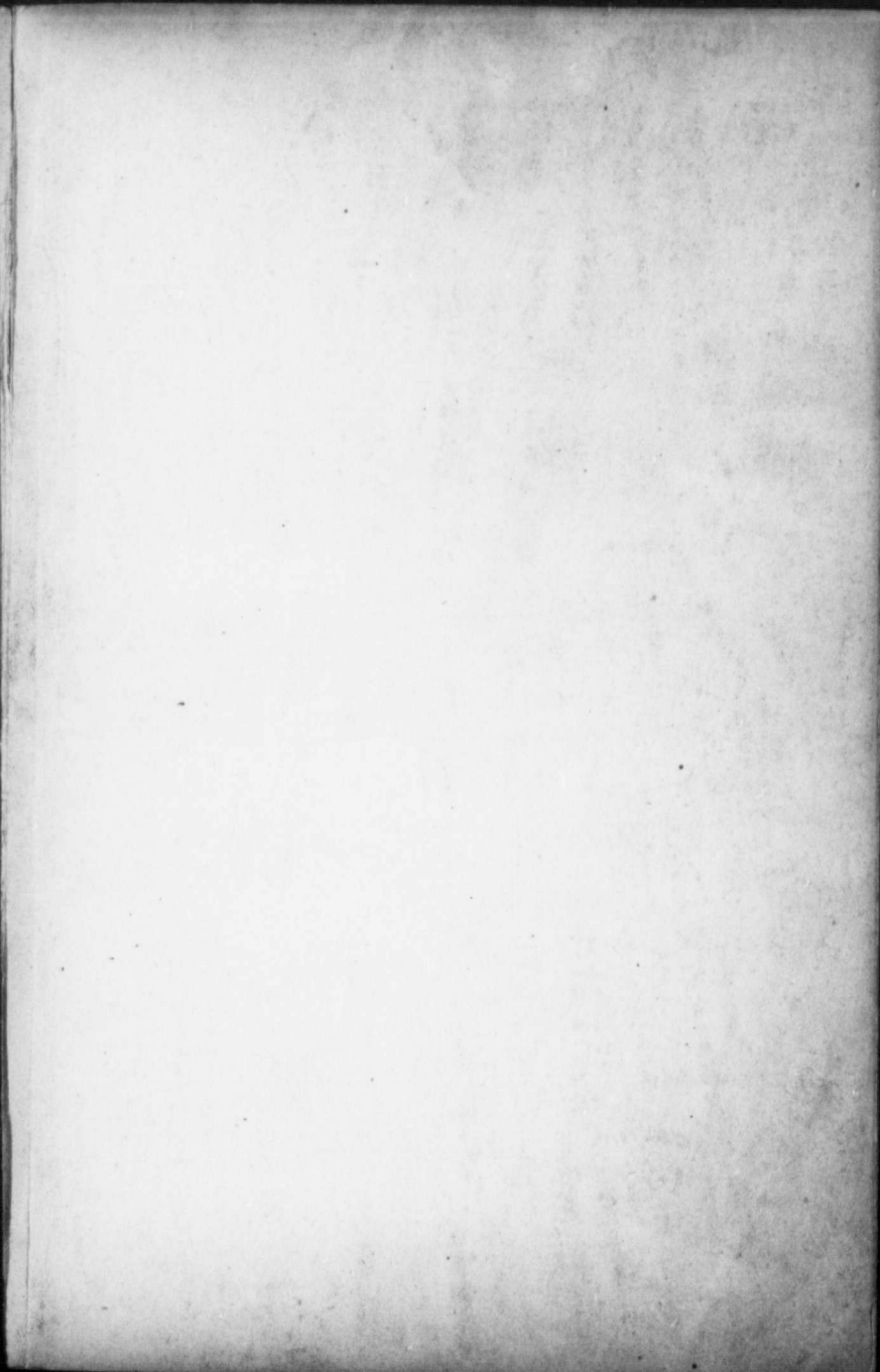
BY



J. A. C. CAMERON, K.C.

Compiled for

NATIONAL TRUST COMPANY, LIMITED





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IN CANADA

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THE LAW OF  
BANKRUPTCY IN CANADA

BEING

*The Bankruptcy Act of Canada, 1920*  
(Consolidated)

9-10 George V., Chapter 36, 1920

WITH ANNOTATIONS, RULES OF PRACTICE AND PROCEDURE,  
FORMS, TARIFF OF COSTS, AND AN INDEX  
TO THE ACT.

BY

J. A. C. CAMERON, M.A., LL.B., K.C.

Master in Chambers, Supreme Court of Ontario,  
Osgoode Hall.

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# **BANKRUPTCY ACT OF CANADA, 1920.**

9-10 Geo. V., Chapter 36, 1920.

*THE ACT CONSIDERED BY SECTIONS WITH NOTES ON  
EACH SECTION AS SUBDIVIDED UNDER  
THE VARIOUS HEADINGS.*

by

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## 1. INTRODUCTION.

A bankruptcy law means a system created by statute by which an insolvent debtor may on petition to the Court be adjudicated bankrupt. Possession is taken of the debtor's property, under order of the Court, the same is distributed proportionately amongst his creditors and the bankrupt and his after acquired property is, in the discretion of the Court, discharged from debts provable in bankruptcy existing at the institution of the bankruptcy proceedings.

The Bankruptcy Act which came into force on the first day of July, 1920, is the third Bankruptcy Act which the Parliament of Canada has passed. The first Act was passed in 1869. This Act was repealed by the Insolvency

Act of 1875 which after being in operation for about five years was repealed, chiefly on the grounds that the administration of the Act was too expensive and cumbersome. Since the repeal of the Act of 1875 several other Bankruptcy Acts were introduced in the House of Commons, but they never reached the final reading, one, at least, was promptly killed by the financial interests because it provided for the abolishment of preferences to creditors.

Bankruptcy law has two objectives: one the expeditious and economical distribution of the debtor's assets, and, secondly, a release of the debtor from his creditors when the debtor has not been guilty of any misconduct or fraud, and has surrendered all his assets.

This Act is largely based on the English Bankruptcy Act, 1914, 4-5 Geo. V. ch. 59. The English Act is a consolidation of the Acts of 1883, 1890, and 1913.

The rules are also based on the English Bankruptcy rules and are to have the same effect as if enacted by the Act, are to be judicially noticed, but must not extend the jurisdiction of the Court.

## 2. CONSTITUTIONALITY OF THE ACT.

The Act is a direct interference with the property, estate and civil rights within a Province of a debtor residing in the same or another Province, and the question arises has the Dominion Parliament jurisdiction to enact the present legislation? It is submitted that it has.

Under the British North America Act the Dominion Parliament has exclusive jurisdiction in respect of "The Regulation of Trade and Commerce" (sec. 91, clause 2), and in respect of "Bankruptcy and Insolvency" (sec. 91, clause 21). These are expressly enumerated in the classes of subjects assigned to the Parliament of Canada.

Each Provincial Legislature has exclusive jurisdiction in respect of "Property and Civil Rights in the Province" (sec. 91, clause 13), and in respect of "Generally all matters of a merely local or private nature in the Province" (clause 16).

At the time when the British North America Act was passed bankruptcy and insolvency legislation existed and was based on very similar provisions both in Great Britain and the Provinces of Canada. In 1869 the Dominion Parliament passed an Insolvency Act. This Act was repealed by a new Insolvency Act of 1875, which, after being twice amended, was, together with the amending Acts, repealed in 1880.

The Insolvency Act of 1875 was held by the Judicial Committee of the Privy Council to be *intra vires* the Dominion Parliament. *Cushing v. Dupuy*, 5 App. Cas. 409; 49 L.J. (P.C.), 63. That Act, in addition to provisions usual in such enactments for the compulsory transfer of the insolvent's assets to the assignee in insolvency and for the realization and distribution among creditors, contained provisions for proceedings in the Courts, and, amongst others, one which made the decisions of certain Courts in insolvency litigation final, so far as any appeal as of right was concerned. These provisions were attacked as being laws in relation to (1) "property and civil rights in the Province" and (2) "procedure in civil matters"—sec. 91, clause 14. They were, however, upheld as relating to "bankruptcy and insolvency."

Sir Montague Smith in giving judgment in the above case said:—

"It was contended for the appellant that the provisions of the Insolvency Act interfered with property and civil rights, and was therefore *ultra vires*. This objection was very faintly urged, but it was strongly contended that the Parliament of Canada could not take away the right of appeal to the Queen from final judgments of the Court of Queen's Bench, which, it was said, was part of the procedure in civil matters exclusively assigned to the Legislature of the Province. The answer to these objections is obvious. It would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates without interfering with and modifying some of the ordinary rights of property, and other civil rights, nor without providing some special mode of procedure for the vesting, realization, and distribution of the estate, and the settlement of the liabilities of the insolvent. Procedure must necessarily form an essential part of any law dealing with insolvency. It is therefore to be presumed, indeed it is a necessary implication, that the Imperial statute, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer on it legislative power to interfere with property, civil rights, and procedure within the Provinces, so far as a general law relating to those subjects might affect them."

After the repeal of the Insolvent Act of 1875, the Ontario Legislature passed the Assignments and Preferences Act. Section 9 of the latter Act (now sec. 14, R.S.O., 1914, ch. 134) which postpones judgments and executions not completely executed by payment to the assignment for the general benefit of creditors was attacked as "bankruptcy and insolvency" legislation.

The Judicial Committee of the Privy Council in *Re Attorney-General of Ontario v. Attorney-General of Canada*, [1894] A.C. 189, decided that such legislation was within the competence of the Provincial Legislature so long as it did not conflict with any existing bankruptcy legislation of the Dominion Parliament. Lord Herschell in pronouncing judgment stated at page 200:—

"It is not necessary in their Lordships' opinion nor would it be expedient to attempt to define what is covered by the words 'bankruptcy' and 'insolvency' in section 91. But it will be seen that it is a feature common to all the systems of bankruptcy and insolvency to which reference has been made, that the enactments are designed to secure that in the case of an insolvent person his assets shall be rateably distributed amongst his creditors whether he is willing that they shall be so distributed or not. Although provision may be made for a voluntary assignment as an alternative, it is only as an alternative. In reply to a question put by their Lordships the learned counsel for the respondents were unable to point to any scheme of bankruptcy or insolvency legislation which did not involve some power of compulsion by process of law to secure to the creditors the distribution amongst them of the insolvent debtor's estate. In their Lordships' opinion these considerations must be borne in mind when interpreting the words 'bankruptcy' and 'insolvency' in the British North America Act. It appears to their Lordships that such provisions as are found in the enactment in question relating as they do to assignments purely voluntary do not infringe on the exclusive legislation power conferred upon the Dominion Parliament. They would observe that a system of bankruptcy legislation may frequently require various ancillary provisions for the purpose of preventing the scheme



of the Act from being defeated. It may be necessary for this purpose to deal with the effect of executions and other matters which would otherwise be within the legislative competence of the Provincial Legislatures. Their Lordships do not doubt that it would be open to the Dominion Parliament to deal with such matters as part of a bankruptcy law, and the Provincial Legislatures would doubtless be then precluded from interfering with this legislation, inasmuch as such interference would affect the bankruptcy law of the Dominion Parliament. But it does not follow that such subjects as might properly be treated as ancillary to such a law, and therefore within the powers of the Dominion Parliament, are excluded from the legislative authority of the Provincial Legislature when there is no bankruptcy or insolvency legislation of the Dominion Parliament in existence."

The decisions of the Judicial Committee of the Privy Council on the constitutionality of certain legislation passed by the Dominion Parliament under other clauses of sec. 91 which purported to give exclusive jurisdiction to the Dominion Parliament throw light on the subject. It had been uniformly held that Dominion legislation in such matters which affects "property and civil rights" and "procedure within the Province" is *intra vires* the Dominion Parliament provided that for the proper enforcement and to give full effect to the Dominion legislation it is necessary to encroach upon the matters assigned to the Provincial Legislatures and to such extent only.

It was held in *Valin v. Langlois*, 5 App. Cas. 115, that the Dominion Act inposing upon certain existing provincial Courts the duty of determining election petitions relating to Federal elections was *intra vires* the Dominion Parliament, as not a law in relation to administration of justice in the Provinces including the constitution, maintenance and organization of provincial Courts. Section 92, clause 14.

In *Citizens Insurance Co. v. Parsons*, 7 App. Cas. 96, 51 L.J. (P.C.) 11, it was held that an Act of the Province of Ontario providing for uniform conditions in fire insurance policies which was attacked as being legislation in relation to "the regulation of trade and commerce" was *intra vires* the Ontario Legislature relating to "property and civil rights in the Province." Sir Montague Smith stated that the two sections 91 and 92 of the British North America Act must be read together and the language of one interpreted and where necessary modified by that of the other. It becomes necessary, as soon as an attempt is made to construe the general terms in which the classes of subjects in clauses 91 and 92 are described, that both sections and the other parts of the Act must be looked at to ascertain whether language of a general nature must not by necessary implication or reasonable intentment be modified and limited.

In *Russell v. Regina*, 7 App. Cas. 829, it was held that the Canada Temperance Act, which was attacked as invading provincial rights in three respects: (1) "shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local, or municipal purposes;" (2) "property and civil rights in the Province;" (3) "generally, all matters of a merely local or private nature in the Province" was *intra vires* the Dominion Parliament.

In *Bank of Toronto v. Lambe*, 12 App. Cas. 175, an Act of the Province of Quebec imposing taxation upon banks carrying on business in the Province, the amount of the tax depending in part upon the amount of the bank's

paid-up capital and in part upon the number of its branches in the Province, was attacked on the ground that it was not direct taxation with the Province, and that banks as the offspring of federal legislation were not proper subjects of provincial legislation. It was held *intra vires* the Quebec Legislature as legislation in relation to "direct taxation within the Province in order to the raising of a revenue for provincial purposes" (sec. 92, clause 2).

In *Tennant v. Union Bank*, [1894] A.C. page 31, a provision in the Dominion Bank Act which empowered banks to take warehouse receipts as collateral security for the re-payment of moneys advanced to the holders of such receipts was contested as legislation in relation to "property and civil rights in the Province" and therefore *ultra vires* the Dominion Parliament. The Judicial Committee of the Privy Council however were of the opinion that, though it did affect such rights, it interfered with them no further than the fair requirements of a banking Act would warrant and they upheld the law as one relating to banking under section 1, clause 15. The principle is well laid down by Lord Watson, who gave judgment in this case, in the following language:—

"Section 91 gives the Parliament of Canada power to make laws in relation to all matters not coming within the classes of subjects by the Act exclusively assigned to the legislatures of the provinces and also exclusive legislative authority in relation to certain enumerated subjects. . . . Section 92 assigns to each provincial legislature the exclusive right to make laws in relation to the classes of subjects therein enumerated. . . . The objection taken by the appellants to the provisions of the Bank Act would be unanswerable if it could be shewn that by the Act of 1867 the Parliament of Canada is absolutely debarred from trenching to any extent upon matters assigned to the provincial legislatures by section 92. But section 91 expressly declares that 'notwithstanding anything in this Act' the exclusive legislative authority of the Parliament of Canada shall extend to all matters coming within the enumerated classes; which plainly indicates that the legislation of that Parliament so long as it strictly relates to those matters is to be of paramount authority. To refuse effect to this declaration would render nugatory some of the legislative powers specially assigned to the Canadian Parliament. For example, among the enumerated classes of subjects in section 91 are 'patents of invention and discovery' and 'copyright'. It would be practically impossible for the Dominion Parliament to legislate upon either of these subjects without affecting the property and civil rights of individuals in the provinces. . . . The power to legislate conferred by that clause (91) may be fully exercised, although with the effect of modifying civil rights in the province."

The result of the decision in *Tennant v. Union Bank* is that legislation of the Dominion Parliament, so long as it strictly relates to the subjects enumerated in section 91, is of paramount authority even though it trenches upon the matters assigned to the Provincial Legislature by section 92.

Attention is drawn to the following cases:—*Attorney-General (Ontario) v. Attorney-General (Canada)*, [1896] A.C. 348; *Attorney-General (Canada) v. Attorney-Generals Ontario, Quebec, Nova Scotia (Fisheries Case)*, [1898] A.C. 700; *G.T.R. v. Attorney-General (Canada)*, [1907] A.C. 65; *Toronto v. C.P.R.*, [1908] A.C. 54; *Montreal v. Montreal Street Railway*, 1 D.L.R. 681, [1912] A.C. 333, 13 Can. Ry. Cas. 541; *Attorney-General (Ontario) v. Attorney-*

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*General for Canada (References Case)*, [1912] A.C. 571; *John Deere Plow Co. v. Wharton*, 18 D.L.R. 353, [1915] A.C. 330; *Bonanza Creek v. The King*, 26 D.L.R. 273, [1916] 1 A.C. 566; *Attorney-General (Canada) v. Attorney-General (Alberta)*, 26 D.L.R. 288, [1916] 1 A.C. 588; *Attorney-General (Ontario) v. Attorney-General (Canada)*, 26 D.L.R. 293, [1916] 1 A.C. 598.

The present Bankruptcy Act, which is based largely on the Imperial Act, appears to be bankruptcy or insolvency legislation of the character referred to in *Cushing v. Dupuy*, 5 App. Cas. 409, and in *Re Attorney-General (Ontario) v. Attorney-General (Canada)*, [1894] A.C. 189, and in view of the Privy Council's decisions above referred to *intra vires* the Dominion Parliament.

### 5. EFFECT OF THE ACT UPON CONFLICTING PROVINCIAL STATUTES.

The Privy Council in *Re Att'y-Gen'l (Ontario) v. Att'y-Gen'l (Canada)*, [1894] A.C. 189, held that the Provincial Legislature had authority to pass certain legislation which was ancillary to bankruptcy and insolvency legislation in the absence of bankruptcy or insolvency legislation by the Dominion Parliament. As the Dominion Parliament introduced no bankruptcy or insolvency legislation, the different Provinces passed assignments and preferences Acts which had the effect, on an assignment for the benefit of creditors being made, of postponing thereto judgments and executions not completely executed by payment and providing for a rateable distribution of all the assets of the debtor amongst his creditors. In the absence of bankruptcy and insolvency legislation by the Dominion Parliament these provincial Acts were clearly *intra vires*.

The present Bankruptcy Act provides that on the making of a receiving order the trustee shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by the Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt or shall commence any action or other legal proceedings unless with the leave of the Court. (Section 6.)

Section 9 of the Act provides that an insolvent debtor whose liabilities exceed \$500.00 may make an authorized assignment; that is, an assignment to a trustee authorized by the Act. The section further provides that every assignment made by an insolvent debtor other than an authorized assignment for the general benefit of his creditors shall be null and void. Section 3 provides that a debtor who makes an assignment for the benefit of his creditors commits an act of insolvency. These sections are in direct conflict with the Assignments and Preferences Acts. Any assignment made under these Acts by a debtor is null and void in so far as the effect of the provision of the Bankruptcy Act.

Section 11 of the Act provides that every receiver order in every authorized assignment shall take precedence over (a) all attachments of debts unless the debt involved has been actually paid over, and (b) all other attachments, executions or other process against the property except such thereof as have been completely executed by payment.

Sections 6 and 11 above referred to directly relate to civil procedure incident to bankruptcy legislation and would repeal by implication any conflicting provincial statutes.

Sections 29, 30, 31, 32 and 33 of the Act deal with fraudulent conveyances. The provisions of these sections are broader than the sections in the Assignments and Preferences Acts touching upon the same subjects.

Having regard to the decisions of the Privy Council above referred to, and particularly what was stated by Lord Herschell in *Re Att'y-Gen'l (Ontario) v. Att'y-Gen'l (Canada)*, [1894] A.C. 200, that "Their Lordships do not doubt that it would be open to the Dominion Parliament to deal with such matters as part of a bankruptcy law, and the provincial legislature would doubtless be then precluded from interfering with this legislation, inasmuch as such interference would affect the bankruptcy law of the Dominion Parliament"—it would appear that all provincial legislation which has any bearing upon or deals with any of the matters mentioned in the Act, should be carefully considered, and if in conflict with the provisions of the Act, or if the effect of such provincial Acts is an interference with the bankruptcy legislation, then such legislation would be *ultra vires* the Provinces.

#### 4. GENERAL EFFECT OF THE ACT.

The Act provides for three methods of distribution of the debtor's assets and the administration of his estate: (1) Adjudicating the debtor a bankrupt by making an order called a receiving order for the protection of the debtor's estate (sec. 4, sub-sec. 5); (2) the execution by an insolvent debtor of an authorized assignment; that is, an assignment made by him for the general benefit of his creditors to a trustee authorized by the Act to act as trustee, (sec. 9), and (3) a composition, extension or scheme of arrangement submitted by the debtor in writing and approved of by the creditors and the Court (sec. 13).

1. The procedure to adjudicate a debtor a bankrupt is by obtaining a receiving order. The order is obtained upon petition duly verified by affidavit by a creditor having a debt amounting to not less than \$500.00. The application is made to a Bankruptcy Court, which, under section 65 of the Act, is the Supreme Court or the High Court of the Province. To support a petition there must have been an act of bankruptcy committed by the debtor within six months before the date of the presentation of the petition. Section 3 of the Act sets forth very clearly what constitutes an act of bankruptcy. The making of an assignment by a debtor, whether an authorized assignment or not, a fraudulent conveyance, a fraudulent preference, absconding, an unsatisfied execution, his goods sold by a sheriff, or having no goods to be found, constitute acts of bankruptcy. A debtor may also commit an act of bankruptcy by exhibiting at any meeting of his creditors a statement of his assets and liabilities which shews that he is insolvent. If the debtor assigns or disposes of any of his goods with intent to defraud or delay his creditors, or if he makes any bulk sale of his goods contrary to the provisions of the Bulk Sales Act, he also commits an act of bankruptcy. A petitioning creditor to obtain an order must have proof to support his debt. If the Court is not satisfied with the proof it may, however, adjourn the proceedings in order to enable a creditor to prove his debt. In case of an authorized assignment being made the Court may instead of adjudicating the debtor a bankrupt and making a receiving order, continue the proceedings under the authorized assignment provided, of course, that it appears that the estate can be best administered under the assignment. The Court is empowered to make an order for an interim receiver if it is shewn to be necessary for the protection of the estate.

2. An insolvent debtor whose liabilities to creditors exceed \$500.00 may at any time prior to the making of a receiving order against him make to an authorized trustee in his locality an assignment of all his property for the general benefit of his creditors. This assignment is made in pursuance of the Act and vests the trustee with all the powers for the distribution of his property as provided in the Act. Section 9 expressly provides that every assignment other than an assignment of this character made by an insolvent debtor for the general benefit of his creditors shall be null and void.

The Act contains provisions making effectual the receiving order and an authorized assignment for the benefit of creditors. Upon the making of the receiving order or an authorized assignment all attachments, debts, executions and other process not completely executed by payment cease to have priority (sec. 11) and no creditor shall have any remedy against the property or person of the debtor in respect of his debt, or shall commence any action or other legal proceedings except with the leave of the Court (sec. 6). It is provided that inspectors shall be appointed, the claims of the creditors shall be proved, the assets distributed and all proceedings taken by the trustee for the economical and expeditious winding-up of the estate. The preferential lien of the landlord and other preferred claims are duly protected. Adequate provision is made for the setting aside of all fraudulent conveyances or preferences and the legislation in this particular is much broader than that now in force in the Provinces. Sections 58, 59 and 60 provide for the discharge of the bankrupt upon application being made to the Court. The procedure for obtaining a discharge and the grounds that must be shewn in that connection are set forth in detail in those sections. If the bankrupt or authorized assignor has not received his discharge and he obtains credit to the extent of five hundred dollars or upwards from any person without informing that person that he is an undischarged bankrupt or an undischarged assignor, or if he engages in any trade or business under a name other than that under which he was adjudicated bankrupt or made such authorized assignment without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt or made such authorized assignment by virtue of section 90 shall be guilty of an indictable offence and liable to a fine not exceeding five hundred dollars and to a term not exceeding one year's imprisonment, or to both.

3. Section 13 provides that an insolvent debtor may either before or after the making of a receiving order or the making of an authorized assignment submit to an authorized trustee in writing a proposal for a composition in satisfaction of his debts or an extension of time for payment thereof, or a scheme of arrangement of his affairs. The trustee may thereupon convene a meeting of the creditors for the consideration of such proposal. If the creditors and the Court approve of the proposal the same is binding on all the creditors. The Court may require security to be given for the carrying out of the proposal agreed upon. Ample provisions have been made to safeguard the creditors' interests

5. *THE ACT CONSIDERED BY SECTIONS WITH NOTES THEREON.*  
SHORT TITLE.

1. This Act may be cited as The Bankruptcy Act.

2. The original section 2 of the Act has been amended by the Bankruptcy Act Amendment Act, 1920, and as amended is as follows:

In this Act, unless the context otherwise requires or implies, the expression.

- (a) "affidavit" includes statutory declaration and affirmation;  
 (b) "alimentary debt" means a debt incurred for necessities or maintenance.

Attention is drawn to section 61 (c) which provides that an order of discharge of a bankrupt shall not release the bankrupt or authorized assignor from any liability for alimony.

- (c) "appeal court" means the court having jurisdiction in bankruptcy, under this Act, on appeal.

Under section 63 (3) the courts named in that sub-section are constituted appeal courts of bankruptcy.

- (d) "assignment" includes conveyance.

This definition is very extensive. See section 9 with reference to the effect of an assignment.

- (e) "assignor" means the maker of an assignment, whether under this Act such maker may lawfully make such assignment or such assignment may lawfully be made, or not;

- (f) "authorized assignment" means an assignment made as provided in this Act to an authorized trustee by an authorized assignor of all his property for the general benefit of his creditors.

Section 9 provides for an authorized assignment. Section 3 constitutes such an assignment as an act of bankruptcy.

- (g) "authorized assignor" means an insolvent assignor whose debts provable under this Act exceed five hundred dollars.

If an insolvent debtor makes an assignment other than to an authorized trustee the assignment is void. See section 9.

- (h) "available act" "act of bankruptcy" means an act of bankruptcy available for a bankruptcy petition at the date of the presentation of a petition on which a receiving order is made.

See section 3 for definition of an act of bankruptcy.

- (i) "banker" includes any person owning, conducting or in charge of any bank or place where money or securities for money are received upon deposit or held subject to withdrawal by depositors.

See section 88, which provides that nothing in the provisions of this Act shall interfere with or restrict the rights and privileges conferred upon banks and banking corporations by the Bank Act.

- (j) "bank" or "chartered bank" means an incorporated bank carrying on the business of banking under the Bank Act;

- (k) "corporation" includes any company incorporated or authorized to carry on business by or under an Act of the Parliament of Canada or of any of the Provinces of Canada, and any incorporated company, wheresoever incorporated, which has an office in or carries on business within Canada, but does not include building societies having a capital stock, nor incorporated banks, savings banks, insurance companies, trust companies, loan companies or railway companies.

This definition would cover every corporation doing business in Canada with the exceptions referred to. Sub-section "O" of this section should be read in conjunction with this sub-section.

- (l) "court" or "the Court" means the Court which is invested with original jurisdiction in bankruptcy under this Act.

Section 63 specifies what Courts are constituted Courts of bankruptcy in the different Provinces.

- (m) "creditor" with relation to any meeting held under authority of this Act, shall, in the case of a corporation, include bond-holder, debenture

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holder, shareholder and member of the corporation, and each class thereof shall in meeting express its views or wishes in manner prescribed by General Rules.

(n) "debt provable in bankruptcy" or "provable debt" or "debt provable" includes any debt or liability by this Act made provable in bankruptcy or in proceedings under an authorized assignment.

Section 44 provides what debts are provable in bankruptcy and section 45 provides what proof shall be given in support of such debts.

(o) "Debtor" includes any person whether a British subject or not, who, at the time when any act of bankruptcy was done or suffered by him, or any authorized assignment was made by him, (a) was personally present in Canada, or (b) ordinarily resided or had a place of residence in Canada, or (c) was carrying on business in Canada personally or by means of an agent or manager, or (d) was a corporation or a member of a firm or partnership which carried on business in Canada; and where the debtor is a corporation, as defined by this section, the Winding-up Act, 1906, ch. 144, shall not, except by leave of the Court, extend to or apply to it notwithstanding anything in that Act contained, but all proceedings instituted under that Act before this Act comes into force or afterwards, by leave of the Court, may and shall be as lawfully and effectually continued under that Act as if the provisions of this paragraph had not been made.

Sub-section "o" in the original Act was repealed and the above substituted thereof by the Bankruptcy Act Amendment Act, 1920.

**BANKS.** A bank cannot be made a bankrupt. It will be noted that under section 2 (k) incorporated banks are not included in the definition "corporation," which, under sub-section (o) of the same section, may be declared a bankrupt.

Section 88 provides that nothing in the provisions of this Act shall interfere with or restrict the rights and privileges conferred upon banks and banking corporations by the Bank Act.

As to whether a bank can take a valid assignment of existing or future books debts, see annotations to section 30.

**FOREIGNER.** Some nice questions have arisen as to whether a foreigner can be made bankrupt. The provision of our Act is broader than the English Act and it is submitted that a foreigner can be declared bankrupt, provided that the petitioning creditor complies in other respects with the provisions of the Act. It will be particularly noticed that in the definition of "debtor" it includes any person whether a British subject or not. Section 4 (D) of the English Act has not been incorporated in our Act. See *Re Pearson*, [1892] 2 Q.B. 263; *Cook v. Voleger Co.*, [1901] A.C. 102.

**INFANTS.** An infant being incapable of contracting except for necessities cannot be adjudged a bankrupt even though he carries on business and for it obtains goods and credits. *Ex parte Jones, Re J.*, 18 Ch.D. 169. Contracts by infants for the repayment of money loaned, or for goods supplied or to be supplied (other than contracts for necessities), and accounts stated with infants are, under the Infants Relief Act, absolutely void, and no action shall be brought on a promise after full age made by an infant to pay a debt contracted during infancy or a ratification of a promise or contract made during infancy. Therefore, a debt rendered void by that Act though ratified after the infant obtains majority will not be a good debt to support bankruptcy proceedings. *Ex parte Kibble*, L.R. 10 Ch. 373. It will be noted that the debt in this case was not incurred for necessities.

**MARRIED WOMEN.** Married women can be made bankrupt. Married women under our laws have a completely independent status.

Section 75 of the Act provides that every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the provisions of this Act as if she were a *feme sole*, and for all the purposes of this Act any judgment or order obtained against her, whether or not expressed to be payable out of her separate property shall have effect as though she were personally bound to pay the judgment, debt or sum ordered to be paid. Attention is also drawn to section 48 of the Act which provides for postponement of the husband's claim when he files a claim against her estate as a creditor, until all claims of the other creditors of his wife for valuable consideration have been satisfied. A claim filed by a married woman against her husband's estate is treated in the same manner.

**LUNATICS.** A lunatic, if he contracted the debt and committed the act of bankruptcy whilst sane, can be made a bankrupt. *Ex parte Stamp*, De Gex 345; *Ex parte Layton*, 6 Ves. 440. Section 85 provides that a lunatic may act by his committee or by the guardian or curator of his property.

**CONVICTS.** They can be made bankrupt. *Ex parte Graves*, 19 Ch. D. 1.

**MEMBERS OF PARLIAMENT.** The English Act provides for their disqualification upon being declared bankrupt. No corresponding provision appears in our Act.

**PARTNERSHIPS.** Section 76 provides that subject to such modifications as may be made by general rules, the provisions of this Act shall apply to limited partnerships in like manner as if limited partnerships were ordinary partnerships and, on all the general partners of a limited partnership being adjudged bankrupt or making an authorized assignment, the assets of the limited partnership shall rest in the trustee. It will be therefore seen that all partnerships and members of partnerships may be declared bankrupt. Section 85 provides that a firm may act by any of its members.

**COMPANIES.** The English Act excludes companies from its operation. Under our law any company incorporated or authorized to carry on business by or under any Act of the Parliament of Canada or any of the Provinces of Canada and any incorporated company wheresoever incorporated which has an office in or carries on business within Canada with the exception of building societies having a capital stock, incorporated banks, savings banks, insurance companies, trust companies, loan companies or railway companies may, notwithstanding the Winding-up Act, be made bankrupt. Section 2 (K) and (O). It is especially provided that the Winding-up Act shall not, except by leave of the Court in such cases, extend or apply to such company. It is pointed out that all proceedings instituted under the Winding-up Act before the Bankruptcy Act comes into force or afterwards, by leave of the Court, may and shall be as lawfully and effectually continued under the Winding-up Act as if the Bankruptcy Act had not been passed. Section 85 provides that a corporation may act by any of its officers authorized in that behalf under the seal of the corporation.

**WAGE-EARNERS.** Section 8 provides that the provisions of Part One of the Act (which relate to receiving order) shall not apply to wage-earners. It would appear, however, that wage-earners can make an authorized assignment. Section 2 (kk) defines a wage-earner to mean one who works for wages, salary, commission, or hire at a rate of compensation not exceeding fifteen hundred dollars per year and who does not on his own account carry on business.

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**FARMERS.** Section 8 provides that the provisions of Part One of the Act (which relate to receiving order) shall not apply to persons engaged solely in farming or the tillage of the soil. Farmers can, however, make an assignment under Part Two of the Act.

(p) "discharge" means the release of a bankrupt or authorized assignor from all his debts provable in bankruptcy or under an authorized assignment save such as are excepted by this Act. See sections 58, 59, 60, 61 and 62.

(q) "gazetted" means published in the Ontario Gazette.

See section 11, subsections 4, 5, 6 and 7.

(r) "general rules" includes forms.

The rules are based on the English rules and provide the procedure to be adopted on application to the Court. It is provided that the general practice of the Court in civil actions or matters before it, including the course of proceedings and practice in Judges' chambers, shall in cases not provided for by the Act and amendments thereto, or these rules, and so far as the same are applicable and not inconsistent with the said Act or these rules, apply to all proceedings under the said Act.

(s) "goods" includes all chattels personal and moveable property.

The definition of "property" (sec. 2, subsection (dd)), should be read along with this subsection.

(t) "insolvent person" and "insolvent" include a person, whether or not he has done or suffered an act of bankruptcy, (i) who is for any reason unable to meet his obligations as they respectively become due, or (ii) who has ceased paying his current obligations in the ordinary course of business, or (iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all his obligations, due and accruing due, thereout.

See section 9 which provides that an assignment, other than an authorized assignment by an insolvent debtor, is void. See section 3 which provides that any statement submitted by a debtor of his assets and liabilities which shews that he is insolvent constitutes an act of bankruptcy.

(u) "judge" means a judge of the court which is by this Act invested with original jurisdiction in bankruptcy.

Section 63 of the Act together with the rules 2 and 63 should be read along with this definition.

(v) "judgment" or "execution" or "attachment" shall have operation as if by law the liability of married women thereon and thereunder were personal as well as proprietary.

See section 11 which provides that all receiving orders and authorized assignments shall take precedence of all judgments, executions, or attachments not completely executed.

(w) "local newspaper" means a newspaper published in and having a circulation throughout the bankruptcy district or division wherein the debtor has resided or carried on business for the longest period during the six months immediately preceding the date of the presentation against him of a bankruptcy petition or the making by him of an authorized assignment.

See section 11 (4) which provides for publication of the receiving order and authorized assignment in the local newspaper.

(x) "locality" of a debtor (whether a bankrupt, assignor or person who has proposed a composition, extension or arrangement to or with his creditors) means either the place within a bankruptcy division or district whereat the debtor has carried on business at any time during the six months immediately preceding the date of the presentation against him of a bankruptcy petition or the making by him of an authorized assignment, or where the greater portion of the property of such debtor is situate, or where the debtor resides.

The definition in the original Act was repealed and the above substituted therefor by the Bankruptcy Act Amendment Act, 1920. See section 4 (4) which provides that the bankruptcy petition shall be presented to the Court having jurisdiction in the locality of the debtor, and section 9 which provides that an authorized assignment must be made to an authorized trustee for the debtor's locality.

(y) "oath" includes affirmation and statutory declaration.

(z) "ordinary resolution" means a resolution carried in manner provided by sub-section fourteen of section forty-two of this Act.

Section 42 provides for the meetings of creditors and under section 43 inspectors are appointed by ordinary resolution.

(aa) "person" includes corporation and partnership.

See previous annotations on corporations and partnerships *supra*.

(bb) "petition" means petition in bankruptcy.

Section 4 contains provisions with reference to the petition. See rules 74 to 91 inclusive.

(cc) "prescribed" means prescribed by General Rules within the meaning of this Act.

(dd) "property" includes money, goods, things in action, land, and every description of property, whether real or personal, movable or immovable, legal or equitable, and whether situate in Canada or elsewhere; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of, or incident to property as above defined.

See definition of goods in section 2 (s).

(ee) "registrar" includes any other officer who performs duties like to those of a registrar.

For the powers of the registrar, see section 65, and rules 4, 5, 6, and 20.

(ff) "resolution" means ordinary resolution.

For calling meetings of creditors and procedure at meetings of creditors, see section 42.

(gg) "secured creditor" means a person holding a mortgage hypothec, pledge, charge, lien or privilege on or against the property of the debtor, or any part thereof, as security for a debt due or accruing due to him from the debtor.

See sec. 6 (1) which provides that a receiving order shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as if he would have been entitled to realize or deal with it if sec. 6 (1) had not been passed. Section 51 deals with priority of claims and section 52 provides for the landlord preferential lien.

(hh) "Sheriff" includes bailiff or any officer charged with the execution of a writ or other process;

(ii) "special resolution" means a resolution decided by a majority in number of the creditors present, personally or by proxy, at a meeting of creditors and voting three-fourths in value of the proved debts on the resolution.

See sec. 42 as to meetings of creditors.

(jj) "trustee" or "authorized trustee" means, dependent upon the context, (a) one of the persons appointed by the Governor in Council, under authority of this Act as proper persons to be trustees in bankruptcy or otherwise hereunder, or (b) one of such persons named in a receiving order or in an authorized assignment to act, or who is otherwise hereunder authorized to act, as a trustee in bankruptcy, or under an authorized assignment or in connection with a proposal by a debtor for a composition, extension or arrangement to or with his creditors.

See sec. 6, and notes thereunder.

(kk) "wage-earners" means one who works for wages, salary, commission or hire at a rate of compensation not exceeding fifteen hundred dollars per year and who does not on his own account carry on business.

Sec. 8 provides that Part 1 of the Act relating to receiving orders shall not apply to wage-earners.

## PART I.

### BANKRUPTCY AND RECEIVING ORDERS.

#### *Acts of Bankruptcy.*

3. A debtor commits an act of bankruptcy in each of the following cases:—

(a) If in Canada or elsewhere he makes an assignment of his property to a trustee or trustees for the benefit of his creditors generally, whether it is an assignment authorized by this Act or not;

(b) If in Canada, or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof;

(c) If in Canada or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this Act be void as a fraudulent preference if he were adjudged bankrupt;

(d) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of Canada, or, being out of Canada, remains out of Canada, or departs from his dwelling house, or otherwise absents himself, or begins to keep house;

(e) If he permits any execution or other process issued against him under which any of his goods are seized, levied upon or taken in execution to remain unsatisfied until within four days from the time fixed by the sheriff for the sale thereof, or for fourteen days after such seizure, levy or taking in execution, or if the goods have been sold by the sheriff or the execution or other process has been held by him after written demand for payment without seizure, levy or taking in execution or satisfaction by payment for fourteen days, or if it is returned endorsed to the effect that the sheriff can find no goods whereon to levy or to seize or take; provided that where interpleader proceedings have been instituted in regard to the goods seized, the time elapsing between the date at which such proceedings were instituted and the date at which such proceedings are finally disposed of, settled or abandoned, shall not be taken into account in calculating any such period of fourteen days;

(f) If he exhibits to any meeting of his creditors any statement of his assets and liabilities which shews that he is insolvent, or presents or causes to be presented to any such meeting a written admission of his inability to pay his debts;

(g) If he assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his goods with intent to defraud, defeat or delay his creditors or any of them;

(h) If he makes any bulk sale of his goods without complying with the provisions of any Bulk Sales Act applicable to such goods in force in the Province within which he carries on business or within which such goods are at the time of such bulk sale.

This section is one of the most important sections of the Act, as it is necessary, on an application for a receiving order, to shew some definite act of bankruptcy. Immediately on the debtor committing one of these acts, he becomes liable to be made a bankrupt. The corresponding section in the English Bankruptcy Act is sec. 1, but there are a number of differences, and while consulting authorities under that section particular attention should be paid to our section to see if the differences are material. For definition of debtor see sec. 2 (o). It will be noted that in sub-section (a) of this section, an act of bankruptcy is committed immediately the debtor makes an assignment for the benefit of his creditors whether it is an authorized assignment or not. But under sec. 4 (6) the Court can, in case of an

authorized assignment, dismiss the application for a receiving order if it appears that the estate can be best administered under the assignment. With reference to sub-sections (b), (c) and (d) relating to fraudulent conveyances, fraudulent preferences, and absconding, the provincial Acts should be consulted on these matters.

A fraudulent disposition of property may be fraudulent under the Statutes of Elizabeth or fraudulent within the meaning of the bankruptcy laws. It has been held under the English bankruptcy laws that a conveyance is fraudulent thereunder as necessarily delaying and defeating creditors if the whole of the debtor's property is included substantially and if the consideration be a past debt and there is no fair present equivalent. An assignment of the whole of the debtor's property to one or several creditors to the exclusion of others for past debts is a fraudulent assignment. See *Ex parte Lukes*, L.R. 7 Ch. 302; *Young v. Fletcher*, 34 L.J. (Exch.) 154; *Ex parte Teevor*, L.R. 1 Ch. 297. A *bona fide* sale, however, either of the whole or a part of the debtor's property does not in itself constitute an act of bankruptcy. There is a great difference between the assignment of the whole and of a part of the debtor's property for a past consideration. If the debtor when he makes the assignment is insolvent and intends to defeat his creditors generally it is clearly invalid and an act of bankruptcy will be committed. *Ex parte Pearson*, L.R. 8 Ch. 667. Intent to defeat or delay creditors must be shewn to support these acts of bankruptcy. Such intent is frequently a matter of inference. See *Ex parte Kümer*, 2 Dea. 324; *Re Woolstenholme*, 4 Mor. 258; *Re Alderson*, [1895] 1 Q.B. 183. It has been held under the English Act that if a man quits England or remains out of England and provides no funds to meet bills becoming due, it may generally be assumed that his intention is to delay his creditors. But if the debtor's permanent home is abroad, this may not, however, be so. *Ex parte Brandon*, *Re Trench*, 25 Ch. D. 500. A married woman who leaves her place of business without paying her creditors, or notifying her change of address, commits an act of bankruptcy, though she goes to live with her husband elsewhere at his request. *Re Worsley*, [1901] 1 K.B. 309.

Sub-section (e) sets out plainly that an act of bankruptcy is committed when the debtor has an unsatisfied execution or permits his goods to be sold by the sheriff or if the sheriff can find no goods for seizure. The English Act provides that if an execution against the debtor has been levied by seizure of his goods under process and the goods have been either sold or held by the sheriff for twenty-one days, the debtor thereby commits an act of bankruptcy. Under that section it has been held that the 21 days are exclusive of the day of seizure.

*Re North*, [1895] 2 Q.B. 264. A petition for bankruptcy must be presented within 3 months (time specified by the English rules) of the completion of the 21 days, though the sheriff remains longer in possession. *Re Beeston*, [1899] 1 Q.B. 626. See Execution Act for rights and duties of the sheriff with regard to seizure, levy and sale.

Sub-section (f) provides that the debtor must exhibit to a meeting of his creditors a statement of his assets and liabilities which shews that he is insolvent or presents to such meetings a written admission of his inability to pay his debts to constitute an act of bankruptcy. See sec. 2, (t) for definition of insolvent person.

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*Petition and Receiving Order.*

4. (1) Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy a creditor may present to the court a bankruptcy petition.

(2) The petition shall be verified by affidavit and served on the debtor in the prescribed manner.

(3) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless,—

(a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors amounts to five hundred dollars; and,

(b) the act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition.

(4) The petition shall be presented to the court having jurisdiction in the locality of the debtor.

(5) At the hearing the court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with the proof, may adjudge the debtor a bankrupt and in pursuance of the petition, make an order, in this Act called a receiving order, for the protection of the estate.

(6) If the court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or, in case an authorized assignment has been made, that the estate can be best administered under the assignment, or that for other sufficient cause no order ought to be made, it may dismiss the petition.

(7) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course of law and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(8) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

(9) A creditor's petition shall not, after presentment, be withdrawn without the leave of the court.

(10) The bankruptcy of a debtor shall be deemed to have relation back to and to commence at the time of the service of the petition on which a receiving order is made against him.

(11) Provided, however, that nothing herein contained shall invalidate any proceedings by reason of the same having been commenced, taken or carried on in the wrong court, but the court may at any time transfer to the proper court the petition, application or proceedings, as the case may be.

The original sub-section 2 of section 4 was repealed and the above substituted therefor by the Bankruptcy Act Amendment Act, 1920, and a new sub-section, numbered 11, was added. Section 3 of the Imperial Act provides that if a debtor commits an act of bankruptcy, the Court may, on a bankruptcy petition being presented by either a creditor or the debtor, make a receiving order. It will be noted that under the above section only the creditor may present to the Court a bankruptcy petition. For what constitutes an act of bankruptcy, see sec. 3. The petition has to be verified by affidavit, and the petition and affidavit served on any party to be affected thereby not less than eight days before the day named for hearing in the petition. The Court may, however, abridge the time. See Rules 74 and

77. The application must be made to the Court of the debtor's locality. See sec. 8 which provides that "debtor" shall not include wage-earners or persons engaged solely in farming or tillage of the soil.

Sub-section 3 requires that the act of bankruptcy on which the petition is grounded must occur within six months before the presentation of the petition.

Section 8, subsection (2), provides that notwithstanding anything in the Act, no act or omission of a debtor in respect of any debt which, (a) was contracted or existed before the coming into operation of this Act; or (b) is or is evidenced by any judgment or negotiable or renewable instrument the cause or consideration whereof (whether or not such judgment or instrument is a renewal or one of several renewals, had or made, before or after the coming into force of this Act, proceeding from the same cause or consideration) existed before the coming into operation of this Act; shall be deemed an available act of bankruptcy, nor shall any such debt be deemed sufficient to found the presentation of a bankruptcy petition.

Attention is drawn to section 5 which provides for the appointment of an interim receiver to protect the estate where it is shewn to be necessary. For practice, see Rules 4, 5, 6, 14 to 20, 26, 28 to 33, 50, 74 to 95.

5. The Court may, if it is shewn to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint an authorized trustee as interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

See Rules 85 and 86 which provide the procedure for the appointment of an interim receiver.

#### *Trustee Under Receiving Order.*

6. (1) On the making of a receiving order the trustee shall be thereby constituted receiver of the property of the debtor and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the court and on such terms as the court may impose. But this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

(2) The court may constitute as such receiver the trustee named in the petition or some other authorized trustee acting for or within the same bankruptcy district as such named trustee, having regard as far as the court deems just to the wishes of the creditors as proved by any sufficient evidence.

(3) On a receiving order being made against a debtor the property of the debtor shall forthwith pass to and vest in the trustee named therein and in any case of change of trustee, shall pass from trustee to trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(4) The court, upon the application of the trustee or of a creditor proceeding under authority of an ordinary resolution carried by the votes of a majority in number of the known creditors, and upon satisfactory proof that the affairs of the debtor can be more economically administered within another bankruptcy district or division, or for other sufficient cause, may at any time by order, transfer any proceedings under this Act, which are pending before it to another bankruptcy district or division wherein thereafter they may be carried on as effectually as if therein commenced, or the court in which any such proceedings were commenced may of itself, for like cause upon satisfactory proof that such proceedings were commenced in good faith and not for the purpose of attempting to vest authority over the estate involved in any partic-

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ular authorized trustee or in the authorized trustee acting for or within any bankruptcy district, and provided that such proceedings were commenced within the province of the debtor's locality, order that such proceedings be retained in the bankruptcy district or division in which they were commenced, although the court so ordering may not be the court in which the proceedings ought to have been commenced.

The effect of a receiving order is to make the debtor a bankrupt. Section 4, subsection (5). The creditors may accept a composition, or if the debtor has been adjudicated a bankrupt, a composition may be accepted and the bankruptcy annulled by the Court. After a receiving order, the debtor must submit a statement of his affairs to the trustee. The debtor is subject to an examination and must attend the meeting of creditors and give such information as the meeting may require. As to the scope of the debtor's examination, see *Re Atherton*, [1912] 2 K.B. 251; *Re Solicitor*, 25 Q.B.D. 17. It will be noted that this section vests all the debtor's property of every kind in the trustee free from any action except action by a secured creditor to realize his security.

7. (1) The court may, at any time after the presentation of a bankruptcy petition against a debtor, order that any action, execution or other proceeding against the person or property of the debtor pending in any court other than the court having jurisdiction in bankruptcy shall stand stayed until the last mentioned court shall otherwise order, whereupon such action, execution or other proceeding shall stand stayed accordingly; and the court in which any such proceedings are pending may likewise, on proof that a bankruptcy petition has been presented against the debtor, stay such proceedings until the first mentioned court shall otherwise order.

(2) On the making of a receiving order every such action, execution or other proceeding for the recovery of a debt provable in bankruptcy shall, subject to the provisions of the next preceding section as to the rights of secured creditors, stand stayed unless and until the court shall, on such terms as it may think just, otherwise order.

The purpose of this section is to stay any action against the debtor pending investigation. Attention is called to Rule 13 which provides that where any proceedings in bankruptcy have been commenced against a corporation or where a corporation has made an authorized assignment, the Court may, on the application of the trustee or any creditor or shareholder, grant leave that all further proceedings in the winding-up of the corporation or liquidation of his assets be continued under the Winding-up Act and amendments *in toto*, and may make such order for the transfer of proceedings or to effectuate such leave as to the Court shall seem best.

8. (1) The provisions of this Part of this Act shall not apply to wage-earners or to persons engaged solely in farming or the tillage of the soil.

(2) Notwithstanding anything in this Part appearing, no act or omission of a debtor in respect of any debt which,—

(a) was contracted or existed before the coming into operation of this Act; or

(b) is or is evidenced by any judgment or negotiable or renewable instrument the cause or consideration whereof (whether or not such judgment or instrument is a renewal or one of several renewals, had or made, before or after the coming into force of this Act, proceeding from the same cause or consideration) existed before the coming into operation of this Act;

(c) shall be deemed an available act of bankruptcy, nor shall any such debt be deemed sufficient to found the presentation of a bankruptcy petition, but it shall be provable in any proceedings otherwise founded under this Part, and otherwise.

By section 2, sub-section (kk), "wage-earner" means one who works for wages, salary, commission or hire, at a rate of compensation not exceeding



fifteen hundred dollars per year, and who does not on his own account carry on business. While a receiving order cannot be obtained against a farmer, yet he may, under sec. 9, make an authorized assignment.

The effect of the above sub-section 2 is that the act or omission of a debtor in respect of the debt relied on as constituting the act of bankruptcy must take place subsequently to the 1st July, 1920.

## PART II.

### ASSIGNMENTS AND COMPOSITIONS.

#### *Assignments.*

9. Any insolvent debtor whose liabilities to creditors, provable as debts under this Act, exceed five hundred dollars, may, at any time prior to the making of a receiving order against him, make to an authorized trustee appointed pursuant to section fourteen with authority in the locality of the debtor, an assignment of all his property for the general benefit of his creditors. An assignment so made is in this Act referred to as an "authorized assignment," and every assignment of his property other than an authorized assignment made by an insolvent debtor for the general benefit of his creditors shall be null and void.

The debtor must be an insolvent one. By section 2, sub-section (t), "insolvent person" includes a person, whether or not he has done or committed an act of bankruptcy, (i) who is for any reason unable to meet his obligations as they respectively become due, or (ii) who has ceased paying his current obligations in the ordinary course of business, or (iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all his obligations, due and accruing due, thereunder.

Section 3 provides that the making of an assignment by an insolvent debtor constitutes an act of bankruptcy; but sec. 4, sub-sec. 6, provides that in case of an authorized assignment, the Court may dismiss an application for a receiving order if it appears that the estate can be best administered under the assignment.

Particular attention is drawn to the last paragraph of this section which provides that every assignment made under any Provincial Act by an insolvent debtor is null and void.

By section 14, the Governor in Council may, upon application made to the Secretary of State of Canada, appoint sufficient fit and qualified persons to be trustees in bankruptcy and under authorized assignments and in proceedings by insolvent debtors to secure compositions, extensions, and arrangements under this Act.

10. Every authorized assignment shall be valid and sufficient if it is in the form provided by General Rules or in words to the like effect; and an assignment so expressed shall, subject to the rights of secured creditors vest in the trustee all the property of the assignor at the time of the assignment excepting such thereof as is held by the assignor in trust for any other person and such thereof as is, against the assignor, exempt from execution or seizure under legal process in accordance with the laws of the province within which the property is situate and within which the debtor resides.

See form 18 of prescribed forms for an authorized assignment for the general benefit of creditors. See annotation to section 11.

#### *General Provisions Relating to Receiving Orders and Assignments.*

11. (1) Every receiving order and every authorized assignment made in pursuance of this Act shall take precedence over,—

(a) all attachments of debts by way of garnishment, unless the debt involved has been actually paid over to the garnishing creditor or his agent; and

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(b) all other attachments, executions or other process against property, except such thereof as have been completely executed by payment to the execution or other creditor;

but shall be subject to a lien for one only bill of costs, including sheriff's fees, which shall be payable to the garnishing, attaching or execution creditor who has first attached by way or garnishment or lodged with the sheriff an attachment, execution or other process against property.

(2) An execution levied by seizure and sale on and of the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall in all cases, acquire a good title to them against the authorized trustee.

(3) If an authorized assignment or a receiving order has been made, the sheriff or other officer of any court having seized property of the debtor under execution or attachment or any other process, shall, upon receiving a copy of the assignment certified by the trustee named therein or of the receiving order certified by the registrar or other clerical officer of the court which made it, forthwith deliver to the trustee all the property of the execution debtor in his hands, upon payment by the trustee of his fees and charges and the costs of the execution creditor who has a lien as in this section provided. If the sheriff has sold the debtor's estate or any part thereof, he shall deliver to the trustee the moneys so realized by him less his fees and the said costs.

(4) No receiving order or authorized assignment or other document made or executed under authority of this Act shall be within the operation of any legislative enactment now or at any time in force in any province of Canada relating to deeds, mortgages, judgments, bills of sale, chattel mortgages, property or registration of documents affecting title to or liens or charges upon property real or personal, immovable or movable; but a notice in the prescribed form of such receiving order or assignment and of the first meeting of creditors required to be called pursuant to this Act shall, as soon as possible after the making or executing of such receiving order or assignment, be gazetted, and not less than six days prior to said meeting be published in a local newspaper.

(5) The registrars of the courts of bankruptcy, the registrars of all land title and land registration offices and the recorders or clerks of all courts and offices wherein any documents of title relating to property are, according to the provisions of this Act or of the law of a province, registered, recorded or filed, shall keep on file for public reference a copy of each issue of the *Canada Gazette* which contains any notice or notices, of, incident to or resulting from receiving orders or authorized assignments referring to bankrupts or assignors who resided or carried on business in the province wherein the said courts or offices are situated; and they shall also keep an index book wherein they shall enter alphabetically the name of each bankrupt and authorized assignor who resided or carried on business in such province prior to the date of the receiving order or assignment and in respect of whose estate a notice may at any time hereafter appear in the said *Canada Gazette*.

(6) A fee not exceeding twenty-five cents for each search and fifty cents for each certificate may be charged by such registrar, recorder or clerk.

(7) The King's Printer, upon request of any person who is by this Act required to keep on file for public reference a copy of the *Canada Gazette*, shall regularly supply to such person, *gratis*, two copies of every issue of such *Gazette*.

(8) Every receiving order and every authorized assignment (or a true copy certified as to such order by the registrar or other clerical officer of the court which has made it, and as to such assignment certified by the trustee therein named) shall be registered or filed by or on behalf of the trustee in the proper office in every district, county or territory in which the whole or any part of any real or immovable property which the bankrupt or assignor owns or in which he has any interest or estate is situate.

(9) The proper office in this section referred to shall be the land titles office, land registration office, registry office or other office wherein, according to the law of the province, deeds or other documents of title to real or immovable property may or ought to be deposited, registered or filed.

(10) From and after such registration or filing or tender thereof within the proper office to the registrar or other proper officer, such order or assign-

ment shall have precedence of all certificates of judgment, judgments operating as hypothecs, executions and attachments against land (except such thereof as have been completely executed by payment) within such office or within the district, county or territory which is served by such office, but subject to a lien for the costs of registration and sheriff's fees, of such judgment, execution or attaching creditors as have registered or filed within such proper office their judgments, executions or attachments.

(11) Every registrar or other officer for the time being in charge of such proper office to whom any trustee shall tender or cause to be tendered for registration or filing any such receiving order or authorized assignment shall register or file the same according to the ordinary procedure for registering or filing within such office documents which evidence liens or charges against real or immovable property (and subject to payment of the like fees) if at the time of the tender of such document for such purpose there be tendered annexed thereto as part thereof an affidavit substantially in the following form:—

"In the matter of *The Bankruptcy Act.*"

"Canada  
Province of  
"I

of \_\_\_\_\_ in the province of \_\_\_\_\_,  
make oath and say—

"That the hereunto annexed document is tendered for registration (or filing) under the authority and direction of \_\_\_\_\_ of \_\_\_\_\_ in the Province of \_\_\_\_\_ a duly appointed trustee under *The Bankruptcy Act.*

"Sworn before me at \_\_\_\_\_  
in the province of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_"

(12) Such affidavit may be sworn before such registrar or other officer, or before a notary public or a commissioner authorized to administer oaths for use in any of the courts of the province.

(13) Any such registrar or other officer, who upon tender of any such receiving order or assignment or a copy thereof, certified as aforesaid, with the proper fees, and with the request that such document be registered or filed as aforesaid, shall refuse or omit to forthwith register or file the same in manner hereinbefore indicated or who shall omit or refuse to comply with the provisions of subsection five of this section in so far as they are applicable to him, shall be guilty of an indictable offence punishable upon indictment or summary conviction by a fine not exceeding one thousand dollars or by imprisonment for a term not exceeding one year or to both such fine and such imprisonment.

(14) If the receiving order or authorized assignment is not registered, or filed, or if notice of said receiving order or assignment is not published within the time and in the manner prescribed by this section, an application may be made by any creditor or by the debtor to compel the registration or filing of the receiving order or assignment, or publication of such notice, and the judge shall make his order in that behalf and with or without costs, or upon the payment of costs by such person as he may, in his discretion, direct to pay the same; and such judge may, in his discretion, impose a penalty on the trustee, for any omission, neglect or refusal to so register, file, or publish as aforesaid, in an amount not exceeding the sum of five hundred dollars, and such penalty when imposed shall forthwith be paid by the trustee personally into and for the benefit of the estate of the debtor.

(15) Saving and preserving the rights of innocent purchasers for value, neither the omission to publish or register as aforesaid, nor any irregularity in the publication or registration, shall invalidate the assignment or affect or prejudice the receiving order.

(16) The provisions of paragraphs one and ten of this section shall not apply to any judgment or certificate of judgment registered against real or immovable property in either of the provinces of Nova Scotia and New Brunswick prior to the coming into force of this Act, which became, under the laws of the province wherein it was registered, a charge, lien or hypothec upon such real or immovable property.

Subsection 1 of the original Act was repealed and the above subsection 1 substituted therefor by the Bankruptcy Act Amendment Act, 1920.

The above subsection 16 was not in the original Act. It was added by the Bankruptcy Act Amendment Act, 1920.

The constitutionality of the Bankruptcy Act is involved in the consideration of section 10 and sub-section 4 of section 11.

Section 68, sub-section 1, of the Land Titles Act provides that no person other than the registered owner shall be entitled to transfer or charge registered freehold or leasehold by a registered disposition.

Section 10 provides that every authorized assignment shall be valid and sufficient if it is in the form provided by General Rules or in words to the like effect; and an assignment so expressed shall, subject to the rights of secured creditors, vest in the trustee all the property of the assignor at the time of the assignment excepting such thereof as is held by the assignor in trust for any other person and such thereof as is, against the assignor, exempt from execution or seizure under legal process in accordance with the laws of the Province within which the property is situate and within which the debtor resides.

Sub-section 4 of section 11 provides that no receiving order or authorized assignment or other document made or executed under authority of this Act shall be within the operation of any legislative enactment now or at any time in force in any Province of Canada relating to deeds, mortgages, judgments, bills of sale, chattel mortgages, property or registration of documents affecting title to or liens or charges upon property, real or personal, immovable or movable.

Section 10 and sub-section 4 of section 11 are clearly *intra vires* the Dominion Parliament, and the effect of these sections is to abrogate section 68, sub-section 1, of the Land Titles Act.

As pointed out by Sir Montague Smith, in giving judgment in *Cushing v. Dupuy*, 5 App. Cas. 409, it would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates without interfering with and modifying some of the ordinary rights of property, and other civil rights, nor without providing some special mode of procedure for the vesting, realization, and distribution of the estate, and the settlement of the liabilities of the insolvent. Procedure must necessarily form an essential part of any law dealing with insolvency. It is therefore to be presumed, indeed it is a necessary implication, that the Imperial Statute, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer on it legislative power to interfere with property, civil rights and procedure within the Provinces, so far as a general law relating to those subjects might affect them.

The effect of the decisions, including the decision in the case above referred to, seems to be that Dominion legislation which affects "property and civil rights" and "procedure within the Provinces," is *intra vires* the Dominion Parliament provided that for the proper enforcement and to give effect to the Dominion legislation, it is necessary to encroach upon matters assigned to the Provincial Legislature and to such extent only.

The Provincial Legislature has jurisdiction to remedy this difficulty by legislation. Rule 38 under the Ontario Land Titles Act makes provision for the entering of the ownership of an ordinary assignee for the general benefit of creditors. The difficulty above pointed out could be remedied by amending

Rule 38 by providing for the entering of ownership by the Authorized Trustee under the Bankruptcy Act. It is very desirable that such an amendment should be made, as then the practice under the Bankruptcy Act in respect to titles would be the same as heretofore under the Assignments and Preferences Act. In making such an amendment the Provincial Legislature would not encroach in any way upon the exclusive right of the Dominion Parliament to enact bankruptcy legislation. A copy of the authorized Trustee's authority, whether by assignment or receiving order, should be registered before any transfer by an authorized Trustee or receiving order is registered. The publication of the notice mentioned in sub-section 4 of section 11 of the assignment or receiving order is clearly not sufficient to authorize registration of a transfer of charge.

Sub-section 5 of section 11 provides that the registrars of the Courts of bankruptcy, the registrars of all land titles and land registration offices and the recorders and clerks of all offices wherein any document of title relating to property are, according to the provisions of this Act or of the law of a Province, registered, recorded or filed, shall keep on file for public reference a copy of each issue of the Canada Gazette which contains any notice or notices of, incident to or resulting from receiving orders or authorized assignments referring to bankrupts or assignors who resided or carried on business in the Province wherein the said Courts or offices are situated; and they shall also keep an index book wherein they shall enter alphabetically the name of each bankrupt and authorized assignor who resided or carried on business in such Province prior to the date of the receiving order or assignment and in respect of whose estate a notice may at any time hereafter appear in the said Canada Gazette.

It will be noticed that only a copy of the Canada Gazette containing any notice or notices referring to bankrupts residing or carrying on business in the Province wherein the said Courts or offices are situated and also that the index book is to contain only the names of such bankrupt or authorized assignor who resided or carried on business in the Province.

In dealing with this section it would be well to consider the effect of a transfer by an undischarged bankrupt from another Province of property subsequently acquired in Ontario. The index book provided by this section would not contain his name. Unless this section is amended to provide for a Dominion index book, there may be serious questions arise as to the validity of such transfer.

The Master of Titles or the Local Masters of Titles should not register a transfer or charge without first obtaining satisfactory evidence that the person transferring or charging is not an undischarged bankrupt.

12. No advantage shall be taken of or gained by any creditor through any mistake, defect or imperfection in any authorized assignment or in any receiving order or proceedings connected therewith, if the same can be amended or corrected; and any mistake, defect or imperfection may be amended by the court. Such amendment may be made on application of the trustee or of any creditor on such notice being given 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 or petition in bankruptcy, but not so as to prejudice the rights of innocent purchasers for value.

Section 84 provides, (1) No proceeding in bankruptcy or under any authorized assignment shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceedings

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is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment of an authorized trustee or an inspector shall vitiate any act done by him in good faith.

*Composition, Extension or Scheme of Arrangement.*

13. (1) Where an insolvent debtor intends to make a proposal for,—

- (a) a composition in satisfaction of his debts; or,
- (b) an extension of time for payment thereof; or,
- (c) a scheme of arrangement of his affairs;

he may, either before or after the making of a receiving order against him or the making of an authorized assignment by him, require in writing an authorized trustee to convene at the office of such trustee a meeting of such debtor's creditors, for the consideration of such proposal. In case the convening of such meeting is required after a receiving order or assignment has been made only the trustee named in such order or assignment, or his successor, shall be authorized to convene it.

(2) The debtor shall at the time when he requires the convening of such meeting, or within such time as the trustee may then fix, lodge with the trustee,

(a) a true statement of the debtor's affairs, including a list of his creditors, which list shall show the post office address of and the amount payable to each creditor, the whole statement being verified by the debtor by way of statutory declaration; and,

(b) a proposal in writing signed by the debtor, embodying the terms of the proposed composition, extension or scheme and setting out the particulars of any sureties or securities proposed.

(3) The trustee shall, when so required, convene a meeting of creditors, and shall, at least ten days before the meeting, send to each creditor a notice of the time and place of such meeting and a copy of the debtor's statement of affairs and of his proposal; if at such meeting a majority in number of creditors who hold two-thirds in amount of the proved debts resolve to accept the proposal, either as made or as altered or modified at the request of the meeting, it shall be deemed to be duly accepted by the creditors, and if approved by the court shall be binding on all the creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter to that effect addressed postage prepaid and registered to the trustee, prior to the meeting, and any such assent or dissent if received by the trustee at or prior to the meeting shall have effect as if the creditor had been present and had voted at the meeting.

(5) The trustee shall forthwith, if the proposal is accepted by the creditors, apply to the court to approve it.

(6) If creditors who hold ten per cent. or more in amount of proved debts request the examination of the debtor, the trustee shall cause him to be examined under oath before the registrar or other officer appointed for that purpose by General Rules and his testimony to be taken down in writing. The testimony, so taken, may be read upon the hearing of the application for the approval of the composition or scheme of arrangement. The court if not satisfied with such testimony as so taken, may direct that the debtor attend before the court for the purpose of further examination.

(7) The court shall, before approving the proposal, hear a report of the trustee as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(8) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the court is required, where the debtor is adjudged bankrupt, to refuse his discharge, the court shall refuse to approve the proposal.

(9) If any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the debtor's discharge were he adjudged bankrupt, the court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than fifty cents on the dollar on all the unsecured debts provable against the debtor's estate.

11-12 Geo IV  
chap 57-12

12-13 Geo IV  
chap. V-14

(10) In any other case the court (subject to the provisions of subsection sixteen of this section) may either approve or refuse to approve the proposal.

(11) If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition, extension or scheme, or by the terms being embodied in an order of the court.

(12) A composition, extension or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable under this Act, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order or for alimony, or under a judgment against him as co-respondent in a matrimonial case or for necessities of life or alimentary debts, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

(13) The provisions of a composition, extension or scheme under this Act may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.

(14) If default is made in payment of any instalment due in pursuance of the composition, extension or scheme, or if it appears to the court, on satisfactory evidence, that the composition, extension or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the trustee or by any creditor, adjudge the debtor bankrupt, make a receiving order against him and annul the composition, extension or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition, extension or scheme. Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

(15) All parts of this Act shall, so far as the nature of the case and the terms of the composition, extension or scheme admit, apply thereto as if the terms "trustee," "bankruptcy," "bankrupt," "assignment," "authorized assignment," "assignor," "authorized assignor," "order" and "order of adjudication" included respectively a composition, extension or scheme of arrangement, a compounding, extending or arranging debtor and an order approving the composition, extension or scheme.

(16) No composition, extension or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt or authorized assignor.

(17) The acceptance by a creditor of a composition, extension or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

(18) Where a debtor has been adjudged bankrupt or has made an authorized assignment, and the court subsequently approves the composition, extension or scheme, it may make an order annulling the bankruptcy or authorized assignment and vesting the property of the debtor in him or in such other person as the court may appoint on such terms and subject to such conditions, if any, as the court may declare.

(19) Notwithstanding the acceptance and approval of a composition, extension or scheme, it shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents (as, for the purposes solely of proceedings relating to a composition, extension or scheme he may, notwithstanding anything in this Act, so assent) to such composition, extension or scheme.

Rule 98 provides that where a debtor intends to submit a proposal for a composition, extension, or scheme of arrangement the prescribed forms in the appendix, of proposal, notice and report shall be used by the trustee for the purpose of meetings of creditors for consideration of the proposal.

Rule 99 provides that whenever an application is made to the Court to approve of a composition, extension or scheme, the trustee shall, not less than seven days before the hearing of the application, send notice by registered mail of the application to the debtor and to every creditor, who has proved his debt; and the trustee shall file his report not less than two days before the time fixed for hearing the application.

Rules 100 to 106 inclusive should also be read in connection with this section.

For examination of the debtor, see secs. 56 and 57, and Rules 131 to 134 inclusive, for procedure on such examination.

The effect of sub-sec. 15 is to make all the sections of the Bankruptcy Act, so far as the nature of the case and the terms of the composition, extension or scheme of arrangement admit, applicable to the composition, or extension or scheme of arrangement. Section 86 provides that save as provided in the Act, the provision of the Act relating to the effect of a composition or scheme of arrangement and the effect of a discharge, shall bind the Crown.

The scheme or composition can be approved of by the Court. The Court's approval or refusal is largely based on the report of the trustee. The report of the trustee is *prima facie* evidence of the facts contained in it. *Ex parte Campbell*, 15 Q.B.D. 213; *Re Bottomley*, 10 Mor. 262, as to annulment of composition or scheme see *Ex parte Moon*, 19 Q.B.D. 669; *Walton v. Cook*, 40 Ch. D. 325. The approval of the Court to a composition is discretionary. See *Re Flew*, [1905] 1 K.B. 278; *Re Burr*, [1892] 2 Q.B. 467, and *Re McTear*, 59 L.T. 150.

### PART III.

#### TRUSTEES AND ADMINISTRATION OF PROPERTY.

##### *Appointment of Trustees.*

14. (1) The Governor in Council may, upon application made to the Secretary of State of Canada, appoint sufficient fit and qualified persons to be trustees in bankruptcy and under authorized assignments and in proceedings by insolvent debtors to secure compositions, extensions and arrangements under this Act.

(2) Every such trustee shall be appointed with authority limited territorially to the whole or part of some one or more bankruptcy districts or divisions but he shall, for the purpose of obtaining possession of, and realizing upon, the assets of a bankrupt or authorized assignor of whom he is trustee, have power to act as such anywhere. Trustees appointed pursuant to this section are in this Act referred to as "authorized trustees."

(3) Every person who applies to be appointed an authorized trustee shall state in his application full particulars of his qualifications, ability and previous business experience.

(4) No authorized trustee shall accept any assignment or trust or execute any duties under this Act unless and until he has given security to the satisfaction of the Governor in Council, by bond or otherwise, executed to His Majesty as represented by such departmental officer as may be designated by the Governor in Council, for due accounting and for payment over and transfer of all moneys and property received by him as such trustee. If the security required is provided in cash the trustee shall be entitled to be paid thereon such interest as may be prescribed by General Rules.

(5) Such departmental officer shall be a special trustee for the creditors and for the estate.

(6) The amount of such security shall not, at any time, be less than ten thousand dollars.

(7) The said bond shall be kept in force by the trustee until such time as the appointment of the trustee is revoked or until he resign such appointment, and until the Governor in Council is satisfied that all moneys and



properties received by the trustee have been duly accounted for and paid over to the parties entitled thereto, whereupon such bond shall be released and discharged.

(8) Unless the creditors, either at the first meeting, or at a meeting convened by notice to all the known creditors, resolve to dispense with further security, the trustee shall give security by bond or otherwise to the registrar of the court in the bankruptcy district or division of the debtor's locality, in an amount satisfactory to the registrar, for the due accounting and payment over and transfer of all moneys and properties received or to be received by him as such trustee in respect of the estate of such debtor, and such security shall be given within thirty days of the date of the receiving order or the making of the assignment. The expense incident to the furnishing of such security may be charged by the trustee to the estate of the debtor.

(9) Should the trustee be unable or fail to give the security required, in the manner and within the time hereinbefore provided, he shall within ten days from the expiration of the said thirty days, by notice in writing, convene a meeting of creditors for the purpose of appointing a new authorized trustee, and should he neglect or refuse to call such meeting, he shall be guilty of an offence and subject to the penalties provided by this Act.

(10) In case the trustee fails to give the security provided by this section and a new trustee is not appointed by the creditors, the court may, on the application of any creditor, appoint from among the available authorized trustees a new trustee.

See section 9 which declares null and void any assignment made by an insolvent debtor other than to an authorized trustee.

Section 96 provides that any person who,—

(a) not being an authorized trustee, advertises or represents himself to be such; or

(b) being an authorized trustee, either before providing the bond required by section fourteen, subsection four, of this Act, or after providing the same but at any time while the said bond is not in force, acts as or exercises any of the powers of an authorized trustee; or

(c) having been appointed an authorized trustee, with intent to defraud fails to observe or to perform any of the provisions of this Act, or fails duly to do, observe or perform any act or duty which he may be ordered to do, observe or perform by the court, pursuant to any of the provisions of this Act;

shall be guilty of an indictable offence and liable to a fine not exceeding one thousand dollars or to a term not exceeding two years' imprisonment or to both such fine and such imprisonment.

Section 84 (2) provides that no defect or irregularity in the appointment of an authorized trustee or an inspector shall vitiate any act done by him in good faith.

A trustee must have no interests which will conflict with his office and must be wholly impartial. See *Re Martin*, 21 Q.B.D. 29; *Re Lamb*, [1894] 2 Q.B. 805; *Re Mardon*, [1896] 1 Q.B. 140.

All the property of the debtor is vested in the trustee as soon as the trustee is appointed, but the trustee's title to the property is not limited by the date of his appointment or by the date of the receiving order or by the date of the adjudication, but it has been held under the English Act that it relates back to the time of the first act of bankruptcy committed by the debtor within the prescribed time. *Re Bumpus*, [1908] 2 K.B. 330; *Re Simmond*, [1894] 1 Q.B. 433; *Re Mander*, 80 L.T. 234.

The doctrine of relating back is very important. As to decisions on the point under the English Bankruptcy Act, see *Daries v. Petrie*, [1906] 2 K.B. 786; *Ponsford v. Union of London and Smith's Bank*, [1906] 2 Ch. 444; *Re Teale*, [1912] 2 K.B. 367; *Re Ashwell*, [1912] 1 K.B. 390.



A trustee under the Act has the same power in respect of acquiring and retaining possession of the debtor's property as if he was appointed receiver by the Court. A trustee can apply to the Court for directions in relation to any matter arising under the bankruptcy. In the management of the estate, the trustee must use his own discretion. The trustee is an officer of the Court and any person dissatisfied by any decision of the trustee can apply to the Court for relief. *Ex parte Kearsley*, 17 Q.B.D. 1; *Ex parte James*, L.R. 9 Ch. 609.

15. (1) A majority in number of the creditors who hold half or more in amount of the proved debts of twenty-five dollars or upwards may, at their discretion, at any meeting of creditors, substitute any other authorized trustee acting for or within the same bankruptcy district for the trustee named in the receiving order or to whom an authorized assignment has been made.

(2) An authorized trustee may be removed and another substituted or an additional authorized trustee may be appointed for cause, by the court.

(3) When a new trustee is appointed or substituted, all the property and estate of the debtor shall forthwith vest in the new trustee without any conveyance or transfer, and he shall gazette a notice of the appointment or substitution and register an affidavit of his appointment in the office of the registrar of the court from which the receiving order was issued, or in the case of an authorized assignment, in every office in which the original assignment or copy or counterpart thereof was lodged, registered or filed. Registration of such affidavit in any land registration district, land titles office, registry office or other land registration office, or lodging or filing such affidavit as aforesaid, shall have the same effect as the registration, lodging or filing of a conveyance or of a transfer to the new trustee.

(4) The new trustee shall pay to the removed trustee, out of the funds of the estate, his proper remuneration and disbursements, which shall be ascertained as provided by section forty of this Act.

(5) No authorized trustee shall be bound to accept an authorized assignment or to act as trustee in matters relating to assignments or receiving orders or to compositions, extensions, or arrangements by debtors, if, in his opinion, the realizable value of the property of the debtor is not sufficient to provide the necessary disbursements and a reasonable remuneration for the trustee, unless and until the trustee has been paid or tendered a sum sufficient to defray such disbursements and remuneration.

For debts provable and proofs of debts, reference should be made to secs. 44 and 45. The practice in regard to calling meetings of creditors and proceedings thereat is set forth in sec. 42. Section 40 provides that the remunerations of the trustee shall be limited to 5% and his disbursements to be taxed.

#### *Official Name.*

16. (1) The official name of an authorized trustee acting in bankruptcy or authorized assignment proceedings shall be "The Trustee of the Property of.....a Bankrupt (or Authorized Assignor)" (inserting the name of the bankrupt or assignor), and by that name the trustee may in any part of Canada or elsewhere hold property of every description, make contracts, sue or be sued, enter into any engagement binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

(2) The official name of an authorized trustee acting with respect to proceedings by a debtor for a composition of, or extension of time for the payment of, his debts, or an arrangement of his affairs shall be "The Trustee acting in re the proposal of.....(insert the name of the debtor) for a composition of his debts" or "arrangement of his affairs."

Under sections 6 and 9, on the making of a receiving order, and on the making of an assignment, all the property vests in the trustee.

*Duties and Powers of Trustees.*

17. (1) The trustee shall, as soon as may be, take possession of the deeds, books and documents of the debtor and all other parts of his property capable of manual delivery.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the debtor, be in the same position as if he were a receiver of the property, appointed by the court, and the court may, on his application, enforce such acquisition or retention accordingly.

(3) Unless otherwise directed in writing by the inspectors, the trustee shall forthwith, on the making of a receiving order or execution of an authorized assignment, insure and keep insured in his official name until sold or disposed of by him all the insurable property of the debtor, to the full insurable value thereof, in insurance companies duly authorized to carry on business in the province wherein the insured property is situate.

(4) All insurance covering property of the debtor in force at the date of the making of such receiving order or execution of such assignment shall, immediately upon such making or executing, and without any notice to the insurer or other action on the part of the trustee, and notwithstanding any statute or rule of law or contract or provision to a contrary effect, become and be, in the event of loss suffered, payable to the trustee, as fully and effectually as if the name of the trustee were written in the policy or contract of insurance as that of the insured, or as if no change of title or ownership had come about and the trustee were the insured.

For notes on this section, see section 14.

18. Subject to the provisions of this Act, an authorized trustee may do all or any of the following things:—

(a) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;

(b) Prove, rank, claim and draw a dividend in respect of any debt due to the debtor;

(c) Exercise any powers the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Act.

See notes to section 14.

19. (1) Where any property of the debtor vesting in an authorized trustee consists of patented articles or goods which were sold to the debtor subject to any restrictions or limitations, the trustee shall not be bound by any such restrictions or limitations but may sell and dispose of any such patented articles, or goods as hereinbefore provided, free and clear of any such restrictions or limitations.

(2) If the manufacturer or vendor of any such patented articles or goods objects to the disposition of them by the trustee as aforesaid and gives to the trustee notice in writing of such objection within five days after the date of the receiving order or authorized assignment, such manufacturer or vendor shall have the right to purchase such patented articles or goods at the invoice prices thereof, subject to any reasonable deduction for depreciation or deterioration.

(3) Where the property of a bankrupt or authorized assignor comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorize the sale of, any copies of the work, or to perform or authorize the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt or authorized assignor, nor shall he, without the consent of the author or of the court, be entitled to assign the right or transfer the interest or to grant any interest in the right by license, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt or authorized assignor was liable to pay.

The corresponding English section was passed superseding the decision in *Re Richards*, [1907] 2 K.B. 93.

**20.** (1) The trustee may, with the permission in writing of the inspectors, do all or any of the following things:—

(a) Sell all or any part of the property of the debtor (including the goodwill of the business, if any, and the book debts due or growing due to the debtor), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(b) Carry on the business of the debtor, so far as may be necessary for the beneficial winding-up of the same;

(c) Bring, institute, or defend any action or other legal proceeding relating to the property of the debtor;

(d) Employ a solicitor or other agent to take any proceedings or do any business, which may be sanctioned by the inspectors;

(e) Accept as the consideration for the sale of any property of the debtor a sum of money payable at a future time subject to such stipulations as to security and otherwise as the inspectors think fit;

(f) Mortgage or pledge any part of the property of the debtor for the purpose of raising money for the payment of his debts;

(g) Refer any dispute to arbitration, compromise any debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the debtor and any person who may have incurred any liability to the debtor, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on;

(h) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable against the estate;

(i) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the debtor, made or capable of being made on the trustee by any person or by the trustee on any person;

(j) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The permission given for the purposes of this section shall not be a general permission to do all or any of the above mentioned things but shall only be a permission to do any particular thing or things for which permission is sought in the specified case or cases.

(3) (a) All sales of property made by the trustee shall vest in the purchaser all the legal and equitable estate of the debtor therein;

(b) in the province of Quebec, if the sale has been made at public auction at the place prescribed and after advertisement as required for the sale of immovable property by sheriff, in the district or place where such immovable property is situate, the sale made by the trustee shall have the same effect as to mortgages, hypothecs, privileges or other real rights then existing thereon as if the same had been made by the sheriff in the said province under a writ of execution issued in the ordinary course, and the title conveyed by such sale in the said province shall have equal validity with a title created by sheriff's sale, and the conveyance of the trustee shall have the same effect as a sheriff's deed in the said province. Such sale shall be subject to the contribution to the building and jury fund provided for in the case of sheriff's sales. In case of false bidding the same recourse as in case of sheriff's sale may be exercised against the false bidder in the manner prescribed by General Rules.

Section 43 provides that at the first or subsequent meeting the creditors shall appoint one or more, but not exceeding five, inspectors of the administration by the trustee of the debtor's estate. Section 22 protects the trustee from personal liability.

**21.** The trustee, with the permission in writing of the inspectors, may appoint the debtor himself to superintend the management of the property of the debtor or any part thereof, or carry on the trade (if any) of the debtor

for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct, and may, with like permission, make from time to time such allowance as he may think just to the debtor out of his property for the support of the debtor and his family, or in consideration of his services, if he is engaged in winding-up his estate, but any such allowance may be reduced by the court.

As to the profits of a business carried on by a bankrupt, see *Re Rogers*, [1894] 1 Q.B. 425; *Affleck v. Hammond*, [1912] 3 K.B. 162.

22. (1) Where the trustee has seized or disposed of any property in the possession or on the premises of a debtor against whom a receiving order has been made or by whom an authorized assignment has been made, without notice of any claim by any person in respect of such property and it is thereafter made to appear that the property was not at the date of the making of said receiving order or assignment the property of the debtor, the trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the court is of opinion that the trustee has been guilty of negligence in respect of the same.

(2) Where any goods of a debtor against whom a receiving order has been made or by whom an authorized assignment has been made, are held by any person by way of pledge, pawn, or other security, it shall be lawful for the trustee, after giving notice in writing of his intention to do so, to inspect the goods, and, where such notice has been given, such person as aforesaid shall not be entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

23. The authorized trustee of a bankrupt or assignor shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt or authorized assignor may, subject to the control of the court, personally or by his agent inspect any such books.

No person shall, as against the trustee, be entitled to withhold possession of the books of account belonging to the debtor or to set up any lien thereon. Rule 145. Section 91 provides penalties for the bankrupt failing to keep proper books of account. Rule 110 provides that the trustee shall keep for a period of at least 6 years from the date of declaring a final dividend all current books of record and important documents of the estate of the bankrupt or authorized assignor.

24. (1) The authorized trustee of a bankrupt or assignor shall from time to time report,—

(a) when required by the inspectors, to every creditor; and,  
(b) when required by any specific creditor, to such creditor, shewing the condition of the debtor's estate, the moneys on hand, if any, and particulars of any property remaining unsold. The trustee shall be entitled to charge against the estate of the debtor, for the preparation and delivery of any such report, only his actual disbursements.

(2) The authorized trustee of a bankrupt or assignor (but not the trustee under a composition, extension or arrangement of a debtor's debts or affairs) shall promptly after their receipt or preparation mail to the Dominion Statistician, Department of Trade and Commerce, Ottawa, a true copy of,—

(a) the notice referred to in subsection four of section eleven of this Act;  
(b) the statement referred to in subsection one of section fifty-four of this Act;

(c) the abstract of receipts and disbursements and the dividend sheet referred to in subsection two of section thirty-seven of this Act;

(d) every order made by the court upon the application for discharge of any bankrupt or authorized assignor; and,

(e) the statement prepared by the trustee upon which a final dividend is declared.

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(3) Any person shall be entitled to examine and make copies of all or any of the documents mentioned in subsection two hereof, which are in the possession of the trustee.

*Administration of Estate.*

**25.** The property of the debtor divisible amongst his creditors (in this Act referred to as the property of the debtor) shall not comprise the following particulars:—

(i) Property held by the debtor in trust for any other person;

(ii) Any property which as against the debtor is exempt from execution or seizure under legal process in accordance with the laws of the province within which the property is situate and within which the debtor resides. But it shall comprise the following particulars:—

(a) All such property as may belong to or be vested in the debtor at the date of the presentation of any bankruptcy petition or at the date of the execution of an authorized assignment, and, in the case of a bankrupt, all property which may be acquired by or devolve on him before his discharge; and,

(b) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of the property as might have been exercised by the debtor for his own benefit at the date of said petition or assignment, or, in the case of such bankrupt, before his discharge.

Generally speaking all the debtor's property vested in the bankrupt at the commencement of the bankruptcy or acquired during the bankruptcy is divisible amongst his creditors. Wages earned after bankruptcy do not pass to the trustee. See *Wadling v. Oliphant*, 1 Q.B.D. 145; *Re Roberts*, [1900] 1 Q.B. 442.

As to goods sold on credit, see *Brandon v. Robinson*, 18 Ves. 429.

Damages for bodily injury do not pass to the trustee. *Beckham v. Drake*, 2 H. L. Cas. 579.

Where any part of the property consists of things in action, such things will be deemed to have been duly assigned to the trustee but he takes them merely as statutory assignee and subject to equities. So that he cannot, by giving notice to an insurance company, obtain priority over a mortgagee of a policy of insurance who is given no notice. *Re Wallis; Ex parte Jenks*, [1902] 1 K.B. 719.

As to what property is exempt from execution or seizure, see the Execution Acts in force in the different Provinces.

Under the English Act after-acquired property may be dealt with by the bankrupt. In *Cohen v. Mitchell*, 25 Q.B.D. 262, the Court of Appeal laid down the following rule: Until the trustee intervenes, all transactions entered into by a bankrupt after his bankruptcy with any person dealing *bona fide* with him, and for value, with respect to his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the trustee. See *Hunt v. Fripp*, [1898] 1 Ch. 675. This rule does not apply to real estate. See *Official Receiver v. Cook*, [1906] 2 Ch. 661.

**26.** (1) No property of an estate of a bankrupt or of an authorized assignor shall be removed out of the province where such property was at the date when any receiving order or authorized assignment was made, without the consent in writing of the inspectors or the order of the court in which proceedings under this Act are being carried on or within the jurisdiction of which such property is situate.

(2) The trustee shall deposit in a chartered bank the proceeds of the sale of any property of the estate of the bankrupt or the authorized assignor and all other moneys realized on account of any trust estate which he is administering under this Act and he shall not withdraw or remove therefrom, without the consent in writing of the inspectors or the order of the court, any such

moneys, except for payment of dividends and other charges incidental to the administration of the estate.

(3) No trustee in a bankruptcy or under any authorized assignment or composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

It is the duty of the trustee by sec. 23 to keep proper books of account.

27. If the trustee is directed to continue the business of a debtor he may incur obligations and make necessary or advisable advances, which obligations and advances so incurred or made shall be discharged or repaid to the trustee out of the assets of the debtor in priority to the claims of the creditors. Provided that,—

(a) the creditors or inspectors may by resolution limit the amount of the obligations or advances which may be made or paid by the trustee in the continuance of the business or the period of time for the continuance of the business; and,

(b) the trustee shall not be under obligation to continue the business if in his opinion the realizable value of the assets of the debtor is insufficient to fully protect him against possible loss from so doing, and if the creditors, upon demand made by the trustee, neglect or refuse to secure him against such possible loss.

Section 21 provides for the trustee appointing the debtor to superintend the management of his property and to carry on the business.

28. (1) The law of set-off shall apply to all claims made against the estate, and also to all actions instituted by the trustee for the recovery of debts due to the debtor in the same manner and to the same extent as if the debtor 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 Act respecting frauds or fraudulent preferences.

(2) If any debtor who has made an authorized assignment or against whom a receiving order has been made, owes or owed debts both individually and as a member of one or more different co-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.

If a creditor who proves is himself indebted to the bankrupt, it would be unfair to make him pay his debt in full and allow him to receive only a dividend on the debt due to him.

Debts must not accrue in different rights. Thus, where a voluntary settlement by the bankrupt is set aside, the donee cannot set off, against the sum settled, a debt due to him by the bankrupt, for the sum settled was never a debt due by him to the bankrupt. *Lister v. Hooson*, [1908] 1 K.B. 174.

The line of set-off is, as a rule, to be drawn at the date of the receiving order, but it may be drawn at an earlier date where the party who has dealt with the bankrupt had notice of an available act of bankruptcy. *Re Daintrey, Ex parte Mant*, [1900] 1 Q.B. 546; *Elliott v. Turquand*, 7 App. Cas. 39; *Re Gillespie*, 14 Q.B.D. 963.

Where a limited company is being wound-up, a solvent contributory can not set off against calls made by the liquidator on him money due to him from the company. *Re Overend, Gurney & Company, Grissell's Case*, L.R. 1 Ch. 528; *Gill's Case*, 12 Ch.D. 755; *Re Washington & Co.*, [1893] 3 Ch. 95. The same rule applies where a contributory is another company in liquidation. See *Re Auriferous Properties, Ltd.*, (1), [1898] 1 Ch. 691. The reason of the rule appears to be that calls are made for the benefit of creditors *pari passu*, but to allow a set-off would give one an advantage. Nor can the liquidator of the contributory company receive a dividend in the winding-up of the other company until he has paid all calls made in such winding-up.

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It has been held in England, if the contributory is a bankrupt, the bankruptcy rules prevail, and his trustee may set off against calls a debt due from the winding-up company to the contributory. *Re Universal Banking Corp.*, L.R. 5 Ch. 492; *Re G.E.B.*, [1903] 2 K.B. 340.

*Settlement and Preferences.*

29. (1) Any settlement of property hereafter made, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt or insolvent or makes an authorized assignment within one year after the date of the settlement, be void against the trustee in the bankruptcy or of the assignment and shall, if the settlor becomes bankrupt or insolvent or makes an assignment as aforesaid at any subsequent time within five years after the date of the settlement, be void against such trustee, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

(2) Any covenant or contract hereafter made by any person (hereinafter called "the settlor") in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt or makes an authorized assignment as aforesaid, and the covenant or contract has not been executed at the date of the petition in bankruptcy or said assignment, be void against such trustee except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy or assignment proceedings under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

(3) Any payment of money hereafter made (not being payment of premiums on a policy of life insurance in favour of the husband, wife, child or children of the settlor) or any transfer of property hereafter made by the settlor in pursuance of such a covenant or contract as aforesaid, shall be void against the trustee unless the person to whom the payment or transfer was made prove either,—

(a) that the payment or transfer was made more than six months before the date of the petition in bankruptcy or the date of the authorized assignment; or,

(b) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or,

(c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor; but, in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the date of the said petition or assignment.

(4) "Settlement" shall, for the purpose of this section, include any conveyance or transfer of property.



Under the corresponding section of the Imperial Act it has been held that it is sufficient if the interests of the settlor in such property had passed to the beneficiaries. *Re Lowndes*, 18 Q.B.D. 677. Also, where by a settlement the settlor declared that he would hold the property in trust for the beneficiary. *Shrager v. March*, [1909] A.C. 402. There is no "settlement" within sub-section 1, unless the settlor wishes the property to be preserved. *Re Player*, No. (2), 15 Q.B.D. 682; *Re Tankard*, [1899] 2 Q.B. 57; *Re Plummer*, [1900] 2 Q.B. 790; *Re Farnham*, [1895] 2 Ch. 799. In *Re Brandon, Ex parte Moore*, 83 L.J. (K.B.) 1073, it was held that there was no "settlement" where the transfer was to a third party for value, though the debtor was to get some benefit from it.

"Void" does not mean void *ab initio*, but "voidable," and the sub-section is aimed at donees under settlements, and not at *bona fide* purchasers or mortgagees from them. Thus, where the wife in the case just referred to pledged, before the husband's bankruptcy, the diamonds with jewellers, the jewellers' title was not defeated by the voluntary settlement. *Re Vansittart*, No. (2), [1893] 2 Q.B. 377.

The fact that a settlement has been declared "void against the trustee in bankruptcy" does not entitle such trustee to stand in the place of the beneficiaries, so as to give him priority over the mortgagees and incumbrancers subsequent to the settlement. *Sanguinetti v. Stuckey's Banking Co.*, [1895] 1 Ch. 176.

It was held in *Ex parte Russell*; *Re Butterworth*, 19 Ch.D. 588, that in determining a settlor's ability to pay his debts without the aid of the settled property, the value of the implements of his trade, fixtures, and goodwill should not be taken into account if he intends to continue business; at any rate, such value, if taken into account, should only be what would be realized at a forced sale.

"Purchaser" in the above section is not limited to a purchaser in the mercantile sense of the term, but includes a person who has given some valuable consideration, not necessarily money or physical property, *e.g.*, it may be the release of a right or the compromise of a claim. But there must be a real consideration or *quid pro quo*. *Hance v. Harding*, 20 Q.B.D. 732; *Re Pope*, [1908] 2 K.B. 169. The "good faith" required is to be on the part of the purchaser, not necessarily on both sides. *Mackintosh v. Pogose*, [1895] 1 Ch. 505; *Re Telley*, 3 Mans. 321.

Rules 120 and 121 provide the procedure for applying to a Judge in Chambers to initiate proceedings to set aside the fraudulent settlement and as to the registration of a *lis pendens*. Section 3, sub-section (b), provides that a fraudulent conveyance, gift, delivery, or transfer by the debtor of his property or any part thereof shall constitute an act of bankruptcy.

30. (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts, or any class or part thereof, and is subsequently adjudicated bankrupt or makes an authorized assignment, the assignment of book debts shall be void against the trustee in the bankruptcy, or under the authorized assignment, as regards any book debts which have not been paid at the date of the petition in bankruptcy or of the authorized assignment, unless there has been compliance with the provisions of any statute which now is or at any time hereafter may be in force in the province wherein such person resides or is engaged in said trade or business as to registration, notice and publication of such assignments. Provided that nothing in this section shall have effect so as to render void any assignment of book debts, due at the date of the assignment from specified

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debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made *bond fide* and for value, or in any authorized assignment.

(2) For the purposes of this section "assignment" includes assignment by way of security and other charges on book debts.

Where an assignment of book debts complies with the provisions of a statute in force in any of the Provinces in reference to registration notice and publication of the assignment the section becomes inoperative.

This section contemplates a general assignment of book debts, not specific individual assignments.

It has been held in the corresponding section in the English Bankruptcy Act that an assignee of book debts due to the bankrupt in the course of his trade should, to avoid the section, give immediate notice to the debtors, and if he does so, before the receiving order, and before notice of an available act of bankruptcy, he will be protected, but the appointment of a receiver, without such notice, will not suffice. *Rutter v. Everett*, [1895] 2 Ch. 872; *Re Neal*, [1914] 2 K.B. 191.

A question of much nicety and of considerable importance to banks is raised as to whether the provisions of this section apply to banks. By sub-sec. 2 (a.a.) of the Act "person" includes corporations and partnerships, and by sub-sec. 2 (k) "corporation" includes any company incorporated or authorized to carry on business by or under any Act of the Parliament of Canada, and any incorporated company wheresoever incorporated which has an office in or carries on business within Canada, but *does not include* building societies having a capital stock nor *incorporated banks*, savings banks, insurance companies, trust companies or railway companies.

In ascertaining the meaning of the word "person" in this section the above sub-sections must be read together and if so the word "person" used in this section does not include banks, and banks are excluded from the operation of this section and can continue to take as heretofore assignments of existing or future book debts, and hold the same as against a Trustee in Bankruptcy free from any claim by him.

It may be argued that under this section banks are not entitled to have a preference over other creditors, and that the word "person" as defined in this section does not mean "person" as above defined, but is used in a broad legal sense, which, under the Interpretation Act (Revised Statutes of Canada), includes "corporations," which does not except banks. The interpretation section of this Act—sec. 2—at the very beginning states: "In this Act, unless the context otherwise requires or implies, the expression 'person' includes corporation and partnership." This, it is submitted, was intended not to enlarge or extend the meaning of the words, but simply to effect a proper interpretation of them. For instance, where the penalty imposed under certain sections of the Act for failure to do a certain act is imprisonment, it is clear that to hold "person" to include "corporation" would not be reasonable, the context requiring this interpretation. In the first line of section 30 it states "a person engaged in any trade or business." It is clear that "person" as used in this line does not include a bank, and the section goes on to state that if such person makes an assignment to "any other person" of his book debts the same shall under certain circumstances be void. The words used

"any other" shew that the assignee must be in the same class or category as the assignor, which, as before stated, does not include a bank. A strict interpretation of the words employed in section 30 shews that banks are not included and that a bank can validly take an assignment of existing or future book debts notwithstanding the Bankruptcy Act. This interpretation it is submitted gives effect to the intention of Parliament as undoubtedly the framers of the Act intended that banks should be in no way affected by the Act, so that there should be no interference with trade relations between banks and their customers and the trade credit of the country.

The Provinces of Saskatchewan and British Columbia have statutes providing for the registration of assignments of book debts, but there is no statute in force in Ontario. Consequently there is an anomaly in Ontario of declaring assignments void for non-compliance with a statute requiring registration which does not exist.

**31.** (1) Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any insolvent person in favour of any creditor or of any person in trust for any creditor with a view of giving such creditor a preference over the other creditors shall, if the person making, incurring, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, incurring, taking, paying or suffering the same, or if he makes an authorized assignment, within three months after the date of the making, incurring, taking, paying or suffering the same, be deemed fraudulent, and void as against the trustee in the bankruptcy or under the authorized assignment.

(2) If any such conveyance, transfer, payment, obligation or judicial proceeding has the effect of giving any creditor a preference over other creditors, or over any one or more of them, it shall be presumed *prima facie* to have been made, incurred, taken, paid or suffered with such view as aforesaid whether or not it was made voluntarily or under pressure and evidence of pressure shall not be receivable or avail to support such transaction.

(3) For the purpose of this section, the expression "creditor" shall include a surety or guarantor for the debt due to such creditor.

The corresponding section in the original Act was repealed and the above substituted therefor by the Bankruptcy Act Amendment Act, 1920.

This section aims at a fraudulent preference and should be carefully compared with existing legislation on fraudulent preferences in the various provinces and the decisions thereunder.

The corresponding section in the Imperial Act does not take away the defence of pressure. Our section specifically provides that if any conveyance or transfer has the effect of giving a creditor a preference over other creditors it shall be presumed *prima facie* to have been made with a view to giving such creditor a preference, whether it was made voluntarily or under pressure. Generally, if the dominant view of the debtor is to prefer a creditor, the Court will find (the other conditions of the section being fulfilled) a fraudulent preference, although the debtor may have been actuated by other motives as well. *Ex parte Griffith*, 23 Ch. D. 69; *Ex parte Hall*, 19 Ch. D. 580. Under the English Act the onus of proof lies on the trustee. *Re Laurie*, 5 Mans. 48. But under our section, under certain circumstances, there is a presumption which it would be necessary for the defendant to rebut. Section 3, sub-section (c), provides that a fraudulent preference is an act of bankruptcy.

32. (1) Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy or of an authorized assignment on an execution, attachment or other process against property, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy or an authorized assignment,—

- (a) any payment by the bankrupt or assignor to any of his creditors;
  - (b) any payment or delivery to the bankrupt or assignor;
  - (c) any conveyance or transfer by the bankrupt or assignor for adequate valuable consideration;
  - (d) any contract, dealing, or transaction by or with the bankrupt or assignor for adequate valuable consideration;
- provided that both the following conditions are complied with, namely:—

(i) that the payment, delivery, conveyance, assignment, transfer, contract, dealing, or transaction, as the case may be, is in good faith and takes place before the date of the receiving order or authorized assignment; and,

(ii) that the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, transfer, contract, dealing or transaction was made, executed or entered into, has not at the time of the payment, delivery, conveyance, assignment, transfer, contract, dealing or transaction, notice of any available act of bankruptcy committed by the bankrupt or assignor before that time.

(2) The expression "adequate valuable consideration" in paragraph (c) of this section means a consideration of fair and reasonable money value with relation to that of the property conveyed, assigned or transferred, and in paragraph (d) hereof means a consideration of fair and reasonable money value with relation to the known or reasonably to be anticipated benefits of the contract, dealing or transaction.

It has been held under the corresponding section of the English Act that a case within this section is outside section 29. *Re Reis; Ex parte Clough*, [1904] 1 K.B. 451; not reversed on this point by Court of Appeal, [1904] 2 K.B. 769.

A charging order on stock or shares or money in Court belonging to a judgment debtor is not a "transaction" protected by this section: *Re O'Shea's Settlement*, [1895] 1 Ch. 325; nor is an order charging a judgment debtor's interest in a partnership: *Wild v. Southwood*, [1897] 1 Q.B. 317; nor the payment of money in respect of lost bets: *Ward v. Fry*, 50 W.R. 72.

Want of notice. The onus of proving the want of notice lies on the person seeking the protection of the section. *Ex parte Schulte*, L.R. 9 Ch. 409; *Ex parte Revell*, 13 Q.B.D. 727. A person will be deemed to have notice of an act of bankruptcy if he has knowledge of it or if he wilfully abstains from acquiring such knowledge, or if he knows facts from which any impartial person would naturally infer that an act of bankruptcy has been committed; and in such a case the Court will not inquire whether he did in fact draw that inference or not. *Ex parte Snowball*, L.R. 7 Ch. 549. Notice of a bankruptcy petition is notice of an act of bankruptcy, because such a petition must be founded upon an act of bankruptcy. *Lucas v. Dicker*, 6 Q.B.D. 84. But notice that a petition has been dismissed would appear not to be notice of an act of bankruptcy. *Re O'Shea's Settlement*, [1895] 1 Ch. 325.

33. If a person in whose favour any settlement of property, conveyance or transfer which is void under this Act has been made, shall have sold, disposed of, realized on or collected the property so conveyed or transferred, or any part thereof, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee as such, who may recover such property or the value thereof from the person in whose favour such settle-

ment of property, conveyance or transfer was made or from any other person to whom the person in whose favour such settlement of property, conveyance or transfer was made may have resold, redispensed of or paid over the proceeds of such property as fully and effectually as the trustee could have recovered the same if it had not been so sold, disposed of, realized on or collected. Provided that where any person to whom such property has been sold or disposed of shall have paid or given therefor in good faith fair and reasonable consideration he shall not be subject to the operation of this section but the trustee's recourse shall be solely against the person in whose favour such settlement was made for recovery of the consideration so paid or given or the value thereof; and further provided that in case the consideration payable for or upon any sale or resale of such property or any part thereof shall remain unsatisfied the trustee shall be subrogated to the rights of the vendor to compel payment or satisfaction.

In case the donee under a fraudulent settlement or the grantee under a fraudulent conveyance or transfer sells or disposes of the property, then the trustee has under this section power to take action to recover the proceeds of such sale.

34. (1) All transactions by a bankrupt with any person dealing with him *bona fide* and for value, in respect of property whether real or personal, acquired by the bankrupt after the making of a receiving order shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction. For the purposes of this subsection, the receipt of any money, security, or negotiable instrument, from or by the order or direction of a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

(2) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in the bankruptcy of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee.

This section applies to real as well as to personal property, and only applies to property acquired after the adjudication and not to property acquired before the act of bankruptcy and the adjudication. *Cohen v. Mitchell*, 25 Q.B.D. 262.

35. If at any time a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the bankrupt's or authorized assignor's estate, and the trustee, under the direction of the creditors or inspectors, refuses or neglects to take such proceeding after being duly required to do so, the creditor may, as of right, obtain from the court an order authorizing him to take proceedings in the name of the trustee, but at his own expense and risk, upon such terms and conditions as to indemnity to the trustee as the court may prescribe, and thereupon any benefit derived from the proceedings shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same; but if, before such order is granted, the trustee shall, with the approval of the inspectors, signify to the court his readiness to institute the proceedings 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 proceedings, if instituted within such time, shall belong to the estate.

The Act gives exclusive right to the trustee to take proceedings, but this section, however, enables a creditor to apply to a Court to compel the

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trustee to bring action, if he does not wish to do so, upon the trustee being indemnified as to costs. A trustee is an officer of the Court and any person dissatisfied by any decision of the trustee can apply to the Court for relief. *Ex parte James*, L.R. 9 Ch. 609.

*Contributors to Insolvent Corporations.*

**36.** (1) This section shall apply only to corporations which have become bankrupt or authorized assignors under this Act.

(2) Every shareholder or member of a corporation or his representative shall be liable to contribute the amount unpaid on his shares of the capital or on his liability to the corporation or to its members or creditors, as the case may be, under the Act, charter or instrument of incorporation of the company or otherwise; such shareholder or member will hereinafter be referred to as the "contributory."

(3) The amount which the contributory is liable to contribute shall be deemed an asset of the corporation and a debt payable to the trustee forthwith upon the making of a receiving order against the corporation or on the execution by the corporation of an assignment for the general benefit of creditors.

(4) If a shareholder has transferred his shares under circumstances which do not, by law, free him from liability in respect thereof, or if he is by law liable to the corporation or to its members or creditors, as the case may be, to an amount beyond the amount unpaid on his shares, he shall be deemed a member of the corporation for the purposes of this Act and shall be liable to contribute as aforesaid to the extent of his liabilities to the corporation or its members or creditors independently of this Act.

(5) The amount which he is so liable to contribute shall be deemed an asset and a debt as aforesaid.

(6) The trustee may from time to time make demand on any contributory requiring him to pay to the trustee within thirty days from and after the date of the service of such demand, the amount for which such person is so liable to contribute or such portion thereof as the trustee deems necessary or expedient. Any such demand shall be deemed to have been properly served if delivered personally to the contributory or if a copy of the same is mailed in a registered prepaid letter addressed to the contributory at his last known address or at the address shown in or by the stock register or other books of the corporation.

(7) If the contributory disputes liability, either in whole or in part, he shall within fifteen days from the service of such demand give notice in writing to the trustee stating therein what portion of the demand is disputed and setting out his grounds of defence and he shall not thereafter, unless by leave of the court, be permitted to plead in any action or proceeding brought against him by the trustee any grounds of defence of which he has not notified the trustee within said fifteen days.

(8) If at the expiration of thirty days from the date of the service of such demand the contributory has not paid to the trustee the required amount, the trustee may take proceedings against the contributory for the recovery thereof in the manner provided by General Rules.

(9) If the contributory considers the demand excessive or unjust he may apply to the court to reduce or disallow it.

(10) If the court considers the demand to be grossly excessive or unjust it may order the trustee to pay personally the costs of any such application.

(11) The court shall, on the application of any contributory, adjust the rights of the contributories among themselves without the intervention of the trustee and without expense to the estate.

The original section 8 of this section was repealed and the above was substituted therefor by the Bankruptcy Act Amendment Act, 1920.

Section 2, subsection (k), provides that "corporation" shall include any company incorporated or authorized to carry on business by or under an

Act of the Parliament of Canada or of any of the Provinces of Canada, and any incorporated company, wheresoever incorporated, which has an office in or carried on business within Canada, but does not include building societies having a capital stock, nor incorporated banks, savings banks, insurance companies, trust companies, loan companies or railway companies.

Section 2, subsection (o), states that where the debtor is a corporation as defined by that section, the Dominion Winding-up Act shall not, except by leave of the Court, extend or apply to this Act notwithstanding anything in that Act contained, but all proceedings instituted under the Winding-up Act before this Act comes into force or afterwards, by leave of the Court, may and shall be as lawfully and effectually continued under the Winding-up Act as if the provisions of sec. 2, subsec. (o), had not been made.

The procedure under this section may be found in Rules 122 to 130 inclusive.

Attention is drawn to section 28 as to the application of the law of set-off, and the annotation thereunder.

#### *Dividends.*

37. (1) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the trustee in bankruptcy or in authorized assignment proceedings shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. Such dividend as can be paid shall be so paid within six months from the date of the receiving order or assignment, and earlier, if required by the inspectors. Thereafter a further dividend shall be paid whenever the trustee has sufficient moneys on hand to pay to the creditors ten per cent., and more frequently if required by the inspectors, until the estate is wound up and disposed of.

(2) So soon as a final dividend sheet is prepared the trustee shall send by mail to every creditor (1) a notice of the fact, (2) an abstract of his receipts and expenditures as trustee which abstract shall indicate what amount of interest has been received by the trustee for moneys in his hands, and (3) a copy of the dividend sheet with notice thereon (a) of the claims objected to and (b) whether any reservation has been made therefor. After the expiry of fifteen days from the date of the mailing of the last of said notices, abstracts and dividend sheets, dividends on all debts not objected to up to the time of payment shall be paid.

(3) Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee and dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

(4) Where one partner of a firm is adjudged bankrupt, or makes an authorized assignment, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt or authorized assignor until all the separate creditors have received the full amount of their respective debts.

(5) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, on the application of any person interested, be declared together, and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to work done for and the benefit received by each property.

(6) When the trustee has realized all the property of the bankrupt, or authorized assignor, or so much thereof as can, in the joint opinion of himself and of the inspectors, be realized without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice by registered prepaid letter posted to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice (which shall be within thirty days after the mailing or service of the notice), he will proceed to make a final dividend without regard to their claims.

(7) After the expiration of the time so limited, or, if the court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt, or authorized assignor shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

(8) Where a trustee has published the notice in the form and in the manner provided by section eleven, subsection four, of this Act and has mailed prepaid and registered a circular to each creditor of the bankrupt or assignor of whom he has notice or knowledge as provided by section forty-two, subsection two, of this Act, such trustee shall at the expiration of thirty days from the date of the mailing of the last of the said circulars or from the date of last publication (whichever date should last occur) be at liberty to distribute the proceeds of the estate of the bankrupt or assignor among the parties entitled thereto, having regard only to the claims of which the trustee has then notice, and shall not be liable for the proceeds of the estate or assets or any part thereof so distributed to any person of whose claim the trustee has not notice at the time of the distribution thereof. The trustee shall, not later than six months after he is at liberty pursuant to the provisions of this section to distribute the proceeds of the estate of the bankrupt or assignor, pay to the Receiver General of Canada all declared but unpaid dividends remaining in his hands, and shall at the same time provide a list of the names and post office addresses, so far as known, of the creditors entitled, showing the respective amounts payable to the respective creditors. The Receiver General shall, thereafter, upon application made, pay to any unpaid creditor his proper dividends as shown on this list, and such payment shall have effect as if made by the trustee.

(9) No action for a dividend shall lie against the trustee but if the trustee refuses to pay any dividend, the court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld and the costs of the application.

The original subsection 8 was repealed and the above substituted therefor by the Bankruptcy Act Amendment Act, 1920.

For costs of administration, attention is drawn to section 40. For debts provable in bankruptcy, see sec. 44 and annotations thereunder, and for proof of debts, see sec. 45.

Under the corresponding section in the Imperial Bankruptcy Act, no action for a dividend will lie against the trustee, but if the trustee refuses to pay one, the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon from the time it was withheld and the costs of the application.

See section 96 which provides penalties for an authorized trustee failing to observe or perform any provisions of the Act.

**38.** The debtor shall be entitled to any surplus remaining after payment in full of his creditors with interest as by this Act provided and of the costs, charges and expenses of the authorized assignment.

#### *Appeals from Decisions of Trustee.*

**39.** If the debtor or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court and the court



may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

Attention is drawn to sections 63 and 64 which provide for Courts and procedure. Rules 63 to 73 should also be read in conjunction therewith.

#### *Remuneration of Trustee.*

40. (1) The trustee in bankruptcy or in any other proceedings under this Act shall receive such remuneration as shall be voted to him by the creditors at any general meeting.

(2) Where the remuneration of the trustee has not been fixed under the next preceding subsection before the final dividend, the trustee 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 reduction by the court upon application of any creditor or of the debtor.

(3) The remuneration of the trustee for all services shall not under any circumstances exceed five per cent. of the cash receipts.

(4) The disbursements of a trustee shall in all cases be taxed by the prescribed authority unless such taxation is waived either by creditors at a general meeting called prior to the declaration of the final dividend, or by the inspectors.

Remuneration under the corresponding English section is arrived at on a different basis. Under the Dominion Winding-up Act, the usual commission is 5% on the corpus of the estate exclusive of an annual allowance for care and management. *Re Farmer's Loan and Savings Co.*, 3 O.W.R. 837. The remuneration is based chiefly on the time occupied, the responsibility imposed and the work done. *Re Central Bank*, 15 O.R. 309.

#### *Discharge of Trustee.*

41. (1) When the affairs of an estate have been fully administered, or, for sufficient cause, before full administration, an authorized trustee may, upon his own request, be discharged from further performance of all or any of his duties and obligations with respect to such estate.

(2) Such discharge may be granted by order of the court.

(3) The grant of such discharge (whether full or partial) shall operate as a release of the special security provided pursuant to subsection eight of section fourteen.

(4) The trustee shall finally dispose of all books and papers of the estate of the bankrupt or authorized assignor in manner prescribed by General Rules.

For application and the procedure with reference to obtaining discharge, see Rules 107 to 111 inclusive.

### PART IV.

#### CREDITORS.

#### *Meeting of Creditors.*

42. (1) As soon as may be after the making of a receiving order against a debtor or after the making of an authorized assignment by a debtor, a general meeting of creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering the affairs of the debtor and to appoint inspectors and give directions to the trustee with reference to the disposal of the estate.

(2) It shall be the duty of the trustee to inform himself, by reference to the debtor and his records and otherwise, of the names and addresses of the creditors, and within five days from the date of the receiving order or assignment, to mail prepaid and registered to every creditor known to him a circular calling the first meeting of creditors at his office or some other convenient place to be named in the notice, for a date not later than fifteen days after the mailing of such notice.

(3) The trustee may at any time call a meeting of creditors, and he shall do so whenever requested in writing by twenty-five per cent. in number of



the known creditors holding twenty-five per cent. in value of the known claims. But, after the first meeting he shall not be under obligation to give notice of any meeting to any creditors other than those who have proved their debts.

(4) Meetings other than the first thereof shall be called by mailing or otherwise giving notice of the time and place thereof to each creditor at the address given in his proof of claim.

(5) At all meetings the chairman shall be such person as the meeting by resolution appoints, and he may with the consent of the meeting adjourn the meeting from time to time and from place to place.

(6) A meeting shall not be competent to act for any purpose except the election of a chairman and the adjournment of the meeting, unless there are present or represented at least three creditors, or all the creditors if their number does not exceed three.

(7) If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven nor more than twenty-one days.

(8) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(9) A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy or under an authorized assignment to be due to him from the debtor, and the proof has been duly lodged with the trustee before the time appointed for the meeting.

(10) For the purpose of voting, a secured creditor shall unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security.

(11) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, or by whom an authorized assignment has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

(12) The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

(13) A creditor may vote either in person or by proxy deposited with the trustee at or before the meeting at which it is to be used. The trustee shall send to each creditor with the notice summoning the first meeting of creditors, a proxy in the form prescribed by General Rules; but neither the name of the trustee nor of any other person shall be printed or inserted in the proxy before it is so sent. A proxy shall not be invalid merely because it is in the form of a letter, telegram or cable.

(14) Subject to the provisions of this Act, all questions at meeting of creditors shall be decided by resolution carried by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:—

For every claim of or over twenty-five dollars and not exceeding two hundred dollars—one vote;

For every claim of over two hundred dollars and not exceeding five hundred dollars—two votes;

For every claim of over five hundred dollars and not exceeding one thousand dollars—three votes;

For every additional one thousand dollars or fraction thereof—one vote.

(15) 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.

(16) A secured creditor shall not be entitled to vote at any meeting of creditors until he has proved his claim and valued his security as hereinafter provided.

(17) The trustee, if a creditor or a proxy for a creditor, may vote as a creditor at any meeting of creditors, and, in addition, in case of a tie, shall have a casting vote, personally, as if he were a creditor holding a proved claim of twenty-five dollars.

(18) A corporation may vote at meetings of creditors as if a natural person, by an authorized agent.

(19) The vote of the trustee, or of his partner, clerk solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

Section 2, sub-section (x), provides that an "ordinary resolution" means a resolution carried in manner provided by sub-sec. 14 of sec. 42 of this Act. Sub-section (ii) of section 2 provides that a "special resolution" means a resolution decided by a majority in number of the creditors present, personally or by proxy, at a meeting of creditors and voting three-fourths in value of the proved debts on the resolution. The Rules relating to meetings of creditors are numbers 112, 113 and 114. As to proof of debts, see sec. 45.

#### *Inspectors.*

43. (1) At the first or a subsequent meeting the creditors shall appoint one or more, but not exceeding five, inspectors of the administration by the trustee of the estate of the debtor.

(2) The powers of inspectors may be exercised by a majority of them.

(3) The creditors may, at any meeting, revoke the appointment of any inspector and in such event or in case of the death, resignation, or absence from the province of an inspector, may appoint another in his stead.

(4) Each inspector may be repaid his actual and necessary travelling expenses incurred in and about the performance of his duties, and may also be paid the following fees:—

Estates with assets below	\$5,000.....	a fee of \$2.00 per meeting.
" " " from	\$5,000 to \$15,000	" 3.00 "
" " " "	\$15,000 " \$30,000	" 4.00 "
" " " "	\$30,000 " \$50,000	" 5.00 "
" " " "	\$50,000 " \$100,000	" 7.50 "
" " " "	\$100,000 and over..	" 10.00 "

The original sub-section 4 was repealed and the above substituted therefor by the Bankruptcy Act Amendment Act, 1920.

The English Bankruptcy Act provides for a committee of inspection.

#### *Debts Provable.*

44. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract promise or breach of trust shall not be provable in bankruptcy or in proceedings under an authorized assignment.

(2) Save as aforesaid all debts and liabilities present or future to which the debtor is subject at the date of the receiving order or the making of the authorized assignment or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order or of the making of the authorized assignment shall be deemed to be debts provable in bankruptcy or in proceedings under an authorized assignment.

(3) The court shall value at the time and in the summary manner prescribed by General Rules, all contingent claims and all such claims for unliquidated damages as are authorized by this section, and after, but not before, such valuation, every such claim shall for all purposes of this Act, be deemed a proved debt to the amount of its valuation.

Contingent debts are capable of being estimated for proof. See *Hardy v. Fothergill*, 13 App. Cas. 351. Any liability which can be fairly estimated

can be proved. For example, an annuity. See *Ex parte Naden*, L.R. 9 Ch. 670. Again, a surety would be entitled to prove in respect to his liability. *Re Parrett*, 39 W.R. 400. Any person affected by an estimate of the value of a contingent debt can apply to the Court to have the value assessed by the Court itself.

Damages for bodily injury do not pass to the trustee. *Beckham v. Drake*, 2 H. L. Cas. 579.

Debts payable at a future time may be proved. Section 50.

#### *Proof of Debts.*

45. (1) Every creditor shall prove his debt as soon as may be after the of a receiving order or after the date of an authorized assignment or as soon as possible after such creditor has received notice of meeting for the consideration of a composition, extension or scheme of arrangement.

(2) A debt may be proved by delivering or sending through the post in a prepaid and registered letter to the trustee, a statutory declaration verifying the debt.

(3) The statutory declaration may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

(4) The statutory declaration shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The trustee may at any time call for the production of the vouchers.

(5) The statutory declaration shall state whether the creditor is or is not a secured creditor.

(6) Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

The original subsection 1 was repealed and the above substituted therefor by the Bankruptcy Act Amendment Act, 1920.

See Rule 115 which provides that in any case in which it shall appear from the debtor's statement of affairs that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made, either by the debtor, or his foreman, or the bookkeeper of the debtor, or some other person on behalf of all such creditors.

See also Rule 116 which provides that where a creditor's proof has been admitted the notice of dividend shall be sufficient notification to such creditor of such admission.

Only creditors who have proved their debts are entitled to vote at the first or any other meeting of creditors. Sec. 42, sub-sec. 9.

#### *Proof by Secured Creditors.*

46. (1) If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized. (Eng. Sch. 2 No. 10.)

(2) If a secured creditor surrenders his security to the trustee for the general benefit of the creditors, he may prove for his whole debt. (Eng. Sch. 2 No. 11.)

(3) If a secured creditor does not either realize or surrender his security, he shall within thirty days of the date of the receiving order, or of the making of the authorized assignment, or within such further time as may be allowed by the inspectors, or in case they shall refuse, then within such further time as may be allowed by the court, file with the trustee a statutory declaration stating therein full particulars of his security or securities, the date when each security was given, and the value at which he assesses each thereof. He shall

be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

(5) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase.

(6) Notwithstanding subsections four and five of this section the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not, within one month after receiving the notice or such further time or times as the court may allow, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

(7) Where a security has been realized as provided by this section, the net amount realized shall be paid to the secured creditor and shall be substituted for the amount at which he valued such security in his claim and shall be treated in all respects as an amended valuation by the secured creditor. The costs and expenses of any such sale shall be in the discretion of the court.

(8) If the trustee has not elected to acquire the security as hereinbefore provided, a creditor may at any time within two months after filing his claim amend the valuation and proof on showing to the satisfaction of the trustee, or the court, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the court shall order, unless the trustee shall allow the amendment without application to the court.

(9) Where a valuation has been amended in accordance with the foregoing subsection, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

(10) If a secured creditor does not comply with the foregoing subsections he shall be excluded from all share in any dividend.

(11) Subject to the provisions of subsections five and six of this section, a creditor shall in no case receive more than one hundred cents in the dollar and interest as provided by this Act.

Section 2, subsection (gg), provides that a "secured creditor" means a person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the debtor, or any part thereof, as security for a debt due or accruing due to him from the debtor.

Under the corresponding section of the English Act, a creditor having a security on a separate estate need not value it when proving against the joint estate. *Ex parte W. Riding Bank*, 19 Ch. D. 105.

#### *Proof in respect of Distinct Contracts.*

47. If a debtor was, at the date of the receiving order or authorized assignment, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals,

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or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

*Restricted Creditors.*

48. (1) Where a married woman has been adjudged bankrupt or has made an authorized assignment, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate hereafter lent or entrusted by him to his wife for the purposes of her trade or business, or claim any wages, salary or compensation for work thereafter done or services hereafter rendered in connection with her trade or business, until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

(2) Where the husband of a married woman has been adjudged bankrupt or has made an authorized assignment, his wife shall not be entitled to claim any dividend as a creditor in respect of any money or other estate hereafter lent or entrusted by her to her husband for the purposes of his trade or business, or claim any wages, salary or compensation for work hereafter done or services hereafter rendered in connection with his trade or business, until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied.

(3) Where any person or firm has been adjudged bankrupt or has made an authorized assignment, any father, son, daughter, mother, brother, sister, uncle or aunt of any such person or of any member of said firm shall not be entitled to claim by way of dividend or otherwise from the trustee any wages, salary or compensation for work hereafter done or services hereafter rendered to said person or firm exceeding an amount equal to three months' wages, salary or compensation, until all claims of the other creditors of said person or firm for valuable consideration in money or money's worth have been satisfied.

(4) Where any corporation has been adjudged bankrupt or has made an authorized assignment no officer, director or shareholder thereof shall be entitled to claim by way of dividend or otherwise from the trustee any wages, salary or compensation for work hereafter done or services hereafter rendered to such corporation exceeding an amount equal to three months' wages, salary or compensation, until all claims of the other creditors of said corporation for valuable consideration in money or money's worth have been satisfied.

It has been held under the corresponding section of the English Act that, as a rule, the onus will not be on a married woman to show that she did not advance the money for the purpose of any trade or business of her husband. *Re Cronmire*, [1901] 1 K.B. 480; *Re Genese*, 16 Q.B.D., 700.

If a married woman has ceased to trade, she remains liable to bankruptcy for trade debts, and possibly for others, contracted by her during the trading period. *Re Dagnall*, [1896] 2 Q.B. 704.

*Interest.*

49. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order or authorized assignment and provable under this Act, the creditor may prove for interest at a rate not exceeding six per cent. per annum to the date of the order or authorized assignment from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

As a general rule, there can be no proof for interest after receiving order. *Ex parte Lubbock*, 4 DeG. J. & Sm. 516; *Quartermaine's Case*, [1892] 1 Ch. 639.

*Debts Payable at a Future Time.*

50. A creditor may prove for a debt not payable at the date of the receiving order or of the authorized assignment as if it were payable presently and

may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of six per cent. per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

As to interest on a contract payable at a future time, see *Re Browne and Wingrove*; *Ex parte Ador*, [1891] 2 Q.B. 574.

#### Priority of Claims.

51. (1) Subject to the provisions of the next succeeding section as to rent, in the distribution of the property of the bankrupt or authorized assignor there shall be paid, in the following order of priority,—

Firstly, The fees and expenses of the trustee;

Secondly, The costs of the execution creditor (including sheriff's fees and disbursements) coming within the provisions of section eleven, subsections one and ten;

Thirdly, All wages, salaries, commission or compensation of any clerk, servant, travelling salesman, labourer or workman in respect of services rendered to the bankrupt or assignor during three months before the date of the receiving order or assignment.

(2) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(3) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Subject to the provisions of this Act, all debts proved in the bankruptcy or under an assignment shall be paid *pari passu*.

(5) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order or assignment at the rate of six per cent. per annum on all debts proved in the bankruptcy or under the assignment.

(6) Nothing in this section shall interfere with the collection of any taxes, rates or assessments now or at any time hereafter payable by or levied or imposed upon the debtor or upon any property of the debtor under any law of the Dominion, or of the province wherein such property is situate, or in which the debtor resides, nor prejudice or affect any lien or charge in respect of such property created by any such laws.

Subsection 3 of this section was repealed and the above substituted therefor by the Bankruptcy Act Amendment Act, 1920.

Services must be rendered personally, not by a paid agent of the clerk. See *Cairney v. Back*, [1906] 2 K.B. 746. The rules provide that one proof may be made for a number of workmen. It has been held that an assignment by an outgrowing partner of his interest in the partnership assets to the continuing partners is not necessarily fraudulent as against creditors. If the assignment was made *bona fide*, it will not constitute an act of bankruptcy. See *Ex parte Williams*, 11 Ves. 3; *Ex parte Walker*, 31 L.J. (Bank.) 69; and *Ex parte Fell*, 10 Ves. 347. Where a partner assigned the whole of his separate estate to secure an existing separate debt, and the partnership was at that time insolvent, the execution of the deed was held to be an act of bankruptcy. *Ex parte Trevor*, *Re Burghardt*, 1 Ch. D. 297.

#### Rights of Landlord.

52. (1) Where the bankrupt or authorized assignor is a tenant having goods or chattels on which the landlord has distrained, or would be entitled to distrain, for rent, the right of the landlord to distrain or realize his rent by

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distress shall cease from and after the date of the receiving order or authorized assignment and the trustee shall be entitled to immediate possession of all the property of the debtor, but in the distribution of the property of the bankrupt or assignor the trustee shall pay to the landlord in priority to all other debts, an amount not exceeding the value of the distrainable assets, and not exceeding three months' rent accrued due prior to the date of the receiving order or assignment, and the costs of distress, if any.

(2) The landlord may prove as a general creditor for (i) all surplus rent accrued due at the date of said receiving order or assignment; and (ii) any accelerated rent to which he may be entitled under his lease, not exceeding an amount equal to three months' rent.

(3) Except as aforesaid the landlord shall not be entitled to prove as a creditor for rent for any portion of the unexpired term of his lease, but the trustee shall pay to the landlord for the period during which he actually occupies the leased premises from and after the date of the receiving order or assignment, a rental calculated on the basis of said lease.

(4) In case of continued occupation by the trustee of the leased premises for the purposes of the trust estate any payment of accelerated rent made to the landlord shall be credited to the occupation of the trustee.

(5) Notwithstanding any provision or stipulation in any lease or agreement, where a receiving order or an authorized assignment has been made, the trustee may within one month from the date of any such receiving order or assignment, by notice in writing signed by him given to the landlord, elect to retain the premises occupied by the bankrupt or assignor at the time of the receiving order or assignment for the unexpired term of any lease under which such premises were held or for such portion of the term as he shall see fit, upon the terms of the lease and subject to payment of the rent therefor provided by such lease or agreement, or he may disclaim the lease or agreement. Should the trustee not give such notice within the time hereinbefore provided, he shall be deemed to have disclaimed the lease or agreement.

(6) If the trustee so elects to retain such premises for such unexpired term or portion thereof and the provisions of the lease do not preclude the lessee from assigning the term or subletting the premises the trustee shall have power to assign or sublet for the unexpired term.

(7) The entry into possession of the premises by the trustee during the said period of one month shall not be deemed to be evidence of an intention on the part of the trustee to elect to retain the premises nor affect his right to disclaim the lease or agreement.

Under the corresponding English section a landlord can at any time either before or after the commencement of the bankruptcy distrain for rent due to him from the bankrupt subject to the limitation that the distress shall not be for more than six months' rent accrued due before the adjudication if it be levied after the commencement of the bankruptcy.

Under this section the right of the landlord to distrain shall cease from and after the date of the receiving order or authorized assignment, and the trustee shall be entitled to immediate possession of the property.

A landlord cannot distrain and prove for the same rent. See *Ex parte Grove*, 1 Atk. 104.

#### *Disallowance of Claims.*

53. (1) The trustee shall examine every proof and the grounds of the debt, and may require further evidence in support of it. If he considers the claimant is not entitled to rank on the estate, or not entitled to rank for the full amount of his claim, or if directed by a resolution passed at any meeting of creditors or inspectors, he may disallow the claim in whole or in part, and in such case shall give to the claimant a notice of disallowance. The said notice may be given either by serving the claimant with a copy thereof personally or by mailing such copy in a registered prepaid letter, addressed to the claimant at his last-known address, or at the address shown in or by the claimant's proof. Such disallowance shall be final and conclusive unless within thirty days after the service or mailing of the said notice or such further

time as the court may on application made within the same thirty days allow, the claimant appeals to the court in accordance with General Rules from the trustee's decision.

(2) The court may also expunge or reduce a proof upon the application of a creditor or of the debtor, if the trustee declines to interfere in the matter.

As to proof of claims, see Rules 115 and 116.

## PART V.

### DEBTORS.

#### *Duties of Debtors.*

54. (1) Where a receiving order or an authorized assignment is made, the bankrupt or assignor shall make out and submit to the trustee a statement of and in relation to his affairs in the prescribed form verified by affidavit and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed or as the trustee may require. Such statement shall be submitted within seven days from the date of the receiving order or assignment, but the court may, for special reasons, extend the time.

(2) Any person stating himself in writing to be a creditor of the bankrupt or assignor, may personally or by agent inspect the statement at all reasonable times and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee.

(3) Every debtor against whom a receiving order is made and every assignor who makes an authorized assignment shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

(4) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the trustee, execute such powers of attorney, conveyances, deeds, and instruments, and, generally, do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the trustee, or may be prescribed by General Rules, or may be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the trustee, or any creditor or person interested.

(5) He shall aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(6) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control, to the trustee, or to any person authorized by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

Rule 97 provides for the statement of affairs. The statement is to be made out on Form 52.

Under the Imperial Act it was held that the debtor must be actually present in the room during the meeting. *Ex parte Best*, 18 Ch.D 488; *Ex parte Hollander*; *Re Cox*, W.N. 186.

The discharge only releases a bankrupt from debts provable in bankruptcy, and not from the obligation to perform the duties prescribed by the statute during the bankruptcy, and therefore, even after his discharge, he may be



committed for contempt of Court if he wilfully fail to perform the duties imposed upon him by this section, or if he fails to deliver up possession to the trustee of any part of his property which is divisible amongst his creditors. *Ex parte Waters*, L.R. 18 Eq. 701.

It has been held under the English Act that an appeal will lie from a refusal of a Judge to commit, though the Court of Appeal will be slow to overrule the discretion of the Judge below (*Jarmain v. Chatterton*, 20 Ch.D. 493); and the rule at all events at common law, was that even though a majority of the Court to whom the application was made thought there should be a committal, if one Judge thought otherwise, no order could be made. (*Swinfen v. Swinfen*, 26 L.J. (C.P.) 97.)

As to the general jurisdiction in cases of contempt, see *Re Hooley (Rucker's Case)*, 5 Mans. 331, and *Re Pickard*; *Ex parte Official Receiver*, [1912] 1 K.B. 397.

Where it is sought to commit a person for contempt in disregarding an injunction, the person applying to commit must show, beyond reasonable doubt, that proper notice of the injunction was given. *Ex parte Langley*; *Re Bishop*, 13 Ch.D. 110.

Section 89 expressly providing for bankruptcy offences makes it a criminal offence if a debtor does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof.

Section 94 provides that where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition, extension, or scheme of arrangement has been accepted or approved.

#### *Arrest of Debtors.*

**55.** (1) The court may, by warrant addressed to any constable or prescribed officer of the court, cause a debtor to be arrested, and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances:—

(a) If, after the presentation of a bankruptcy petition against him, it appears to the court that there is probable reason for believing that he has absconded, or is about to abscond from Canada, with a view of avoiding payment of the debt in respect of which the bankruptcy petition was filed, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him;

(b) If after presentation of a bankruptcy petition against him, or after an authorized assignment has been made by him, it appears to the court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or any books, documents or writings which might be of use to the trustee or to his creditors in the course of the bankruptcy or authorized assignment proceedings;

(c) If after service of a bankruptcy petition on him or after he makes an authorized assignment, he removes any goods in his possession above the value of twenty-five dollars without the leave of the trustee.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

Section 72 provides for warrants of bankruptcy Courts and sec. 73 for commitment to prison.

The power to issue a warrant extends to the case of a debtor who has absconded before the issue of a notice or the presentation of a petition. *R. v. Northallerton County Court Judge*, [1898] 2 Q.B. 680; on appeal *sub nom. Skinner v. Northallerton County Court Judge*, [1899] A.C. 439.

A door may be broken open in order to affect the arrest. *Re Von Weissenfeld; Ex parte Hendry*, 9 Mor. 30.

Attention is drawn to rules 44 to 53 inclusive which provide the procedure for warrants, arrests and commitments.

#### *Examination of Debtors and Others.*

56. (1) Where a receiving order or an authorized assignment has been made, the trustee, upon ordinary resolution passed by the creditors present or represented at a meeting regularly called, or upon the written request or resolution of a majority of the inspectors of the estate, may, without an order, examine under oath before the registrar of the court or other prescribed person, the debtor or any person who is or has been an agent, clerk, servant, officer, director or employee of the debtor, respecting the debtor, his dealings or property, and, in the case of a bankrupt, as to any property, acquired or disposed of by him subsequently to the date of the receiving order.

(2) If the debtor, or any person liable to be examined as provided by the preceding subsection, is served with an appointment or summons to attend for examination and is paid or tendered the proper conduct money and witness fees, but refuses or neglects to attend as required by such appointment or summons, or, if attending, refuses to make satisfactory answers to any questions asked him or refuses to produce any book, document or other paper, having no lawful impediment made known to the examiner at the time of his sitting for such examination and allowed by him, the court may, by warrant, cause him to be apprehended and brought up for examination, and may order him to be committed to the common gaol of the judicial district in which he resides for any term not exceeding twelve months.

(3) The amount of conduct money and witness fee shall be fixed by General Rules.

(4) If any person has, or is believed or suspected to have, in his possession or power any of the property of the debtor, or any book, document or paper of any kind relating in whole or in part to the debtor, his dealings or property, or shewing that such person is indebted to the debtor, such person may, upon ordinary resolution passed by the creditors present or represented at a regularly called meeting (exclusive of such person, if he is a creditor), or upon the written request or resolution of the majority of the inspectors of the estate, be required by the trustee to produce such book, document or paper for the information of such trustee, or to deliver over to him any such property of the debtor.

(5) If such person fails to produce such book, document or other paper, or to deliver over such property, within four days of his being served with a copy of the said resolution and a request of the trustee in that behalf, or if the trustee or the majority of the inspectors is or are not satisfied that full production or delivery has been made, the trustee may, without an order, examine the said person before the registrar of the court or other prescribed person touching any such property, book or document or other paper which he is supposed to have received.

(6) Any such person may be compelled to attend and testify, and to produce upon his examination any book, document or other paper which under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as is provided by subsections two and three of this section.

(7) If any person on such examination admits that he is indebted to the debtor, the court may, on the application of the trustee, order him to pay to

the trustee, at such time and in such manner as to the court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.

(8) If any person on such examination admits that he has in his possession any property belonging to the debtor, the court may, on the application of the trustee, order him to deliver to the trustee such property, or any part thereof, at such time, and in such manner, and on such terms, as to the court may seem just.

Subsection 2 of the original Act was repealed and the above substituted therefor by the Bankruptcy Act Amendment Act, 1920.

Rules 131 to 134 inclusive provide the procedure for examination of debtors and others. Rules 34 to 43 inclusive should also be consulted. Section 2, subsection (z), defines "ordinary resolution" as a resolution carried in the manner provided by subsection 14 of sec. 42 of the Act. As to what constitutes a meeting regularly called, see annotations to sec. 42 and Rules 112, 113 and 114.

Under the corresponding section of the English Act the bankrupt being under a personal obligation to make a full disclosure of his property, will not be entitled to any protection in reference to incriminating answers in relation to a question touching his estate. *Ex parte Schofield; Re Firth*, 6 Ch.D. 230.

In *Reg. v. Scott*, 25 L.J. (M.C.) 128, Lord Campbell, in his judgment, says that the result seems to be that a question cannot be put to a bankrupt which does not touch his trade dealings, or estate, or the direct object of which is to show that he has committed a criminal act; yet he cannot refuse to answer a question which does touch his trade dealings or estate, although the answer may tend to show that he has concealed his effects, or been guilty of any other offence connected with his bankruptcy. This case was followed in *Reg. v. Robinson*, L.R. 1 C.C.R. 80.

**57.** Where a receiving order is made against a debtor or where a debtor makes an authorized assignment, the court, on the application of the trustee, may from time to time order that for such time, not exceeding three months, as the court thinks fit, post letters, post packets and telegrams addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, sent or delivered by the Postmaster General or the officers acting under him, or by the various telegraph and cable systems, government and other, operating in Canada, or by the operators thereof, to the trustee, and the same shall be done accordingly.

#### *Discharge of Bankrupt or Assignor.*

**58.** (1) Any debtor may, at any time after being adjudged bankrupt or making an authorized assignment, apply to the court for an order of discharge, to become effective not sooner than three months next after the date of his being adjudged bankrupt or of his making such assignment, and the court shall appoint a day for hearing the application.

(2) A bankrupt or authorized assignor intending to apply for his discharge shall produce to the registrar of the court a certificate from the trustee specifying the names and addresses of his creditors of whom the trustee has notice (whether they have proved or not) and it shall be the duty of the trustee to furnish such certificate upon request therefor by the bankrupt or authorized assignor. The registrar shall, not less than twenty-eight days before the day appointed for hearing the application, give to the trustee notice of the application and of the time and place of the hearing of it, and the trustee shall not less than fourteen days before the day appointed for hearing the application give to each creditor who has proved his debt like notice.

(3) The trustee shall file with the registrar of the court, at least three days before the day appointed for hearing the application, his report as to the conduct and affairs of the bankrupt or assignor (including a report as to the conduct of the bankrupt or assignor during the proceedings under his bankruptcy or assignment). If the bankrupt or assignor has been examined, the trustee shall also file such examination, and shall report to the court any fact, matter or circumstance which would, under this Act, justify the court in refusing an unconditional order of discharge.

(4) On the hearing of the application the court shall take into consideration the report of the trustee, and may either grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt or authorized assignor or with respect to his after-acquired property.

(5) The court shall refuse the discharge in all cases where the bankrupt or authorized assignor has committed any offence under this Act or any offence connected with his bankruptcy or assignment or the proceedings thereunder, unless for special reasons the court otherwise determines, and shall on proof of any of the facts mentioned in the next succeeding section, either,—

(a) refuse the discharge; or,

(b) suspend the discharge for a period of not less than two years; provided that the period may be less than two years if the only fact proved of those hereinafter mentioned is that his assets are not of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities; or,

(c) suspend the discharge until a dividend of not less than fifty cents in the dollar has been paid to the creditors; or,

(d) require the bankrupt or assignor, as a condition of his discharge, to consent to judgment being entered against him by the trustee for any balance or part of any balance of the debts provable under the bankruptcy or assignment which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt or assignor in such manner and subject to such conditions as the court may direct; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt or assignor has, since his discharge, acquired property or income available towards payment of his debts.

Provided that, if at any time after the expiration of one year from the date of any order made under this section the bankrupt or assignor satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

The procedure for application for discharge is found in Rule 135. Rule 136 provides that an appeal to the Appeal Court shall lie at the instance of the trustee, the debtor and or at the instance of any creditor or creditors, who oppose the discharge, from any order of the Court made upon the application for discharge.

Where a debtor intends to dispute any statement with regard to his conduct and affairs contained in the trustee's report he must comply with the provisions contained in Rule 137.

Under Rule 138, a debtor shall not be entitled to have any of the costs of or incidental to his application for discharge allowed to him out of his estate. If the debtor does not make his application for discharge until after the trustee has paid the final dividend, he shall, before the order of discharge is signed or delivered out, pay to the trustee such remuneration and solicitor's costs as the Court may allow.

Rule 139 provides for orders conditional on a consensual judgment.

The order of the Court made on an application for discharge shall be dated on the day on which it is made, and shall take effect from the day on which the order is drawn up and signed. See Rule 140.

Provision is made in Rule 141 for application for leave to issue execution.

Rule 142 and Form 77 deal with accounts of after-acquired property.

See also Rules 143 and 144.

As to the suspension of the discharge until a stated dividend is paid, see *Re Walmsley*, 98 L.T. 55.

In dealing with an application for a discharge from bankruptcy, the Court will take into consideration not only the interests of the bankrupt and his creditors, but also the effect of a discharge on public morality. See *Ex parte Campbell*, 15 Q.B.D. 213.

As to the effect of a promise to pay a provable debt in bankruptcy after obtaining a discharge, see *Heather v. Webb*, 2 C.P.D. 1; *Elmslie v. Corrie*, 4 Q.B.D. 295; *Ex parte Barrow*, 18 Ch. D. 464.

An order discharging a bankrupt bars all debts wherever contracted insofar as an action in our Courts is concerned. See *R. v. Peters*, 16 Q.B.D. 636. As to actions in foreign Courts, see *Reg. v. Dyson*, 59 L.T. 932.

**59.** The facts referred to in the next preceding section are,—

(a) that the assets of the bankrupt or assignor are not of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(b) that the bankrupt or assignor has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy or the making of the assignment;

(c) that the bankrupt or assignor has continued to trade after knowing himself to be insolvent;

(d) that the bankrupt or assignor has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(e) that the bankrupt or assignor has brought on, or contributed to, his bankruptcy or assignment by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;

(f) that the bankrupt or assignor has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;

(g) that the bankrupt or assignor has, within three months preceding the date of the receiving order or assignment, incurred unjustifiable expense by bringing a frivolous or vexatious action;

(h) that the bankrupt or assignor has, within three months preceding the date of the receiving order or of the making of the assignment, when unable to pay his debts as they became due, given an undue preference to any of his creditors;

(i) that the bankrupt or assignor has, within three months preceding the date of the receiving order or of the making of the assignment, incurred liabilities with a view of making his assets equal to fifty cents in the dollar on the amount of his unsecured liabilities;

(j) that the bankrupt or assignor has, on any previous occasion, been adjudged bankrupt or has made an authorized assignment or made a composition, extension or arrangement with his creditors;

(k) that the bankrupt or assignor has been guilty of any fraud or fraudulent breach of trust.

Under the corresponding section in the English Act it has been held that the Court may properly refuse the discharge where the bankrupt has been guilty of gross misconduct as a trader, although not guilty of any of the specific offences mentioned in the section. *Re Badcock*, 3 Mor. 138. On the other hand, if there are special circumstances, a conditional discharge

may be granted even when the bankrupt has committed a misdemeanor. *Re Solomons*, [1904] 1 K.B. 106.

Rule 139 provides for an order of discharge conditionally upon the debtor consenting to judgment being entered against him by the trustee for the balance or any part of the balance of the debts provable under the bankruptcy or authorized assignment which is not satisfied at the date of his discharge.

It has been held that a trader was not bound to leave off trading merely because he was in difficulties, the question being whether he had continued trading after there ceased to be any reasonable prospect of his retrieving himself. *Ex parte Johnson*, 4 DeG. & S. 25. See judgment of Cave, J., in *Re Stainton, Ex parte Board of Trade*, 4 Mor. 242, 251.

It has been held under the English Act that though a speculation turned out very badly, the bankrupt did not come within the section if, when he entered upon it, he possessed property beyond the amount of his liability. *Ex parte Evans*, 31 L.J. (Bank), 63.

As to rash and hazardous speculations see *Ex parte Rogers*, 13 Q.B.D. 438.

As to extravagance in living, see *Re Stevens*, 7 L.T. 649.

As to vexatiously defending an action, see *Re Pownall*, Fonb. 221; *Re Smith*, 29 L.T. (o.s.) 147.

**60.** (1) For the purposes of the preceding section the assets of a bankrupt or authorized assignor shall be deemed of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt or assignor has realized, or is likely to realize, or with due care in realization, might have realized an amount equal to fifty cents in the dollar on his unsecured liabilities, and a report by the trustee shall be *prima facie* evidence of the amount of such liabilities.

(2) For the purposes of this and the next preceding sections the report of the trustee shall be *prima facie* evidence of the statements therein contained.

(3) Any statutory disqualification on account of bankruptcy shall cease if and when the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part. The court may, if it thinks fit, grant such a certificate, and a refusal to grant such a certificate shall be subject to appeal.

(4) At the hearing of the application, the court may read the examination of the bankrupt or assignor, and may put such further questions to him and receive such evidence as it may think fit.

(5) The trustee, the debtor and any creditor may attend and be heard in person or by counsel.

(6) The powers of suspending and of attaching conditions to the discharge of a bankrupt or authorized assignor may be exercised concurrently.

(7) In either of the following cases, that is to say:—

(a) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or,

(b) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife); if the settlor is adjudged bankrupt or makes an authorized assignment or compounds or arranges with his creditors, and it appears to the court that such settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

The burden of proving insufficiency of assets is on the opposing creditors. *Re Van Laun; Ex parte International Assets Co. Ltd.*, 14 Mans. 281.

The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently. *Re Walsley*, 98 L.T. 55.

**61.** (1) An order of discharge shall not release the bankrupt or authorized assignor,—

(a) from any debt on a recognizance nor from any debt with which the bankrupt or assignor may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence, and he shall not be discharged from such excepted debts unless an order in council proceeding from the Crown in the proper right is filed in court consenting to his being discharged therefrom; or,

(b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or,

(c) from any liability under a judgment against him in an action for seduction, or under an affiliation order, or for alimony or under a judgment against him as a co-respondent in a matrimonial case, except to such an extent and under such conditions as the court expressly orders in respect of such liability; or,

(d) from any debt or liability for necessities of life, and the court may make such order for payment thereof as it deems just or expedient.

(2) An order of discharge shall release the bankrupt or assignor from all other debts provable in bankruptcy or under an authorized assignment.

(3) An order of discharge shall not release any person who at the date of the receiving order or assignment was a partner or co-trustee with the bankrupt or authorized assignor or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

(4) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.

(5) Notice of the order of discharge of a bankrupt, or authorized assignor shall be forthwith gazetted.

See section 86 which provides that save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

Section 2, subsection (b), defines "alimentary debt" as a debt incurred for necessities or maintenance. Sec. 2, sub-sec. (p), defines "discharge" as meaning the release of a bankrupt or authorized assignor from all his debts provable in bankruptcy or under an authorized assignment save such as are excepted by this Act.

See section 13, subsection (12), as to what extent a composition, extension or scheme of arrangement discharges the debtor. Sec. 84 provides that no proceeding in bankruptcy or under an authorized assignment shall be invalidated by any formal defect or by any irregularity.

See sec. 44 as to what debts are provable in bankruptcy.

**62.** (1) Where, in the opinion of the court, a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any person interested, by order annul the adjudication.

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done by the trustee, or other person acting under his authority, or by the



court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court may declare by order.

(3) Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local paper.

(4) For the purposes of this section any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court.

Rule 96 provides that an application to the Court to annul an adjudication, shall not be heard except upon proof that notice of the intended application and a copy of the affidavits in support thereof have been duly served upon the trustee. Unless the Court gives leave to the contrary, notice of any such application together with copies of such affidavits shall be served on the trustee not less than four days before the day named in the notice for hearing the application. Pending the hearing of the application, the Court may make an interim order staying such of the proceedings as it thinks fit.

Section 2, subsection (w), provides that "local newspaper" means a newspaper published in and having a circulation throughout the bankruptcy district or division wherein the debtor has resided or carried on business for the longest period during the six months immediately preceding the date of the presentation against him of a bankruptcy petition or the making by him of an authorized assignment.

## PART VI.

### COURTS AND PROCEDURE.

#### *Jurisdiction.*

63. (1) The following named courts are constituted Courts of Bankruptcy and invested within their territorial limits as now established, or as these may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms as they are now, or may be hereafter, held, and in vacation and in chambers:—

(a) In the provinces of Alberta, British Columbia, Nova Scotia, Ontario and Prince Edward Island, the Supreme Court of the province;

(b) In the provinces of Manitoba and Saskatchewan, the Court of King's Bench of the province;

(c) In the province of New Brunswick, the King's Bench Division of the Supreme Court of the province;

(d) In the province of Quebec, the Superior Court of the province; and,

(e) In the Yukon Territory, the Territorial Court of the Yukon Territory.

(2) Subject to the provisions of this Act and to General Rules, the judge of the court exercising jurisdiction in bankruptcy or in authorized assignment proceedings may exercise in chambers the whole or any part of his jurisdiction.

(3) The courts in this subsection named are constituted Appeal Courts of Bankruptcy, and, subject to the provisions of this Act with respect to appeals, are invested with power and jurisdiction to make or render on appeal asserted, heard and decided according to their ordinary procedure, except as varied by General Rules, the order or decision which ought to have been made or rendered by the court appealed from. All appeals asserted under authority of this Act shall be made —

(a) In the provinces of Alberta, Nova Scotia and Prince Edward Island, to the Supreme Court *in banc* of the province;



(b) In the provinces of British Columbia, Manitoba and Saskatchewan to the Court of Appeal of the province;

(c) In the province of Ontario, to the Appellate Division of the Supreme Court of the province;

(d) In the province of New Brunswick, to the Appeal Division of the Supreme Court of the province;

(e) In the province of Quebec, to the Appeal side of the Court of King's Bench;

(f) In the Yukon Territory, to the Court of Appeal of the province of British Columbia.

Rule 63 provides that the Judge or Judges of the Court appointed by the Minister of Justice to have jurisdiction in bankruptcy shall with the approval of the Chief Justice of the Court regulate the bankruptcy sittings and vacations of the Court.

See also Rules 64, 65 and 66 and Rules 4 to 42 inclusive.

*Sittings and Distribution of Business of Courts.*

64. (1) The courts having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of their powers hereunder by the order of any other court.

(2) Periodical sittings for the transaction of the business of such courts shall be held at such times and places and at such intervals as each of such courts shall for itself prescribe.

(3) Except as otherwise provided by this Act, all the powers and jurisdiction in bankruptcy and otherwise conferred by this Act may and shall be exercised by or under the direction of one of the judges of the court upon which such powers and jurisdiction are so conferred, and the Minister of Justice shall from time to time assign a judge or judges of such court for that purpose. The judgment, decision or order of such judge shall be deemed the judgment, decision or order of the court, and references in this Act to the court shall, where necessary, apply to such judge exercising the powers and jurisdiction of such court. Provided that during vacation or during the illness of the judge so assigned or during his absence, or for any other reasonable cause, such powers and jurisdiction or any part thereof may be exercised by or under the direction of any judge of the court named for that purpose by the Chief Justice thereof.

(4) The Chief Justice of each court upon which such powers and jurisdiction are so conferred shall from time to time appoint and assign such registrars, clerks, and other officers in bankruptcy as he deems necessary or expedient for the transaction or disposal of matters in respect of which power or jurisdiction is given by this Act.

(5) Each province of Canada shall constitute for the purposes of this Act, one bankruptcy district, but the Governor in Council may divide any such bankruptcy district into two or more bankruptcy divisions and name or number them. A judge shall be assigned to each of such divisions to exercise therein the powers and jurisdiction conferred by this Act on the court of which he is a member.

(6) In case the Chief Justice of the court having jurisdiction in bankruptcy in any province shall report to the Minister of Justice that it is impossible or highly inconvenient for any judge of his court to undertake to exercise within any bankruptcy division in such province the powers and jurisdiction conferred on such court, the Minister of Justice may, from time to time, assign to exercise within said division said powers and jurisdiction any district, county or other judge, who shall for all the purposes of this Act be deemed a judge of the court having jurisdiction in bankruptcy, and references in this Act to the court or to the judge of the court shall, where necessary, apply to such district, county or other judge, so assigned.

Section 7 provides that the Court may, at any time after the presentation of a bankruptcy petition against the debtor, order that any action, execution or other proceeding against the person or property of the debtor pending in any Court other than the Court having jurisdiction in bankruptcy shall

stand stayed until the last mentioned court shall otherwise order, whereupon such action, execution or other proceeding shall stand stayed accordingly.

Rule 63 provides that the Judge or Judges of the Court appointed by the Minister of Justice to have jurisdiction in bankruptcy shall with the approval of the Chief Justice of the Court regulate the bankruptcy sittings and vacations of the Court.

#### *Powers of Registrar.*

**65.** (1) The registrars of the several courts exercising bankruptcy jurisdiction under this Act shall have the powers and jurisdiction in this section mentioned, and any order made or act done by such registrars in the exercise of the said powers and jurisdiction shall be deemed the order or act of the court.

(2) Subject to General Rules limiting the powers conferred by this section, a registrar shall have power,—

(a) to hear bankruptcy petitions where they are not opposed, and to make receiving orders and adjudications thereon, where they are not opposed;

(b) to hold examinations of debtors;

(c) to grant orders of discharge where the application is not opposed;

(d) to approve compositions, extensions or schemes of arrangement where they are not opposed;

(e) to make interim orders in cases of urgency;

(f) to make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers;

(g) to hear and determine any unopposed or *ex parte* application;

(h) to summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property;

(i) to hear and determine appeals from the decision of a trustee allowing or disallowing a creditor's claim where such claim does not exceed five hundred dollars.

(3) A registrar shall not have power to commit for contempt of court.

(4) Any person dissatisfied with an order or decision of the registrar may appeal therefrom to a judge, in manner prescribed by General Rules.

Subsection 4 did not appear in the original Act. It was added by the Bankruptcy Act Amendment Act, 1920.

Section 64 (4) provides that the Chief Justice of each Court upon which such powers and jurisdictions are so conferred by that section, shall from time to time appoint and assign such registrars, clerks, and other officers in bankruptcy as he deems necessary or expedient for the transaction or disposal of matters in respect of which power or jurisdiction is given by this Act.

Rule 64 provides that any registrar in bankruptcy may act for any other registrar.

Section 2 (ee) provides that "registrar," shall include any other officer who performs duties like those of a registrar.

A registrar may without any general or special directions of the Judge hear and determine any matter or application referred to in sec. 55 (2) of the Act. See Rule 5.

Any matter or application pending before a registrar which under the Act, or the Bankruptcy Rules for the time being in force, a registrar has jurisdiction to determine, shall be adjourned to be heard before the Judge, if the Judge shall, either specially or by any general direction applicable to the particular case, so direct. See Rule 6.

Rule 67 provides that an appeal from the registrar shall be by ordinary notice of motion to the Judge of the bankruptcy district or division in which

the proceedings are pending. No appeal shall be brought unless the notice thereof is filed with the registrar and served within ten days after the pronouncing of the order or decision complained of, or within such further time as may be allowed by the Judge. The notice shall set forth fully the grounds of appeal. No security for the costs of the appeal need be given by the appellant.

*General Rules.*

66. (1) The Governor in Council may make, alter or revoke, and may delegate to the judges of the several courts exercising bankruptcy jurisdiction under this Act the power to make, alter or revoke, General Rules not inconsistent with the terms of this Act for carrying into effect the objects thereof.

(2) Such rules shall not extend the jurisdiction of the court, save and except that, for the purpose of enabling the provision of rules having application to corporations, but for such purpose only, the Winding-up Act, chapter 144 of the Revised Statutes of Canada, shall be deemed part of this Act.

(3) All General Rules, as from time to time made, shall be laid before Parliament within three weeks after made, or, if Parliament is not then sitting, within three weeks after the beginning of the next session. Such Rules shall be judicially noticed, and shall have effect as if enacted by this Act.

Rule 152 provides the general practice of the Court in civil actions or matters before it, including the course of proceedings and practice in Judges' Chambers, shall in cases not provided for by the Act and amendments thereto or these Rules, and so far as the same are applicable and not inconsistent with the said Act or these Rules, apply to all proceedings under the said Act.

*Fees and Returns.*

67. All attorneys, solicitors and counsel acting for the trustee or for the estate of a debtor in respect of proceedings under this Act, shall be paid out of the assets of such estate their reasonable costs and fees as fixed in a tariff provided by General Rules; but, except as hereinafter provided, the aggregate amount of such costs and fees so payable out of the assets of estates whereof the gross proceeds exceed five thousand dollars shall not exceed five per centum of such gross proceeds. This provision shall not disentitle such attorneys, solicitors and counsel to any costs or fees which may be awarded against or be payable by persons other than the trustee or the estate of the debtor, and notwithstanding anything in this Act contained, in estates whereof the gross proceeds do not exceed five thousand dollars, the costs or fees payable may, by unanimous vote of the inspectors, be increased to any amount not to exceed ten per centum of the gross proceeds of such estate. Such tariff shall direct by whom and in what manner such costs and fees are to be collected and accounted for and to what account they shall be paid.

Section 87 provides that all persons who are barristers, solicitors or advocates of any Court in any Province may practice as barristers, solicitors and advocates in the Courts exercising bankruptcy jurisdiction under this Act in any or in all of the Provinces.

The fees to be charged for or in respect of proceedings under the Act shall be as fixed by the tariff in part three of the Appendix and shall be collected and may be retained by the registrars or other proper officers who perform the duties under the Act or these Rules in respect of which such fees are payable. In case of any proceedings not covered by the tariff, a fee may be charged of an amount equal to the tariff fee for the proceeding most nearly resembling the one in question. In the case of any dispute as to the amount of fees charged, the Judge shall fix and settle the amount. Rule 62.

The procedure with reference to costs and taxation is provided in Rules 54 to 61 inclusive. Part 2 and part 3 of the forms provide the tariff of costs and scale of fees.

## Procedure.

68. (1) All proceedings in bankruptcy or under authorized assignments subsequent to the presentation of a bankruptcy petition or the making of an authorized assignment shall be entitled "In the matter of the Bankruptcy" of the debtor, or "In the matter of the Authorized Assignment" of the debtor, as the case may be.

(2) Subject to the provisions of this Act and to General Rules, the costs of and incidental to any proceeding in court under this Act shall be in the discretion of the court.

(3) The court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(4) The court may at any time amend any written process or proceedings under this Act upon such terms, if any, as it may think fit to impose.

(5) Where by this Act, or by General Rules, the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof, upon such terms, if any, as the court may think fit to impose.

(6) Subject to General Rules, the court may in any matter take the whole or any part of the evidence either *visa voce*, or by interrogatories, or upon affidavit, or, out of the Dominion of Canada, by commission.

(7) Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings, or any of them on such terms as the court thinks fit.

(8) Where the petitioner does not proceed with due diligence on his bankruptcy petition, the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor, or may dismiss the petition.

(9) If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive.

(10) The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think just.

See Rules 7 to 13 as to proceedings, 14 to 19 as to motions and practice, 20 settlement of order, 21 to 25 security in Court, 26 to 33 as to affidavits, 34 to 42 as to witnesses and depositions, 43 discovery and examination, 44 to 49 warrants or arrests and commitments, 50 to 53 as to service and execution of process, and 54 to 61 costs and taxation.

69. (1) Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm, without including the others.

(2) Where there are more respondents than one to a bankruptcy petition the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

(3) Where a receiving order has been made on a bankruptcy petition by or against one member of a partnership, any other bankruptcy petition by or against a member of the same partnership shall be filed in or transferred to the court in which the first-mentioned petition is in course of prosecution, and unless the court otherwise directs, the same trustee shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the court may give such directions for consolidating the proceedings under the petitions as it thinks just.

See Rules 80 and 81 as to service on firm.

70. (1) Where a member of a partnership is adjudged bankrupt, the court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application, the court may, if it thinks fit, direct that he shall receive his proper share of the

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proceeds of the action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

(2) Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the court may direct.

(3) Where a bankrupt or authorized assignor is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt or authorized assignor.

Section 85 provides that for all or any of the purposes of this Act, a corporation may act by any of its officers, authorized in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or by the guardian or curator of his property.

71. (1) Any order made by a court exercising jurisdiction in bankruptcy under this Act in any province of Canada shall be enforced in the courts having jurisdiction in bankruptcy in all other provinces of Canada in the same manner in all respects as if the order had been made by the Court hereby required to enforce it.

(2) All courts having jurisdiction in bankruptcy in all provinces of Canada and the officers of such courts respectively shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy and in proceedings under authorized assignments, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regards to the matter directed by the order, such jurisdiction as either the court which made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

(3) The court may direct any issue to be tried or inquiry to be made by any judge or officer of any of the courts of the province, and the decision of such judge or officer shall be subject to appeal to a judge in bankruptcy, unless the judge is a judge of a superior court when the appeal shall be under section seventy-four of this Act.

Subsection 3 did not appear in the original Act. It was added by the Bankruptcy Act Amendment Act, 1920.

72. (1) Any warrant of a court having jurisdiction in bankruptcy may be enforced in any part of the Dominion of Canada in the same manner and subject to the same privileges in, and subject to which, a warrant issued by any justice of the peace under or in pursuance of the Criminal Code may be executed against a person for an indictable offence.

(2) A search warrant issued by a court having jurisdiction in bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

See Rules 44 to 49 inclusive as to procedure with reference to warrants, arrests and commitments.

73. Where the court commits any person to prison, the commitment may be to such convenient prison as the court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed, he shall be liable for every such refusal to a fine not exceeding five hundred dollars.

See Rules 45, 46 and 47.

#### *Review and Appeal.*

74. (1) Every court having jurisdiction in bankruptcy under this Act may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

(2) Any person dissatisfied with an order or decision of the court or a judge in any proceedings under this Act may,—

(a) if the question to be raised on the appeal involves future rights; or,  
 (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy or authorized assignment proceedings; or,  
 (c) if the amount involved in the appeal exceeds five hundred dollars; or,  
 (d) if the appeal is from the grant or refusal to grant a discharge and the aggregate of the unpaid claims of creditors exceeds five hundred dollars; appeal to the Appeal Court.

(3) The decision of the Appeal Court upon any such appeal shall be final and conclusive unless special leave to appeal therefrom to the Supreme Court of Canada is obtained from a judge of that Court.

(4) The Supreme Court of Canada shall have jurisdiction to hear and to decide according to its ordinary procedure any appeal so permitted and to award costs.

(5) No such appeal to the Supreme Court of Canada shall operate as a stay of proceedings unless the judge who permits such appeal shall so order, and to the extent to which he shall order, and the appellant shall not be required to provide any security for costs, but unless he provides security for costs, in an amount to be fixed by the judge permitting the appeal, he shall not be awarded costs in the event of his success upon such appeal.

(6) The decision of the Supreme Court of Canada on any such appeal shall be final and conclusive.

See section 63 and the annotations thereunder.

Appeals from registrars are governed by Rule 67.

Rule 68 provides the procedure for appeals and securities to be given on appeals to Appeal Courts.

Appeals from the Appeal Courts to the Supreme Court of Canada are governed by Rule 72.

Appeals to the Supreme Court of Canada shall, as nearly as possible, be regulated by the Rules of such Court for the time being in force in relation to appeals in civil matters or actions. Rule 73.

## PART VII.

### SUPPLEMENTAL PROVISIONS.

**75.** Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the provisions of this Act as if she were a *feme sole*, and for all the purposes of this Act any judgment or order obtained against her, whether or not expressed to be payable out of her separate property shall have effect as though she were personally bound to pay the judgment debt or sum ordered to be paid.

A married woman can be made a bankrupt. See section 3 and the annotations thereunder.

**76.** Subject to such modifications as may be made by General Rules, the provisions of this Act shall apply to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership being adjudged bankrupt or making an authorized assignment, the assets of the limited partnership shall vest in the trustee.

Ordinary and limited partnerships may be declared bankrupt. See section 3 and the annotations thereunder.

**77.** (1) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect to the proceedings whereof a minute has been so signed, shall be deemed to have been duly convened and held and all resolutions passed or proceedings thereat to have been duly passed or had.

(3) A copy of the *Canada Gazette* containing any notice inserted therein in pursuance of this Act, shall be evidence of the facts stated in the notice.

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(4) The production of a copy of the *Canada Gazette* containing any notice of a receiving order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

As to meetings of creditors, see sec. 42 and Rules 112, 113 and 114.

**78.** Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate, made by any court having jurisdiction in bankruptcy, any instrument or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Act shall if it appears to be sealed with the seal of any court having jurisdiction in bankruptcy, or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.

Section 80 provides that every Court having jurisdiction in bankruptcy under this Act shall have a seal describing the Court, and judicial notice shall be taken of the seal and of the signature of the Judge or registrar of any such Court in all legal proceedings.

**79.** Subject to General Rules, any affidavit to be used in a court exercising jurisdiction in bankruptcy under this Act may be sworn before any person authorized to administer oaths in the court having jurisdiction or before any registrar of the court or before any officer of a court having jurisdiction in bankruptcy authorized in writing in that behalf by the court, or be ore a justice of the peace for the province, county or place where it is sworn, or, in the case of a person who is out of Canada, before a notary public, a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides, he being certified to be a magistrate or justice of the peace or qualified as aforesaid by a British consul or vice-consul or by a notary public.

Rules 26 to 33 inclusive state requisites of affidavits to be used in the Courts.

**80.** Every court having jurisdiction in bankruptcy under this Act shall have a seal describing the court, and judicial notice shall be taken of the seal and of the signature of the judge or registrar of any such court in all legal proceedings.

See section 78 which provides for the sealing of proceedings in bankruptcy.

**81.** In case of the death of the debtor or his wife, or of a witness whose evidence has been received by any court in any proceedings under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the court or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

**82.** (1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday or a statutory holiday throughout the province where the act or proceeding is to be done or taken or a day on which the court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

(2) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which shall not be one of the days in this section specified.

In all cases in which any number of days not directed to be clear days is prescribed by the Act or by these Rules, or by any notice or order in reference to any proceeding under the Act, the same shall be reckoned exclusively of the date from which the computation is made but inclusively of the day on which the actual proceeding referred to is to be done or taken. See Rule 148.



Where notice is to be given or service is required to be made a certain number of days before the day on which something is to be done, if the words "clear days" or "at least" or "not less than" are used, both the day of service or of giving notice and the day on which such thing is to be done shall be excluded from the computation. Rule 149.

Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, days on which the offices of the Court are closed shall not be reckoned in the computation of such limited time. Rule 150.

Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices of the Court are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking same, be held to be duly done or taken on the next day on which the said offices are open. Rule 151.

83. All notices and other documents for the service of which no special mode is directed may be sent by registered and prepaid post to the last known address of the person to be served therewith.

See Rules 50 to 52 inclusive as to services and execution of process.

84. (1) No proceeding in bankruptcy or under an authorized assignment shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

(2) No defect or irregularity in the appointment of an authorized trustee or an inspector shall vitiate any act done by him in good faith.

Non-compliance with any of these Rules, or with any Rule of Practice for the time being in force, shall not render any proceeding void unless the Court shall so direct, but such proceeding may be set aside, either wholly or in part, as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court may think fit. Rule 146.

85. For all or any of the purposes of this Act, a corporation may act by any of its officers authorized in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or by the guardian or curator of his property.

Section 2, subsection (k), provides that "corporation" includes any company incorporated or authorized to carry on business by or under an Act of Parliament of Canada or of any of the provinces of Canada, and any incorporated company, wheresoever incorporated, which has an office in or carries on business within Canada, but does not include building societies having a capital stock, nor incorporated banks, savings banks, insurance companies, trust companies, loan companies or railway companies.

A corporation, firm and lunatic may be made bankrupt. See sec. 3 and annotations thereunder.

86. Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

Subsection 1 (a) of section 61 provides that an order for discharge shall not release the bankrupt or authorized assignor from any debt on a recognition nor from any debt with which the bankrupt or assignor may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff



or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence, and he shall not be discharged from such excepted debts unless an order in council proceeding from the Crown in the proper right is filed in Court consenting to his being discharged therefrom; or from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or from any liability under a judgment against him in an action for seduction, or under an affiliation order, or for alimony or under a judgment against him as a co-respondent in a matrimonial case, except to such an extent and under such conditions as the court expressly orders in respect of such liability; or from any debt or liability for necessities of life, and the Court may make such order for payment thereof as it deems just or expedient.

Subsection 2 of section 61 provides that an order of discharge shall release the bankrupt or assignor from all other debts provable in bankruptcy or under an authorized assignment.

**87.** (1) All persons who are barristers, solicitors or advocates of any court in any province may practise as barristers, solicitors and advocates in the courts exercising bankruptcy jurisdiction under this Act in any or in all of the provinces.

(2) All persons who may practise as barristers, solicitors or advocates in the courts exercising bankruptcy jurisdiction under this Act shall be officers of such courts.

For tariff of costs and fees, see section 67 and notes thereunder.

**88.** Nothing in the provisions of this Act shall interfere with, or restrict the rights and privileges conferred on banks and banking corporations by The Bank Act.

Section 2, subsection (k), expressly excludes building societies having a capital stock, incorporated banks, savings banks, insurance companies, trust companies, loan companies or railway companies from the operation of the Act

## PART VIII.

### *Bankruptcy Offences.*

**89.** Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made, or who has made an authorized assignment under this Act, shall in each of the cases following be guilty of an indictable offence and liable to a fine not exceeding one thousand dollars or to a term not exceeding two years' imprisonment or to both such fine and such imprisonment:—

(a) If he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless he proves that he had no intent to defraud;

(b) If he does not deliver up to the trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud;

(c) If he does not deliver up to the trustee, or as he directs, all books, documents, papers and writing in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;

(d) If after the presentation of a bankruptcy petition against him or within six months next before such presentation or if after making an authorized assignment or within six months next before the date of making thereof, he conceals any part of his property to the value of fifty dollars or upwards or conceals any debt due to or from him, unless he proves that he had no intent to defraud;

(e) If after the presentation of a bankruptcy petition against him or within six months next before such presentation or if after making an authorized assignment or within six months next before the date of making thereof, he fraudulently removes any part of his property to the value of fifty dollars or upwards;

(f) If he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud;

(g) If, knowing or believing that a false debt has been proved by any person under the bankruptcy or authorized assignment, he fails for the period of a month to inform the trustee thereof;

(h) If, after the presentation of a bankruptcy petition against him or after he makes an authorized assignment, he prevents the production of any book, document, paper or writing, affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(i) If, after the presentation of a bankruptcy petition against him or within six months next before such presentation or if after making an authorized assignment or within six months next before the date of making thereof, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(j) If, after the presentation of a bankruptcy petition against him or within six months next before such presentation or if after making an authorized assignment or within six months next before the date of making thereof, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(k) If, after the presentation of a bankruptcy petition against him or within six months next before such presentation or if after the making of an authorized assignment by him or within six months next before the date of making thereof, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs;

(l) If, after the presentation of a bankruptcy petition against him or after the making of an authorized assignment by him or at any meeting of his creditors within six months next before such presentation or assignment, he attempts to account for any part of his property by fictitious losses or expenses;

(m) If, within six months next before the presentation of a bankruptcy petition against him or next before the date of the making of an authorized assignment by him, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same;

(n) If, within six months next before the presentation of a bankruptcy petition against him or next before the date of the making of an authorized assignment by him he obtains, under the false pretense of carrying on business and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud;

(o) If within six months next before the presentation of a bankruptcy petition against him, or next before the date of the making of an authorized assignment by him or after the presentation of a bankruptcy petition against him or the making of an authorized assignment by him he pawns, pledges or disposes of any property which he has obtained on credit and has not paid for, unless in the case of a trader such pawning, pledging or disposing is in the ordinary way of his trade and unless in any case he proves that he had no intent to defraud;

(p) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy;

(q) If he knowingly makes or causes to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon respecting the financial condition or means or ability to pay of himself or any other person, firm or corporation in whom or

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in which he is interested, or for whom or for which he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan, or credit, the extension of a credit, the discount of any account receivable, or the making, acceptance, discount or endorsement of a bill of exchange, cheque, draft or promissory note, either for the benefit of himself or such person, firm or corporation;

(r) If he, knowing that a false statement in writing has been made respecting the financial condition or means or ability to pay of himself or any other person, firm or corporation in whom or in which he is interested or for whom or for which he is acting, procures upon the faith thereof, either for the benefit of himself or such person, firm or corporation, any of the benefits mentioned in the preceding paragraph.

The onus of proving no intent is on the accused and this is declaratory of the law as laid down in *R. v. Thomas*, 22 L.T. 138; and *R. v. Bolus*, 23 L.T. 339. As to evidence negating intent, see *R. v. Wiseman*, 9 Mans. 12. In *R. v. Mitchell*, 50 L.J. (M.C.) 76, it was held that such disclosure was not restricted to property in the possession of the bankrupt at the commencement of his bankruptcy. See *R. v. Creese*, L.R. 2 C.C.R. 105, distinguished in *R. v. Humphris*, [1904] 2 K.B. 89.

It is not enough that there should have been a false representation; it must be by means of the false representation that the goods were obtained. *Ez parte Stallard, Re Howard*, L.R. 3 Ch. 408. Where goods were obtained on credit in the county of Durham by means of false representation made in Glasgow, it was held that the offence was properly triable in the county of Durham. *R. v. Ellis*, [1899] 1 Q.B. 230.

90. Where an undischarged bankrupt or an undischarged authorized assignor,—

(a) either alone or jointly with any other person obtain credit to the extent of five hundred dollars or upwards from any person without informing that person that he is an undischarged bankrupt or an undischarged authorized assignor; or,

(b) engages in any trade or business under a name other than that under which he was adjudicated bankrupt or made such authorized assignment without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt or made such authorized assignment; he shall be guilty of an indictable offence and liable to a fine not exceeding \$500 and, to a term not exceeding one year's imprisonment, or to both such fine and such imprisonment.

Section 90 of the original Act was repealed and the above substituted therefor by the Bankruptcy Act Amendment Act, 1920.

If credit is in fact obtained, there need be no agreement to give it (*R. v. Peters*, 16 Q.B.D. 636); and credit "within the section" may in fact be obtained even though security for the debt is given. *R. v. Fryer*, 7 Cr. App. Rep. 183. The offence is committed where the bankrupt keeps goods to the statutory extent though the order was for a less amount. *R. v. Juby*, 55 L.T. 788. Nor is it necessary to shew an intent to defraud. *R. v. Duson*, [1894] 2 Q.B. 176.

Under the original section, \$50.00 was stated as the amount of credit. In the amendment, \$500.00 was substituted.

91. (1) If any person who has on any previous occasion been adjudged bankrupt or made an authorized assignment or extension or arrangement with his creditors, is adjudged bankrupt, makes an authorized assignment or secures or asks for a composition, extension or arrangement with his creditors, he shall be guilty of an indictable offence and liable to a fine of one thousand dollars and to one year's imprisonment if, having, during the whole or any part of the two years immediately preceding the date of the presentation of

the bankruptcy petition or of the making of the authorized assignment or of the securing or asking for the composition, extension or arrangement, been engaged in any trade or business, he has not kept proper books of account throughout those two years or such part thereof, as aforesaid, and if so engaged at the date of presentation of the petition or the making of the assignment or the securing or asking for the composition, extension or arrangement, thereafter, whilst so engaged, up to the date of the receiving order, or the making of the assignment or the securing or asking for the composition, extension or arrangement, or has not preserved all books of account so kept: Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section if his unsecured liabilities at the date of the making of the receiving order, or the assignment or of the securing or asking for the composition, extension or arrangement did not exceed five hundred dollars or if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual and other stock-takings.

(3) Paragraphs (i), (j) and (k) of section eighty-nine of this Act (which relate to the destruction, mutilation, and falsification and other fraudulent dealings with books and documents), shall, in their application to such books as aforesaid, have effect as if "two years next before the date of the making of the bankruptcy petition" and "two years next before the date of the making of an authorized assignment" were substituted for the time mentioned in those paragraphs as the time prior to such presentation or making within which the acts or omissions specified in those paragraphs constitute an offence.

For computation of time, see section 82 and annotations thereunder.

Rule 145 provides that no person shall, as against the trustee, be entitled to withhold possession of the books of account belonging to the debtor or to set up any lien thereon.

92. If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, or in any proceedings pursuant to section thirteen of this Act, for obtaining a composition, extension or arrangement of a debtor's debts or of his affairs, or in any proceedings under an authorized assignment, wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account, which is untrue in any material particular, he shall be guilty of an indictable offence, and shall on conviction on indictment be liable to imprisonment with or without hard labour for a term not exceeding one year.

An intention to defraud is essential to this offence. *R. v. Brownlow*, 26 T.L.R. 345.

93. Where an authorized trustee reports to any court exercising jurisdiction under this Act that, in his opinion, a debtor in respect of whose estate a receiving order has been made or who has made an authorized assignment has been guilty of any offence under this Act, or where the court is satisfied, upon the representation of any creditor or inspector that there is ground to believe that the debtor has been guilty of any such offence, the court shall, if it appears to the court that there is a reasonable probability that the debtor will be convicted, order that the debtor be prosecuted for such offence. Provided that it shall not be obligatory on the court, in the absence of any application by the trustee for such an order, to make an order under this section for the prosecution of an offence unless it appears to the court that the circumstances are such as to render a prosecution desirable.

A trustee prosecuting without leave may not get costs out of the estate. *Re Howes, Ex parte White*, [1902] 2 K.B. 290.

It was held in *Mittens v. Foreman*, 58 L.J. (Q.B.) 40, that an order would not protect the trustee from an action for malicious prosecution.

In the corresponding section of the English Act, the application by the trustee is made *ex parte* and the debtor cannot appeal from the order. *Ex parte Marsden*, 2 Ch. D. 786.

Where there is reasonable evidence to go to a jury of a bankrupt having committed offences within this Act a prosecution will be directed, and the Court will not try the question whether the evidence is sufficient to induce a jury to find him guilty, though a prosecution will not be directed on mere suspicion. *Ex parte Stallard*; *Re Howard*, L.R. 3 Ch. 408; *Ex parte Strickland*, 32 L.J. (Bank), 12.

94. Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition, extension or scheme of arrangement has been accepted or approved.

As to the effect of a composition, extension, or scheme of arrangement, see sec. 13, and as to the effect of a discharge see sec. 61 and notes thereunder.

95. (1) Where there is, in the opinion of the court, ground to believe that the bankrupt or any other person has been guilty of any offence under this Act, the court may commit the bankrupt or such other person for trial.

(2) For the purpose of committing the bankrupt or such other person for trial, the court shall have power to take depositions, bind over witnesses to appear, admit the accused to bail, or otherwise.

(3) In an indictment for an offence under this Act, it shall be sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant or document of, any court acting under this Act.

(4) Where any person is prosecuted for an offence under this Act no other prosecution shall be instituted against him for the same offence under any other Act.

See secs. 89, 90 and 91 as to bankruptcy offences by a bankrupt and notes thereunder.

96. Any person, who,—

(a) not being an authorized trustee, advertises or represents himself to be such; or

(b) being an authorized trustee, either before providing the bond required by section fourteen, subsection four, of this Act, or after providing the same but at any time while the said bond is not in force, acts as or exercises any of the powers of an authorized trustee; or

(c) having been appointed an authorized trustee, with intent to defraud fails to observe or to perform any of the provisions of this Act, or fails duly to do, observe or perform any act or duty which he may be ordered to do, observe or perform by the court, pursuant to any of the provisions of this Act; shall be guilty of an indictable offence and liable to a fine not exceeding one thousand dollars or to a term not exceeding two years' imprisonment or to both such fine and such imprisonment.

The original section was repealed and the above section substituted therefor by the Bankruptcy Act Amendment Act, 1920.

See secs. 6 and 9 which require an authorized trustee to act in bankruptcy and assignment proceedings.

Section 9 declares any assignment by an insolvent debtor to an authorized trustee to be null and void. See annotations on trustees and sec. 14 on appointment of trustees and sec. 17 on duties and power of trustees with the annotations thereunder.

97. Any person who maliciously institutes or carries on against any person who has not done or suffered any act of bankruptcy any proceeding in bankruptcy under this Act shall be guilty of an indictable offence and liable to a fine not exceeding one thousand dollars or to a term not exceeding two years imprisonment, or to both such fine and such imprisonment.

This section was repealed by the Bankruptcy Act Amendment Act, 1920.

The proclamation of the Governor in Council declared that the Bankruptcy Act shall come into force on the 1st of July, 1920.

The General Rules and Forms under the Bankruptcy Act became effective on the same date.

#### 6. GENERAL RULES UNDER THE BANKRUPTCY ACT.

1. These Rules may be cited as "the Bankruptcy Rules," and shall come into operation on the First day of July, A.D. 1920. (E.R. 1 in part.)

2. (1) In these Rules, unless the context or subject matter otherwise requires,—

"The Act" means "The Bankruptcy Act" and amendments thereto for the time being in force.

"The Court" means the Court as defined by The Bankruptcy Act and includes a Registrar when exercising the powers of the Court pursuant to the Act or these rules.

"Creditor" includes a corporation and a firm of creditors in partnership.

"Contributory" means a contributory as defined by Section 36 (2) of the Act.

"Judge" means the Judge to whom bankruptcy business is for the time being assigned in any Court having jurisdiction under the Act, or any other Judge having authority under the Act or these rules to act.

"Proper Officer" means the officer appointed by the Chief Justice of the Court for the transaction or disposal of the particular matter in question.

"Province" includes Territory.

"Registrar" means a registrar, deputy registrar or local registrar having jurisdiction in bankruptcy.

"Seal" shall mean the seal ordinarily used in civil actions and matters before it by the Court having jurisdiction, and the words "Sealed" or "and Sealed" where used shall refer to such seal.

"Taxing Officer" means and includes the officer of the Court whose duty it is to tax costs in bankruptcy proceedings or in pursuance of an authorized assignment or composition, extension or scheme of arrangement.

"Trustee" or "authorized trustee" means a Trustee or authorized trustee as defined by The Bankruptcy Act.

"Written" "writing" and any like expression shall include typewriting, printing and mimeographing or partly one and partly another.

(2) The definitions contained in section two of the Act shall, where applicable and unless the context or subject matter otherwise requires, apply to and be part of these rules.

3. (1) The forms in the Appendix, where applicable, or forms to the like effect with such variations as circumstances may require, shall be used.

Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct. (E.R. 5.)

(2) The provisions contained in the forms prescribed shall be deemed to be authorized by these rules.

4. All matters and applications shall be heard and determined in Chambers unless the Court or a Judge shall in the particular matter or application otherwise direct.

5. A Registrar may without any general or special directions of the Judge hear and determine any matter or application referred to in Section 65 (2) of the Act.

6. Any matter or application pending before a Registrar which under the Act, or the Bankruptcy Rules for the time being in force, a Registrar has jurisdiction to determine, shall be adjourned to be heard before the Judge, if the Judge shall, either specially or by any general direction applicable to the particular case, so direct. (E.R. 8.)

#### PROCEEDINGS.

7. Every proceeding in Court under the Act shall be dated, and shall be intitled in the name of the Court in which it is taken "In Bankruptcy," and then in the matter to which it relates. Numbers and dates may be denoted by figures. (E.R. 10.)

(2) Unless otherwise provided, all proceedings and documents required, under the Act or these Rules, to be filed in Court or with the proper officer shall be filed with the registrar.

8. All proceedings in Court shall be written on sheets of paper of the size ordinarily used in civil actions or matters before it by the Court; but no objection shall be allowed to any proof, affidavit, or other proceedings on account of its being written or printed on paper of other size. (E.R. 11.)

9. All proceedings of the Court shall remain of record in the Court, but they may at all reasonable times be inspected by any person. (E.R. 12 in part.)

10. All petitions, and warrants and subpoenas issued by the Court shall be sealed. (E.R. 14.)

11. (1) The Judge may at any time, for good cause shown, order the proceedings in any matter under the Act, to be transferred to the Court in another bankruptcy district or division. (E.R. 18.)

(2) Where the proceedings in any matter are transferred to the Court in another bankruptcy district or division the proper officer of the first Court shall send by post the records of proceedings transferred, to the Registrar of the Court in the bankruptcy district or division to which the transfer is made and shall include with such records a copy of the order of transfer. (E.R. 22 modified.)



12. When a bankruptcy proceeding has been commenced in a bankruptcy district or division in which it should not have been commenced, the Judge of the Court of such bankruptcy district or division may order that the proceeding shall be transferred to the Court in the bankruptcy district or division in which the same should have been commenced, or that it be continued in the Court in which it was commenced; but, unless and until a transfer is made under these Rules, the proceeding shall continue in the Court in which it was commenced. (E.R. 24 in part.)

13. Where proceedings in bankruptcy have been commenced against a corporation or where a corporation has made an authorized assignment, the Court may, on the application of the trustee or any creditor or shareholder, grant leave that all further proceedings in the winding up of the corporation or liquidation of its assets be continued under *The Winding Up Act* and amendments thereto, and may make such order for the transfer of proceedings or to effectuate such leave as to the Court shall seem best.

#### MOTIONS AND PRACTICE.

14. Every application (unless otherwise provided by these Rules, or the Court shall in any particular case otherwise direct) shall be made by motion. (E.R. 26.)

15. Where any party, other than the applicant, is affected by the motion, no order shall be made, unless upon the consent of such party duly shown to the Court, or upon proof to the satisfaction of the Court that notice of the intended motion had been duly served upon such party; provided that the Court, if satisfied that the delay caused by serving notice would or might entail serious mischief, may make any order *ex parte* upon such terms as to costs and otherwise, and subject to such undertaking, if any, as the Court may think just; and any party affected by such order may move to set it aside. (E.R. 27.)

16. Unless the Court gives leave to the contrary, notice of motion shall be served on any party to be affected thereby not less than four days before the day named in the notice for hearing the motion. An application for leave to serve short notice of motion may be made *ex parte*. (E.R. 28.)

17. In cases in which personal service of any notice of motion, order, or other proceeding, is required the same may be effected by delivering to each party to be served a copy of the notice of motion, order, or other proceeding, as the case may be. (E.R. 32 in part.)

18. Every affidavit to be used in supporting or opposing any motion or application shall be filed with the proper officer not later than the day before the day of the hearing. (E.R. 33.)

19. A party intending to move shall, not later than the day before the day of the hearing, file with the proper officer a copy of his notice of motion. (E.R. 35 in part.)

## SETTLEMENT OF ORDER.

20. All orders made by a Judge in Chambers shall be settled and signed by him or by the Registrar or proper officer. All orders made by the Registrar shall be settled and signed by the Registrar. The person who has the carriage of any order which in the opinion of the Judge or Registrar requires to be settled shall obtain from the Judge or Registrar, as the case may be, an appointment to settle the order and give reasonable notice of the appointment to all persons who may be affected by the order, or to their solicitors. (E.R. 37 in part.)

## SECURITY IN COURT.

21. (1) Except where otherwise provided any security required to be given shall be by bond of a guarantee company or corporation approved by the Court. (E.R. 38 modified.)

(2) Provided, however, that the Court may in its discretion permit the security to be given by bond with one or more surety or sureties to the Registrar of the Court or to the person proposed to be secured and in such case the Court may require the surety or sureties to make an affidavit of justification and may also require such notice to be given to the person proposed to be secured as the Court deems advisable or expedient.

22. The bond shall be taken in a penal sum, which shall be not less than the sum for which security is to be given, and probable costs to be estimated by the Court, unless the opposite party consents to it being taken for a less sum. (E.R. 39.)

23. Where a person is required to give security he may, in lieu thereof, lodge in Court a sum equal to the sum in question in respect of which security is to be given and the probable costs to be estimated as aforesaid of the trial of the question, together with a memorandum to be approved of by the Registrar and to be signed by such person, his solicitor, or agent, setting forth the conditions on which the money is deposited. (E.R. 40.)

24. Where a person makes a deposit of money in lieu of giving a bond, he shall forthwith give notice in writing to the person to whom the security is to be given of such deposit having been made. (E.R. 46.)

25. Except as in the Act or these Rules otherwise provided the Rules for the time being in force in civil actions or matters before it of the Court relating to payment into or out of Court of moneys shall apply to moneys lodged in Court or to be paid out of Court under these Rules. (E.R. 41 modified.)

## AFFIDAVITS.

26. Every affidavit shall be drawn up in the first person, and shall state the description and true place of abode of its deponent, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. No costs shall be allowed for any part of an affidavit containing unnecessary matters or which in the opinion of the taxing officer is unduly prolix. (E.R. 50 and 51)

27. The Court may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client. (E.R. 53.)

28. No affidavit having in the jurat or body thereof, any interlineation, alteration, or erasure shall, without leave of the Court, be read or made use of in any matter depending in Court unless the interlineation, alteration or erasure is authenticated by the initials of the officer or person taking the affidavit. (E.R. 54 in part.)

29. Where an affidavit is sworn by any person who appears to the person taking the affidavit to be illiterate or blind, the person taking the affidavit shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature or declared his inability to sign in the presence of such person. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent. (E.R. 55.)

30. The Court may receive any affidavit sworn for the purpose of being used in any matter notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. (E.R. 56.)

31. No affidavit (other than a proof of debt) shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent, clerk or partner of such solicitor, or before the party himself. (E.R. 58 in part.)

32. Where by this Act or in these Rules it is provided that an affidavit or declaration be made by a debtor, authorized trustee or any other person and such debtor, authorized trustee or other person is a corporation such affidavit or declaration may be made by the Manager or by any officer or employee of the corporation who has knowledge of the facts deposed to providing that he states therein that he has such knowledge.

33. The Court shall take judicial notice of the seal and/or signature of any person authorized by or under the Act or these rules to take affidavits or to certify to such authority. (E.R. 60.)

#### WITNESSES AND DEPOSITIONS.

34. Any party to any proceeding in Court may by a writ of subpoena in the prescribed form, with or without a clause requiring the production of books, deeds, papers, documents and writings, require the attendance of a witness for the purpose of using his evidence upon any motion, petition or other proceeding before the Court or any Judge or Registrar. The name of one or more witnesses may be inserted in the subpoena. (E.R. 61 and K.B. Man., 489.)

35. A copy of the subpoena shall be served personally, on the witness within a reasonable time before the time of the return thereof and service of

the subpoena may where required, be proved by affidavit. (E.R. 62 and 63 modified.)

**36.** The costs of witnesses, whether they have been examined or not, may, in the discretion of the Court or taxing officer, be allowed; provided, however, that the Court may at any time limit the number of witnesses to be allowed on taxation of costs. (E.R. 64 and 65.)

**37.** The Court may, in any matter where it shall appear necessary for the purpose of justice, make an order for the examination upon oath before the Court or any officer, or other person, and at any place, of any witness or person, and may empower any party to any such matter to give such depositions in evidence therein on such terms (if any) as the Court may direct. (E.R. 66.)

**38.** (1) Where the evidence of any person is taken on or for use on the hearing of any motion, application or issue or in pursuance of an order for examination, commission or letters of request or where the debtor or any other person is examined under section 56 of the Act, or otherwise under the Act or these Rules, such evidence or examination may be taken in shorthand by a shorthand writer approved and duly sworn by the judge, registrar, or person before whom the examination is taken. A shorthand writer who has been duly appointed to report trials at sittings of the Court need not be sworn.

(2) When taken in shorthand the evidence or examination may be taken down by question and answer; and unless otherwise ordered it shall not be necessary for the depositions to be read over to or signed by the person examined, unless the judge or registrar so directs, when the examination is taken before a judge or registrar, or in other cases unless any of the parties so desire.

(3) A copy of the depositions so taken, certified by the judge, registrar or person before whom the same were taken as correct, shall for all purposes have the same effect as the original depositions in ordinary cases.

**39.** An order for examination, commission or letters of request to examine witnesses, and the writ, order, commission or request, shall follow the forms for the time being in use in the Court in civil actions or matters before it with such variations as circumstances may require. (E.R. 69 modified.)

**40.** The Court may, in any matter, at any stage of the proceedings, order the attendance of any person for the purpose of producing any writings or other documents named in the order, which the Court may think fit to be produced. (E.R. 70.)

**41.** Any person wilfully disobeying any subpoena or order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of Court, and may be dealt with accordingly. (E.R. 71.)

**42.** Any witness required to attend for the purpose of being examined, or to produce any document, or to give evidence, shall be entitled to the witness fees and conduct money provided by the tariff of costs in the appendix hereto. (E.R. 72 in part.)

## DISCOVERY AND EXAMINATION.

43. Any party to any proceeding in Court may with leave of the Court, administer interrogatories to, or obtain discovery of documents or examination for discovery from any other party to such proceeding, or any other person as authorized by the Court and may also cross-examine any person upon an affidavit made by him in such a proceeding. Proceedings under this Rule shall be regulated as nearly as may be by the Rules of the Court for the time being in force in relation to like matters in civil actions or matters in such Court. An application for leave under this Rule may be made *ex parte*. (E.R. 73 modified.)

## WARRANTS, ARRESTS AND COMMITMENTS.

44. A warrant of seizure, or a search warrant, or any other warrant issued under the provisions of the Act, or these rules, shall be addressed to the Sheriff or such other officer or person as the Court may in each case direct. (E.R. 80.)

45. When a debtor is arrested under a warrant issued under section fifty-five of the Act, he shall be given into custody of the Governor or Keeper of the prison or gaol mentioned in the warrant, who shall produce such debtor before the Court as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order; and any books, papers, moneys, goods, and chattels in the possession of the debtor, which may be seized, shall forthwith be lodged with the trustee. (E.R. 81.)

46. Where a person is apprehended under a warrant issued under section fifty-six (2) of the Act the officer apprehending him shall forthwith bring him before the Court issuing the warrant to the end that he may be examined, and if he cannot immediately be brought up for examination or examined, the officer shall deliver him into custody of the Governor or Keeper of the prison or gaol mentioned in the warrant, and the said Governor or Keeper shall receive him into custody and shall produce him before the Court as it may from time to time direct or order and subject to such direction or order shall safely keep him. (E.R. 82.)

47. The officer executing a warrant issued under section fifty-six (2) of the Act shall forthwith, after apprehending the person named in the warrant and bringing him before the Court as in the last preceding rule mentioned, or after delivering him to the Governor or Keeper of the prison or gaol in the last preceding rule mentioned, as the case may be, report such apprehension or delivery to the Court issuing the warrant, and apply to the Court to appoint a day and time for the examination of the person so apprehended, and the Court shall thereupon appoint the earliest practicable day for the examination and shall issue its direction or order to the said Governor or Keeper to produce him for examination at a place and time to be mentioned in such direction or order. Notice of any such appointment shall forthwith be given, by the Registrar to the Trustee and to such other person who shall have applied for the examination or warrant. (E.R. 82.)

48. Where an order of committal is made against any person, for disobeying any order of the Court, to do some particular act or thing, the Court

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may direct that the order of committal shall not be issued, provided that such person complies with the previous order within a specified time. (E.R. 85.)

**49.** Where a debtor or witness refuses or neglects to attend at the time and place appointed for his examination or, if attending, refuses to be sworn, or to answer any lawful question, the rules of practice for the time being in force in similar or analogous proceedings in civil actions or matters before the Court shall in so far as the same are applicable, and not inconsistent with the Act or these Rules, apply.

#### SERVICE AND EXECUTION OF PROCESS.

**50.** Every solicitor suing out, filing or serving any petition, notice, summons, order, or other document, shall indorse thereon his name or firm and place of business, which shall be called his address for service. All notices, orders, documents, and other written communications which do not require personal service shall be deemed to be sufficiently served on such solicitor if left for him at his address for service. (E.R. 87.)

**51.** Service of notices, orders, or other proceedings shall be effected before the hour of five in the afternoon, except on Saturdays, when it shall be effected before the hour of one in the afternoon. Service effected after five in the afternoon on any week day, except Saturday, shall for the purpose of computing any period of time subsequent to such service be deemed to have been effected on the next following day which is not a legal holiday. Service effected after one in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the next following day which is not a legal holiday. (E.R. 88.)

**52.** It shall be the duty of the sheriff or bailiff of the Court having jurisdiction or such officer, or officers as the Court may direct, to serve such orders, summonses, petitions and notices as the Court may require him to serve; to execute warrants and other process; and to do and perform all such things as may be required of him by the Court. Where any notice or other proceeding may be served by post it shall be sent by registered letter. (E.R. 89 in part.)

**53.** Every order of the Court may be enforced as if it were a judgment of the Court. (E.R. 91.)

#### COSTS AND TAXATION.

**54.** (1) The Court in awarding costs may direct that the same shall be taxed and paid as between party and party or as between solicitor and client, or the Court may fix a sum to be paid in lieu of taxed costs.

(2) In the absence of any express direction costs of an opposed motion shall follow the event, and shall be taxed as between party and party.

(3) Where an action is brought by or against an authorized trustee as representing the estate of the debtor, or where an authorized trustee is made a party to a cause or matter, on his application or on the application of any other party thereto, he shall not be personally liable for costs unless the Judge before whom the action, cause or matter is tried for some special reason otherwise directs. (E.R. 96 modified.)

55. (1) When a receiving order is made on a creditor's petition the costs of the petitioning creditor shall be taxed and be payable out of the estate.

(2) When the proceeds of the estate are not sufficient for the payment of the petitioning creditor's costs and of any costs necessarily incurred by the trustee down to the conclusion of the first meeting of creditors the Court may order such costs to be paid by the petitioning creditor. (E.R. 187 in part.)

56. The costs directed by any order to be paid shall be taxed on production of a copy of such order, and the allocatur or certificate of taxation shall be signed and dated by the taxing master or officer and delivered to the person who presented such bill for taxation. (E.R. 98.)

57. (1) The tariff of costs set forth in the Appendix and the regulations contained in such tariff, shall, subject to these Rules, apply to the taxation and allowance of costs and charges in all proceedings.

(2) Where the estimated assets of the debtor, in accordance with the certificate of the authorized trustee, do not exceed the sum of fifteen hundred dollars a lower scale of solicitor's costs shall be allowed in all proceedings under the Act in which costs are payable out of the estate, namely—two-thirds of the charges ordinarily allowed, disbursements being added, unless the Court by order directs that increased costs be allowed. (E.R. 103 modified.)

58. Every person whose bill or charges is or are to be taxed shall in all cases give not less than two days' notice of the appointment to tax the same to the Trustee. (E.R. 112.)

59. Every person whose bill or charges is or are to be taxed shall on application of the trustee furnish to the trustee a copy of his bill or charges so to be taxed on payment at the rate of fifteen cents per folio, which payment may be charged to the estate. (E.R. 114 in part.)

60. Where the joint estate of any co-debtors is insufficient to defray any costs or charges properly incurred the trustee may pay such costs and charges as cannot be paid out of the joint estate out of the separate estates of such co-debtors or one or more of them in such proportion as he may determine, with the consent of the inspectors of the estates out of which the payment is intended to be made, or, if such inspectors withhold or refuse their consent, then with the approval of the Court. (E.R. 121 modified.)

61. Subject to the provisions of the Act, no costs shall be paid out of the estate or assets of the debtor, excepting the costs of the solicitor or solicitors employed by the trustee and such costs as have been awarded against the trustee or the estate of the debtor by order of the Court in any set on or proceeding under the Act or these Rules.

#### FEEs.

62. The fees to be charged for or in respect of proceedings under the Act shall be as fixed by the tariff in part three of the Appendix and shall be collected and may be retained by the registrars or other proper officers who perform the duties under the Act or these Rules in respect of which such fees are payable. In case of any proceedings not covered by the tariff a fee may be charged of an amount equal to the tariff fee for the proceeding most nearly resembling the one in question. In the case of any dispute as to the amount of fees charged the Judge shall fix and settle the amount.



## RULES RELATING TO THE BUSINESS OF THE COURT.

63. The Judge or Judges of the Court appointed by the Minister of Justice to have jurisdiction in bankruptcy shall with the approval of the Chief Justice of the Court regulate the bankruptcy sittings and vacations of the Court. (E.R. 122.)

64. Any Registrar in bankruptcy may act for any other Registrar. (E.R. 124 in part.)

65. Writs of execution shall issue from the proper office of the Court and all proceedings thereon and in relation thereto shall be regulated as nearly as may be by the Rules of the Court for the time being in force in relation to executions in civil actions or matters before such Court. (E.R. 126.)

66. Where any registrar, clerk or other officer in bankruptcy refuses or neglects to act as such registrar, clerk or other officer or to perform or carry out any act, matter or thing connected with the office to which he has been appointed or assigned for the transaction or disposal of any matter in respect of which power or jurisdiction is given by "The Bankruptcy Act" or by these Rules, then, and in every such case, the registrar, clerk or other officer so neglecting or refusing, shall be guilty of contempt of Court and be liable to be punished accordingly.

## APPEALS FROM REGISTRAR.

67. An appeal from the registrar shall be by ordinary notice of motion to the Judge of the bankruptcy district or division in which the proceedings are pending. No appeal shall be brought unless the notice thereof is filed with the registrar and served within ten days after the pronouncing of the order or decision complained of, or within such further time as may be allowed by the Judge. The notice shall set forth fully the grounds of appeal. No security for the costs of the appeal need be given by the appellant.

## APPEALS TO APPEAL COURT.

68. No appeal from a Judge to the Appeal Court shall be brought unless notice thereof is filed with the registrar and served within ten days after the pronouncing of the order or decision complained of or within such further time as may be allowed by a Judge.

(2) At or before the time of entering an appeal the party intending to appeal shall lodge in the Court the sum of one hundred dollars to satisfy, in so far as the same may extend, any costs that the appellant may be ordered to pay. Provided that the Appeal Court may in any special case increase or diminish the amount of such security or dispense therewith. (E.R. 131.)

69. The proper officer of the Court appealed from shall upon receiving a copy of the notice of appeal promptly transmit to the Registrar of the Appeal Court the notice of appeal and the file of proceedings in the matter under appeal. (E.R. 133.)

70. Where an issue or question is, under the provisions of section seventy-one of the Act, tried by a Court other than the Court in which the bankruptcy proceedings are pending, any appeal from the decision of such

Court shall be made to and be heard by the Appeal Court of the province in which the bankruptcy proceedings are pending.

71. Subject to the foregoing Rules, appeals to the Appeal Court in any bankruptcy district or division shall be regulated by the Rules of such Court, for the time being, in force in relation to appeals in civil actions or matters. (E.R. 134 modified.)

#### APPEALS TO SUPREME COURT.

72. An application for special leave to appeal from a decision of the Appeal Court and to fix the security for costs, if any, shall be made to a Judge of the Supreme Court of Canada within thirty days after the pronouncing of the decision complained of and notice of such application shall be served on the other party at least fourteen days before the hearing thereof.

(2) Where any security for the costs of such appeal is fixed the same shall be given to the Registrar in the manner and form prescribed by the rules and practice of the Supreme Court of Canada, or in manner and form to like effect.

73. Subject to the foregoing Rules appeals to the Supreme Court of Canada shall, as nearly as possible, be regulated by the Rules of such Court for the time being in force in relation to appeals in civil matters or actions.

74. Every petition shall be fairly written and no alteration, interlineations, or erasures shall be made therein, after the same has been filed, without the leave of the Registrar. (E.R. 145 in part.)

75. A petitioning creditor who is resident abroad, or whose estate is vested in a trustee under any law relating to bankruptcy, or against whom a petition is pending under any such law, or who has made default in payment of any judgment, order for payment of money or of any costs ordered by any Court to be paid by him to the debtor, may be ordered to give security for costs to the debtor. (E.R. 150 modified.)

76. With every creditor's petition when filed there shall be lodged a copy to be sealed and issued to the petitioner. The petition shall be deemed to have been presented to the Court on the day of the filing thereof.

77. A true copy of the creditor's petition together with a notice of the time and place of the presentation and hearing thereof shall be personally served upon the debtor at least eight days before the presentation and hearing; provided that where it is proved to the satisfaction of the Court that the debtor has absconded, or in any other case for good cause shown, the Court may, on such terms, if any, as the Court may think fit to impose, hear the petition at such earlier date and without such service as the Court may deem expedient. (E.R. 155 and 156 modified.)

78. If the Court is satisfied by affidavit or other evidence that the debtor is keeping out of the way to avoid service of the petition or any other document, or service of any other legal process, or that for any other cause prompt personal service cannot be effected, it may order substituted service to be made by delivery of the petition or such other document to some adult

inmate at his usual or last known residence or place of business, or by registered letter, or in such other manner as the Court may direct, and such petition or other document shall then be deemed to have been duly served on the debtor. (E.R. 156 modified.)

**79.** Service of the petition may be proved by affidavit, with a sealed copy of the petition attached, and the same shall be filed in Court as soon as practicable after the service. (E.R. 157.)

**80.** Any notice, petition or other document for which personal service is necessary shall be deemed to be duly served on all the members of a firm if it is served at the principal place or one of the principal places of business of the firm in the province wherein the proceedings are taken or if there is no such place then at the principal place of business of the firm in Canada, on any one of the partners, or upon any person having at the time of service the control or management of the partnership business there. (E.R. 279 modified.)

**81.** The provisions of the last preceding rule shall so far as the nature of the case will admit apply in the case of any person carrying on business within the jurisdiction in a name or style other than his own. (E.R. 280.)

**82.** Any notice, petition or other document for which personal service is necessary shall be deemed to be duly served on a corporation if it is served at the head office or principal place, or one of the principal places of business of a corporation in the province wherein the proceedings are taken or if there is no such place at the head office or principal place of business of the corporation in Canada, on the president, vice-president, secretary, treasurer, manager or upon any officer of the corporation or upon any person having at the time of service the control or management of the business of the corporation at the place of such service.

**83.** Where a debtor is not in Canada, the Court may order service of the petition, or any other document to be made within such time and in such manner and form as it shall think fit. (E.R. 158 and 183 modified.)

**84.** If a debtor against whom a bankruptcy petition has been filed dies before service thereof, the Court may order service to be effected on the personal representatives of the debtor, or on such other person as the Court may think fit. (E.R. 159.)

#### INTERIM RECEIVER.

**85.** After the presentation of a petition, upon the application of a creditor, or of an authorized trustee, or of the debtor himself, and upon proof by affidavit of sufficient grounds for the appointment of an authorized trustee as interim receiver of the property of the debtor or any part thereof, the Court may, if it thinks fit, and upon such terms as may be just, make such appointment; such order may be made *ex parte*. (E.R. 160 modified.)

**86.** Where, after an order has been made appointing an authorized trustee interim receiver, the petition is dismissed, the Court shall, upon application to be made within 21 days from the date of the dismissal thereof, adjudicate, with respect to any damages or claim thereto arising out of the appointment, including the proper remuneration of the trustee, and shall make such order as the Court thinks fit. (E.R. 165 modified.)

## HEARING OF PETITION.

87. Where a debtor intends to show cause against a petition he shall file a notice with the proper officer, specifying the statements in the petition which he intends to deny or dispute, and shall transmit by post to the solicitor of the petitioning creditor, a copy of the notice three days before the day on which the petition is to be heard. (E.R. 169.)

88. If the debtor does not appear at the hearing, the Court may make a receiving order and adjudge the debtor bankrupt on such proof of the statements in the petition as the Court shall think sufficient. (E.R. 170.)

89. On the appearance of the debtor to show cause against the petition, the petitioning creditor's debt, and the act of bankruptcy, or such of those matters as the debtor shall have given notice that he intends to dispute, shall be proved to the satisfaction of the Court by affidavit or by any evidence which would be admissible to prove the facts in a civil action in the Court. (E.R. 171 modified.)

90. Where proceedings on a petition have been stayed for the determination of the question of the validity of the petitioning creditor's debt, which question may be determined in such manner as the Court may direct, and such question has been decided in favour of the validity of the debt, the registrar shall on production of the judgment of the Court, or a copy thereof, and on the application of the petitioning creditor fix a day on which further proceedings on the petition may be had. The petitioning creditor shall within forty-eight hours of the date of said appointment mail or deliver to the debtor, at the address given in his notice of dispute, a notice in writing of such appointment, and a like notice to his solicitor, if known. (E.R. 174 modified.)

91. Where proceedings on a petition have been stayed for the determination of the question of the validity of the petitioning creditor's debt, and such question has been decided against the validity of the debt the registrar shall on the production of the judgment of the Court or a copy thereof, and on application of the debtor fix a day on which he may apply to the Court for the dismissal of the petition with costs. The debtor shall within forty-eight hours of the date of the appointment mail or deliver to the petitioner (and to his solicitor, if known) notice in writing of the time and place fixed for the hearing of the application. (E.R. 175 modified.)

## RECEIVING ORDER.

92. When a receiving order is made on a creditor's petition there shall be stated in the receiving order the nature and date, or dates of the act, or acts, of bankruptcy upon which the order has been made. (E.R. 179 in part.)

93. The Trustee shall cause a copy of the receiving order or of the order appointing the trustee an interim receiver, as the case may be, to be served on the debtor. (E.R. 182.)

94. A receiving order against a firm shall operate as a receiving order not only against the firm, but also against each person who at the date of the order is a partner in that firm. (E.R. 285 modified.)

95. The rights or liabilities of any past or present limited partner of a limited partnership, against which a receiving order has been made or which has made an authorized assignment, as such rights or liabilities are fixed or defined by the statutory provision (if any) of the province wherein the partnership business is or has been carried on, shall not in any way be prejudiced or affected by these Rules. (E.R. 290 modified.)

96. An application to the Court to rescind a receiving order or to stay proceedings thereunder, or to annul an adjudication, shall not be heard except upon proof that notice of the intended application and a copy of the affidavits in support thereof have been duly served upon the trustee. Unless the Court gives leave to the contrary, notice of any such application together with copies of such affidavits shall be served on the trustee not less than four days before the day named in the notice for hearing the application. Pending the hearing of the application, the Court may make an interim order staying such of the proceedings as it thinks fit. (E.R. 188.)

#### STATEMENT OF AFFAIRS.

97. (1) Every debtor shall be furnished by the trustee with instructions for the preparation of his statement of affairs. Such statement of affairs shall be made out in duplicate and shall be verified by the debtor. The trustee shall file with the Registrar one of such verified statements. (E.R. 189 modified.)

(2) Where the debtor is a partnership it shall submit a statement, in duplicate, of its partnership affairs verified by one of the partners or by the manager in charge of the business and each partner shall submit a statement, in duplicate, of his separate affairs verified personally.

(3) Where the debtor is a corporation the statement of affairs, in duplicate, shall be verified by the president, vice-president, secretary, treasurer, general manager, manager or by any officer or director of the corporation having knowledge of the facts contained in such statement.

#### COMPOSITION, EXTENSION OR SCHEME OF ARRANGEMENT.

98. Where a debtor intends to submit a proposal for a composition, extension or scheme of arrangement the prescribed forms in the appendix, of proposal, notice and report shall be used by the trustee for the purpose of meetings of creditors for consideration of the proposal. (E.R. 200.)

99. Whenever an application is made to the Court to approve of a composition, extension or scheme, the trustee shall, not less than seven days before the hearing of the application, send notice by registered mail of the application to the debtor and to every creditor, who has proved his debt; and the trustee shall file his report not less than two days before the time fixed for hearing the application. (E.R. 203 and 205.)

100. In any case in which an application is made to the Court to approve a composition, extension or scheme and the trustee reports to the Court any fact, matter, or circumstance which would justify the Court in refusing to approve of the composition, extension or scheme, such application shall be deemed to be an opposed application within the meaning of section 65 (2) (d) of the Act. (E.R. 204.)

**101.** On the hearing of any application to the Court to approve of a composition, extension or scheme the Court shall in addition to considering the report of the trustee hear the trustee, the debtor and/or any opposing, objecting or assenting creditor thereon, and an appeal to the Court of Appeal shall lie at the instance of the trustee, the debtor or any such creditor from any order of the Court made upon such application. (E.R. 206 modified.)

**102.** No costs incurred by a debtor, or of incidental to an application to approve a composition, extension or scheme, other than the costs incurred by the trustee, shall be allowed out of the estate if the Court refuses to approve the composition, extension or scheme. (E.R. 207.)

**103.** The Court before making an order approving a composition, extension or scheme shall, in addition to investigating the other matters as required by the Act, require proof that the provisions of section 13 (1) and (2) of the Act have been complied with. (E.R. 208 in part.)

**104.** At the time a composition, extension or scheme is approved, the Court may correct or supply any accidental or formal slip, error, or omission therein, but no alteration in the substance of the composition, extension or scheme shall be made. (E.R. 211.)

**105.** Where a composition, extension or scheme is annulled, the property of the debtor shall, unless the Court otherwise directs, forthwith re-vest in the trustee, if any, in whom the estate was originally vested without any special order being made or necessary. (E.R. 216 modified.)

**106.** Every person claiming to be a creditor under any composition, extension or scheme, who has not proved his debt before the approval of such composition, extension or scheme, shall lodge his proof with the trustee thereunder, who shall admit or disallow the same. And no creditor shall be entitled to enforce payment of any part of the sums payable under a composition, extension or scheme unless and until he has proved his debt and his proof has been admitted or allowed. (E.R. 219.)

#### DISCHARGE OF TRUSTEE.

**107.** The application of an authorized trustee for a grant of discharge (whether full or partial) shall be made in the prescribed form to the Registrar and shall be verified by the affidavit of such authorized trustee. Such application shall contain or have attached thereto a complete and itemized statement showing all moneys realized by such authorized trustee from and out of the property of the bankrupt or assignor and of all moneys disbursed and expenses incurred and the remuneration claimed by such authorized trustee; and full particulars, description and value of all property belonging to the estate which has not been sold or realized upon, setting out the reasons why such property has not been sold or realized upon; and full particulars and information with regard to any unsettled disputes, actions or proceedings between such authorized trustee and either the debtor or any creditor or creditors or any other person connected with the estate.

**108.** The trustee shall, unless otherwise ordered by the Court on an *ex parte* application, at least ten days prior to the hearing of the application send notice in writing by registered mail to the debtor and to each of the creditors.

**109.** (1) If the debtor or any creditor desires to oppose the application for discharge he shall file with the Registrar, at least two days prior to the hearing or within such further time as the Court may allow, a notice in writing of his intention to oppose the application setting out his reasons therefor and shall serve a copy of the said notice on the authorized trustee, within the time aforesaid.

(2) If the application for discharge is not opposed the Registrar may either grant or refuse the same. If the application is opposed the same shall be adjourned for hearing before a Judge.

**110.** The authorized trustee shall keep for a period of at least six years from the date of declaring a final dividend all current books of record and important documents of the estate of the bankrupt or authorized assignor. After the expiration of such period the trustee may destroy unimportant books and documents but shall continue to keep for a further period of fourteen years from the date thereof all title papers relating to real or immovable estate, important documents under seal and such other books and papers which in the judgment of the trustee should be kept. During the said periods the trustee shall at all times produce and dispose of all books and papers in his possession as ordered by the Court.

**111.** In the case of the sale of immovable property in the Province of Quebec by the trustee, if the purchaser has not paid the whole of the purchase price or given security when he may lawfully do so under the provisions of the Code of Civil Procedure for the Province of Quebec, the trustee may obtain from the Court an order for the resale of the property; the purchaser may however prevent the resale for false bidding by paying to the trustee, before such resale, the amount of his bid with the interest accrued by reason of his default and all costs incurred thereby; if a resale takes place the false bidder is liable to the trustee for the difference between the amount of his bid and the price brought on the resale with all costs incurred by reason of his default for the payment of which on application of the trustee, the Court may make an order against the false bidder; if the price obtained on the resale is greater, it goes to the benefit of the estate.

#### MEETING OF CREDITORS.

**112.** (1) Where a meeting of creditors is called by notice, the proceedings had and resolutions passed at such meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors shall not have received the notice sent to them and notwithstanding the inadvertent omission to send such notice to one or more creditors. (E.R. 243.)

(2) Where a meeting of creditors is adjourned, the adjourned meeting shall be held at the same place as the original place of meeting, unless in the resolution for adjournment another place is specified. (E.R. 248.)

**113.** A debtor who is required by a trustee to attend any meeting of creditors (other than the first meeting) and who resides at a distance of more than ten miles from the place of such meeting, shall be entitled to be paid for such attendance the like conduct money and expenses as if he were a witness required to attend in Court or for the purpose of being examined.



114. Every class of creditors shall express its views and wishes separately from every other class and the effect to be given to such views and wishes shall, in case of any dispute and subject to the provisions of the Act, be in the discretion of the Court having regard to the financial condition of the debtor.

#### PROOF OF CLAIMS.

115. In any case in which it shall appear from the debtor's statement of affairs that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor, or his foreman, or the bookkeeper of the debtor, or some other person on behalf of all such creditors. Such proof shall have annexed thereto, as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this Rule shall have the same effect as if separate proofs had been made by each of the said workmen and others. (E.R. 251.)

116. Where a creditor's proof has been admitted the notice of dividend shall be sufficient notification to such creditor of such admission. (E.R. 261.)

#### DISALLOWANCE OF CLAIMS.

117. The appeal of a claimant from the trustee's decision under section 53 of the Act shall be by notice of motion to a Judge and the trustee shall be served with a copy thereof in the ordinary manner provided by these Rules. The Judge shall hear and dispose of the appeal summarily on affidavits or viva voce evidence or both as to the Judge shall seem best.

118. The trustee shall in no case be personally liable for costs in relation to an appeal from his decision rejecting or disallowing any proof wholly or in part. (E.R. 263.)

#### CONTINGENT OR UNLIQUIDATED CLAIMS.

119. Where a contingent claim has been filed with a trustee, or one in the nature of unliquidated damages arising by reason of a contract, promise or breach of trust, and the trustee under the provisions of section 20 of the Act has been unable to make a compromise or other arrangement satisfactory to the inspectors in respect thereto, the trustee shall apply to a Judge, by way of notice of motion, to value the claim, serving the claimant with a copy of the notice of motion in the ordinary manner provided by these rules. The trustee shall prior to the hearing of the motion file with the registrar a copy of the claim in question, and an affidavit or affidavits by the trustee, the debtor or of some other person having knowledge of the claim setting out as full particulars and information as to the claim as have been ascertained, also setting out what steps (if any) were taken to make a compromise or other arrangement in respect of the claim, and particulars of any offer of compromise or arrangement made by the trustee with the permission of the inspectors, and such other facts as the trustee deems advisable. The Judge shall hear and dispose of the matter summarily and either on affidavits or viva voce evidence or both as to the Judge shall seem best.

## SETTLEMENTS AND PREFERENCES.

120. Applications by a trustee, or any person, to set aside or avoid under the Act, or any other Act or law, any settlement, conveyance, transfer, security or payment, or to declare for or against the title of the trustee to any property adversely claimed, and any proceedings under "The Winding-up Act" against any past or present director, manager, liquidator, receiver, employee, or officer of any company, against whom a receiving order has been made, or which has made an authorized assignment, shall be to a Judge in chambers by notice of motion served in the ordinary manner as provided by these rules. The Judge may proceed in a summary manner to try the question or issue in the case or may adjourn the hearing, or may direct or settle any question or issue to be tried, or may give such directions for the preparation and filing of pleadings and for the trial of such question or issue, or may make such other order in the premises as to the Judge shall seem best.

121. Any application or notice of motion under the preceding rule, may contain a description of the land (if any) in question and upon filing the same or a copy thereof, signed by the solicitor of the applicant, with the proper officer, a certificate of *lis pendens* may be issued for registration, and in case the said application or motion is refused in whole or in part, a certificate of such order may be issued for registration.

## CONTRIBUTORIES TO INSOLVENT CORPORATIONS.

122. The demand of an authorized trustee on any contributory shall be in the prescribed form and there shall be no duty imposed on the authorized trustee to make demands on a *pro rata* basis so far as the contributories of a debtor are concerned or to adjust rights as between contributories.

123. If a contributory does not pay the authorized trustee the amount demanded and does not give notice in writing, to the trustee, disputing the demand within the time and in the manner provided by the Act, the authorized trustee may from and after the expiration of thirty days from the date of service of the demand, make an *ex parte* application to the Court in the prescribed form for judgment against the contributory and the Court may on such application, without notice to the contributory, give judgment in favour of the trustee for the amount demanded or such amount as the Court finds justly owing and for the costs of the application.

124. In the case where a contributory has given notice in writing to the trustee disputing the demand, within the time and in the manner provided by the Act, the trustee may, from and after the expiration of thirty days from the date of service of the demand, make application to the Court in the prescribed form for judgment against the contributory, giving the contributory at least four days' notice of such application, and the Court on the hearing of the application may proceed in a summary way to try the question or issue in the case or may adjourn the hearing or may direct and settle any question or issue to be tried between the authorized trustee and the contributory or may give such directions for the preparation and filing of pleadings or for the trial of such question or issue or may make such other order in the premises as to the Court shall seem best.

**125.** The authorized trustee may include in any application more than one contributory.

**126.** At least two days before the hearing of any such application the authorized trustee shall file with the proper officer the verified statement of the affairs of the debtor; an estimate of the authorized trustee as to the realizable value of all property of the debtor, and a list of all proved or provable claims against the estate of the debtor in so far as the authorized trustee is able to ascertain.

**127.** If it should appear to the Court that the issue of immediate execution under any judgment recovered or entered by an authorized trustee against a contributory would be an undoubted hardship on the contributory, or would be unjust or inequitable, the Court may, on the application or request of the contributory and on such terms as to security or otherwise as the Court deems advisable, order that execution be stayed pending the adjustment of rights between contributories or for such period as to the Court shall seem best.

**128.** In case a contributory desires to have the Court adjust rights and liabilities as between contributories he may make application to the Court in the prescribed form setting out his grounds in an affidavit in the prescribed form. He shall give at least four days' notice of such application to all other contributories from whom he claims contributions. The Court may on an *ex parte* application direct the method of service of said notice, whether by personal service, mail or otherwise, as to the Court may seem best.

**129.** The Court may on any such application order any one or more of the contributories of the debtor to pay into Court such amounts as may be found by the Judge to be just and equitable and in default of payment of the amount so found the Court may give judgment against any defaulting contributory directing payment of such amount to the applicant or to the trustee or otherwise and may dispose of the costs of such application.

**130.** All moneys paid into Court shall be adjusted, divided and paid out according to the directions of the Judge and where the Judge deems advisable such moneys or any portion thereof may be paid out to the authorized trustee.

#### EXAMINATION OF DEBTOR AND OTHERS.

**131.** Examinations under section fifty-six of the Act or any other examination may be held before a Registrar or before any person or officer who is qualified or authorized to hold examinations for discovery or of judgment debtors in accordance with the Rules, for the time being in force in civil actions or matters of the Court in the bankruptcy district or division in which the examination is held or to be held or before such other person as the Court on an *ex parte* application therefor may order.

**132.** Such examination may be held in the bankruptcy district or division in which the debtor, or other person to be examined resides or in which he is served with the appointment for examination, or in which the debtor, or such other person, resided or carried on business at the date of the receiving order or authorized assignment, notwithstanding that such bankruptcy district or division may not be the same district or division in which

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the bankruptcy of the debtor occurred or in which the debtor made an authorized assignment or in which the proceedings are being carried on; or the examination may be held at such time and place and in such bankruptcy district or division in Canada as the Court on application may order. Such application, unless the Court otherwise directs, may be made *ex parte*.

**133.** Any such registrar, person or officer empowered to hold examinations may grant, in duplicate, an appointment for examination in the form provided by the Appendix or in form to like effect.

**134.** A duplicate of such appointment shall be served upon the debtor or person to be examined at least forty-eight hours before the time of examination.

#### DISCHARGE.

**135.** (1) In any case in which an application is made to the Court by a debtor for his discharge and the trustee reports to the Court any fact, matter or circumstance which would, under the Act, justify the Court in refusing an unconditional order of discharge, such application shall be deemed to be an opposed application within the meaning of section sixty-five (2) (c) of the Act. (E.R. 228.)

(2) The Court may, on the application by a debtor for his discharge, cause the debtor to be brought before the Court for examination or further examination.

**136.** An appeal to the Appeal Court shall lie at the instance of the trustee, the debtor and/or at the instance of any creditor or creditors, who oppose the discharge, from any order of the Court made upon the application for discharge. (E.R. 229 modified.)

**137.** When a debtor intends to dispute any statement with regard to his conduct and affairs contained in the trustee's report he shall at or before the time appointed for hearing the application for discharge give notice in writing to the trustee specifying the statements in the report, if any, which he proposes at the hearing to dispute. Any creditor who intends to oppose the discharge of a debtor on grounds other than those mentioned in the trustee's report shall give notice of the intended opposition, stating the grounds thereof, to the trustee and to the debtor at or before the time appointed for the hearing of the application. In either of such cases the Judge or registrar may enlarge the hearing of the application as deemed advisable. (E.R. 231 modified.)

**138.** (1) A debtor shall not be entitled to have any of the costs or incidental to his application for discharge allowed to him out of his estate. (E.R. 232.)

(2) If the debtor does not make his application for discharge until after the trustee has paid the final dividend, he shall, before the order of discharge is signed or delivered out, pay to the trustee such remuneration and solicitor's costs as the Court may allow.

**139.** (1) Where the Court grants an order of discharge conditionally upon the debtor consenting to judgment being entered against him by the trustee for the balance or any part of the balance of the debts provable under the bankruptcy or authorized assignment which is not satisfied at the date

of his discharge, the order of discharge shall not be signed completed or delivered out until the debtor has given the required consent. The judgment shall be entered in the Court having jurisdiction in bankruptcy in the district or division in which the order of discharge is granted.

(2) If the debtor does not give the required consent, within ten days of the making of the conditional order the Court may, on the application of the trustee, revoke the order or make such other order as the Court may think fit. (E.R. 233 in part.)

**140.** The order of the Court made on an application for discharge shall be dated on the day on which it is made, and shall take effect from the day on which the order is drawn up and signed; but such order shall not be delivered out or gazetted until after the expiration of the time allowed for appeal, or, if an appeal be entered, until after the decision of the Appeal Court thereon. (E.R. 234.)

**141.** (1) An application by the trustee for leave to issue execution on a judgment entered pursuant to a conditional order of discharge shall be made to the Court in writing, and shall state shortly the grounds on which the application is made.

(2) The trustee shall give not less than four days' notice of the application to the debtor, and shall at the same time furnish him with a copy of the application. (E.R. 236 modified.)

**142.** Where a debtor is discharged subject to the condition that judgment shall be entered against him, or subject to any other condition as to his future earnings or after-acquired property, it shall be his duty until such judgment or condition is satisfied, from time to time, to give the trustee such information as he may require with respect to his earnings and after-acquired property and income, and not less than once a year to file in the Court and with the trustee a statement shewing the particulars of any property or income he may have acquired subsequent to his discharge. (E.R. 237.)

**143.** Any statement of after-acquired property or income filed by a debtor whose discharge has been granted subject to conditions, shall be verified by affidavit, and the trustee may require the debtor to attend before an examiner to be examined on oath with reference to the statements contained in such affidavit, or as to his earnings, income, after-acquired property, or dealings. Where a debtor neglects to file such affidavit or to attend for examination when required so to do, or properly to answer all such questions as the Court may decide to be proper, the Court may, on the application of the trustee, rescind the order of discharge. (E.R. 238.)

**144.** Where after the expiration of one year from the date of any order made upon a debtor's application for a discharge, the debtor applies to the Court to modify the terms of the order on the ground that there is no reasonable probability of his being in a position to comply with the terms of such order, he shall give 14 days' notice by mail of the hearing of the application to the trustee and to all his creditors. (E.R. 239.)

## MISCELLANEOUS.

**145.** No person shall, as against the trustee, be entitled to withhold possession of the books of account belonging to the debtor or to set up any lien thereon. (E.R. 383.)

**146.** Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceeding void unless the Court shall so direct, but such proceeding may be set aside, either wholly or in part, as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court may think fit. (E.R. 385.)

**147.** Where an authorized trustee provides the security required by section 14 (4) of the Act in cash, the amount thereof shall be paid by the authorized trustee to the Receiver General, and the authorized trustee shall receive interest thereon, payable . . . yearly at the rate of . . . per cent. per annum.

**148.** In all cases in which any number of days not directed to be clear days is prescribed by the Act or by these rules, or by any notice or order in reference to any proceeding under the Act, the same shall be reckoned exclusively of the date from which the computation is made, but inclusively of the day on which the act or proceeding referred to is to be done or taken.

**149.** Where notice is to be given or service is required to be made a certain number of days before the day on which something is to be done, if the words "clear days" or "at least" or "not less than" are used, both the day of service or of giving notice and the day on which such thing is to be done shall be excluded from the computation.

**150.** Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, days on which the offices of the Court are closed shall not be reckoned in the computation of such limited time.

**151.** Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices of the Court are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking same, be held to be duly done or taken on the next day on which the said offices are open.

**152.** The general practice of the Court in civil actions or matters before it, including the course of proceedings and practice in Judges' chambers, shall in cases not provided for by the Act and amendments thereto, or these rules, and so far as the same are applicable and not inconsistent with the said Act or these rules, apply to all proceedings under the said Act.

## FORMS.

## 1. GENERAL TITLE.

In the ..... Court of .....  
 In Bankruptcy  
 In the matter of the Bankruptcy  
 of ..... Debtor.  
 or  
 (IN THE MATTER of the Authorized Assignment of .....  
 Debtor.)

## 2. CREDITORS' PETITION.

(Title.)

I, C.D. of .....  
 (or we, C.D. of ..... )  
 hereby petition the Court that (a) .....  
 (a) Insert name of debtor.  
 of the ..... of .....  
 in the Province of ..... lately carrying on  
 business at (or residing at) the .....  
 of ..... in the .....  
 of ..... be adjudged bankrupt and that a receiving  
 order may be made in respect of his estate, and say:—

1. That the said A.B. has at some time during the six months next  
 preceding the presentation of this petition carried on business (or now resides)  
 at ..... within the jurisdiction of this Court or  
 (1) The greater portion of the property of the said A.B. is situate at .....  
 within the jurisdiction of this Court.

2. That the said S.B. is justly and truly indebted to me (or us in the  
 aggregate) in the sum of \$..... (set out the amount of debt or  
 debts and the consideration).

3. That I (or we) do not, nor does any person on my (or our) behalf  
 hold any security on the said debtor's estate, or on any part thereof, for the  
 payment of the said sum. or

That I hold security for the payment of (or part of) the said sum (but  
 that I will give up such security for the benefit of the creditors of A.B. in the  
 event of his being adjudged bankrupt) (or ..... and I estimate the value  
 of such security at the sum of \$.....). or

That I, C.D., one of your petitioners, hold security for the payment  
 of, etc.

That I, E.F., another of your petitioners, hold security for the payment  
 of, etc.

4. That A.B., within six months before the date of the presentation of  
 this petition, has committed the following act (or acts) of bankruptcy,  
 namely:—(here set out the nature and date or dates of the act or acts of bankruptcy  
 relied on).

5. That ..... of .....  
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under the Bankruptcy Act with authority in the locality of the debtor and is fit and qualified to act as trustee in respect of the estate of the said debtor.

Dated this.....day of....., 19..

(Signed) C.D., E.F.

Signed by the petitioner in my presence.

Signature of Witness,

*Notice of Hearing.*

*(Title may be omitted if notice endorsed on Petition.)*

Take notice that a Petition that you, A.B., of.....  
be adjudged bankrupt and that a receiving order may be made in respect of  
your estate will be presented and heard before The Honourable Mr. Justice  
.....in Chambers at.....  
in the.....of.....at the hour  
of.....o'clock in the.....noon or so soon thereafter  
as the Petition can be heard.

If you do not appear at the hearing the Court may make a receiving order  
and adjudge you bankrupt on such proof of the statements in the petition as  
the Court shall think sufficient.

Dated at.....this.....day of.....19..

To A.B. (name of debtor).

Petitioner (or A.B. Solicitor for Petitioner).

**3. AFFIDAVIT OF TRUTH OF STATEMENTS IN PETITION.**

*(Title.)*

I, the petitioner named in the petition hereunto annexed, make oath  
and say:—

1. That I am the.....
2. That such of the statements in the said petition as relate to my own  
acts and deeds are true, and such of the statements as relate to the acts and  
deeds of any other person or persons, I believe to be true.

Sworn at, etc.

C.D.

**4. AFFIDAVIT OF TRUTH OF STATEMENTS IN JOINT  
PETITION.**

*(Title.)*

We, C.D., E.F., G.H., etc., the petitioners named in the petition hereunto  
annexed, severally make oath and say:—

And first I, the said C.D., for myself say:—

1. That A.B. is justly and truly indebted to me in the sum of.....  
dollars as stated in the said before-mentioned petition.

2. That the said A.B. committed the act (or acts) of bankruptcy stated  
to have been committed by him in the said before-mentioned petition.

3. That A.B. has resided (or carried on business) at.....

*(here verify facts set out in paragraph 1 of Petition).*

And I, the said E.F., for myself say:—

4. That A.B. is justly and truly indebted to me in the sum of.....  
dollars as stated in the said before-mentioned petition.

And I, the said G.H., for myself say:—

5. That A.B. is, etc. *(here follow paragraph 4).*

Sworn by the deponents

C.D., E.F., G.H.

C.D., E.F. and G.H., etc.

## 5. AFFIDAVIT OF SERVICE OF PETITION.

(Title.)

I, L.M., of..... make oath and say:—

1. That I did on..... day the..... day of..... 19.., serve the above named A.B. (or the partners of the above-mentioned firm of.....) with a copy of the above-mentioned petition by delivering the same personally to the said A.B. (or C.D. a partner, or E.F. a person having at the time of service the control or management of the partnership business there) (or the President, Vice-President, Secretary, Treasurer, Manager (or other officer of the debtor if a Corporation), or upon E.F., the person having at the time of service the control or management of the business of the Corporation) at (place)..... before the hour of..... in the..... noon.

2. A sealed copy of the said petition is hereunto annexed.

Sworn at, etc.

NOTE: If the service is effected on one partner on behalf of his firm, or on a person having at the time of service the control and management of the partnership business there or of a business carried on by any person in a name or style other than his own, the affidavit must after the word "at" contain the words "being the principal place of business of the said."

## 6. NOTICE OF SUBSTITUTED SERVICE OF PETITION.

(Title.)

To A.B.

Take notice that a bankruptcy petition has been presented against you in this Court by..... of..... and that the Court has ordered that the sending of a copy of the petition together with a copy of the order for substituted service by registered post addressed to..... and/or the publication of this notice in the..... Gazette and/or in the..... newspapers (following the terms of the order for substituted service) shall be deemed to be service of the petition upon you; and further take notice that the said petition will be heard by this Court on the..... day of..... 19..... at..... o'clock in the..... noon on which day you are required to appear, and if you do not appear the Court may adjudge you bankrupt and may make a receiving order against you in your absence, on such proof of the statements in the petition as the Court shall think sufficient.

The Petition can be inspected by you on application at my office.

Dated this..... day of..... A.D. 19..

Registrar.

## 7. ORDER FOR SUBSTITUTED SERVICE OF A PETITION.

(Title.)

Upon the application of..... and upon reading the affidavit of..... of..... in the..... of..... and the Bankruptcy Petition filed the..... day of..... A.D. 19..

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It is ordered that the sending of a copy of the above-mentioned petition, together with a copy of this order by registered post, addressed to ..... at ..... and/or by publication in the ..... Gazette and/or in the ..... newspapers of the presentation of such petition and the time and place fixed for hearing the petition shall be deemed to be good and sufficient service of the said petition on the said.....

And that the costs of this application be

Dated this ..... day of .....  
A.D. 19.....

#### 8. NOTICE BY DEBTOR OF INTENTION TO OPPOSE PETITION.

(Title.)

I, the above A.B., do hereby give you notice that I intend to oppose my being adjudged bankrupt and the making of a receiving order as prayed, and that I intend to dispute the petitioning creditor's debt (or the act of Bankruptcy, or to contend that ..... or as the case may be) (specifying the statements in the petition which he intends to deny or dispute).

Dated this ..... day of ..... 19...

A.B.

To C.D. of .....  
and to .....  
and to the Registrar in Bankruptcy of the said Court.

#### 9. ORDER TO STAY PROCEEDINGS ON PETITION.

(Title.)

Upon the hearing of the Bankruptcy petition against A.B. of ..... this day, and the said A.B. appearing and denying that he is indebted to the petitioner (when petition presented by more than one creditor, add the name of the creditor whose debt is denied) in the sum stated in the petition (or alleging that he is indebted to the petitioner in a sum of a less amount than five hundred dollars (\$500)) (or alleging that he is indebted to C.D., one of the petitioners, in a sum less than the sum stated to be due from him in the petition), it is ordered that the said A.B. shall within ..... days enter into a bond in the penal sum of (the amount of the alleged debt and probable costs or such other sum as the Court may direct) with such sufficient surety or sureties as the Court shall approve of to pay (or deposit with the Registrar the sum of \$..... as security for the payment of) such sum or sums as shall be recovered against the said A.B. by C.D. the petitioner (or one of the petitioners) in any proceeding taken or continued by him against the said A.B. together with such costs as shall be given by the Court in which the proceedings are had.

And it is further ordered, that upon the said A.B. entering into the bond aforesaid with such surety or sureties, all proceedings on this petition shall be stayed until after the Court in which the proceedings shall be taken shall have come to a decision thereon.

Dated this ..... day of ..... 19...

## 10. BOND ON STAY OF PROCEEDINGS, SECURITY, ETC.

(Title.)

Know all men by these presents, that we, A. B. of etc. and C. D. of etc. and E. F. of etc., (or some Guaranty Company approved by Court) are jointly and severally held and firmly bound to L. M. of etc., in ..... dollars to be paid to the said L. M. or his certain attorney, executors, administrators or assigns. For which payment to be made we bind ourselves and each and every of us, our and each of our heirs, executors and administrators (or our successors and assigns) jointly and severally, firmly by these presents.

Sealed with our seals, and dated this ..... day of ..... one thousand nine hundred and .....

Whereas a Bankruptcy petition against the said A. B. having been presented to the ..... Court of ..... he did appear at the hearing of the said petition and deny that he was indebted to the petitioner (or to one or more of the petitioners), (or allege that he was indebted to the petitioner in the sum of ..... dollars only or as the case may be).

Now, therefore, the condition of this obligation is such that if the above-bounden A. B., or the said C. D. or E. F., (or Guaranty Company) shall on demand well and truly pay or cause to be paid to L. M., his attorney or agent, such sum or sums as shall be recovered against the said A. B. by any proceedings taken or continued in any competent Court by the said L. M. for the payment of the debt claimed by him in the said petition, together with such cost as shall be given to the said L. M. by such Court (or whatever the condition of the bond is), this obligation shall be void, otherwise it shall remain in full force.

A. B. (L. S.)

C. D. (L. S.)

E. F. (L. S.)

Signed, sealed and delivered by the above bounden in the presence of—

NOTE: If a deposit of money be made the memorandum should follow the terms of the conditions of the bond. This form may be adapted to other cases.

## 11. NOTICE OF SURETIES.

(Title.)

Take notice that the sureties whom I propose as my security in the above matter (here state the proceedings which have rendered the sureties necessary) are (here state the full names and descriptions of the sureties, and their residence for the last six months, therein mentioning the county or city, places, streets, and numbers, if any).

Dated ..... day of ..... 19....

A. B.

L. M. of .....

## 12. AFFIDAVIT OF JUSTIFICATION.

This affidavit not necessary if surety is an approved Guaranty Company.

(Title.)

I, E. F. of ....., one of the sureties for ..... make oath and say:—

1. That I am a householder (or as the case may be) residing (describing particularly the county or city, the street or place, and the number of the house, if any).

2. That I am worth property to the amount of \$.....  
(the amount required) over and above what will pay my just debts (if security  
in any other action or for any other purpose, add, and every other sum for which  
I am now security).

3. That I am not bail or security in any other matter, action, or proceed-  
ing, or for any other person except for C. D., at the suit of E. F., in the Court  
of ..... in the sum of \$.....; for G. H.  
at the suit of I. K., in the Court of ..... in the sum of  
\$..... (specifying the several actions in which he has become  
bound).

4. That my property, to the amount of the said sum of \$.....  
(and if security in any other action, etc. over and above all other sums for which  
I am now security as aforesaid), consists of (here specify the nature and value  
of the property in respect of which the deponent proposes to become bondsman, as  
follows), stock in trade, in my business of ..... carried on by  
me at ..... of the value of \$....., of good  
book debts owing to me to the amount of \$..... of furniture  
in my house at ..... of the value of \$....., of  
a freehold (or leasehold) farm of the value of \$.....  
situate at ..... occupied by ..... or of a  
dwelling-house of the value of \$..... situate at .....  
occupied by ..... (or of other property, particularizing each  
description of property, with the value thereof).

5. That I have for the last six months resided at .....  
(describing the place of such residence, or if he has had more than one residence  
during that period, state it in the same manner as above directed).

Sworn at, etc. .... E. F.

### 13. DISMISSAL OF PETITION.

(Title.)

Upon hearing the petition of ..... filed the .....  
day of ..... 19.., and upon reading ..... and  
hearing .....

It is ordered that the said petition be dismissed and (that the petitioner do  
pay to the said A. B. the taxed costs thereof).

Dated this ..... day of ..... 19....

### 14. RECEIVING ORDER.

(Title.)

On the petition of J. S. of .....  
a creditor, filed the (insert date) and on reading ..... and  
hearing ..... and it appearing to the Court that the  
following act or sets of bankruptcy has or have been committed viz:—(set out  
the nature and date or dates of the act or acts of bankruptcy on which the Order is  
made).

The said A. B. is hereby adjudged bankrupt and a receiving order is  
hereby made against A. B. (insert name, addresses and description of debtor as

set out in petition) and (insert name of authorized trustee) of the .....  
of ..... is hereby constituted receiver of the estate of  
the said debtor.

Date this ..... day of .....

NOTE: If trustee requires debtor to attend at his office, then endorse following note:  
The above named debtor is required immediately after the service of this order upon him,  
to attend the above named authorized trustee at his office at

Such offices are open every week day from 10 a.m. to 4 p.m., except Saturday, when  
they close at 1 p.m.

#### Indorsement on Order.

The name and address of the solicitor to the petitioning creditor are  
(insert name and address).

#### 15. ORDER APPOINTING INTERIM RECEIVER.

(Title.)

Upon reading the application of .....  
for the appointment of an Interim Receiver and the affidavit therein referred  
to and hearing ..... it is ordered that .....  
..... of the ..... of .....  
in the Province of ..... an authorized trustee be and he is  
hereby constituted Interim Receiver of the property of the said A. B. (here  
insert directions, if any).

The said authorized trustee is hereby directed to take immediate pos-  
session of the property of the said A. B.

Dated this ..... day of ..... 19....

#### 16. ORDER OF TRANSFER OF PROCEEDINGS.

(Title.)

Upon application of A. B. and upon reading .....  
and hearing ..... and it  
appearing to the Court that (state here special reason or reasons why order is  
made), that the proceedings in the above matter should be transferred from  
..... to ..... (or, as the case may be).

It is hereby ordered that the said proceedings in the above named matter  
be transferred from the above Court to the Court of the Bankruptcy division  
of .....

Dated this ..... day of ..... 19....

#### 17. ORDER RESTRAINING ACTION, ETC., BEFORE RECEIVING ORDER.

(Title.)

Upon the application of .....  
and upon reading ..... it is ordered that  
L. M. of ..... shall be restrained from  
taking any further proceedings in the action brought by him (or, upon the  
judgment recovered or obtained by him) against the said A. B. in (here state  
the Court in which proceedings are), or, it is ordered that the proceedings in  
the action (or suit) brought by him against the said A. B. in (here state the  
Court in which proceedings are) may be proceeded with on (here insert the terms  
fixed by the Court).

Dated this ..... day of ..... 19....

#### 18. ASSI

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## 18. ASSIGNMENT FOR THE GENERAL BENEFIT OF CREDITORS.

THIS INDENTURE made (in duplicate) this.....  
day of.....A.D. 19....

IN PURSUANCE OF "THE BANKRUPTCY ACT" BETWEEN.....  
hereinafter called "the Debtor"

of the first part; and .....  
hereinafter called "the Authorized  
Trustee" of the second part.

Whereas the Debtor is insolvent and desires to assign and deliver to the  
said Authorized Trustee all his property for distribution among.....  
creditors in pursuance of the said Act.

NOW THEREFORE THIS INDENTURE WITNESSETH that the debtor doth  
assign, convey and assure unto the said Trustee, his successors and assigns  
forever, all his property which is divisible among creditors under and by  
virtue of the said Act.

To have and to hold all the said property unto and to the use of the said  
Trustee his successors and assigns on the trusts and to and for the uses,  
intents and purposes provided by the said Act.

Signed and sealed at the.....of.....  
.....in the Province of.....  
in the presence of }  
Witness: }

## 19.

Canada } I.....  
Province of } of the.....of.....  
} in the Province of.....

To Wit: .....make oath and say:

1. That I was present and saw the within Indenture and the duplicate  
thereof, duly signed, sealed and executed by.....the parties  
thereto at the.....of.....  
in the Province of.....

2. That I know the said part and  
of the full age of twenty-one years.

3. That I am a subscribing witness to the said Indenture and duplicate.

Sworn before me at the.....of.....  
in the Province of.....  
this.....day of.....A.D. 19....

A Commissioner in B. R., etc.,  
or A Notary Public in and for the Province of  
.....

20. NOTICE TO CREDITORS OF FIRST MEETING WHERE  
RECEIVING ORDER OR ASSIGNMENT MADE.

This notice is pursuant to sec. 11 (4) and sec. 42.

## THE BANKRUPTCY ACT.

In the estate of.....  
authorized assignor, (or bankrupt).

Notice is hereby given that A. B. of.....  
was adjudged bankrupt and a receiving order made on the.....day



of.....19.... (or that A. B. of.....  
did on the.....day of.....19.... make an authorized  
assignment to the undersigned).

Notice is further given that the first meeting of creditors in the above  
estate will be held at.....on the.....  
day of.....19.... at.....o'clock in the  
.....noon.

To entitle you to vote thereat proof of your claim must be lodged with me  
before the meeting is held.

Proxies to be used at the meeting must be lodged with me prior thereto.

And further take notice that if you have any claim against the debtor  
for which you are entitled to rank, proof of such claim must be filed with me  
within thirty days from the date of this notice, for from and after the expiration  
of the time fixed by subsection 8 of section 37 of the said Act I shall distribute  
the proceeds of the debtor's estate among the parties entitled thereto having  
regard only to the claims of which I have then notice.

Dated at.....this.....day of.....19....

Authorized Trustee.

NOTE: When mailing this notice to creditors, a form of proof and form of proxy should  
be enclosed with each notice.

## 21. NOTICE TO CREDITORS WHERE DEBTOR SUBMITS OFFER OF COMPOSITION, EXTENSION OR SCHEME.

### THE BANKRUPTCY ACT.

Re (James Brown),

Take notice that.....of the  
.....of....., in the Province  
of.....has submitted to me for  
the consideration of his creditors a proposal for a composition (or extension  
of time for payment of his debts).

Particulars of the debtor's proposal and a summary of his statement  
of affairs are enclosed herewith.

A general meeting of the creditors of the debtor will be held at....  
.....on the.....day of  
.....19.... at the hour of.....o'clock  
in the.....noon.

The creditors qualified to vote at such meeting may, by resolution  
passed by a majority in number thereof holding two-thirds in amount of the  
proved debts, accept the proposal made by the debtor either as made or  
as altered or modified at the request of the meeting. If so accepted and if  
approved by the Court such proposal shall be binding on all the creditors.

Proof of debts, proxies and voting letters intended to be used at the meet-  
ing must be lodged with me prior thereto.

Creditors who prove their debts and whose proofs are admitted and who  
do not vote on the debtor's proposal shall be reckoned as voting against it.

Dated at.....this.....day of.....  
19.... Trustee.

#### NOTE:—

1. Creditors who have proved may vote for or against the debtor's proposal by means  
of a voting letter.

2. A form of proof of debt, proxy and voting letter are sent herewith.

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## 22. VOTING LETTER.

### THE BANKRUPTCY ACT.

In the Estate of.....authorized assignor (of bankrupt).

I,.....of  
a creditor in the above matter for the sum of.....  
hereby request the authorized trustee of the said estate to record my vote  
(a).....the acceptance of the proposal  
(a) Insert here the word "for" or the word "against" as the case may be.  
as set forth in the report of the authorized trustee hereto annexed or as altered  
or modified at the request of the meeting.

Dated this.....day of.....19.....

(Signature of Witness.)

(Signature of Creditor.)

## 23. PROPOSAL FOR A COMPOSITION.

### THE BANKRUPTCY ACT.

In the matter of.....  
of.....  
in the Province of.....

I,....., the above named debtor, hereby submit the following proposal for composition in satisfaction of my debts:—

1. That payment in priority to all other of my debts of all debts directed to be so paid in the distribution of the property of a bankrupt (or authorized assignor) shall be provided for as follows:—

(Set out terms of proposal so far as relate to preferential claims.)

2. That provision for payment of all the proper costs, charges and expenses of and incidental to the proceedings, and all fees and percentages payable to the trustee shall be made in the following manner:—

(Set out proposal for provisions for fees, charges, costs, etc.)

3. That the following composition shall be paid as hereinafter mentioned on all provable debts:—

(Set out terms of composition.)

4. That the payment of the composition be secured in the following manner:—

(Set out full names and addresses of sureties (if any) and complete particulars of all securities intended to be given.)

Dated at.....this.....  
day of.....A.D. 19.....

(Signed.)

## 24. PROPOSAL FOR AN EXTENSION OF TIME OR SCHEME.

### THE BANKRUPTCY ACT.

In the matter of.....  
of....., in the Province of.....

I, the above named debtor, hereby submit the following proposal for an extension of time from my creditors for payment of my debts (or for a scheme of arrangement of my affairs in satisfaction of my debts).

1. That.....  
(Set out terms of extension or scheme.)
2. That payment in priority to all other of my debts of all debts directed to be so paid in the distribution of the property of a bankrupt (or authorized assignor) is provided for as follows:—  
(Set out or indicate by reference to the extension or scheme how it is proposed to satisfy preferential claims.)
3. That provision for payment of all the proper costs, charges, and expenses of and incidental to the proceedings, and all fees and percentages payable to the trustee is provided for as follows:—  
(Set out or indicate by reference to the scheme how it is proposed to provide for fees, costs, charges, etc.)
4. That the payment of the terms of the said extension (or scheme) is to be secured in the following manner.  
(Set out full names and addresses of sureties and give particulars of all securities.)
- Dated at.....this.....  
day of.....A.D. 19.... (Signed.)

**25. RESOLUTION ACCEPTING COMPOSITION.**  
**THE BANKRUPTCY ACT.**

In the matter of.....of the.....  
of.....in the Province of.....  
Minutes of resolution come to and proceedings had at a meeting of  
creditors held at.....in the Province of.....  
this.....day of.....19....

Chairman.

Resolved as follows:—Insert "unanimously" where the resolution is so carried.

That the debtor's proposal for a composition as set forth in the annexed paper writing marked "A" be accepted.

Chairman.

Number.	Assenting Creditors' Signatures.	Amount of Proof.	Number.	Dissenting Creditors' Signatures.	Amount of Proof.

NOTE: When a resolution is carried unanimously the creditors need not sign, but when a division is taken all creditors and holders of proxies voting should sign. The signatures must be attached at the meeting. Resolutions should be put separately.

**26. RESOLUTION ACCEPTING EXTENSION OR SCHEME OF  
ARRANGEMENT.**

**THE BANKRUPTCY ACT.**

In the matter of.....of the.....  
of.....in the Province of.....  
Minutes of resolution come to and proceedings had at the first meeting  
of creditors held at.....in the Province of.....  
this.....day of.....19....

Chairman.

Resolved as follows:—(a)

(a) Insert "unanimously" where the resolution is so carried.

That  
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letter "A"

Number.

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That the debtor's proposal for an extension of time (or scheme of arrangement) as set forth in the paper writing hereto annexed and marked with the letter "A" be accepted.

.....Chairman.

Number.	Assenting Creditors' Signatures.	Amount of Proof.	Number.	Dissenting Creditors' Signatures.	Amount of Proof.

NOTE: When a resolution is carried unanimously the creditors need not sign but when a division is taken all creditors and holders of proxies voting should sign. The signatures must be attached at the meeting. Resolutions should be put separately.

## 27. ORDER APPOINTING DAY OF HEARING.

(Title.)

Upon the application of the Trustee..... it is ordered that the application for the approval by the Court of the composition (or extension or scheme) in this matter shall be heard before me at my Chambers in the.....of.....in the.....of.....on the.....day of.....19...., at the hour of.....o'clock in the.....noon.

Dated this.....day of.....19....

## 28. NOTICE TO CREDITORS OF APPLICATION TO COURT TO APPROVE COMPOSITION, EXTENSION OR SCHEME.

(Title.)

Take notice that application will be made to..... in Chambers at.....on the.....day of.....19...., at.....o'clock in the.....noon, to approve the composition (or extension or scheme of arrangement) as proposed by the debtor and duly accepted by the statutory majority of creditors at a meeting held on.....the.....day of.....19....

Dated this.....day of.....19.... Authorized Trustee.

## 29. REPORT OF AUTHORIZED TRUSTEE ON PROPOSAL FOR COMPOSITION, EXTENSION OR SCHEME.

(Title.)

The authorized trustee of the above estate hereby reports:—

That the debtor has lodged with him a proposal for a composition (extension or scheme) to be submitted to the creditors, of which the following is a copy:—

(Here set out fully the terms of proposal.)

That the liabilities, as shewn by the debtor's statement of affairs, amount to the sum of \$....., and the assets are estimated by the debtor at the sum of \$.....after payment of preferential debts.

That the value of the assets is (fairly estimated by the debtor) (or, as the case may be).

That the terms of the debtor's proposal (set out particulars of proposal and observations on the proposals and the debtor's conduct).

Dated this.....day of.....19.... Authorized Trustee.

## 30. ORDER APPROVING COMPOSITION OR SCHEME.

(Title.)

On the application of the authorized trustee .....  
and on reading the report of the authorized trustee filed on the .....  
day of ..... 19...., and hearing .....  
and the Court being satisfied that the required majority of creditors under  
the said Act have duly accepted the composition (or extension or scheme)  
in the terms contained in the paper writing marked "A" annexed hereto and  
being satisfied that the said terms are reasonable and calculated to benefit  
the general body of creditors and that no facts have been proved which  
would justify the Court in withholding its approval, the said composition  
(or extension or scheme) is hereby approved.

Dated this ..... day of ..... 19....

## 31. ORDER REFUSING TO APPROVE COMPOSITION, EXTENSION OR SCHEME.

(Title.)

On the application of the authorized trustee .....  
and on reading the report of the authorized trustee filed on the .....  
day of ..... 19...., and hearing .....  
and the Court being satisfied that the required majority of creditors under the  
said Act have duly accepted the composition (or extension or scheme) in the  
terms contained in the paper writing marked "A" annexed hereto, and being  
satisfied that the said terms are not reasonable or calculated to benefit the  
general body of creditors (or ..... being satisfied that the case is  
one in which the Court would be required, if the debtor was adjudged bank-  
rupt, to refuse his discharge) or (facts having been proved which would under  
the Act justify the Court in refusing, qualifying or suspending the debtor's dis-  
charge).

The Court doth refuse to approve the said composition (or extension or  
scheme).

Dated this ..... day of ..... 19....

## 32. NOTICE TO CREDITORS OF MEETING TO APPOINT NEW TRUSTEE.

Under sec. 14 (9).

## THE BANKRUPTCY ACT.

In the matter of the Estate .....  
of .....  
..... Bankrupt (or authorized assignor).

Take Notice that the undersigned authorized trustee having been unable  
(or having failed) to give the security required by sec. 14 (8) of the said Act,  
a meeting of creditors will be held at ..... on the  
..... day of ..... 19...., at ..... o'clock  
in the ..... noon for the purpose of appointing a new authorized trustee.

Dated at ..... this ..... day of ..... 19....

Authorized Trustee.

## 33. RESOL

In the  
of the .....  
Province of

Minute  
creditors be  
this .....

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Resolvt  
(a) Insert  
That (l  
(b) Insert

.....  
substituted]  
of .....  
order (or to

Number.

NOTE: W  
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(or substitut  
place of  
the  
authorized  
Dated  
.....

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In the  
.....  
of .....

### 33. RESOLUTION TO APPOINT OR SUBSTITUTE ANOTHER AUTHORIZED TRUSTEE.

Under sec. 14 (9).

## THE BANKRUPTCY ACT.

In the Matter of the Estate of .....  
 of the ..... of ..... in the  
 Province of ..... Bankrupt,  
 (or authorized assignor).

Minutes of Resolution come to and proceedings had at a meeting of  
 creditors held at ..... in the ..... of .....  
 this ..... day of ..... 19....

Chairman.

Resolved as follows (a)

(a) Insert "unanimously" where the resolution is so carried.

That (b) ..... of the ..... of ....

(b) Insert name of new trustee.

..... an authorized trustee, be henceforth appointed (or  
 substituted) as the authorized trustee in the above estate for and in the place  
 of ..... the authorized trustee named in the receiving  
 order (or to whom the authorized assignment was made).

Chairman.

Number.	Assenting Creditors' Signatures.	Amount of Proof.	Number.	Dissenting Creditors' Signatures.	Amount of Proof.

NOTE: When a resolution is carried unanimously the creditors need not sign, but when  
 a division is taken all creditors and holders of proxies voting should sign. The signatures  
 must be attached at the meeting. Resolutions should be put separately.

### 34. NOTICE OF NEW OR SUBSTITUTED TRUSTEE.

Under section 15 (3).

## THE BANKRUPTCY ACT.

In the Matter of the Estate of .....  
 of the ..... of ..... in the Province of  
 ..... Bankrupt, (or Authorized Assignor).

Take Notice that the undersigned authorized trustee has been appointed  
 (or substituted) as the authorized trustee of the above estate for and in the  
 place of

the authorized trustee named in the receiving order (or to whom the  
 authorized assignment was made).

Dated at ..... this ..... day of  
 ..... 19.... Authorized Trustee.

### 35. AFFIDAVIT OF NEW OR SUBSTITUTED TRUSTEE.

Under section 15 (3).

## THE BANKRUPTCY ACT.

In the Matter of the Estate of ..... of the  
 ..... of ..... in the Province  
 of ..... Bankrupt, (or Authorized Trustee).

I, ..... of the .....  
 (Name of new trustee).  
 of ..... in the Province of ..... Authorized  
 Trustee, make oath and say:—

1. That pursuant to the provisions of section 14 (9) of the said Act I have been appointed the authorized trustee of the above estate in place of ..... the authorized trustee named in the receiving order (or to whom the authorized assignment was made) or

(1) That pursuant to the provisions of section 15 (1) (or 15 (2)) of the said Act I have been substituted as the authorized trustee of the above estate for ..... the authorized named in the receiving order (or to whom the authorized assignment was made).

2. That hereto annexed and marked with the letter "A" is a true copy of the resolution of the creditors so appointing (or substituting) me trustee, which resolution was passed on the ..... day of ..... 19...  
 Sworn, etc.

### 36. BOND TO REGISTRAR UNDER SECTION 14 (8).

(Title).

Know all Men by these Presents that we (name and address of authorized trustee) and (name and description of guarantor) are jointly and severally held and firmly bound to ..... (name of Registrar), Registrar in Bankruptcy of the Court ..... (name Court) and to his successor or successors in office in the sum of \$..... to be paid to the said Registrar or to his successor or successors in office, for which payment well and truly to be made we bind ourselves and each and every of us, our and each of our heirs, executors, administrators and successors jointly and severally firmly by these presents.

Sealed with our seal and dated this ..... day of ..... 19...

Whereas the said ..... (name of authorized trustee) is the authorized trustee of the estate of ..... of ..... under and by virtue of a receiving order bearing the date, the ..... day of ..... 19... (or under and by virtue of a certain authorized assignment bearing date, the ..... day of ..... 19...);

And Whereas the estimated value of the assets of the said debtor as shewn by his statement of affairs filed in this Court is the sum of .....;

Now Therefore the condition of this obligation is such that if the above bounden authorized trustee shall duly account and pay over and transfer all moneys and properties received or to be received by him as such authorized trustee in respect of the estate of said debtor then this obligation shall be void, otherwise it shall remain in full force.

### 37. DEMAND BY TRUSTEE ON CONTRIBUTORY UNDER SEC. 36 (6).

THE BANKRUPTCY ACT.

In the matter of the estate of (A. B. Company)  
 bankrupt (or authorized assignor).

It appears from the records of ..... the above named corporation that you are a shareholder of such corporation and that the amount unpaid on your shares of the capital of said corporation is \$.....

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 the date of  
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 (a) If amo  
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To.....

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I accordingly demand that you pay me within thirty days from and after the date of the service of this demand on you the sum of \$.....being part of (a) your liability in respect of your said shares.

(a) If amount demanded is total amount due strike out words "part of."

Dated at.....this.....day of.....19...

.....  
Authorized Trustee.

To.....

Contributory.

### 38. APPLICATION OF TRUSTEE FOR JUDGMENT AGAINST CONTRIBUTORIES OF INSOLVENT CORPORATION.

(Title).

The trustee reports to the Court:—

That a receiving order was made against the above named debtor on the.....day of....., 19..., (or that the above named debtor made an authorized assignment to the trustee on the.....day of.....19...)

That the debtor is a corporation and that the following persons (*among others*) appear to be contributories under the Bankruptcy Act, namely—

(*Here give names and addresses of contributories against whom judgment is asked.*)

That the trustee has demanded payment from each of the said contributories of the amount set opposite each of their respective names, namely—  
Name of Contributory. Amount Demanded.

That the amounts so demanded are for the purpose of paying the liabilities of the debtor.

That none of the said contributories have paid the amounts demanded, although more than thirty days have elapsed since each of said contributories have been served with the demand and evidence of such service is filed on this application.

That the following contributories have not disputed the said demand or any part thereof, namely—

That the following contributories have disputed the said demand, namely—

and a true copy of each notice of dispute given to the trustee is filed on this application.

The verified statement of affairs of the debtor, the trustee's estimate of the realizable value of the property of the debtor, and a list of proved or provable claims against the estate of the debtor so far as can be ascertained, are filed on this application.

The trustee accordingly, in pursuance of the said Act, makes application to the Court for judgment against each of said contributories for the amount demanded from each thereof and the costs of this application or for such other order as the Court may deem advisable or expedient.

Dated this.....day of.....19...

.....  
Authorized Trustee.

## 39. APPLICATION OF CONTRIBUTORY TO ADJUST RIGHTS OF CONTRIBUTORIES.

(Title).

I, L. M. of ..... do apply to this Court under the provisions of section 36 (11) of The Bankruptcy Act to adjust the rights of the contributories of the above named debtor among themselves on the grounds set forth in the annexed affidavit.

Dated this ..... day of ..... 19...

L. M.

## 40. AFFIDAVIT IN SUPPORT OF APPLICATION TO ADJUST RIGHTS OF CONTRIBUTORIES.

(Title).

I, L. M., of the ..... of ..... in the Province of ..... make oath and say:—

1. That a receiving order was made against the above named debtor on the ..... day of ..... A.D. 19..., (or that the above named debtor made an authorized assignment to ..... an authorized trustee on the ..... day of ..... 19...)

2. That the debtor is a corporation and that I am one of the contributories and pursuant to a demand made upon me by the said authorized trustee, I did pay him on the ..... day of ..... 19..., the sum of ..... (or the authorized trustee has made application to this Court for judgment against me for \$.....).

3. Set out in the Schedule hereto annexed marked "Schedule A" is a list of all the contributories of the said debtor and their addresses and the estimated amounts for which they are liable as contributories set opposite each respective name, so far as I have been able to ascertain the same.

4. That set out in the Schedule hereto annexed and marked "Schedule B" is a list of all the contributories from whom I claim contribution.

5. That my grounds for claiming such contribution are as follows (*here set out grounds and any pertinent facts*).

Sworn before me at the ..... of ..... in the Province of ..... this ..... day of ..... A.D. 19...

A Commissioner in B. R., etc.  
or A Notary Public in and for .....

## 41. NOTICE TO PERSONS CLAIMING TO BE CREDITORS OF INTENTION TO DECLARE FINAL DIVIDEND AND REQUIRING THEM TO ESTABLISH CLAIM.

THE BANKRUPTCY ACT.

In the matter of the estate of ..... of .....

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the ..... day of ..... 19..., or such later day as the Court may fix, I shall proceed to make a final dividend without regard to such claim.

Dated this ..... day of ..... 19...

Authorized Trustee.

To X. Y.  
Address.

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## 42. APPLICATION OF TRUSTEE FOR HIS DISCHARGE.

(Title).

The undersigned authorized trustee hereby applies to the Court for an order fully (or partially) discharging him from the performance of any further duties and obligations with respect to the above estate and for a release of the special security provided by the undersigned.

Attached hereto and marked with the letter "A" is a complete and itemized statement of all moneys realized by the undersigned from or out of the property of the bankrupt or assignor and of all moneys disbursed including expenses incurred and remuneration received or claimed by the undersigned.

That all of the property of the bankrupt or assignor has been sold or realized upon by the undersigned, with the exception of the following:—

(Here give full particulars, description and value of all property not sold or realized upon and reasons why not sold.)

That there are no disputes, actions or proceedings unsettled or pending between the authorized trustee and the debtor or any creditor or creditors of the estate or any other persons whatsoever except the following—

(Here give particulars, if any.)

Dated this..... day of..... 19...

Authorized Trustee.

## 43. AFFIDAVIT VERIFYING APPLICATION OF TRUSTEE FOR HIS DISCHARGE.

(Title).

I,..... the authorized trustee named in the application hereto annexed make oath and say:—

That the several statements in or attached to the said application are within my own knowledge true.

Sworn at, etc.

C. D.

## 44. ORDER DISCHARGING AUTHORIZED TRUSTEE.

(Title.)

UPON THE APPLICATION OF..... authorized trustee of the estate of..... bankrupt (or authorized assignor), and upon hearing the authorized trustee and C.D., E.F., etc (as the case may be).

IT IS ORDERED that the said authorized trustee be and he is hereby fully discharged from the performance of any further duties and obligations with respect to the said estate.

(or IT IS ORDERED that the authorized trustee be partially discharged from the performance of any further duties and obligations with respect to the said estate excepting as to any property which the trustee has not sold or realized upon).

IT IS FURTHER ORDERED that the special security provided by the authorized trustee be and the same is hereby released.

Dated this..... day of..... 19...

## 45. GENERAL PROXY.

## THE BANKRUPTCY ACT.

In the Estate of .....  
 I, (or We) ..... of the  
 ..... of ..... a creditor, here-  
 by appoint ..... of the ..... of  
 ..... to be my (or our) general proxy in the above  
 matter (excepting only as to the receipt of dividends).

Dated at ..... this .....  
 day of ..... A.D. 19...

(Signed)

Signature of witness.

## 46. SPECIAL PROXY.

## THE BANKRUPTCY ACT.

In the matter of the Estate of .....  
 I, ..... of the ..... of .....  
 ..... a creditor, hereby appoint ..... of the .....  
 ..... of ..... as my proxy at the meeting of  
 creditors to be held on the ..... day of ..... 19..., or any  
 adjournment thereof, to vote.

Dated at ..... this ..... day of .....  
 ..... A.D. 19...

(Signed)

Signature of witness.

## 47. PROOF OF DEBT.

## THE BANKRUPTCY ACT.

In the matter of the estate of .....  
 of .....

I, ..... of the ..... of  
 ..... in the Province of ..... do  
 solemnly declare and say:—

1. That I am the ..... of the undermentioned creditor  
 and have knowledge of all circumstances connected with the debt hereinafter  
 referred to.

2. That the said ..... was at the date of the authorized  
 assignment (or receiving order) namely: the ..... day of .....  
 ..... 19..., and still is justly and truly indebted to .....  
 in the sum of ..... as shewn by the account hereto  
 annexed and marked "A."

The account attached must shew the consideration such as "goods sold and de-  
 livered" or "moneys lent."

3. That the said ..... has not, nor has any person by  
 his order to my knowledge or belief for his use, had or received any manner  
 of satisfaction or security whatsoever save and except the following:—

Here state particulars of all securities held and where the securities are on the property  
 of the debtor assess the value of each thereof— and give dates when given.

AND I MA  
 true and know  
 and by virtue  
 Declared before  
 ..... of  
 in the Province  
 this .....

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 ..... of

DO SOLEMNLY

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 authorized assi  
 referred to.

2. That th  
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DECLARED:

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AND I MAKE this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me at the  
 ..... of .....  
 in the Province of .....  
 this ..... day of .....  
 ..... A.D. 19....

A Commissioner in B. R., etc., or A Notary Public in and for

#### 48. PROOF OF DEBT OF WORKMEN OR OTHERS.

##### THE BANKRUPTCY ACT.

IN THE ESTATE OF .....  
 the Debtor.

I, ..... of the .....  
 ..... of .....

DO SOLEMNLY DECLARE AND SAY:—

1. That I was the foreman (*or book-keeper or as the case may be*) of the above named debtor at the date of the receiving order (*or at the date of the authorized assignment*) namely—the ..... day of ..... 19... and I have knowledge of the facts and matters hereinafter referred to.

2. That the said debtor was at the said date and still is justly and truly indebted to the several persons whose names, addresses and descriptions appear in the schedule endorsed hereon in the sums severally set against their names in the sixth column of such schedule for wages due to them respectively as workmen or employees in the employ of the said debtor in respect of services rendered by them respectively to the debtor during such period before the date of the receiving order (*or authorized assignment*) as are set out against their respective names in the fifth column of such schedule for which said sums, or any part thereof, I say that they have not, nor has any of them, had or received any manner of satisfaction or security whatsoever.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

DECLARED before me at the ..... of .....  
 ..... in the Province of ..... this  
 ..... day of ..... A.D. 19....

A Commissioner in B. R., etc.

##### SCHEDULE.

1	2	3	4	5	6
No.	Full Name of Workman.	Address.	Description.	Period Over Which Wages Due.	Amount Due.

49. NOTICE OF ELECTION TO RETAIN LEASEHOLD PROPERTY  
UNDER SECTION 52.

## THE BANKRUPTCY ACT.

In the Estate of ..... of  
.....

Take notice that I hereby elect to retain the premises (*here describe premises*) occupied by the above named bankrupt (*or authorized assignor*) under a certain lease dated ..... for the unexpired term of such lease (*or for the following period*) ..... of the unexpired term of said lease).

Dated at ..... this .....  
day of ..... 19 ..

To E. Z. Landlord.

Authorized Trustee.

## 50. NOTICE OF DISCLAIMER OF LEASE UNDER SECTION 52.

## THE BANKRUPTCY ACT.

In the Estate of ..... of the .....  
of ..

Take notice that I hereby disclaim the lease dated ..... whereby the following premises, namely—(*here describe premises*) were let to ..... at a rent of .....

Dated at ..... this .....  
day of ..... 19 ..

To E. Z. Landlord.

Authorized Trustee.

## 51. NOTICE OF DISALLOWANCE OF CLAIM.

## THE BANKRUPTCY ACT.

In the Estate of .....

Take notice, that, as trustee of the above estate, I have this day disallowed your claim against such estate (a) (to the extent of \$. ....) on the following grounds:—

(a) If proof wholly rejected strike out.

And further take notice that if you are dissatisfied with my decision in respect of your proof, you may apply to the Court to reverse or vary the same but, subject to the power of the Court to extend the time, no application to revise or vary my decision in disallowing your proof will be entertained after the expiration of thirty days from this date.

Dated at the ..... of .....  
this ..... day of ..... A. D. 19 ..

Authorized Trustee.

# 52. STATEMENT OF AFFAIRS.

## THE BANKRUPTCY ACT.

*Re Estate of (James Brown) Authorized Assignor (or Bankrupt).*

To the Debtor:—

You are required to fill up, carefully and accurately, this sheet and such of the several sheets attached hereto as are applicable shewing the state of your affairs on the 19, such sheets when filled up will constitute your Statement of Affairs and must be verified by oath or declaration.

### LIABILITIES (as stated and estimated by debtor).

1. Unsecured liabilities as per List "A"..... \$.....
2. Secured creditors as per List "B"..... \$.....
- Less estimated value of securities..... \$.....
- Expected to rank for..... \$.....
3. Liabilities on bills or notes endorsed or given  
for accommodation as per List "C"..... \$.....
- Of which it is expected will rank against the  
Estate for dividend..... \$.....
4. Preferred creditors as per List "D"..... \$.....
5. Contingent or other liabilities as per List "E" estimated  
to rank for..... \$.....
- Total Liabilities..... \$.....
- Surplus.....

I, ..... of the ..... of .....  
in the Province of ..... make oath  
and say that the above statement and the several Lists hereunto annexed and  
marked A, B, C, etc., are to the best of my knowledge  
and belief a full, true and complete statement of my affairs on the .....  
day of ..... A. D. 19, and fully disclose all my  
property of every description in possession and in reversion as defined by  
Section 25 of the Act.  
Sworn before me  
at the ..... of .....  
in the Province of .....  
this ..... day of ..... A. D. 19.

### ASSETS (as stated and estimated by debtor).

- (a) Stock-in-Trade at cost price not exceeding fair market value .... \$.....
- (b) Trade Fixtures, fittings, utensils, etc. .... \$.....
- (c) Book Debts, promissory notes, etc., as per  
List "F"—  
Good..... \$.....  
Doubtful..... \$.....  
Bad..... \$.....
- Estimated to produce..... \$.....
- (d) Cash in Bank of..... \$.....
- (e) Cash on Hand..... \$.....
- (f) Farming Stock..... \$.....
- (g) Machinery, equipment and plant..... \$.....
- (h) Real Estate as per List "G"..... \$.....
- (i) Surplus from securities in hands of creditors fully secured... \$.....
- (j) Other property, viz.:—

If Debtor is a Corporation, add—

- Amount of capital subscribed..... \$.....  
Amount paid thereon..... \$.....  
Balance subscribed and unpaid..... \$.....  
Estimated to produce..... \$.....  
Total assets..... \$.....  
Deficiency..... \$.....



"A."

## UNSECURED CREDITORS.

(The names to be arranged in alphabetical order and numbered consecutively).

No.	Name.	Address.	Amount of Claim.

Signature.

Dated.....19...

"B."

## SECURED CREDITORS.

No.	Name of Creditor.	Address.	Amount of Debt.	Particulars of Security.	When Given.	Estimated Value of Security.	Balance of Debt Unsecured.

Signature.

Dated.....19...

"C."

## LIABILITIES ON BILLS OR NOTES ENDORSED OR GIVEN FOR ACCOMMODATION.

No.	Name of Acceptor of Maker.	Address.	Date When Due.	Amount	Holder's Name and Address.	Amount expected to rank against Estate for Dividend.

Signature.

Dated.....19...

"D."

## Preferential Creditors for Wages, Rent, etc.

No.	Name of Creditor.	Address and Occupation	Nature of Claim.	Period during which Claim Accrued Due.	Amount of Claim.	Amount Payable in Full.	Difference Ranking for Dividends.

Signature

Dated.....19...

(Full par

No.	Nar Credi Claim

Debts due to

No.	Name

Description of  
Property.

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require.

"E."

*Contingent or Other Liabilities.*

(Full particulars of all liabilities not otherwise scheduled to be given here.)

No.	Name of Creditor or Claimant.	Address and Occupation.	Amount of Liability or Claim.		Amount Expected to Rank for Dividend.		Date when Liability Incurred.		Nature of Liability.
			\$	c.	\$	c.	Month	Year	

Signature

Dated ..... 19...

"F."

*Debts due to the Estate, including bill of exchange, promissory notes, lien notes and chattel mortgages.*

No.	Name of Debtor.	P. O. Address.	Occupation.	Good.	Amount of Debt.	
					Doubtful	Bad.

Signature

Dated ..... 19...

"G."

*Real Estate or Immovable Property owned by Debtor.*

Description of Property.	In whose Name does Title Stand.	Total Value.	Particulars of Mortgages, Hypothecs or other Encumbrances.			Equity or Surplus.
			Name.	Address.	Amount.	

Signature

Dated ..... 19...

**53. NOTICE TO DEBTOR OF MEETING OF CREDITORS.**Re (*James Brown*) debtor.

Take notice that a meeting of your creditors will be held at .....  
on the ..... day of ..... 19...  
at the hour of ..... o'clock in the ..... noon at .....  
..... and that you are required to attend thereat and  
submit to such examination and give such information as the meeting may  
require.

And further take notice that if you fail to comply with the requirements of this notice you will be guilty of contempt of Court and may be punished accordingly.

Dated at ..... this .....  
day of ..... 19 .....

Authorized Trustee.

To .....  
The above named debtor.

#### 54. AFFIDAVIT OF PERSON IN SUPPORT OF ORDER OF COMMITTAL.

(Title.)

I, .....  
of the ..... of .....  
..... make oath and say:—

1—That ..... of .....  
was at the order of this Court made on ..... the  
..... day of ..... 19 ....., ordered  
to

(Here set out the order.)

2—That a copy of the said order was duly served on the said .....

3—That the said .....  
has failed to obey such order.  
Sworn at, etc. L. M.  
E. F. 124.

#### 55. AFFIDAVIT IN SUPPORT OF APPLICATION FOR COMMITTAL OF DEBTOR FOR CONTEMPT UNDER SECTION 54.

(Title.)

I, ..... the  
authorized trustee of the estate of the said debtor make oath and say:—

1—(That the said debtor did attend at the first meeting of his creditors held on the ..... day of ..... 19 ....., at ..... and wilfully refused to submit to be examined at such meeting in respect of his property (or his creditors), the submitting to examination being a duty imposed upon him by the Bankruptcy Act.)

(1—(a) That the said debtor did wilfully fail to attend a meeting of his creditors held on the ..... day of ..... 19 ....., at ..... (or to wait on me at my office on the ..... day of ..... 19 ....., the attending such meeting (or waiting on me) being a duty imposed upon him by the Bankruptcy Act.)

(or 1—That the said debtor has wilfully failed to execute (here describe the deed, etc., that he has failed to execute), the execution of such deed when required by me being a duty imposed upon him by the Bankruptcy Act).

2—(That  
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which is her  
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deed, etc.).  
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Debtor do s  
period of...  
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Dated t

2—(That the said debtor was on the ..... day of ..... 19... , duly served with a notice, a copy of which is hereunto annexed, by leaving the same at his usual place of residence, requiring him to attend the said meeting, (or to execute the above-mentioned deed, etc.).

(or 1—That the said debtor has wilfully failed to perform the duty imposed upon him by the Bankruptcy Act, section 54 (*here insert any act he has been required to do by any special order of the Court, stating the day on which the order was made*).

(2—That the said debtor was duly served with a copy of such order by leaving the same at his usual place of residence on the ..... day of ..... 19...).

(or 1—That the said debtor has failed to deliver up possession of (*here state the property he has failed to deliver up*) which property is divisible amongst his creditors under the said Act and which said property was (*or is*) in his possession or control, he having been required by me to deliver up the said property by notice, a copy of which is hereunto annexed, and which notice was duly served upon him on the ..... day of ..... 19... , at .....).

SWORN at, etc.,

Authorized Trustee.

#### 56. NOTICE OF APPLICATION FOR COMMITTAL UNDER SECTION 54.

(Title.)

To the said A.B.

Take notice that an application will be made on behalf of ..... the authorized trustee of the property of the said debtor before the Honourable Mr. Justice ..... at his Chambers ..... at ..... in the ..... at the hour of ..... o'clock in the ..... noon or so soon thereafter as the application may be heard for an order for your committal to gaol for contempt of this Court, you having failed to perform the duty imposed on you by the fifty-fourth section of the said Act (*here set out the duty he has failed to perform*).

And further take notice that you are required to attend the Court on such day at the hour before stated to shew cause why an order for your committal should not be made.

Dated this ..... day of ..... 19...

#### 57. ORDER FOR COMMITTAL UNDER SECTION 54.

(Title.)

Upon the application of the authorized trustee of the property of the Debtor, and upon hearing the Debtor (*or if he does not appear so state*), and reading the affidavit of (*here insert name and description of person by whom the notice to shew cause was served*), and upon reading the affidavit of (*enter evidence*), and it appearing that the Debtor has been guilty of a contempt of this Court by having failed to (*here follow the notice*), it is ordered that the Debtor do stand committed to (*here insert gaol*) for his contempt, for the period of ..... from the execution of the warrant issued hereunder.

Dated this ..... day of ..... 19...

## 58. WARRANT FOR COMMITTAL FOR CONTEMPT.

(Title.)

To X. Y., officer of this Court, and to the Governor or Keeper of the  
(*here insert the gaol*).

Whereas by an order of this Court bearing date the ..... day of ..... 19... it was ordered that the said debtor (or L. M. of ..... ) should stand committed for contempt of this Court.

These are therefore to require you the said X. Y. to take the said A. B. (or L. M.) and to deliver him to the Governor or Keeper of the above-named gaol, and you the said Governor or Keeper to receive the said A. B. and him safely to keep in the said gaol and in your custody for a period of ..... from the date of the execution of this warrant, or for such shorter period as the Court shall order, and you the said Governor or Keeper shall, while the said A. B. is in your custody, and at all times when the Court shall so direct, produce the said A. B. before the Court.

Dated this ..... day of ..... 19...

## 59. ORDER FOR DISCHARGE FROM CUSTODY ON CONTEMPT.

(Title.)

Upon the application made this ..... day of ..... for A. B., who was committed to gaol for contempt by order of this Court, dated the ..... day of ..... 19... and upon reading his affidavit shewing that he has cleared (or is desirous of clearing) his contempt, and has paid the costs occasioned thereby, and upon hearing the authorized trustee (or C.D. of ..... ), it is ordered that the Governor or Keeper of (*here insert name of gaol*) do discharge the said A. B. out of his custody, as to the said contempt.

Dated this ..... day of ..... 19...

## 60. WARRANT OF SEIZURE.

(Title.)

Whereas on the ..... day of ..... 19... a receiving order was made against the said debtor (or, an authorized assignment was made by the said debtor) and it has been made to appear that (a) (*here set out facts bringing within either (a), (b) or (c) of sec. 55*).

These are therefore to require you forthwith to enter into and upon the house and houses, and other the premises of the said debtor, and also in all other place and places belonging to the said debtor where any of his goods and moneys are, or are reputed to be; and there seize all books, papers, money and goods, except only such property which is not divisible among his creditors as provided by section 25 of the Bankruptcy Act.

And that which you shall so seize you shall safely detain and keep in your possession until you shall receive orders in writing for the disposal thereof from the authorized trustee; and in case of resistance or of not having the key or keys of any doors or lock of any premises belonging to the said debtor where any of his goods are or are suspected to be, you shall break open, or cause the same to be broken open for the better execution of this warrant.

Dated this ..... day of ..... 19...  
To X. Y., the officer of this Court and his assistants.

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named deb

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day of ...

## 61. WARRANT OF ARREST AGAINST DEBTOR.

(Title.)

To X. Y. the officer of this Court and all peace officers within the jurisdiction of the said Court, and to the Governor or Keeper of the (*here insert gaol*).

WHEREAS, by evidence taken upon oath, it has been made to appear to the satisfaction of the Court that there is probable reason to suspect and believe that the said A. B. has absconded, or is about to abscond from Canada, with a view of avoiding payment of the debt in respect of which the bankruptcy petition was filed (*or of avoiding appearance to a bankruptcy petition*) (*or avoiding examination in respect of his affairs*) (*or otherwise avoiding, delaying or embarrassing the proceedings in bankruptcy against him*).

(*Or that there is probable cause for believing that the said A. B. is about to remove his goods with a view of preventing or delaying possession being taken of them by the trustee of the property of the said A. B.*).

(*Or that there is probable ground for believing that the said A. B. has concealed or is about to conceal or destroy any of his goods or any books, documents or writings which might be of use to the trustee of the property of the said A. B. or to the creditors of the said A. B., in the course of the bankruptcy (or authorized assignment) proceedings.*).

(*Or whereas by evidence taken upon oath it has been made to appear to the satisfaction of this Court that the said A. B. has removed certain of his goods and chattels in his possession above the value of \$25.00 without the leave of the Trustee, that is to say (here describe the goods and chattels).*).

These are therefore to require you the said (here name bailiff or other officer) to take the said A. B. and to deliver him to the Governor or Keeper of the above named gaol, and you the said Governor or Keeper to receive the said A. B. and him safely to keep in the said gaol until such time as this Court may order.

Dated this ..... day of ..... 19 ..

## 62. APPOINTMENT FOR EXAMINATION OF DEBTOR OR OTHERS.

## THE BANKRUPTCY ACT.

In the matter of the estate of .....  
..... authorized assignor (*or bankrupt*).

Upon the application of the trustee in the above matter, I do hereby appoint ..... the .....  
day of ..... A.D. 19 .. at the hour of .....  
o'clock in the ..... noon at ..... in the .....  
..... of ..... for the examination upon oath  
before me of ..... the above  
named Debtor (*or* ..... an agent,  
clerk, servant, officer, director or employee as the case may be, of the above  
named debtor), under the said Act.

Dated at ..... this .....  
day of ..... A.D. 19 ..

Registrar (*or Special Examiner*) (*or other proper officer*).

## 63. DECLARATION BY SHORTHAND WRITER.

## THE BANKRUPTCY ACT.

In the matter of the estate of ..... of the  
 I, ..... in the Province of .....  
 the shorthand writer appointed by the Registrar (or Special Examiner or as the case may be) to take down the examination of .....  
 do make oath and say that I will truly and faithfully take down the question and answers put and given by the said ..... in this matter, and will deliver true and faithful transcripts thereof as such Registrar (or Special Examiner or as the case may be) may direct.

Sworn before me at the ..... of ..... in the Province of ..... this ..... day of ..... A.D. 19 .....

Registrar (or Special Examiner) (or as the case may be).

## 64. NOTES OF EXAMINATION OF DEBTOR OR OTHERS.

## THE BANKRUPTCY ACT.

In the matter of the estate of ..... authorized assignor (or bankrupt).

Examination of ..... before Mr. .... (Registrar or Special Examiner) the ..... day of ..... A.D. 19 .....

The above-named ..... being sworn and examined at the time and place above mentioned upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is to say:—

These are the notes of the examination referred to in the memorandum of the examination of ..... taken before me this ..... day of ..... 19 .....

Register (or Special Examiner).

Stenographer.

## 65. ORDER TO POSTMASTER GENERAL UNDER SECTION 57.

(Title.)

Upon the application of ..... the authorized trustee of the property of the above debtor, it is ordered that for a period of three months from the ..... day of ..... 19 ....., all post letters, telegrams and postal packets directed or addressed to the said debtor, at (a) shall be re-directed, sent or delivered by the Postmaster General, (a) Here insert the full addresses.

or officers acting under him to, (b) except any letter on which there is a specific (b) The said trustee at or otherwise as the court may direct.

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direction signed by the authorized trustee that it is to be delivered as addressed, if possible, and that a copy of this order be forthwith transmitted by the authorized trustee to the Postmaster General and to the Postmaster in charge of the Post Office at .....

Dated.....day of.....19...

#### 66. APPLICATION FOR ORDER OF DISCHARGE.

(Title.)

I, A.B. of the .....  
of.....  
in the Province of.....  
having been adjudged bankrupt on the.....day  
of.....A.D. 19..., or having  
made an authorised assignment on the.....day of  
.....19..., and being desirous of obtaining my discharge, hereby apply to the Court to fix a day for hearing my application.

Annexed hereto is the certificate of the authorized trustee certifying the number of my creditors.

Dated at.....  
this.....day of.....19...

(Signed) A. B.

To the Registrar of the.....Court.

#### 67. NOTICE TO TRUSTEE OF APPLICATION FOR DISCHARGE.

(Title.)

The bankrupt (or authorized assignor).....  
having applied to the Court for his discharge, the Court has fixed the.....day of.....19...,  
at.....o'clock in the.....noon  
at.....for hearing the  
application.

Dated at.....  
this.....day of.....19...

Registrar.

To.....

Authorized Trustee of the Estate of the said.....

#### 68. NOTICE TO CREDITORS OF APPLICATION FOR DISCHARGE.

(Title.)

Take notice that the above named bankrupt (or authorized assignor) has applied to the Court for his discharge, and that the Court has fixed the.....day of.....at.....  
o'clock in the.....noon, at.....for  
hearing the application.

Authorized Trustee.

Note: See sections 58, 59 and 60 of the Bankruptcy Act dealing with the discharge of a debtor.

### 69. ORDER GRANTING DISCHARGE UNCONDITIONALLY. (Title.)

On the application of A.B. of .....  
adjudged bankrupt on the ..... day of .....  
19... (or who made an authorized assignment on the .....  
day of ..... 19...), and upon taking into consideration the  
report of the authorized trustee as to the bankrupt's conduct and affairs and  
upon hearing the authorized trustee, and C.D., E.F., etc., creditors, (as the  
case may be).

And whereas it has not been proved that the bankrupt (or authorized  
assignor) has committed any of the offences mentioned in the Bankruptcy Act,  
and proof has not been made of any of the facts mentioned in sections 59 or 60  
of the said Act, or that the bankrupt (or authorized assignor) has been guilty of  
any misconduct in relation to his property or affairs.

It is ordered that he be and he hereby is discharged.

### 70. ORDER REFUSING DISCHARGE. (Title.)

On the application of (Commencement as in form No. 69).

And whereas it has been proved that the bankrupt (or authorized assignor)  
has committed the following offences namely—(Here state particulars) or

And whereas it has not been proved that the bankrupt (or authorized  
assignor) has committed any of the offences mentioned in the Bankruptcy Act  
but proof has been made of the following facts under section 59 of said Act  
(or/and section 60 of said Act) namely—(Here state particulars)  
or/and that he has been guilty of misconduct in relation to his property and  
affairs, namely—(Here state particulars).

It is ordered that the bankrupt's (or authorized assignor's) discharge be  
and it is hereby refused.

Dated this ..... day of ..... 19...

### 71. ORDER SUSPENDING DISCHARGE. THE BANKRUPTCY ACT.

On the application of (Commencement as in form 69).

And whereas it has not been proved that the bankrupt (or authorized  
assignor) has committed any of the offences mentioned in the Bankruptcy Act  
(or it has been proved that the bankrupt (or authorized assignor)) has com-  
mitted the following offences namely—(set them out), but the Court has for  
the following special reasons (state them) determined that his discharge shall  
not on that ground be absolutely refused; but proof has been made of the  
following facts under section 59 (or/and section 60) of the said Act. (Here  
state particulars)

or/and that he has been guilty of misconduct in relation to his property and  
affairs, namely—(Here state particulars).

It is ordered that the bankrupt's (or authorized assignor's) discharge be  
suspended until a dividend of not less than 50 cents on the dollar has been  
paid to the creditors, with liberty to the bankrupt (or authorized assignor) at  
any time after the expiration of one year from the date of this order to apply  
for a modification thereof, pursuant to section 58. or

It is ordered that the bankrupt's (or authorized assignor's) discharge be  
suspended for ..... years and that he be discharged as from  
the ..... day of ..... 19...

### 72. ORDER AS

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and for \$....

**72. ORDER OF DISCHARGE WHERE ONLY FACTS PROVED THAT ASSETS NOT EQUAL TO 50c. ON THE DOLLAR.**

**THE BANKRUPTCY ACT.**

On the application of (*Commencement as in form 69*).

And whereas it has not been proved that the bankrupt (*or authorized assignor*) has committed any of the offences mentioned in the Bankruptcy Act, and whereas the only fact under sections 59 and 60 of which proof has been made is the fact that the bankrupt's (*or authorized assignor's*) assets are not of a value equal to 50c. on the dollar on the amount of his unsecured liabilities.

It is ordered that the bankrupt's (*or authorized assignor's*) discharge be suspended for and that he be discharged as from the ..... day of ..... 19...

Dated this ..... day of ..... 19...

**73. ORDER OF DISCHARGE SUBJECT TO CONDITIONS AS TO EARNINGS, AFTER-ACQUIRED PROPERTY, AND INCOME.**

(*Title.*)

On the application of (*Commencement as in form 69*).

And whereas it has not been proved (*Here state particulars of the finding of the Court*).

It is ordered that the bankrupt (*or authorized assignor*) be discharged subject to the following conditions as to his future earnings, after-acquired property, and income:—

After setting aside out of the bankrupt's (*or authorized assignor's*) earnings, after-acquired property and income the yearly sum of \$..... for the support of himself and his family, the bankrupt (*or authorized assignor*) shall pay the surplus, if any (*or such portion of such surplus as the Court may determine*), of such earnings, after-acquired property, and income to the authorized trustee for distribution among the creditors of the estate. An account shall, on the first day of January in every year, or within fourteen days thereafter, be filed in these proceedings and with the trustee by the bankrupt (*or authorized assignor*) and verified by affidavit setting forth a statement of his receipts from earnings, after-acquired property and income during the year immediately preceding the said date, and the surplus payable under this order shall be paid by the bankrupt (*or authorized assignor*) to the authorized trustee within fourteen days of the filing of the said account.

Dated this ..... day of ..... 19...

**74. ORDER OF DISCHARGE SUBJECT TO A CONDITION REQUIRING THE BANKRUPT OR ASSIGNOR TO CONSENT TO JUDGMENT BEING ENTERED AGAINST HIM.**

(*Title.*)

On the application of (*Commencement as in Form 69*).

It is ordered that the bankrupt (*or authorized assignor*) be discharged subject to the following condition to be fulfilled before his discharge takes effect, namely, he shall, before the signing of this order, consent to judgment being entered against him in this Court by the authorized trustee for the sum of \$....., being the balance (*or part of the balance*) of the debts provable in the estate which is not satisfied at the date of this order, and for \$..... cost of judgment.

And it is further ordered, without prejudice and subject to any execution which may be issued on the said judgment with the leave of Court, that the said sum of \$..... be paid out of the future earnings or after-acquired property of the bankrupt (or authorized assignor) in manner following, that is to say, after setting aside out of the bankrupt's (or authorized assignor's) earnings and after-acquired property a yearly sum of \$..... for the support of himself and his family, the bankrupt (or authorized assignor) shall pay the surplus, if any, (or such portion of such surplus as the Court may determine), to the authorized trustee for distribution among the creditors in the estate. An account shall, on the 1st day of January in each year, or within fourteen days thereafter, be filed in these proceedings, and with the authorized trustee, by the bankrupt (or authorized assignor) setting forth a statement of his receipts or earnings, after-acquired property, and income, during the year immediately preceding the said date, and the surplus payable under this order shall be paid by the bankrupt to the authorized trustee within fourteen days of the filing of the said account.

And it is further ordered that, upon the required consent being given, judgment may be entered against the bankrupt (or authorized assignor) in this Court for the said sum of \$..... together with \$..... for costs of judgment.

Dated this..... day of..... 19.....

75. CONSENT OF BANKRUPT (OR AUTHORIZED ASSIGNOR) TO JUDGMENT BEING ENTERED FOR BALANCE OR PART OF BALANCE OF PROVABLE DEBTS.

(Title.)

Re.....  
I, A.B., of....., the above named bankrupt (or authorized assignor), do hereby consent to judgment being entered against me in this Court by the authorized trustee..... for the sum of \$....., being the balance or part of the balance of the debt provable under my bankruptcy (or under my authorized assignment) which is not satisfied at the date of my discharge, together with \$..... for costs of judgment, but this consent is subject to the provision contained in the Bankruptcy Act with regard to the issue of execution on such judgment.

Dated this..... day of..... 10.....

(Signed) A. B.

76. JUDGMENT TO BE ENTERED PURSUANT TO THE CONSENT.

In the..... Court of.....  
in Bankruptcy  
Between:—

(Name of authorized trustee.)

AND

A. B.

Plaintiff,

Defendant.

The..... day of..... 19.....  
Pursuant to the order made herein and dated the.....  
day of..... whereby it was ordered that

(Recite substance of Order.)

And the  
It is this  
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judgment.  
Dated t

77. AFFIDAVIT  
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78. ORDER

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79. NOTICE

TAKE NO  
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80. CER

WHEREAS  
day of.....  
bankrupt (or a

And the consent mentioned in the said order having been given and filed.  
It is this day adjudged that the plaintiff recover against the said defendant  
\$....., together with \$.....for costs of  
judgment.

Dated this.....day of.....19...

77. *AFFIDAVIT BY DEBTOR, WHOSE DISCHARGE HAS BEEN  
GRANTED CONDITIONALLY AS TO AFTER-ACQUIRED  
PROPERTY OR INCOME.*

(Title.)

I.....  
the above-named debtor, make oath and say as follows:

1. I have since the date of my discharge resided and carried on business  
at.....,  
and I now reside and carry on business at.....

2. The statement hereto annexed is a full, true and complete account of  
all moneys earned by me and of all property and income acquired or received  
by me since the date of my discharge (or since the date when last I filed a  
statement of after-acquired property and income in Court, namely—the  
.....day of.....19...).

Sworn at, etc. ....

Signature of Debtor.

78. *ORDER ANNULLING ADJUDICATION UNDER SECTION 62 (1).*

(Title.)

On the application of R.S. of.....  
and on reading.....and.....  
hearing....., It is ORDERED that the  
adjudication of Bankruptcy of the above named.....  
.....under Order dated.....  
of....., be and the same is hereby  
annulled.

Dated this.....day of.....19...

79. *NOTICE OF ORDER ANNULLING ADJUDICATION UNDER  
SECTION 62 (3).*

(Title.)

TAKE NOTICE that the Order of Adjudication bearing date the.....  
day of.....19... under which A.B. of.....was  
adjudged bankrupt has been annulled by Order of this Court dated the  
.....day of.....19...

DATED at.....this.....day of.....19...

80. *CERTIFICATE OF REMOVAL OF DISQUALIFICATION.*

(Title.)

WHEREAS an order of discharge was, on the.....  
day of.....A.D. 19..., granted to A.B. the above-named  
bankrupt (or authorized assignor);

IT IS HEREBY CERTIFIED that the bankruptcy of the said A.B. was caused by misfortune without any misconduct on his part.

Dated this.....day of.....A.D. 19...

Registrar.

### 81. NOTICE OF DISCHARGE OF BANKRUPT.

(Title.)

TAKE NOTICE that.....  
the bankrupt (or authorized assignor) was discharged by order of this Court bearing date the.....day of.....A.D. 19...

Dated at.....the.....day of.....A.D. 19...

Authorized Trustee.

### 82. TAXING MASTER'S CERTIFICATE.

(Title.)

I hereby certify that I have taxed the bill of costs (or charges) (or expenses) of Mr. C.D. (here state capacity in which employed or engaged) (where necessary add "pursuant to an order of the Court dated the.....day of.....19..."), and have allowed the same at the sum of \$..... (where necessary add "which sum is to be paid to the said C.D. by..... as directed by the said order").

Dated this.....day of.....19...

Taxing Master (or Registrar).

### 83. SUBPOENA.

(Title.)

George the Fifth, by the Grace of God, etc., to (the names of witnesses may be inserted) Greeting: We command you to attend before..... at.....on.....day the.....day of.....19..., at the hour of.....in the.....noon, and so from day to day until the above matter is heard, to give evidence on behalf of (insert name).

Dated this.....day of.....19...

Registrar.

### 84. SUBPOENA DUCES TECUM.

(Title.)

George the Fifth, by the Grace of God, etc., to (the name of witness may be inserted) Greeting:

We command you to attend before..... at.....on.....day the.....day of.....19..., at the hour of.....in the.....noon, to give evidence on behalf of.....and also to bring with you and produce at the time and place aforesaid (specify documents to be produced).

Dated this.....day of.....19...

Registrar.

#### INSTRUCTIONS

1. For petition
2. To defend
3. For appeal
4. To attend
5. For or to
6. For any
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## TARIFF OF COSTS.

INSTRUCTIONS:		\$	cts-
1.	For petition or authorized assignment.....	4	00
2.	To defend, oppose or attend upon petition.....	4	00
3.	For approval composition, extension or scheme.....	4	00
4.	To attend on or oppose or defend any issue.....	4	00
5.	For or to oppose notice of motion or application to Court or Chambers.....	4	00
6.	For any affidavit.....	2	00
7.	For or to answer interrogatories or cross-interrogatories or to examine or attend on any examination of a debtor or of any other person.....	4	00
8.	For any judgment or warrant.....	4	00
9.	For commission or other like proceeding, or order for evidence or examination.....	4	00
10.	For brief on any summary hearing, issue, trial or important motion or application.....	5	00
11.	To appeal or to oppose appeal.....	4	00
12.	For any pleading.....	4	00
13.	For any other important step or proceeding in any cause, matter or proceeding not included in the above.....	4	00
DRAWING, PLEADINGS, ETC.			
14.	Drafting—		
	(a) Statement of claim or defence or any pleadings instructed by the Court or a Judge to be drawn.....	4	00
	(b) Petition.....	4	00
	(c) Issue, composition, extension or scheme.....	4	00
	(d) Any other documents commencing a proceeding not commenced by petition or statement of claim and any document in answer to same.....	4	00
	(e) Record.....	4	00
	(f) Authorized assignment (including two duplicates).....	10	00
	(g) Notice of motion objections, contestation, etc.....	3	00
15.	For every additional folio over ten, per folio.....	0	30
16.	Engrossing same and for each copy to file and serve, per folio.....	0	15
17.	Drawing interrogatories or cross-interrogatories, or answers to either of the same, commission, letters rogatory or other document of like nature, per folio.....	0	30
18.	Engrossing and for each copy to file and serve, per folio.....	0	15
AFFIDAVITS.			
19.	Drawing affidavit, per folio.....	0	30
20.	Engrossing and for each necessary copy, per folio.....	0	15
21.	Preparing exhibits, each.....	0	20
PERUSALS.			
22.	Of (a) Statement of claim, defence or other pleading, (b) Petition, (c) Issue, (d) Any other document commencing a proceeding not commenced by petition or statement of claim and any document in answer to same.....	3	00
23.	Perusing any notice of motion, objections, contestations, etc.....	2	00
24.	Of each affidavit, including exhibits of a party adverse in interest.....	2	00
25.	Of interrogatories, cross-interrogatories or answers to either of same, or any other document of a similar nature.....	3	00
26.	To be increased in the discretion of the taxing officer.....	2	00
27.	Of notice to produce or admit.....	2	00
27.	Of any important notice or paper not otherwise mentioned.....	2	00
WRITS.			
28.	All writs, warrants, certificates of judgment and lis pendens, including attendances to issue, register and deliver same.....	8	00
29.	Renewals of same, including attendances to issue, register and deliver the same.....	8	00
30.	Subpoena ad testificandum.....	1	50
31.	Subpoena duces tecum.....	3	00
32.	For every additional folio over four.....	0	30
SERVICES.			
33.	Service of petition, or other document by which any proceeding is commenced.....	3	00
34.	If served at over two miles from nearest place of business or office of solicitor serving same, for each mile beyond two, each way.....	0	30
35.	For service out of jurisdiction, such allowance as taxing officer thinks proper.....		
36.	Attending to serve any other document.....	2	00
BRIEFS.			
37.	Drawing brief.....	3	00
38.	Every additional folio over five.....	0	30
COPIES.			
39.	Copies for petitions, pleadings, notices, demands, minutes, orders, judgments, appointments, subpoenas and any other documents when no other provision is made and copies are properly allowable per folio, for each copy.....	0	15



## NOTICES, DEMANDS, ETC.

	\$	cts.
40. Notice to admit or produce.....	1	00
To be increased in the discretion of the taxing officer.		
41. Appointment for examination of debtor witness or for any other purpose.....	3	00
Engrossing and each copy, per folio.....	0	15
42. Notice of trial, hearing of issue, or summary hearing.....	2	00
43. Every notice under any other statute.....	2	00
44. All other notices and demands not above specified including notices to Gazette, newspaper, etc.....	2	00
45. Every folio over three of any of above.....	0	30

## ATTENDANCES.

46. Attendances consequent on service of notice to produce or admit, or on inspection of documents, or notice under any statute.....	2	00
47. Attendance for special leave for a service of notice of motion or of appeal, in the discretion of the taxing officer.....	3	00
48. On consultation with counsel, where proper in the discretion of the taxing officer	10	00
Solicitor attending Court or chambers, including partner of counsel, when no second counsel fees taxed, per hour.....	5	00
To be increased in the discretion of the taxing officer to an amount not to exceed, per hour.....	10	00
50. To obtain or give undertaking to defend when service accepted by solicitor.....	2	00
51. To file any paper or for any appointment, or to receive, accept or admit service of any paper not otherwise provided for.....	1	00
52. Solicitor attending to procure evidence for the trial or petition, in addition to all proper travelling expenses. Such amount as the taxing officer thinks proper		
53. Every other attendance, per hour.....	5	00
To be increased in the discretion of the taxing officer.		
54. Attendance, correspondence, etc., incurred through negotiations by a defendant creditor or debtor to gain time, or in the endeavour to compromise or settle the action, petition or proceeding		
Such allowance as the taxing officer deems proper.		

NOTE: Throughout this tariff a telephone attendance shall be an attendance.

## LETTERS.

55. Each letter.....	1	00
56. Perusal of each letter.....	1	00
These two items may be increased in the discretion of the taxing officer.		

## BONDS.

57. Upon giving of any bond in any proceeding, including drawing and engrossing same and all affidavits and copies, and necessary attendances and taking of affidavits.....	15	00
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## JUDGMENT, RULE OR ORDER.

58. Drawing minutes of judgment or order.....	3	00
For every folio over five, per folio.....	0	30
59. Engrossing judgment roll or order after settlement or minutes, per folio.....	0	15
60. Judgment when no defence and no minutes necessary.....	3	00
61. Appointment to settle or pass judgment or order of Court.....	1	00
62. Attending to settle minutes.....	3	00
To be increased in the discretion of the taxing officer in difficult or contested cases.		
63. Attending to enter judgment.....	3	00
64. Attending for any praecipe order.....	1	00
65. Any praecipe order.....	1	00

## PAYMENT INTO OR OUT OF COURT.

66. (a) Instructions to pay into Court.....	3	00
(b) Instructions to obtain moneys out of Court.....	3	00
(c) Praecipe to pay in or obtain out of Court.....	1	00
(d) Attending for direction.....	1	00
(e) Attending for cheque to pay in.....	1	00
(f) Attending to pay in or receive cheque in payment out.....	1	00
(g) Praecipe for certificate of accountant.....	1	00
(h) Attending for certificate of accountant.....	1	00
(i) Drawing receipt or certificate of bank as to payment in or non-payment in.....	1	00
(j) Attending to enquire at bank and for certificate.....	2	00

## TAXATION OF COSTS.

67. Drawing bill of costs for taxation, per folio.....	0	30
68. Engrossing and each copy to serve, each per folio.....	0	15
69. Notice of taxation or appointment to tax.....	1	00
70. Every copy, per folio.....	0	15
71. Attending on taxation, per hour.....	5	00

## 72. Settling

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COUNSEL FEES.		\$	cts
72. Settling—			
(a) Statement of claim, defence or any other pleading.			
(b) Petition.			
(c) Special notice of motion.			
(d) Interrogatories or answers to same.			
(e) Cross-interrogatories or answers to same.			
(f) Issue.			
(g) Application in connection with any composition, extension or scheme.			
(h) Any other document or proceeding of like nature to any of the above.	10	00	
Any of the above to be increased in the discretion of the taxing officer.			
73. Attendance of counsel on—			
(a) Examination for discovery.			
(b) Cross-examination on affidavits.			
(c) Examination of witness on motion.			
(d) Examination of witness de bene esse.			
(e) Examination of debtor.			
(f) Or any similar examination.	15	00	
Any of the above to be increased in the discretion of the taxing officer.			
74. On consultation with solicitor or client, where proper, in the discretion of the taxing officer.	5	00	
75. Advising on evidence.	10	00	
To be increased in the discretion of the taxing officer.			
76. Attendance of counsel on adjournment in Judge's chambers or on any motion when opposed.	10	00	
77. Attendance of counsel upon adjournment in Judge's chambers when opposed.	15	00	
78. Attendance of counsel upon adjournment before Registrar.	5	00	
79. Fee of counsel on ex parte motion or application to Registrar.	10	00	
80. Attendance of counsel on opposed motion or application to Registrar.	15	00	
Both of above items subject to increase in the discretion of the taxing officer.			

## COUNSEL FEES—Concluded.

81. Counsel fee on all ex parte motions or applications to Court or Judge in chambers	20	00
82. Counsel fee on opposed motion in Court or before Judge in chambers.	40	00
To be increased in the discretion of the taxing officer.		
83. Counsel fee with brief on—		
(a) Petition.		
(b) Trial.		
(c) Approval of any composition, extension or scheme.		
(d) Trial of issue.		
(e) Summary hearing.		
(f) Application for discharge by trustee or debtor when opposed.	50	00
To be increased in the discretion of the taxing officer.		
For second counsel, two-thirds of the fee allowed to first counsel.		
84. Counsel fee on settlement or compromise when proceedings have been taken or services rendered by a barrister in or out of Court to expedite proceedings, save costs, to compromise or settle actions, proceedings or claims, or in negotiations leading up to a compromise or settlement, a counsel fee or allowance may be made therefor in the discretion of the taxing officer, which may be by way of commission or percentage on the amount recovered or defended, or on the value of the property about which the action, suit, claim or transaction is concerned, or the same may be made by way of quantum meruit for the services rendered or upon such other basis as the taxing officer thinks proper.		
85. In all cases of fees or allowances which are in the discretion of the taxing officer or which may be increased in the discretion of the taxing officer, the taxing officer shall have regard to all the circumstances including (but not in any way restricting the generality of the foregoing) the nature, importance or urgency of the matters involved, the time occupied, the circumstances and interest of the person by whom the costs are payable, the general conduct of the proceedings, and the amount, skill, labour and responsibility involved, and the preparation and consideration of any written argument when requested by a Judge.		
86. In case of any service rendered in any action or proceeding of a like nature to any of the services provided for in this tariff and not expressly covered by any item in the tariff, a fee shall be allowed by the taxing officer of an amount equal to the tariff fee for the service most nearly resembling the one in question.		
87. In all cases of fees or allowances which may be allowed in the discretion of the taxing officer or which may be increased in his discretion, there shall be a right of appeal to a Judge in chambers and the fee or allowance so made or increased shall be reconsidered by such Judge whether the exercise of the discretion pertains to the quantum of fees or relates to a question of principle. This right shall be in addition to any existing right of appeal.		

## SOLICITORS' FEES ON COLLECTION OF ACCOUNTS.

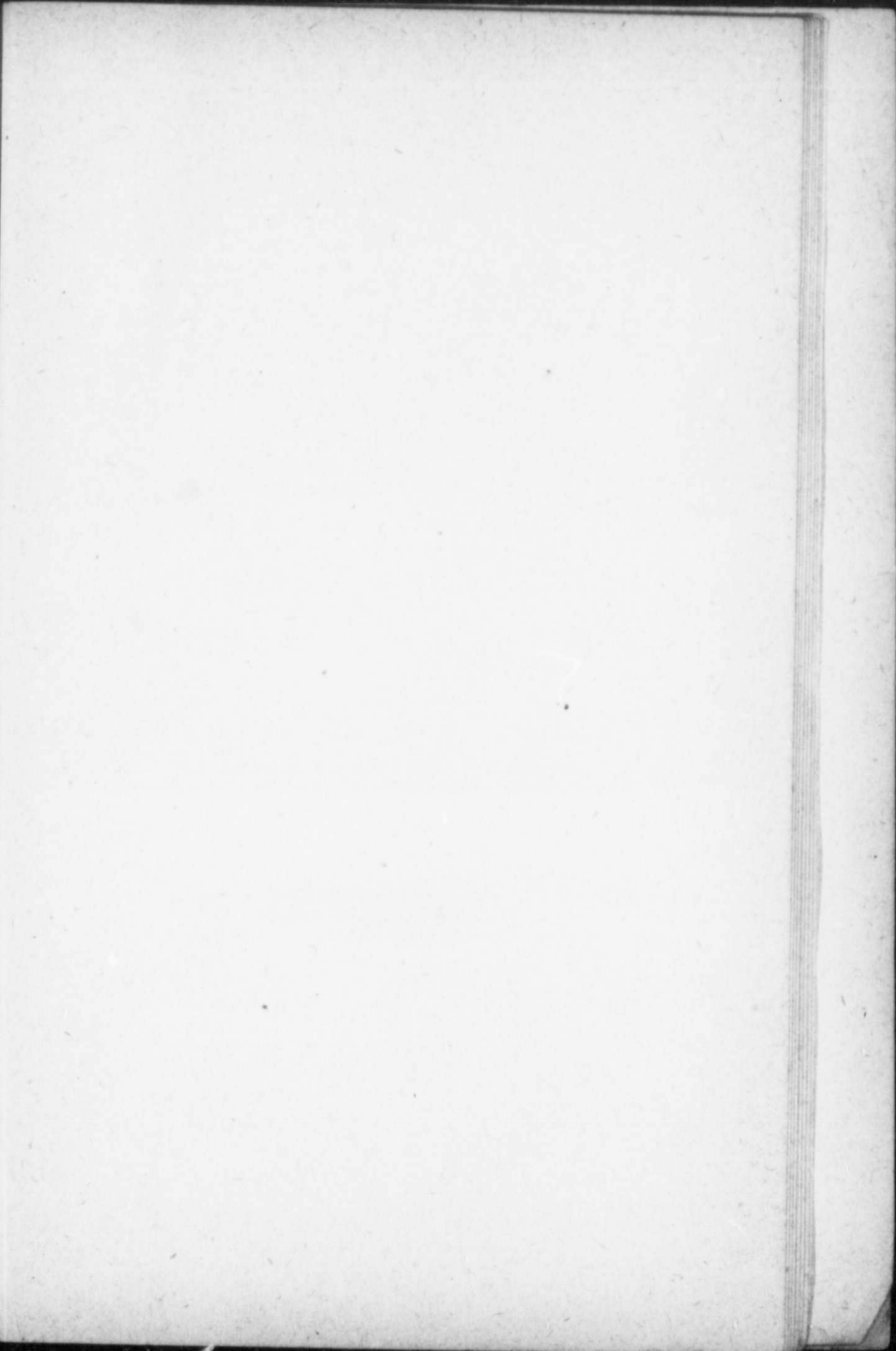
88. Claims collected after notice or demand and enter as a whole or in instalments:—		
On first \$300 or less.	15	%
On excess over \$300 up to \$1,000.	8	%
On over \$1,000.	4	%
Minimum charge, \$5.		
On claims less than \$10 charge not to exceed one-half the claim.		
Where no collection made, no charge.		

## ALLOWANCE TO WITNESSES.

	\$	cts.
89. To witnesses residing within five miles of the court-house where action is tried, or the place at which they are required to attend, for each day's attendance	3	00
90. To witnesses residing more than five miles from the court-house where the action is tried, or the place at which they are required to attend, for each day's attendance	5	00
91. To barristers, solicitors, civil, mechanical and electrical engineers, architects, chartered accountants, dentists, dental surgeons, physicians and surgeons, when called upon to give evidence in consequence of any professional services rendered by them, or to give professional opinions for each day's attendance	6	00
In addition to the foregoing fees, the travelling expenses of witnesses residing more than five miles from the court-house where the action is tried, or the place at which they are required to attend, shall be allowed according to the sums actually and reasonably expended, but shall in no case exceed twenty cents per mile one way.		

## SCALE OF FEES.—PAYABLE ON PROCEEDINGS.

Issuing and filing of every bankruptcy petition, including the sealing thereof and one duplicate or copy	5	00
Filing and approving every bond, with or without sureties, including affidavits; or memorandum as to payment into Court, including such payment in	2	50
Every receiving order, excepting an order for interim receiver	5	00
Every interim receiving order	2	00
Every other order	2	00
Every application to approve a composition extension or scheme	5	00
Every application for an order for discharge	5	00
Every other notice of motion or application filed, including notice of appeal	2	00
Every affidavit filed	0	20
Every subpoena or warrant	2	00
Every lis pendens	2	00
Every statement of affairs, filing	1	00
For filing any other document or proceeding not otherwise particularly provided for	0	20
For making copies or certified copies of any proceeding, per folio of 100 words	0	15
Taxation of costs, per hour. (Including taxing officer's certificate)	5	00
For the registrar holding examinations or hearing appeals under sec. 65 of the Act, per hour	2	00
Bailiff for serving petition, subpoena, order or other proceeding including affidavits of service	3	00
Mileage both ways, per mile	0	20
Possession under a warrant for each day a man is actually in possession	5	00
No fees shall be charged for searching any proceedings or documents required, under the Act or these Rules, to be filed with the registrar		



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# National Trust Company, Limited

Capital - - - - - \$ 2,000,000  
Reserve - - - - - 2,000,000  
Assets under administration over - 90,000,000

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## Head Office:

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Secretary.

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