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No. 123.

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4th Session, 6th Parliament, 24 Victoria, 1861.

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**B I L L .**

**An Act respecting Bankrupts and Bankrupt Estates in Upper Canada.**

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Received and read first time, Tuesday, 9th April, 1861.

Second Reading, Friday, 12th April, 1861.

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Hon. Atty. Genl. **MACDONALD.**

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**S. Derbishire & G. Desbarats, Queen's Printer.**

An Act respecting Bankrupts and Bankrupt Estates in Upper Canada.

WHEREAS it is expedient that provision should be made for the equitable adjustment of the estates and affairs of Bankrupts in Upper Canada: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

BANKRUPTCY DISTRICTS.

1. For the purposes of this Act Upper Canada shall be divided into three Bankruptcy Districts, and such Districts shall be called respectively by the names following, namely:— The Eastern District, the Central District, the Western District, and shall be severally of such limit and extent as described in the Schedule A to this Act annexed.

COURTS OF BANKRUPTCY.

2. In each District there shall be established a Court of Bankruptcy to be styled respectively the Eastern District Bankruptcy Court, to be held at Kingston; the Central District Bankruptcy Court, to be held at Toronto; the Western District Bankruptcy Court, to be held at London;—And each of the said Courts shall be a Court of Record.

3. Each District shall be presided over by a Judge, who shall be appointed by Her Majesty, under the Great Seal of the Province, who shall be a Barrister of at least ten years' standing, and who shall hold office during good behaviour, subject to removal by Her Majesty upon an address of both Houses of the Provincial Parliament.

4. One of the said Judges shall be designated in his commission and shall be styled and known as the Chief Judge of the Court of Bankruptcy, and shall have precedence over the other two Judges.

5. The Chief Judge shall have rank and precedence with the Puisné Judges of the Superior Courts of Common Law and the Vice-Chancellors, according to the date of his appointment, and the other Judges shall have rank and precedence with Judges of County Courts, according to the date of their appointments.

6. There shall be paid to the Chief Judge the yearly salary of dollars, and to each of the

*other Judges the yearly salary of dollars, which shall be charged on and payable out of the Consolidated Revenue of the Province.*

COURT OF APPEAL IN BANKRUPTCY.

- 7.** A Court of Appeal in Bankruptcy shall be established at Toronto, and such Court shall be a Court of Record. **5**
- 8.** The Judges for the time being of the Courts of Bankruptcy shall be *ex officio* members of the Court of Appeal in Bankruptcy.
- 9.** The Chief Judge, and, in his absence, the Senior of the other two Judges, shall preside.
- 10.** Two members of the Court shall be necessary to constitute a quorum. **10**
- 11.** The Registrar of the central District Bankruptcy Court, hereinafter mentioned, shall, *ex officio*, be Clerk of the Court of Appeal in Bankruptcy.

OATH OF OFFICE OF JUDGES.

- 12.** Before entering upon any of the duties of his office, each Judge shall take the following oath before the Chief Justice of Upper Canada, the Chancellor of Upper Canada or the Chief Justice of the Common Pleas in Upper Canada in open Court: **15**
- “ I do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and power, execute the office of Judge of the Court of Appeal in Bankruptcy and of the District Bankruptcy Court (*naming the District, as the case may be*) So help me God.” **20**

TEMPORARY JUDGES.

- 13.** During the temporary absence of any Judge in Bankruptcy, the Governor may, by warrant under his hand and seal at arms, appoint a Barrister, of not less than five years' standing, to act as a Judge in his stead. **25**

PRIMARY JURISDICTION.

- 14.** The several Courts of Bankruptcy and the Judges thereof shall have original jurisdiction, superintendance and control in all matters of bankruptcy originated in their respective Courts, and shall have authority to take such order and direction with the body of each Bankrupt, and also with the estate of each Bankrupt as hereinafter expressed, and shall, as against the assignees, creditors and bankrupt, have authority to hear, determine and make order in any matter relating to the estate and **30** **35**

effects of the Bankrupt, or any estate or effects taken under the Bankruptcy, or claimed by the assignees for the benefit of the creditors, or relating to any acts done or sought to be done by the assignees in their character of assignees (by virtue or under colour of the Bankruptcy), and also in any matter of Bankruptcy whatever, as between the assignees and any creditor or other person appearing and submitting to the jurisdiction of the Court, and also in any application for discharge, and generally in any matter where the Court, by virtue of this Act, has jurisdiction, save and except as may be by this Act otherwise specially provided, and subject in all cases to the appeal hereinafter provided.

**15.** The several Courts of Bankruptcy shall be auxiliary to each other for proof of debts, for the examination of persons or witnesses on oath, and for all other purposes under the provisions of this Act; provided, always, that all such examinations shall be taken down in writing, and shall be annexed to and form part of the proceedings in the matter to which the same shall relate, and that no such proof or examination shall be taken without the sanction of the Judge before whom the matter is being prosecuted.

Courts to be auxiliary to each other.

#### SITTINGS.

**16.** The Courts of Bankruptcy shall sit for despatch of business daily throughout the year, Monday and Tuesday in Easter Week, Her Majesty's Birth day and all legal Holidays, and also the times during which the Court of Appeal in Bankruptcy may be sitting excepted.

Sittings of the Courts.

#### REGISTRARS.

**17.** A Registrar shall be appointed by the Governor in Council for each Court of Bankruptcy who shall be called the Registrar for the Court of Bankruptcy for which he is appointed, and who shall hold office during pleasure.

Appointment of Registrar.

**18.** The Registrars shall have their offices in the several places in which the Courts for their respective Districts are held.

Where he shall have his office.

**19.** The Registrars shall keep their offices open for the transaction of business, from ten o'clock A. M., until three P. M. every day, except Sundays and legal holidays.

Office hours.

**20.** All Proceedings, Books, Papers and Documents constituting from time to time the Records of the Court, shall be kept by the several Registrars, and shall be open to the inspection of all persons on the payment of such fees, as by General Orders, may be directed.

His duties as regards the Records of the Court.

**Restriction as to fees.** 21. It shall not be lawful for the Registrars to receive and take any fees other than such fees as General Orders may allow, or may be otherwise allowed by this Act.

**Registrar to attend sittings of the Court.** 22. The Registrar shall attend all sittings of the Court to which he is attached and all sittings of the Judge in Chambers, when required by the Judge, and shall, in all occasions, at such sittings and in his office, discharge the duties usually discharged by clerks and masters of the Superior Courts, and such other duties as General Orders may direct. 5

**To give security.** 23. Before entering upon the duties of his office, each Registrar shall give security in such form and to such amount as the Governor in Council may prescribe. 10

#### SHERIFFS, BAILIFFS AND CONSTABLES.

**Sheriffs to be officers of the Courts.** 24. The Sheriffs of the several Counties in Upper Canada, shall, within their respective limits, be deemed officers of the Court of Appeal in Bankruptcy and Courts of Bankruptcy, and shall obey all writs, process and orders directed to them under the authority or within the scope and meaning of this Act, or authorized by General Orders, and shall, by themselves or their officers, discharge the duties of messenger in all matters of Bankruptcy, within their several limits, in such manner as the Courts or Judges of the Courts may respectively direct. 15 20

**Their existing securities to be sufficient.** 25. The securities given by the Sheriffs, before the passing of this Act, for the performance of their duties as Sheriffs, shall be and are hereby declared to be securities for the performance of their duties under this Act, and the present sureties for the said Sheriffs shall be liable for the performance of such last mentioned duties, in the same manner as if the said sureties had expressly covenanted in the covenants or were expressly bound by the Bonds or the conditions thereof, heretofore executed by them, as sureties for the said Sheriffs respectively. 25 30

**Their remuneration.** 26. Sheriffs shall receive such remuneration in respect of all services performed under this Act as general orders may direct.

**Sheriffs, &c., to attend the Courts.** 27. Sheriffs, bailiffs and constables, within their respective limits, shall attend the sittings of the Courts of Appeal in Bankruptcy and Courts of Bankruptcy, and be subject to the orders of the Courts and Judges, and be entitled to the same remuneration therefor as they now are while attending the several Superior Courts in this province. 35

#### GENERAL ORDERS.

**General orders to be framed in relation to** 28. The Court of Appeal in Bankruptcy shall frame general orders for the several Courts of Bankruptcy and the Court of Appeal in Bankruptcy, for the following purposes : 40

1. For regulating the practice and procedure of the Courts of Bankruptcy and the Court of Appeal in Bankruptcy, and the forms of petitions, orders and other proceedings to be used in the said Courts in all matters under this Act ; The practice of the Courts;
- 5 2. For regulating the duties of the various officers of such Courts ; The duties of the officers ;
3. For regulating the fees payable, and the charges and costs to be allowed with respect to all proceedings under this Act ; The fees and costs ;
- 10 4. For regulating the practice and procedure upon appeals and the costs thereof ; The practice and cost on appeal ;
5. For regulating the filing, custody and inspection of Records ; The Records ;
6. And generally for carrying the provisions of this Act into effect. And generally for carrying out this Act.
- 15 29. After such General Orders shall have been so framed, they, or any of them, may, from time to time, be rescinded or varied, and other General Orders may be framed in manner aforesaid. They may be rescinded or varied.

## AS TO APPEALS.

- 20 30. Every decision or order of the several Courts of Bankruptcy, or of the several Judges thereof, acting under this Act, shall be subject to appeal to the Court of Appeal in Bankruptcy. What shall be subject to appeal.
- 25 31. Such appeal shall be brought by way of petition or motion ; on the hearing thereof no new evidence shall be received without leave of the Court, and if such appeal shall not be presented within fifteen days from the date of the decision or order complained of, then such decision or order shall be final. Proceedings in appeal.
- 30 32. Every decision or order of the Court of Appeal in Bankruptcy shall, at the instance of a party having an interest in the estate of the Bankrupt for any sum not less than five hundred dollars, and every decision or order of such Court, with respect to the discharge of the Bankrupt, shall at the instance of the Bankrupt be subject to appeal to the Court of Error and Appeal in Upper Canada. Further appeal in certain cases.

## MODE OF CONDUCTING BUSINESS.

- 35 33. The Court of Appeal in Bankruptcy, and the Central District Bankruptcy Court, may sit in Osgoode Hall, or in such other place at Toronto, as the Governor may appoint, and the several Court Houses within the Province may be used

for holding the Courts' sittings and meetings in Bankruptcy respectively.

- Procedure and practice of the Court.** **34.** The Practice and Procedure of the Court of Bankruptcy shall, except where otherwise provided by this Act, or by General Orders, be, so far as the circumstances of the case will admit, according to the present practice of the Courts of Bankruptcy in England. 5
- Judges to sit at Chambers.** **35.** The Judges in Bankruptcy may, respectively, sit at Chambers for the despatch of such part of the business of their Courts as can, without detriment to the public advantage, arising from the discussion of questions in open Court, be heard in Chambers, and while so sitting at Chambers shall have, in all respects, like power and jurisdiction as when sitting in Court. 10
- Judges may adjourn matters from open Court to Chambers.** **36.** It shall be lawful for the Judges in Bankruptcy, when sitting in open Court, to adjourn for consideration in Chambers any matter, which, in their opinion, may be more conveniently disposed of in Chambers, or when sitting in Chambers to direct any matter to be heard in open Court. 15
- Proceedings in Chambers.** **37.** The mode of proceeding at Chambers shall be by summons and, as near as may be, according to the form now adopted by the Judges of the Superior Courts of Common Law, when sitting at Chambers. 20
- Registrars may sit at Chambers; their duties.** **38.** The Registrars shall have power to sit at Chambers or to attend, under the the direction of the Court, at any place or places in the several Counties, or Districts, and to despatch there such part of the administrative business of the Court, as shall be defined in General Orders, or as the Judge of the Court, in any particular matter, shall direct, but nothing herein contained shall empower a Registrar to commit, or to hear a disputed adjudication, or to hear a question of the allowance or suspension of an order of discharge. 25 30
- Courts may direct Registrars to hold meetings, &c.** **39.** The Court or Judge may direct a Registrar to attend at any place or places within the District to which he is attached, for the purpose of holding any meeting or meetings of creditors, of receiving proof of debts, and generally for the prosecution of any Bankruptcy, or other proceeding under this Act, and the travelling and incidental expenses of such Registrar, incurred in so acting, shall be settled by the Court or Judge and paid out of the assets of the estate, in respect of which such Registrar has so acted, and such Registrar so acting shall have and exercise all power, except the power of commitment, vested in such Court, for the summoning and examination of persons or witnesses and for requiring the productions of books, papers and documents; Provided, always, that all depositions and examinations of persons and witnesses, taken before such Registrar, and all acts done by him, shall be reduced to writing. 35 40 45
- Provide: evidence before Registrar to be in writing.**



and be signed by such Registrar, and shall be annexed to and form part of the proceedings.

40. Any party shall, during the proceedings before a Registrar, be at liberty to take the opinion of the Judge, upon any point or matter arising in the course of such proceedings or upon the result of such proceedings. Parties may take opinion of the Judge.

41. The result of any proceeding before a Registrar in Chambers shall be stated in the shape of a short certificate to the Judge, who shall sign the same, if he approve thereof, and such certificate so signed shall be binding on all the parties to the proceedings, but every such certificate may be discharged or varied by the Judge at Chambers or in open Court. Certificates by Registrars in Chambers, as regards proceedings.

42. Parties and witnesses summoned before the Court of Appeal in Bankruptcy or any Bankruptcy Court, or any Judge or Registrar in Chambers, or in Court, shall be bound to attend in pursuance of such summons, and shall be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpoena, and all persons wilfully and corruptly swearing or affirming falsely shall be liable to all the penalties, punishments and consequences of perjury. Parties, &c., not attending, liable for contempt. False swearing to be perjury.

43. In any Bankruptcy, arrangement under the Superintendence of the Court, arrangement by deed or Instrument of Assignment, Composition or Inspection, or any other proceeding within the jurisdiction of the Court, the parties concerned or submitting to such jurisdiction may, at any stage of the proceedings, by consent, state any question or questions in a special case for the opinion of the Court. Questions raised by consent.

44. The parties may, if they think fit, agree that upon the judgment of the Court being given in the affirmative or negative of the question or questions raised by such special case, a sum of money fixed by the parties or to be ascertained by the Court, or in such manner as the Court may direct, or any property shall be paid or transferred by one of such parties to the other of them either with or without costs. Payment of money, &c., on judgment being given.

45. It shall be lawful for any Judge in Bankruptcy to direct any question of fact to be tried and determined before himself by the verdict of a special or common jury. Questions of fact may be tried by jury.

46. The Judges in Bankruptcy may make all such rules and orders upon the Sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the Superior Courts, and also may make any other orders which may be requisite for the purpose of such trial. Summoning of juries in such cases.

- How Sheriff shall proceed.** 47. The Sheriff on receiving an order for the summoning one or more juries shall ballot for the names from the panels of jurors for the Superior Courts, and if only one jury is required eighteen shall be summoned, and if more than one, thirty-six, and every juryman so summoned shall be entitled to the same rights and emoluments and subject to the same duties and liabilities as if he had been duly summoned for the trial of a civil action in any of the said Superior Courts, and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to a cause in any of the said Superior Courts. 5
- Questions to be reduced to writing.** 48. When any question of fact shall be ordered to be tried such question shall be reduced into writing in such form as the Court shall direct, and at the trial the jury shall be sworn to try the said question and a true verdict to give thereon according to the evidence, and upon every such trial the Court shall have the same powers, jurisdiction and authority as any Judge of the Courts of Common Law sitting at *nisi prius*. 15
- Issues may be directed.** 49. It shall be lawful for the Court of Appeal in Bankruptcy to direct one or more issue or issues to be tried in any Court of Common Law and either before a Judge of Assize in any County or before a Judge in Bankruptcy or before a Judge of any County Court and either by a special or common Jury. 20
- How evidence shall be taken.** 50. The Court of Appeal in Bankruptcy and Courts of Bankruptcy respectively may, in all matters within their respective jurisdictions, take the whole or any part of the evidence either *vivâ voce* on oath or by interrogatories in writing or upon affidavit. 25
- Seal of the Court.** 51. A Seal, on which shall be engraved the style of each Court respectively, shall be kept by each of the Registrars or Clerk of such Courts respectively in trust for the purposes of such Court, and such seal shall be, and shall be deemed and taken to be the Seal of the respective Court. 30
- Sealing and signature of Warrants.** 52. Every Warrant issued by any Court under this Act shall be under the seal of the Court and the hand of the Judge of such Court, and every summons under the hand of the Registrar and the seal of the Court. 35
- Records and proceedings to be sealed.** 53. The Court shall cause to be sealed with the seal of the Court all such records, proceedings, documents and copies of the same, as are by this Act or shall be by general orders required to be so sealed, and such other records, proceedings, documents and copies of the same as the Court shall at any time direct. 40
- Want of form not to invalidate.** 54. No rule, order, warrant or other proceeding or document required by this Act to be in a form given in the Schedules to 45

5 this Act annexed, or to be given by any general order, shall be date proceed-  
 invalidated by reason of any want of form or omission therein, ings.  
 if such want of form or omission shall not, in the opinion of the  
 Court, before which the same shall be brought, be calculated to  
 5 mislead or prejudicially affect any party, and each Court. Power of  
 established by and each judge appointed under this Act, shall Court as to  
 have the same power as to amendments as is given to the amendments.  
 Superior Courts in Upper Canada.

10 **55.** The Clerk and Registrars shall, from time to time, Forms to be  
 under the direction of the respective Courts, prepare proper prepared and  
 forms for carrying out the proceedings of the Courts respectively, printed.  
 and shall have the same printed.

#### GAOLS AND GAOLERS.

15 **56.** Every prisoner committed under any process or order in Confinement  
 bankruptcy shall be confined in such gaol as the exigency of of prisoners.  
 such process or order may require, and each gaoler respectively  
 shall be answerable for the safe keeping of any prisoner so Duties of  
 committed to his charge and shall obey every process or order Gaolers.  
 of a Court or Judge in Bankruptcy in the same manner as he is  
 now bound by law to obey any process or order of any Superior  
 20 Court of law or any judge thereof.

#### FEE FUND COSTS AND DISBURSEMENTS.

25 **57.** The several fees in Schedule B, annexed to this Act, Fees to Clerk  
 and such other fees belonging to the fee fund as general orders and Regis-  
 may direct, shall be payable to the Clerk and Registrars respec- trars.  
 tively, who shall be severally accountable for them and pay them  
 over, in the manner and under the inspection directed by general  
 orders to the Receiver General of this Province, who shall keep a  
 separate account of the same.

30 **58.** All bills of costs, charges, fees and disbursements of So- Costs, how  
 licitors and Attorneys in matters under this Act, which may be taxed.  
 referred to a Registrar in any Court in Bankruptcy for taxation,  
 shall be taxed by him subject to the revision of the Court of  
 Bankruptcy to which the Registrar may be attached.

35 **59.** All bills of charges, fees and disbursements of any Auctioneers'  
 auctioneer, appraiser, broker, valuer or accountant, or any other charges, &c.  
 person in any matter under this Act, shall be settled by the  
 Registrar of the Court, subject to revision as aforesaid, and the  
 amount of the bill so settled, and no more, shall be paid to or  
 recoverable by such auctioneer, appraiser, broker, valuer, ac-  
 countant or other person.

#### OFFICIAL ASSIGNEES.

40 **60.** The Court may, in each case of Bankruptcy, appoint Appointment  
 an official assignee and until an assignee shall be chosen by of official as-  
 signees.

the creditors, such official assignee shall, to all intents and purposes whatsoever, be deemed to be the sole assignee of such estate and effects.

Registrars to perform duties of, in certain cases.

**61.** The Registrar shall, unless and until another official assignee is appointed by the Court, discharge the duties of official assignee in all cases of Bankruptcy which originate within his district—and shall give such security—receive such remuneration and be subject to such rules and act in such manner as general orders shall direct. 5

Official assignee to act as creditors' assignee, in certain cases.

**62.** In case it shall appear to the Court to be for the benefit of the creditors of any Bankrupt's Estate, that any duty, right, power or authority by this Act devolved upon or given to the creditors' assignee after his appointment, should, prior to the appointment of such creditors' assignee, be performed or exercised by the official assignee, it shall be lawful for the Court, by order, to direct or authorize the official assignee to perform or exercise such duty, right, power or authority, and he shall therefore be authorized and required to perform or exercise the same. 10 15

Official assignee to take possession of Bankrupt's estate.

**63.** It shall be the duty of the official assignee, when ordered by the Court, to take possession of the Bankrupt's Estate and to retain possession thereof until the appointment of a creditors' assignee, and the official assignee shall be allowed, out of the Estate of the Bankrupt, such reasonable sum as shall have been expended by him in the wages of the person or persons employed by him for the purpose of taking and retaining possession, and all other necessary and proper charges, expenses and disbursements incident to the performance of the said duty. 20 25

Official assignee not to be personally responsible for his acts as such.

**64.** No official assignee shall be personally responsible or liable for any act done by him or by his order or authority in the execution of his duty as such official assignee by reason of the petitioning creditor's debt, trading or Act of Bankruptcy upon which any adjudication of Bankruptcy shall have been founded or of any or either of such matters being insufficient to support such adjudication. 30 35

Appointment of official assignee.

**65.** The Court may appoint, in its discretion, any other person instead of the Registrar to be official assignee of a bankrupt estate and may require him to give such security, and be subject to such rules and act in such manner as general orders shall direct—and such official assignee shall be removeable at the discretion of the Court who may appoint another in his place. 40

In case of the death of the official assignee.

**66.** On the death of any official assignee who shall have been appointed to act in any matter under this Act, the Court shall have power to appoint another official assignee to act in such matter. 45

**67.** Upon the appointment of the creditors' assignee the powers and duties of the official assignee shall cease and terminate, except as herein otherwise provided, and all the estate, both real and personal, of the Bankrupt, shall be divested 5 out of the official assignee and vested in the creditors' assignee, or shall, in case of the appointment of the official assignee to be creditors' assignee, continue vested in him as such creditors' assignee.

When duties of official assignee to cease.

**68.** The official assignee, when not appointed to be the 10 creditors' assignee, shall forthwith render to the creditors' assignee a full and particular account under his hand of the state of the Bankrupt's Estate, and of all receipts, payments and other transactions of such official assignee, and also a list of 15 all the creditors of the Bankrupt who have proved their debts against the Estate, and of all creditors who have authorized other persons to vote for them at meetings of creditors and whose authorities have been approved, and shall, unless the Court shall otherwise direct, transfer and hand over to the creditors' assignee, all the moneys, bills, notes or other negotiable 20 instruments in the hands of such official assignee belonging to the Bankrupt's Estate, and all books, papers, writings, securities, muniments of title and documents belonging to the Estate.

Official assignee to render an account to creditors' assignee.

**69.** The creditors' assignee shall compare such accounts 25 with the vouchers produced by the official assignee, and may call for such information from the official assignee as he may reasonably require concerning the estate, and shall audit the said account, and give to the official assignee a receipt for all moneys, bills, notes or other negotiable instruments, books, 30 papers, writings, securities, muniments of title and documents transferred and handed over by the official assignee to the creditors' assignee.

Creditors' assignee to audit the accounts of the official assignee.

**70.** The Court shall at the time of such transfer give such 35 directions as it may deem expedient with respect to the custody and inspection of the said books, papers, writings, securities, muniments of title and documents, and the creditors' assignee shall at all reasonable times afford to the bankrupt and to any creditor under the estate, or any person claiming to be a creditor, and to the attorney of such bankrupt, creditor or claimant 40 the fullest information in his power as to the condition from time to time of the estate and of all circumstances relating thereto.

Custody of Bankrupts' Books, Securities &c.

**71.** There shall be payable to the official assignee such 45 sum *per diem* as the Court may direct, regard being had to the amount of assets likely to be realized from the estate.

Remuneration of official assignee.

**72.** The official assignee may be chosen and appointed to be the creditors' assignee of any bankrupt's or debtor's estate, 50 Official assignee may be

Official assignee may be

appointed Creditors' assignees. or to be a trustee or inspector under any deed or memorandum of arrangement registered in any Court under this Act.

AS TO WHO SHALL BE DEEMED TRADERS UNDER THIS ACT.

Who shall be deemed traders.

**73.** All persons being merchants or using the trade of merchandize, Bankers, Brokers, persons insuring ships or other vessels, or their freight, or other matters against perils of the sea, 5  
or of inland navigation, builders, carpenters, shipwrights, keepers of inns, taverns, hotels or coffee houses, millers, lumberers, ship owners and all persons who, either for themselves or as agents or as factors for others, seek their living by buying or selling or by buying and letting for hire or by the workmanship of goods or commodities, shall be deemed traders within 10  
the scope and meaning of this Act; Provided that no father, grazier, common laborer or workman for hire or member of or subscriber to any building society, insurance company or any incorporated, commercial or trading company, established by 15  
Royal Charter or Legislative enactment, shall be deemed as such a trader within the meaning of this Act.

Proviso.

Act to extend to aliens.

**74.** This Act shall extend to aliens and denizens, both to make them subject thereto, and to entitle them to all the benefits given thereby. 20

Persons having privilege of Parliament may become Bankrupt.

**75.** Any person having privilege of Parliament may become a Bankrupt and be subject to all the provisions of this Act, in like manner as any other person, but such person having such privilege shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases made misde- 25  
meanors by this Act.

AS TO ACTS OF BANKRUPTCY GENERALLY.

**76.** The six sections of this Act next following this section shall apply to all debtors whether they be traders or not.

Departing the Province with intent to defeat creditors.

**77.** If any debtor shall with intent to defeat or delay his creditors depart this Province or, being out of this Province, 30  
shall remain abroad or shall conceal himself within this Province, to prevent his being arrested or shall suffer himself to be arrested or taken in execution for any debt not due or shall suffer himself to be outlawed, or procure his goods, money or chat- 35  
tels to be attached, sequestered or taken in execution, or make or cause to be made, either within this Province or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods or chattels, or make or cause to be made any fraudulent gift, delivery or transfer of any of his goods or chattels or shall 40  
remove or conceal any of his goods or chattels in order to prevent their being levied upon or taken in execution or attached under any process for debt, any such debtor doing, suffering, procuring, executing, permitting, making or causing to be made

Outlawry.

Fraudulent execution or conveyance, &c.

with such intent any of the acts, deeds or matters aforesaid, shall be deemed to have thereby committed an Act of Bankruptcy.

To be deemed acts of Bankruptcy.

78. If any debtor having been arrested, committed or detained for debt shall escape out of prison or custody, every such debtor shall be deemed to have thereby committed an act of Bankruptcy from the time of such arrest, commitment or detention.

Case of debtor's escape from custody.

79. No deed or instrument by which a debtor shall convey or shall covenant or agree to convey his estate and effects or the principal part thereof to a trustee of trustees for the benefit of his creditors shall be deemed fraudulent, provided the several conditions be observed which are required in and by the section of this Act; if any one of such several conditions shall not be observed or performed the deed or assignment shall be void and the execution thereof shall be an act of Bankruptcy by the debtor. ---

Conveyance of property, when not an act of Bankruptcy.

80. Any provision in any such conveyance or assignment for any allowance to the debtor executing the same not exceeding the amount to which such debtor would be entitled in Bankruptcy shall not prevent such conveyance or assignment from being a conveyance of all such debtors' estate or effects within the meaning of this Act.

Effect of provision for allowance to debtor.

81. If any debtor, after the filing of any Petition for Adjudication of Bankruptcy against him, shall pay money to the petitioning creditor or give or deliver to such petitioning creditor any satisfaction or security for his debt or for any part thereof, whereby such petitioning creditor may receive more in the dollar in respect of his debt than the other creditors, such payment, gift, delivery, satisfaction or security shall be an act of Bankruptcy, and if adjudication of Bankruptcy shall have been made under such petition the Court may either declare such adjudication to be valid and direct the same to be proceeded with or may order it to be annulled and a petition or new petition for adjudication may be filed, and such petition or new petition may be supported either by proof of such last mentioned or any other Act of Bankruptcy.

Compounding with petitioning creditor.

82. If any debtor shall file in the office of the Registrar of the Court of Bankruptcy for the District in which such debtor resides, a declaration in writing in such form as general orders shall direct, signed by such debtor and attested by the Registrar of the Court, or by an attorney or Solicitor, that he is unable to meet his engagements, every such debtor shall be deemed thereby to have committed an act of Bankruptcy, at the time of filing such Declaration; Provided a petition for adjudication of Bankruptcy shall be filed by or against him within two months from the filing of such declaration.

Filing a declaration of insolvency.

## AS TO ACTS OF BANKRUPTCY BY TRADERS.

Application of  
fourteen next  
following sec-  
tions.

**83.** The fourteen sections of this Act next following this section shall apply only to those debtors who at the time of any proceedings being taken under any of the Provisions of this act are traders within the meaning of the section of this Act.

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Lying in the  
prison or being  
confined on  
Gaol limits.

**84.** If any debtor being a trader having been arrested or committed to prison for debt or on any attachment for non payment of money shall upon such or any other arrest or commitment for debt or nonpayment of money or upon any detention for debt lie in prison for fourteen days or having been arrested for any cause shall lie in prison for fourteen days after any detainer for debt lodged against him and not discharged, or shall be confined upon the limits of any Gaol in Upper Canada, for more than thirty days, either upon mesne process or in execution in any civil action, every such debtor shall thereby be deemed to have committed an Act of Bankruptcy.

10

Suffering exe-  
cution to be  
levied.

**85.** If any execution shall be levied by seizure and sale of any of the goods and chattels of any debtor being a trader upon any judgment recovered after the passing of this Act in any action personal for the recovery of any debt or money demand in any Court of Record against such debtor; every such debtor shall be deemed to have committed an Act of Bankruptcy from the date of the seizure of such goods and chattels.

20

Judgment  
debtor sum-  
mons.

**86.** Every judgment creditor, whose judgment or judgments shall be for a sum not less than two hundred dollars, who is or shall be entitled to sue out against a debtor being a trader a writ of fieri facias, shall be entitled at the end of one week from the signing of Judgment to sue out against such debtor a summons, to be called a Judgment Debtor Summons, requiring him to appear and be examined respecting his ability to satisfy the debt.

25

Its issue.

**87.** The Judgment debtor summons shall issue out of the Court of Bankruptcy for the District in which the debtor had his usual or last known place of abode in Upper Canada.

Affidavit be-  
fore issue.

**88.** Before such Judgment Debtor Summons shall issue, the plaintiff, his attorney or agent, shall make and file with the Registrar of the Court from which the summons is required, an affidavit that the amount of the Judgment is unpaid and unsatisfied, and shewing that the debtor is a trader within the meaning of this Act, which affidavit shall be according to the form prescribed by general orders.

35

Service in the  
Province.—  
without the  
Province.

**89.** When the debtor is in this Province the summons shall be served personally, unless the Court shall in any case direct that service in some other manner shall be good service;

40



when the debtor is not in this Province, the Court, upon such evidence as shall satisfy it in what place or country he is or may probably be found, may order service on him in such place or country or within such limit and in such manner and form as shall seem fit.

90. When the debtor is in custody a duplicate of the summons shall be delivered to the sheriff or other person in whose custody he is who shall bring him up according to the summons. If debtor is in custody.

10 91. If service of the summons be not effected and the Court is satisfied that the debtor is keeping out of the way to avoid service, the Court may order that one or more notices be inserted in the Bankruptcy Gazette, for the District where the debtor had his last known place of abode, requiring him to appear on a day named being not less than fourteen days after the publication of the first notice. Notice, if personal service not effected.

20 92. Upon the appearance of the debtor he may be examined on oath by or on behalf of the creditor and by the Court respecting his ability to satisfy the debt and for the discovery of property applicable in that behalf, and shall be bound to produce on oath or otherwise such books, papers and documents in his possession or power relating to property applicable or alleged to be applicable to the satisfaction of the debt as the Court shall think fit and to sign his examination when reduced into writing, and any debtor who shall upon examination wilfully fail to discover fully and truly to the best of his knowledge and belief all his property, real and personal, inclusive of his rights and credits, and to produce all books, papers and documents in his possession or power relating thereto, shall be liable to be committed by the Court as in the case of a bankrupt. Examination of debtor upon his appearance.

35 93. The debtor on the return of the judgment debtor summons before the Judge may, by his Attorney or Agent, dispute the fact of his being a trader within the meaning of this Act, and the Judge, on proof of the facts which he may require to be made, orally or in writing, shall, subject to appeal, determine the question of such debtor being a trader, and if he shall determine that he is not such trader, then he shall dismiss the summons and the plaintiff shall pay the costs of the proceeding, together with such costs to the debtor for his attendance as the Judge in his discretion may deem proper. Determination as to whether debtor be a trader.

40 94. The Judge may, in his discretion, adjourn the proceeding on the summons from time to time and admit such further proof on such adjourned hearing as he may deem proper. Adjournment of proceedings.

45 95. If after service of such summons or due notice thereof, as aforesaid, such debtor shall not pay the debt and costs or Adjudication of Bankruptcy

and notification thereof.

secure or compound for them to the satisfaction of the creditor, the court may, on the appearance of the debtor, or if he shall not appear, having no lawful impediment allowed by the Court, adjudge him Bankrupt, without the presentation of a petition for adjudication or other proceeding; and where the debtor has not appeared, notice of such adjudication shall be served upon him in like manner as hereinafter provided, with respect to notice of adjudication to other persons adjudged bankrupt. 5

Delay to show cause against adjudication.

96. The debtor shall be allowed three days from such notice, or such further time, not exceeding seven days in the whole, as the Court shall think fit, for appearing to show cause against the adjudication; and if he appear within the time allowed, and show sufficient cause, the adjudication may be annulled; otherwise, at the end of the time allowed, or on the judgment of the Court against the sufficiency of the cause shown, the adjudication shall become absolute, and the notice thereof shall be forthwith given in the Gazette; and the adjudication shall have relation back to the service of the summons, or the insertion of the first notice in the Gazette as the case may be. 10 15 20

Certain provisions of this Act, to apply.

97. The provisions contained in this Act, relating to the committal of a person refusing to be sworn, or doing or omitting the other Acts or things therein mentioned, shall apply to a debtor appearing on a Judgment Debtor Summons.

#### AS TO PROCEEDINGS BEFORE ADJUDICATION.

No person liable to become bankrupt, by reason of acts committed twelve months before petition filed.

98. No person shall be liable to become bankrupt by reason of any Act of Bankruptcy committed more than *twelve months* prior to the filing of any petition for adjudication of bankruptcy against him, and no adjudication shall be deemed invalid by reason of any Act of Bankruptcy prior to the Debt of the petitioning creditor, provided there be a sufficient Act of Bankruptcy subsequent to such Debt. 25 30

Proceedings to obtain adjudication to be by petition.

99. Proceedings to obtain adjudication of Bankruptcy shall be by petition, such petition being in such form as general orders shall direct, and the truth thereof verified by the affidavit of the petitioner; every such petition shall be filed of record, and prosecuted as directed by this Act; and from and after the filing of such petition, in the case of a debtor petitioning against himself, and from and after adjudication, in the case of a petition presented by a creditor, the Court shall have full power and authority to take such order and direction with the body of the bankrupt as mentioned in this Act, as also with all his lands, tenements, and hereditaments, both within Upper Canada and abroad, which he shall have in his own right before he became Bankrupt, as also with all such interest in any such lands, tenements and hereditaments as such Bankrupt may lawfully depart withal, and with all his money, fees, offices, 35 40 45

annuities, funds, securities, goods, chattels, wares, merchandize, debts and property wheresoever they may be found or known, and to make or order sale thereof in manner herein mentioned, or otherwise order the same for satisfaction and  
**5** payment of the creditors of the Bankrupt.

**100.** Every petition for adjudication of Bankruptcy against or by any debtor, shall be filed and prosecuted in the Court within the District of which such debtor shall have resided or carried on business for the *six* months next immediately preceding the time of filing such petition, or for the longest period during such *six* months, except where otherwise in this Act provided; but the Court of Appeal in Bankruptcy may order any such petition to be prosecuted in any District, with or without reference to the District in which the debtor shall have  
**10** resided or carried on business, or may consolidate the proceedings or any part thereof under two or more petitions for adjudication of bankruptcy, or may impound any petition for adjudication of Bankruptcy, or judgment debtor summons and the proceedings thereunder, or any part thereof, upon such terms  
**20** as the Court of Appeal in Bankruptcy shall think fit, or may transfer any petition for adjudication of Bankruptcy, or judgment debtor summons, and the proceeding thereunder, and the prosecution or the further prosecution thereof, from the Court in any one District to the Court in any other District, and the  
**25** Court to which any such Transfer shall be made may remove the official assignee, and appoint a new official assignee to any such Bankruptcy.

Where petition shall be filed.

**101.** The amount of the debt of any creditor petitioning for Bankruptcy shall be as follows, that is to say :

**30** The debt of a single creditor, or of two or more persons being partners, shall amount to *two hundred dollars* or upwards ;

The debt of two creditors shall amount to *three hundred dollars* or upwards ;

The debt of three or more creditors shall amount to *five hundred dollars* or upwards ;

Every person who has given credit to any debtor upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such debtor committed an Act of Bankruptcy, may so petition or join in petitioning,  
**40** whether he shall have any security in writing for such sum or not.

Person whose claim is not yet due may petition.

**102.** If the debt stated by the petitioning creditor in his affidavit, or in his petition for adjudication, and verified by affidavit to be due to him from any debtor, shall not be really  
**45** due, or if, after a petition for adjudication of Bankruptcy filed, it

If petition be filed fraudulently or maliciously Court may order satisfaction.

shall not have been proved that the person against whom such petition has been filed was liable to an adjudication of Bankruptcy at the time of the filing of such petition, and it shall also appear that such petition was filed fraudulently or maliciously, the Court shall and may, upon petition of any person aggrieved by such petition, examine into the same, and order satisfaction to be made to him for the damages by him sustained. 5

Petition may be sued out by public officer of a copartnership.

**103.** A petition for adjudication of Bankruptcy, or judgment debtor summons, against any debtor indebted in the amount aforesaid to any copartnership duly authorized to sue and be sued in the name of a public officer of such copartnership may be filed or sued out by such public officer as the nominal petitioner for and on behalf of such copartnership. 10

Debtor may petition against himself.

**104.** Any debtor may petition for adjudication of Bankruptcy against himself, and such petition shall operate as a sufficient Act of Bankruptcy, without any previous declaration of insolvency by such debtor. 15

Schedule to be filed in such case.

**105.** Every debtor so petitioning against himself shall file in Court, together with his petition, or within *three* days after the same has been filed, a full, true, and accurate statement of his debts and liabilities of every kind, and of the names and residences of his creditors, and of the causes of his inability to meet his engagements, and such statement shall be in such form as General Orders shall direct, and shall be verified by the oath of the petitioner. 20 25

How debts to be computed.

**106.** In the computation of debts for the purposes of any petition under this Act there shall be reckoned as debts,—

1. Sums due to creditors holding mortgages or other available securities or liens;

2 Such interest and costs as shall be due in respect of any of the debts; 30

But there shall not be reckoned,—

1. The amount of the debts in respect of which the petitioner has already taken the benefit of insolvency, or bankruptcy; 35

2. Debts barred by any statute of limitations.

Notice to gaoler.

**107.** Every debtor who shall present a petition for adjudication whilst a prisoner in any prison or gaol, shall by writing give notice to the keeper of such gaol or prison of his intention so to do, and shall in his petition state that such notice has been given. 40

**108.** If the petitioning creditors, or debtor petitioning against himself, in any petition for adjudication of Bankruptcy, shall not proceed and obtain adjudication within three days after his petition shall have been filed or within such extended time as shall be allowed by the Court, the Court may, at any time within fourteen days then next following, upon the application of any creditor to the amount required to constitute a petitioning creditor, proceed to adjudicate on such petition, upon the proof of the debt of such creditor and of the act of Bankruptcy.

If adjudication be not obtained within three days, any other creditor may proceed.

**109.** Any creditor whose debt is sufficient to entitle him to petition for adjudication of Bankruptcy against all the partners of any firm, may petition for adjudication against one or more partners of such firm, and every such petition shall be valid, although it does not include all the partners of the firm; and in every petition for adjudication against two or more persons the Court may dismiss the same as to one or more of such persons, and the validity of such petition shall not be thereby affected as to any person with respect to whom such petition is not ordered to be dismissed, nor shall any such person's discharge be thereby affected.

Petitions against one or more partners in a firm.

**110.** After a petition for adjudication of Bankruptcy filed against or by one or more Member or Members of a Firm, any petition or petitions for adjudication of Bankruptcy against or by any other Member or Members of such firm shall be filed and prosecuted in the Court in which the first petition was prosecuted; and upon adjudication under such other petition or petitions all the estate, real and personal, of such Bankrupt or Bankrupts, shall vest in the official assignee or creditors assignee (as the case may be) under the first petition; and thereafter all separate proceedings under such subsequent petition or petitions shall, without affecting the validity of the first petition, be annexed to and form part of the first petition; provided that the Court of Appeal in Bankruptcy may direct that such other petition or petitions shall be filed and prosecuted in any other Court; and such direction shall be made by a Memorandum to that effect endorsed on such petition or petitions, and under the hand of the Chief Judge.

As to a second or other petition against one or more members of a firm.

**111.** After any petition for adjudication of Bankruptcy shall have been filed against any person, and it shall be proved to the satisfaction of the Court that there is probable cause for believing that such person is about to quit this Province, or to remove or conceal any of his goods or chattels, with intent to defraud his creditors, unless he be forthwith apprehended, it shall be lawful for the Court to issue a warrant in the form contained in Schedule C. to this Act annexed, directed to such person as the Court shall think fit, whereby he shall have authority to arrest the person against whom such petition shall have been filed, and also to seize his books, papers, moneys, secu-

Warrant against debtor about to quit this Province or to remove or conceal his goods.

rities for moneys, goods and chattels, wheresoever he or they may be found, and him and them safely keep until further order of the Court; Provided always, that any person arrested, or whose books, papers, moneys, securities for moneys, goods or chattels, have been seized under any such warrant, may apply, at any time after such arrest or seizure, to the Court for an order or rule on the petitioning creditor to show cause why the person arrested should not be discharged out of custody, or why his books, papers, moneys, securities for moneys, goods and chattels, should not be delivered up to him; and it shall be lawful for the Court to make absolute or discharge such rule or order. 5 10

Court may summon witnesses before adjudication to prove act of Bankruptcy.

**112.** The Court, before adjudication, may summon before it any person whom such Court shall believe capable of giving any information concerning any Act of Bankruptcy committed by the person against whom a petition for adjudication of Bankruptcy has been filed, and may require such person to produce any books, papers, deeds, and writings, and other documents in his custody, possession, or power, which may appear to the Court to be necessary to establish such Act of Bankruptcy; and it shall be lawful for the Court to examine any such person upon oath, by word of mouth or interrogatories in writing, concerning such Act of Bankruptcy. 15 20

#### AS TO PROCEEDINGS UNDER ADJUDICATION.

Court to make adjudication, &c., upon certain proofs.

**113.** The Court, under any petition filed by a Creditor, shall, upon Proof of his Debt, and of an Act of Bankruptcy committed by the Debtor, adjudge such Debtor bankrupt; and under a Petition filed by a Debtor, the Court shall, upon such Petition, adjudge the Debtor bankrupt. 25

Appointment of official assignee.

**114.** At the same time with the adjudication the Court shall make an order appointing an Official assignee to Act in the Matter as herein provided. 30

In case petitioning creditor's debt be insufficient to support adjudication.

**115.** If after Adjudication the Debt of the Petitioning Creditor be found by the Court to be insufficient to support such Adjudication, the Court may, upon the Application of any other Creditor having proved a Debt sufficient to support an Adjudication, order the Petition for Adjudication of Bankruptcy to be proceeded with, and it shall by such order be deemed valid. 35

Bankrupt to have notice before advertisement of adjudication.

**116.** Before Notice of any Adjudication of Bankruptcy on any Creditor's Petition shall be given in the Gazette, a Duplicate of such Adjudication shall be served on the person adjudged bankrupt, personally, or by leaving the same at the usual or last known Place of Abode or Place of Business of such person; and such person shall be allowed *three* days, or such extended time, not exceeding *seven* days in the whole, as 40 45

the Court shall think fit, from the service of such duplicate, to appear and show cause against the validity of the adjudication, and if he shall within such time appear to show cause and shall show sufficient cause against the validity of such adjudication, the Court shall thereupon order the adjudication to be annulled, although cause may not have been fully shown until after the expiration of the time so allowed. If cause shall not be then shown to the satisfaction of the Court, the Court shall direct Notice of such adjudication to be given in the Gazette ; provided that nothing herein contained shall be construed to prevent the immediate Seizure of the goods of any Bankrupt upon the adjudication of Bankruptcy.

117. The Court shall in every Notice of adjudication appoint a day for the Bankrupt to surrender and conform, which shall be not more than *forty-two* days from the appearance of such Notice of adjudication in the Gazette ; provided that the Court shall have power from time to time to enlarge the time for the Bankrupt surrendering himself for such time as the Court shall think fit.

118. If a person adjudged bankrupt shall, before the expiration of the time allowed for showing cause against adjudication, file in the Court a declaration in writing signed by him, the signature being witnessed by a Solicitor of the Court, to the effect that he surrenders and submits himself to the Court, and consents to the adjudication being advertised, the Court may, on the application of the Bankrupt, if it think that his personal attendance for surrender on that occasion may be safely and properly dispensed with, make an order dispensing therewith accordingly, and the Bankrupt shall be deemed to have duly surrendered, and the Court shall forthwith cause Notice of the adjudication to be advertised.

119. If any Bankrupt apprehended by any warrant of the Court shall, within the time allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if had he voluntarily surrendered.

120. Forthwith after the insertion of the Notice of the adjudication in the Gazette, or, if the Bankrupt before the expiration of the time allowed for showing cause against the adjudication surrender himself and give consent to such insertion, forthwith after such surrender, the Bankrupt shall deliver up to the official Assignee upon oath before the Court or any registrar thereof, or any Judge of a Court of Bankruptcy, all books of account, papers, and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person ; and every Bankrupt, not in prison or custody, shall at all times after such surrender attend the official and Creditors' Assignee upon every reasonable Notice in writing for that purpose given by them to him, or left at his

Notice of meeting.

Where personal appearance for surrender dispensed with.

Bankrupt apprehended by Warrant.

Bankrupt to deliver up his books of account to the official assignee upon oath.

usual or last known place of abode, and shall assist them in making out the accounts of his estate; and such Bankrupt, after he shall have surrendered, may at all reasonable times before the expiration of such time as shall be allowed to him to finish his examination, inspect his books, papers and writings 5 in the presence of the official or Creditors' Assignee, as the case may be, or any person appointed by such Assignee; and every such Bankrupt, after he shall have obtained his discharge, shall, upon demand in writing given to him or left at his usual or last known place of abode, attend the said Assignee to settle any 10 accounts between his estate and any debtor or creditor thereof, or attend any Court of Record to give evidence touching the same, or do any Act necessary for getting in or protecting the said estate, for which attendance he shall be paid out of the estate his reasonable expenses, if any, incurred in giving such 15 attendance, together with such sum per day as shall be directed by the Court.

Search warrants may be granted.

**121.** Where it shall be made to appear to the satisfaction of the Court that there is reason to suspect and believe that any property of any bankrupt is concealed in any House or other 20 place not belonging to such bankrupt, the Court may grant a Search Warrant to some person appointed by the Court, and it shall be lawful for such person to execute such Warrant according to the Tenor thereof; and such person shall be entitled to the same protection as is allowed by Law in execution of a 25 Search Warrant for property reputed to be stolen or concealed; and every such Search Warrant shall be in the form contained in Schedule D to this Act annexed.

No action against persons acting in obedience to warrant of the Court.

**122.** No action shall be brought against any such person for anything done in obedience to any such Warrant unless 30 Demand of the Perusal and Copy of such Warrant have been made or left at the usual Place of Abode of such Person, by the Party intending to bring such Action, or by his Attorney or Agent, in Writing, signed by such Party, and unless the same have been refused or neglected for Six Days after such Demand; 35 and if after such Demand, and Compliance therewith, any Action be brought against such Person without making the Petitioning Creditor Defendant, if living, the Jury, at the Trial of such Action, on the Production and Proof of such Warrant, shall give their Verdict for the Defendant, notwithstanding any 40 Defect of Jurisdiction in the Court by which such Warrant shall have been granted; and if such Action be brought against the Petitioning Creditor and the Person so appointed, the Jury shall, on Proof of such Warrant, give their Verdict for such Person, notwithstanding any such Defect of Jurisdiction; 45 and if the Verdict shall be given against the Petitioning Creditor the Plaintiff shall recover his costs against him, to be taxed so as to include such costs as the Plaintiff is liable to pay to such person.



- 123.** In any action brought against the petitioning creditor, either alone or jointly with any person so appointed by the Court, for anything done in obedience to the Warrant of the Court, proof by the Plaintiff in such action that the Defendant or Defendants, or any of them, is or are petitioning creditor or creditors, shall be sufficient for the purpose of making such Defendant or Defendants liable, in the same manner and to the same extent as if the Act complained of in such action had been done or committed by such Defendant or Defendants.
- 10** **124.** It shall be lawful for any person and his Assistants, acting under Warrant of the Court, to break open any house, chamber, shop, warehouse, door, trunk, chest, or other place of or belonging to any Bankrupt, where such Bankrupt or any of his property shall be reputed to be, and seize upon the body or property of such Bankrupt, and if he be in Prison or in custody to seize any property of his (save the articles excepted by this Act and his necessary Wearing Apparel) in the custody or possession of such Bankrupt, or of any other person, in any Prison or place where such Bankrupt is in custody.
- 20** **125.** Where a Search Warrant has been granted by the Court as aforesaid, and it shall be made to appear to the satisfaction of a Justice of the Peace for the City, Town, or County where the Warrant is to be executed, or to any other authority aforesaid, that there is reason to suspect and believe that the property or some part of the same to which the Warrant applies is concealed in some house or place within such City, Town, or County other than the house or place described in the Warrant, the Justice or other such authority may back the Warrant, describing thereon the house or place in which the property is suspected and believed to be concealed, and thereupon the person by whom the Warrant is to be executed may execute it according to the tenor of it as so backed, as if the house or place so described had been originally described in the Warrant.
- 35** **126.** If the Bankrupt be not in Prison or custody at the date of the Adjudication, he shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the time by this Act limited for such surrender, and for such further time as shall be allowed him for finishing his examination, and for such time after finishing his examination until his discharge as the Court shall from time to time, by endorsement upon the Summons of such Bankrupt, appoint; and whenever any Bankrupt is in prison or in custody under any civil process, attachment, execution, commitment, or sentence, the Court may, by Warrant directed to the person in whose custody he is confined, cause him to be brought before it at any sitting, either public or private, and if he be desirous to surrender he shall be so brought up, and the expense thereof shall be paid out of his estate and effects.

Proof in such actions that Defendant is petitioning creditors sufficient to render him liable.

Persons acting under warrant may break into Bankrupt's House, &c.

Amendment of warrant.

Bankrupt not being in custody at date of adjudication to be free from arrest.

Adjudication  
against pri-  
soner for debt  
to relate back  
to date of com-  
mitment.

**127.** Every Adjudication against any Prisoner for Debt so brought up as aforesaid shall have relation back to the date of his Commitment or Detention, as the case may be, and shall be as valid and effectual for all purposes as if it had been made under any other of the Provisions of this Act.

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AS TO PROCEEDINGS AFTER ADJUDICATION.

Release of  
prisoner.

**128.** Where any Person who has been adjudged bankrupt, and has obtained Protection from Arrest, is in prison or in custody for Debt at the Time of his obtaining such Protection, the Court may order his immediate Release, either absolutely or upon Conditions, unless it shall appear by any Judgment, 10 Order, Commitment, or Sentence under which the Bankrupt is in prison or in custody, or by the Record or Entry of any such Judgment, Order, Commitment, or Sentence, and the Pleadings or proceedings previously thereto, that he is in prison or in cus- 15 tody for any Debt contracted by Fraud or Breach of Trust, or by reason of any Prosecution against him whereby he has been convicted of any Offence, or for any Debt contracted by reason of any Judgment in any Proceeding for Breach of the Revenue Laws, or in any Action or Suit for Breach of Promise of Marriage, Adultery, Seduction, Libel, Slander, Assault, Battery, mali- 20 cious Arrest, malicious Trespass, or maliciously filing or prosecuting a Petition for Adjudication of Bankruptcy; Provided also, that such Release shall in nowise affect any Rights of the Creditor at whose Suit the Bankrupt may be in prison or in custody against the Bankrupt, except the Right of detaining 25 him in prison or in Custody whilst protected from Imprisonment by order of the Court.

Person may be  
ordered to at-  
tend Bank-  
rupt in prison.

**129.** Whenever any Bankrupt is in prison or in custody under any process, attachment, execution, commitment, or sentence, the Court may appoint a person to attend him from 30 time to time, to produce to him his books, papers, and writings, in order that he may prepare his statement of accounts, and show the particulars of his Estate and effects, previous to his last examination.

Bankrupt ar-  
rested to be  
discharged on  
producing  
protection.

**130.** If any Bankrupt shall be arrested for debt or on any 35 escape warrant in coming to surrender, or shall, after his surrender, and while protected by order of the Court, be so arrested, he shall, on producing such protection to the officer who shall arrest him, and giving such officer a copy thereof, be imme- 40 diately discharged; and if any officer shall detain any such Bankrupt after he shall have shown such protection to him, except for so long as shall be necessary for obtaining a copy of the same, such officer shall forfeit to such Bankrupt, for his 45 own use, the sum of twenty dollars for every day he shall detain such Bankrupt, to be recovered by action of debt in any Court of Record, in the name of such Bankrupt, with full costs of suit.

**131.** The petitioning creditor shall at his own costs file and prosecute his petition, until the choice of an Assignee by the creditors; and the Court shall, at or immediately after such choice, make order for the payment of such costs out of the Estate of the Bankrupt, in course of priority to be settled by general orders.

Petitioning creditor to proceed at his own cost, till creditors' assignee chosen.

**132.** No petition for adjudication of Bankruptcy shall be dismissed, nor any adjudication annulled, by reason only that the petition, or adjudication, or Act of Bankruptcy, has been concerted or agreed upon between the Bankrupt, his solicitor or agent, or any of them, and any creditor or other person.

No petition, &c., to be annulled by reason of concert.

**133.** If any Bankrupt shall die after adjudication, the Court may proceed in the Bankruptcy as if such Bankrupt were living.

Death of Bankrupt.

#### AS TO PROCEDURE AFTER ADJUDICATION.

**134.** Immediately on adjudication it shall be the duty of the official Assignee to take possession of the bankrupt's Estate, and to retain possession thereof until the appointment of a creditors assignee; but if such official Assignee, or if the Court, upon the representation of any creditor, shall be of opinion that the keeping possession of the Bankrupt's property is not requisite for the due protection of the creditors, such possession shall not be continued.

Official assignee to take possession of Bankrupt's estate.

**135.** It shall be the duty of the Official Assignee, immediately after adjudication, by examination of the Bankrupt personally and of his books and accounts, to ascertain the persons who are creditors of the bankrupt, and to give notice by the General Post to such creditors of the first Meeting of creditors.

Notice to creditors.

**136.** At the time of adjudication, the Court shall appoint a meeting of the creditors, of which *seven* days' notice shall be given in the Gazette, and which meeting shall be held at such time and place as the Court shall appoint.

Meeting of creditors.

**137.** The bankrupt shall have notice of such last mentioned meeting, and shall be required to attend the same. In case at such meeting or at any other meeting of creditors any proposal shall be made by or on behalf of the bankrupt which it shall appear to the major part in value of the creditors then present ought to be accepted, or if it shall appear to the majority in value of the creditors present at any Meeting to be desirable on any ground to resolve, and such majority shall resolve that no further proceedings be taken in Bankruptcy, the meeting shall be adjourned for *fourteen* days, in order that notice of such resolution may be given to every creditor by the official or cre-

Option to creditors.

ditors' assignee, which shall be done accordingly; and if at such adjourned meeting *three fourths* in number and value of the creditors present shall so resolve, the proceedings in Bankruptcy shall be suspended, and the estate and effects to the Bankrupt shall be wound up and administered in such manner as such majority shall direct. 5

AS TO EXAMINATION OF BANKRUPT, &C.

Court may  
summon and  
examine  
Bankrupt.

**138.** The Court may summon any bankrupt before it, whether such Bankrupt shall have obtained his discharge or not; and in case he shall not come at the time appointed by the Court (having no lawful impediment allowed by the Court,) it shall be lawful for the Court by warrant, to authorize and direct any person the Court shall think fit, to apprehend and arrest such Bankrupt, and bring him before the Court; and upon the appearance of such Bankrupt, or if such Bankrupt be present at any sitting of the Court, it shall be lawful for the Court to examine such Bankrupt on oath, either by word of mouth or on interrogatories in writing, touching all matters relating to his trade, dealings, or estate, or which may tend to disclose any secret grant, conveyance, or concealment of his lands, tenements, goods, money, or debts, and to reduce his answers into writing, which examination, so reduced into writing, the said Bankrupt shall sign and subscribe. 10 15 20

Court may  
summon and  
examine  
Bankrupt's  
wife.

**139.** It shall be lawful for the Court to summon before it the wife of any Bankrupt, and to examine her on oath either by word of mouth or interrogatories in writing, for the finding out and discovery of the estate, goods and chattels of such Bankrupt concealed, kept, or disposed of by such wife, in her own person or by her own act, or by any other person, and she shall incur such danger or penalty for not coming before the Court, or for refusing to be sworn and examined, or for refusing to sign or subscribe her examination, or for not fully answering to the satisfaction of the Court, as herein provided. 25 30

If Bankrupt be  
keeping out of  
the way, Court  
may issue  
Warrant.

**140.** If in any case it shall be proved to the satisfaction of the Court that any Bankrupt is keeping out of the way, and cannot be personally served with a summons, and that due pains have been taken to effect such personal service, or that there is probable cause for believing that he is about to quit this Province or to remove or conceal any of his goods or chattels, unless he be forthwith apprehended, it shall be lawful for such Court, by warrant, to authorize and direct any person it shall think fit to apprehend and arrest such Bankrupt, and bring him before the Court, to be examined in like manner as if he appeared upon a summons. 35 40

Bankrupt or  
his wife may  
be committed

**141.** If any Bankrupt or the wife of any Bankrupt shall refuse to make and sign the declaration contained in the Schedule E to this Act annexed, or shall refuse to be sworn upon 45

any examination, or if any other person shall refuse to be sworn or make a solemn affirmation or solemn declaration (as the case may be), or shall refuse to answer any lawful question put by the Court, or shall not fully answer any such question to the satisfaction of the Court, or shall refuse to sign or subscribe his examination when reduced into writing (not having any lawful objection allowed by the Court), or shall not produce any books, papers, deeds and writings, or other documents in his custody or power, relating to any of the matters under inquiry which such Bankrupt, wife of Bankrupt, or other person is required by the Court to produce, and to the production of which he shall not state any objection allowed by the Court, it shall be lawful for the Court, by warrant, in such of the Forms contained in Schedule F to this Act annexed as shall be applicable to the case, to commit such Bankrupt, wife of Bankrupt, or other person, to such prison as the Court shall think fit, there to remain without bail until he shall submit himself to the Court to be sworn or to make a solemn affirmation or solemn declaration and full answers make to the satisfaction of such Court to all such lawful questions as shall be put by the Court, and sign and subscribe such examination, and produce such books, papers, deeds, writings, and other documents in his custody or power, and to the production of which no such objection as aforesaid has been allowed.

to prison in certain cases.

25 **142.** In any such warrant of commitment it shall not be necessary to set forth or specify any question or any part of the examination of the person so committed, but it shall be sufficient to refer in the warrant to the examination or deposition of the person as remaining on the file of proceedings, and to specify in the said warrant the precise date of the examination or deposition so referred to; provided, however, that in every case in which any person shall be so committed for refusing to answer or for not fully answering any question put to him, every such question shall be specified in the examination or deposition of the person committed remaining on the file of proceedings, and so referred to as aforesaid; and provided also, that a copy of the said examination or deposition so referred to shall be delivered personally to the person committed within *twenty-four* hours next after his actual committal to prison; and in default of the said copy being delivered, the person committed shall be discharged from custody, either by the Court or by the Judge before whom such person may be brought by *habeas corpus*, with such costs, if any, as the said Court or Judge may deem just.

Question, &c., need not be set forth in Warrant of commitment.

45 **143.** If any person so committed shall sue forth any writ of *habeas corpus* in order to be discharged from such commitment, he shall not be discharged by reason of any mere matter of form, but if the Court or Judge before whom he shall be brought, upon inspection and consideration of the whole of the examination or deposition of such person, shall be of opinion,

Discharge person committed.

that the answer or answers of such person is or are satisfactory, the Court or Judge may order the person so committed to be discharged.

Court may  
summon per-  
sons suspect-  
ed of having  
Bankrupt's  
property.

**144.** After adjudication it shall be lawful for the Court to summon before it any person known or suspected to have any of the estate of the Bankrupt in his possession, or who is supposed to be indebted to the Bankrupt, or any person the Court may believe capable of giving information concerning the person, trade, dealings, estate or pecuniary affairs of the Bankrupt, or concerning any Act of Bankruptcy committed by him, or any information material to the full disclosure of his dealings or pecuniary affairs; and the Court may require such person to produce any books, papers, deeds, writings or other documents in his custody or power which may appear to the Court necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the Court is authorized to inquire into; and if such person so summoned shall not come before the Court at the time appointed, having no lawful impediment allowed by the Court, it shall be lawful for the Court, by warrant, to authorize and direct the person or persons therein named for that purpose to apprehend and arrest such person, and bring him before the Court for examination.

Service of  
summons  
where person  
keeps out of  
the way.

**145.** Where it shall be shown by affidavit to the satisfaction of the Court that any person to whom any such summons is directed is keeping out of the way, and cannot be personally served therewith, and that due pains have been taken to effect such personal service, it shall be lawful for the Court to order by endorsement upon the summons that the delivery of a copy of such summons to the wife or servant or some adult inmate of the house or family of the person at his usual or last known place of abode or business, and explaining the purport thereof to such wife, servant or inmate, shall be equivalent to personal service, and in every such case the service of such summons in pursuance of such order shall be deemed to be of the same force and effect, to all intents and purposes, as if the party to whom such summons was directed had been personally served therewith.

Power to ex-  
amine persons  
summoned or  
present at any  
sitting.

**146.** Upon the appearance of any person summoned or brought before the Court upon any warrant as aforesaid, or if any person be present at any sitting of the Court, it shall be lawful for the Court to examine any such person upon oath, either by word of mouth or by interrogatories in writing, concerning the person, trade, dealings, estate or pecuniary affairs of any Bankrupt, or concerning any Act or Acts of Bankruptcy by any Bankrupt committed, and to reduce into writing the answers of every such person, and such answers so reduced into writing such person examined is hereby required to sign and subscribe.

**147.** Any Bankrupt or Bankrupt's wife who shall upon any examination upon Oath or Affirmation, or upon the declaration directed by this Act, and any person who shall upon any examination upon Oath or Affirmation, or in any affidavit or deposition on Oath, Affirmation or declaration, wilfully and corruptly give false evidence, or wilfully and corruptly swear, affirm, or declare any thing which shall be false, being convicted thereof, shall be liable to the penalties of wilful and corrupt perjury.

False evidence  
perjury.

**148.** Any person who shall wilfully conceal any Real or Personal Estate of the Bankrupt or Debtor, and who shall not, within *forty-two* days after the filing of the Petition for Bankruptcy or arrangement discover such Estate to the Court or to the Assignees, shall forfeit the sum of *four hundred dollars* and *double* the value of the Estate so concealed. And any person who shall after such time voluntarily discover to the Court or to the Assignee any part of such Estate not before come to the knowledge of the Assignee shall be allowed *five* per centum thereupon, and such further reward as the Assignee, with the consent of the Court, shall think fit, to be paid out of the Estate recovered on such discovery.

Concealing  
Bankrupt's  
effects.

Allowance to  
persons making  
discovery.

**AS TO THE POWER OF THE COURT OVER CERTAIN DESCRIPTIONS OF PROPERTY.**

**149.** If any Bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the Court shall have power to order the same to be sold and disposed of for the benefit of the creditors under the Bankruptcy, provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of the Laws for the time being in force for the registering of vessels in this Province, or any sale or mortgage of personal property *bona fide* made according to law and under the provisions of the forty-third chapter of the Consolidated Statutes for Upper Canada, intituled: *An Act respecting mortgages and sales of personal property.*

Goods in order  
and disposition.

**150.** If any Bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration,) have conveyed, assigned, or transferred to any of his children, or to any other person, any hereditaments, annuities, leases, goods or chattels, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or into any other person's name, the Court shall have

Power of  
Court over  
certain con-  
veyances,  
&c., made by  
Bankrupt.

power to order the same to be sold and disposed of for the benefit of the creditors under the Bankruptcy; and every such sale shall be valid against the Bankrupt, and such children and persons, and against all persons claiming under him or them.

Where Bankrupt beneficially entitled to stock, Court may make order for transfer.

**151.** If any Bankrupt shall have any Government stock, funds, or annuities, or any of the stock of any public Company, in Upper Canada, it shall be lawful for the Court, by writing, to order all persons whose act or consent is thereto necessary to transfer the same into the name of the Assignee, and to pay all dividends upon the same to the official or creditors Assignee, as the case may be; and all such persons whose act or consent is so necessary are hereby indemnified for all things done or permitted pursuant to such order. 5 10

Goods under attachment to be delivered up.

**152.** All goods and chattels of any Bankrupt which shall at the filing of the petition be under seizure by virtue of any attachment shall, upon demand, be delivered up by all persons having the custody of the same to the official or creditors Assignee, as the case may be, and the Court may make order accordingly 15

Where Bankrupt is trustee, Court of Appeal in Bankruptcy may order conveyance or assignment to another trustee.

**153.** If any Bankrupt shall as trustee be seized, possessed of, or entitled to, either alone or jointly, any Real or Personal Estate, or any interest secured upon or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any Government stock, funds, or annuities, or any of the stock of any public Company, in Upper Canada, it shall be lawful for the Court of Appeal in Bankruptcy, on the petition of the person entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice given to all other persons (if any) interested therein, to order the Assignee, and all persons whose act or consent thereto is necessary, to convey, assign, or transfer the said estate, interest, stock, funds, or annuities, to such person as the said Court shall think fit, upon the same trusts as the said estate, interest, stock, funds, or annuities, were subject to before the Bankruptcy, or such of them as shall be then subsisting and capable of taking effect, and also to receive and pay over the rents, issues profits, dividends, interest, or produce thereof, as the said Court shall direct. 20 25 30 35

Titles to property sold not to be impeached unless proceedings instituted.

**154.** No title to any Real or Personal Estate sold under any Bankruptcy shall be impeached by the Bankrupt, or any person claiming under him, in respect of any defect in the Petition for Bankruptcy, or in any of the proceedings under the same, unless the Bankrupt shall, within the time allowed by this Act, have commenced proceedings to dispute, dismiss, or annul the Petition or Adjudication, and duly prosecuted the same. 40 45

After adjudication Court may order

**155.** After the Adjudication of Bankruptcy shall have been advertised in the Gazette, it shall be lawful for the Court to



order any Treasurer or other officer, or any Banker, Attorney, delivery to assignee of Bankrupt's moneys, &c.  
 or Solicitor, or other Agent of the Bankrupt, to pay and deliver  
 over to the Assignee, to the credit of the Bankrupt's Estate, all  
 moneys or securities for money in his custody, possession, or  
 5 power, as such officer or agent, and which he is not by law  
 entitled to retain as against the Bankrupt or his Assignees.

AS TO TRANSACTIONS WITH THE BANKRUPT AND EXECUTIONS  
 AGAINST HIS PROPERTY UP TO THE TIME OF THE BANKRUPTCY  
 OR WITHIN A LIMITED TIME PREVIOUS THERETO.

156. All claims, liens, rights of priority, and all other pri- Claims, &c.,  
 vileges and benefits respecting the estate and effects of any due at the  
 Debtor who may become a Bankrupt to which any Creditor passing of this  
 10 may be lawfully entitled at the time of the passing of this Act, Act to be valid  
 by reason of any Chattel Mortgage, Judgment, execution, and may be  
 attachment or sequestration then subsisting, shall be as enforced.  
 valid and effectual to all intents and purposes, and such Cre-  
 ditor shall have the same right to proceed upon and enforce  
 15 such chattel mortgage, judgment, execution, attachment or  
 sequestration against the estate and effects which such  
 debtor may have or be entitled to at the time of his Bankruptcy,  
 as if this Act had not been passed.

157. Any payment which may be made *bona fide* by a Certain pay-  
 20 Debtor at any time previous to his Bankruptcy on any *bona* ments *bona*  
*fide* chattel mortgage, judgment, execution, attachment or *fide* before  
 sequestration subsisting at the time of the passing of this Act, Bankruptcy to  
 shall not be deemed a fraudulent preference under this Act. be valid.

158. All payments really and *bona fide* made by a Bankrupt What pay-  
 25 or by any person on his behalf before the filing of the Petition ments, &c., by  
 for adjudication of Bankruptcy, to any creditor of such Bank- Bankrupt  
 rupt, and all payments really and *bona fide* made to any Bank- valid.  
 rupt before the filing of such Petition, and all conveyances  
 by any Bankrupt *bona fide* made and executed before the  
 30 filing of such petition, and all contracts, dealings, and  
 transactions by and with any Bankrupt, really and *bona*  
*fide* made and entered into before the filing of such Peti-  
 tion, and all Executions, Sequestrations, and Attachments  
 35 against the lands and tenements of any Bankrupt *bona fide*  
 executed by Seizure, and all Executions and Attachments  
 against the goods and chattels of any Bankrupt, *bona fide* exe-  
 cuted and levied by seizure and sale before the date of the  
 filing of such Petition, shall be deemed to be valid notwith-  
 40 mitted; provided the person so dealing with or paying to or  
 being paid by such Bankrupt, or at whose suit or on whose  
 account such Execution, Sequestration, or Attachment shall  
 have issued, had not, at the time of such payment, conveyance,  
 contract, dealing, or transaction, or at the time of so executing  
 45 or levying such Execution, Sequestration or Attachment, or at

**Proviso.** the time of making any sale thereunder, notice of any prior Act of Bankruptcy by such Bankrupt committed; provided, also, that nothing herein contained shall be deemed or taken to give validity to any payment or to any delivery or transfer of any goods or chattels made by any Bankrupt, being a fraudulent preference of any creditor of such Bankrupt, or to any conveyance or equitable mortgage made or given by any Bankrupt by way of fraudulent preference of any creditor of such Bankrupt, or to any Execution or Sequestration founded on a judgment on a Warrant of Attorney, or *cognovit actionem*, or Judge's Order, obtained by consent, given by any Bankrupt by way of fraudulent preference. 5 10

**Attachments, &c., when void.** **159.** If any attachment, sequestration, or execution be issued against any Bankrupt, by virtue whereof his estate and effects, or any of them, may be attached, sequestrated, or taken in Execution at any time within sixty days next before the filing of the Petition for adjudication of Bankruptcy, such Attachment, sequestration, or Execution, shall be void, in favour of the Assignee, as against the attaching, sequestering, or Execution Creditor, except that such creditor shall, if the Attachment, Sequestration, or Execution would have been valid but for this provision, be entitled to retain out of any money already realised his costs of suit, and of the Attachment, Sequestration, or Execution, or to proceed with such Attachment, Sequestration or Execution for the purpose of realising such costs; but on satisfaction of such costs, or on tender of the amount thereof by the Assignee to the Creditor, it shall be lawful for the Assignee to recover from such Creditor the property so attached, sequestrated, or taken in Execution, or the residue thereof, or the proceeds thereof, as the case may be. 15 20 25 30

**Payments, &c., when fraudulent.** **160.** Any payment made by any bankrupt or by any person on his behalf, and any transfer so made or caused to be made by any bankrupt or by any person on his behalf, of any of his goods or chattels, within sixty days next before the filing of the petition for Adjudication of Bankruptcy, not being for a reasonable and sufficient consideration given or agreed to be given at the time, to any creditor of such bankrupt, or to any person in trust for or to or for the use, benefit and advantage of such creditor, shall be deemed a fraudulent preference of such creditor, and such payment, delivery, or transfer shall not be available to the creditor as against the assignee, but he shall be paid rateably with the other creditors, and the full amount of such payment made, and the goods and chattels delivered, or their full value, shall be forthcoming to and recoverable by the assignee from such creditor. 35 40 45

**Conveyance and equitable mortgage, when a fraudulent.** **161.** Any conveyance or equitable mortgage made and executed or given by any bankrupt within sixty days next before the filing of the petition for Adjudication of Bankruptcy, not being for a reasonable and sufficient consideration given or 45

- agreed to be given at the time, or in pursuance of an agreement in writing made at the time of contracting an antecedent debt, and produceable under the Adjudication, and the Bankrupt being at the time of making and executing or granting the same unable to meet his engagements, shall be deemed a fraudulent preference of the creditor to whom or in trust for whom or to or for the use, benefit, or advantage of whom such conveyance or mortgage shall have been made and executed or granted, and shall not be available to him as against the assignee; but such creditor shall be paid rateably with the other creditors, and the property conveyed or charged, or the full value thereof, shall be forthcoming to or recoverable by the assignee from such creditor, or from the person to whom the same shall, in trust for him, or to his use, benefit, or advantage, have been conveyed or mortgaged, or from any person to whom such creditor or such trustee shall have conveyed or mortgaged the same, such person having at the time of such conveyance or mortgage notice of an Act of Bankruptcy committed by the Bankrupt.
- 162.** No purchase from any Bankrupt *bona fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an Act of Bankruptcy by such Bankrupt committed, shall be impeached by reason thereof, unless a petition for Adjudication of Bankruptcy shall have been filed within *twelve* months after such Act of Bankruptcy.

ulent preference.

*Bona fide* purchases, when valid.

#### OF WARRANTS OF ATTORNEY, &c.

- 163.** Every warrant of Attorney to confess judgment in any personal action, given by any Bankrupt after the commencement of this Act, and within *sixty* days of the filing of a petition for Adjudication of Bankruptcy by or against such Bankrupt, and being for or in respect of (wholly or in part) an antecedent debt or money demand, and every *cognovit actionem* or consent to a Judge's order for judgment given by any Bankrupt at any time after the commencement of this Act, and within *sixty* days of the filing of any such petition in any action commenced by collusion with the Bankrupt, and not adversely, or purporting to have been given in an action, but having been in fact given before the commencement of any action against the Bankrupt, such Bankrupt being unable to meet his engagements at the time of giving such warrant of Attorney, *cognovit actionem*, or consent, (as the case may be,) shall be deemed and taken to be null and void, whether the same shall have been given by such Bankrupt in contemplation of Bankruptcy or not.

Warrants of Attorney *cognovits* and consents to Judge's order given within *sixty* days after filing petition to be void.

- 164.** In all cases, after the commencement of this Act, where any Bankrupt shall at any time previously to the filing of the petition for Adjudication of Bankruptcy by or against such Bankrupt have executed any warrant of Attorney to con-

Warrant of Attorney and *cognovit actionem* not to be acted upon

against goods  
of Bankrupt  
after adjudi-  
cation.

ness judgment, or shall have given any *cognovit actionem* or bill of sale, whether for a valuable consideration or otherwise, no person shall, after the Adjudication of Bankruptcy of such Bankrupt, avail himself of any execution or sequestration issued or to be issued upon any judgment obtained or to be obtained upon such warrant of Attorney or *cognovit actionem*, or of such bill of sale, either by seizure and sale or sequestration of the property of such Bankrupt, or any part thereof, or by sale of such property theretofore seized, or any part thereof, but any person to whom any sum or sums of money shall be due in respect of any such warrant of Attorney or *cognovit actionem*, or of such bill of sale, shall and may prove as a creditor for the same under this Act.

AS TO THE CHOICE OF A CREDITORS' ASSIGNEE.

Creditors' as-  
signee, when  
and how  
chosen.

**165.** At the first meeting of creditors, or any adjournment thereof, the majority in value of the creditors shall choose either the official assignee or some other qualified person, to be the assignee of the Bankrupt's estate and effects, and to be called the creditors' assignee; provided that the Court shall have power to reject any person so chosen who shall appear to such Court unfit to be such assignee.

Joint cre-  
ditors entitled  
to prove under  
separate es-  
tate for choice  
of assignee.

**166.** If one or more of the partners of a firm be adjudged Bankrupt, any creditor to whom the Bankrupt is indebted jointly with the other partners of the firm, or any of them, shall be entitled to prove his debt, for the purpose of voting in the choice of creditors' assignee, and of being heard against the allowance of the bankrupt's discharge, or for either of such purposes; but such creditor shall not receive any dividend out of the separate estate of the Bankrupt until all the separate creditors shall have received the full amount of their respective debts.

Objections to  
appointment.

**167.** The Court shall, within *four* days after the election of the creditors' assignee, hear any creditors desirous of making objection to the appointment of such creditors' assignee, and also hear such creditors in support thereof, as the Court shall judge fit, and shall, unless some valid objection shall, in the opinion of the Court, be made to such appointment, confirm the same.

If Court al-  
lows objection.

**168.** In case the Court shall allow such objection, it shall declare the election void, and another meeting of the creditors shall thereupon be called for the election of another person as creditors' assignee, and such meeting shall be held within *seven* days after the allowance of such objection as aforesaid.

Security.

**169.** The creditors shall, at the meeting for choice of a creditors' assignee, determine on the amount and nature of the security to be given by such assignee, and such security may,

if the creditors so determine, be by way of bond given to any Registrar of the Court or his successors, who are hereby authorized to sue thereon.

**170.** The creditors may at the same meeting determine the rate or amount of the remuneration, if any, to be paid to the creditors' assignee out of the Bankrupt's estate. Remuneration.

**171.** When the election of an assignee shall have been confirmed by the Court as aforesaid, the Court shall, by certificate under the hand of the Judge and the seal of the Court (to be called the certificate of appointment), declare such creditors' assignee to have been duly elected, and appoint him to the said office accordingly, and such appointment shall be final, and shall not be subject to review or appeal, except as hereinafter provided. Certificate of appointment.

**172.** A copy of such certificate of appointment, purporting to be under the seal of the Court, shall be received as evidence of such appointment in all Courts and places whatsoever, without further proof. Evidence of appointment.

**173.** A majority in number and value of the creditors may, at any meeting, duly called for the purpose, remove the creditors' assignee or accept of his resignation; and *one fourth* of the creditors in value may at any time apply to the Court, by petition, for the removal of the creditors' assignee, and if on the hearing of such petition the Court shall be of opinion that sufficient reason has been shown, it may remove such creditors' assignee, and appoint a meeting of the creditors to be held for electing a new creditors' assignee; and if the assignee shall die, resign, or be removed, or remain abroad for *two* months at any one time, any creditor may apply to the Court to appoint a meeting for electing a new creditors' assignee, and the Court may accordingly appoint a meeting, whereof at least *seven* days previous notice shall be given in the Gazette, and such meeting may elect a new creditors' assignee accordingly. Removal of creditors' assignee.

**174.** In all cases of the election of a new creditors' assignee the proceedings shall take place in the like manner as is hereinbefore provided in the case of the first election, and the new creditors' assignee shall be invested with the powers and perform the duties and be subject to the rules hereinbefore provided as to the creditors' assignee first chosen, and shall call to account such creditors' assignee, his heirs, executors, administrators, or assigns, as the case may require. Election of new creditors' assignee.

**175.** At the sitting for choice of assignees the majority in value of the creditors entitled to vote may resolve that no creditors' assignee be chosen, and thereupon the official assignee who has been appointed by the Court shall continue If it be resolved that none be chosen.

and be the sole assignee of the estate, with all the rights, powers, duties, and liabilities of a creditors' assignee.

AS TO THE RIGHTS AND DUTIES OF THE CREDITORS' ASSIGNEE.

Duties of creditors' assignee.

**176.** The creditors' assignee shall manage, realize, and recover the estate belonging to the Bankrupt, wherever situated, and convert the same into money, and he shall pay all moneys, and all provincial debentures, all municipal debentures and bonds, and other public securities, and all bills, notes, and negotiable instruments belonging to the estate, forthwith upon receipt thereof, into such chartered Bank of this Province, to the credit of the Estate, as the Court may require. 5 10

Creditors' assignee's account.

**177.** The Creditors' Assignee shall, at the end of *two* months from and after his appointment, and thenceforth at the expiration of every succeeding *two* months, render to the Registrar a Debtor and Creditor Account of all sums received and paid on account of the Bankrupt or his estate, verified on oath of such Creditors' Assignee as being a full, true, and faithful account of his receipts and payments as such Creditors' Assignee; and the vouchers for such account, and all Books of Account in his possession or power, together with his Banker's Pass Book, shall be produced by him to the Registrar, who shall examine the same. 15 20

Personal estate to vest in assignee.

**178.** When any person shall have been adjudged a Bankrupt, all his Personal Estate and Effects, present and future, wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him, before he shall have obtained his discharge, and all debts due or to be due to him, wheresoever the same may be found or known, and the Property, Right and Interest in such debts, shall become absolutely vested in the Assignee for the time being, for the benefit of the Creditors of the Bankrupt, by virtue of his appointment; and after such appointment, neither the Bankrupt, nor any person claiming through or under him, shall have power to recover the same, or to make any release or discharge thereof, neither shall the same be attached by any person as the debt of the Bankrupt, but such Assignee shall have like remedy to recover the same in his own name as the Bankrupt himself might have had if he had not been adjudged Bankrupt. 25 30 35

Real estate to vest in assignee.

**179.** When any person shall have been adjudged a Bankrupt, all Lands, Tenements, and Hereditaments in Upper Canada, to which any Bankrupt is entitled, and all interest to which such Bankrupt is entitled in any of such Lands, Tenements or Hereditaments and of which he might, according to the law of Upper Canada, have disposed, and all such Lands, Tenements and Hereditaments in Upper Canada as he shall purchase, or as shall descend, be devised, revert to, or come to 40 45

such Bankrupt, before he shall have obtained his discharge, and all Deeds, Papers and Writings respecting the same, shall become absolutely vested in the Assignee for the time being, for the benefit of the Creditors of the Bankrupt, by virtue of his  
 5 appointment, without any deed or conveyance for that purpose; and as often as any such Assignee shall cease to be such Assignee, and another Assignee shall be duly appointed, such of the aforesaid Real Estate as shall remain unsold or unconveyed shall, by virtue of such appointment, vest in the new Assignee,  
 10 without any conveyance for that purpose.

**180.** The certificate of the appointment of the official or creditors' assignee, as the case may be, shall be registered in the Registry Office for the registration of deeds of every district, county, riding or city, within which, at the time of the  
 15 bankruptcy, there may be any lands belonging to the bankrupt, and such registry shall have the like effect as the registry of the conveyance or assignment of such lands by the bankrupt to the assignee would have had, and the title of any purchaser of any such property for valuable consideration without notice of  
 20 the bankruptcy who shall have duly registered his purchase deed previous to the registry hereby directed, shall not be invalidated by reason of such appointment of an assignee, or of the vesting of such property in him consequent thereupon, unless the certificate of such appointment shall be registered-  
 25 within six months of the date of such appointment.

Registration of assignee's appointment.

**181.** If the creditors' assignee of any Bankrupt having or being entitled to any land either under a conveyance to him in fee or under an agreement for any such conveyance, subject to  
 ✓ any perpetual yearly rent reserved by such conveyance or agreement, or having or being entitled to any lease or agreement for  
 30 a lease, shall elect to take such land or the benefit of such conveyance or agreement, or such lease or agreement for a lease, as the case may be, the bankrupt shall not be liable to pay any rent accruing after the filing of the petition for adjudication of  
 35 Bankruptcy against him, or to be sued in respect of any subsequent nonobservance or nonperformance of the conditions, covenants or agreements in any such conveyance or agreement, or lease or agreement for a lease; and if the assignee shall decline to take such land or the benefit of such conveyance or  
 40 agreement, or lease or agreement for lease, the Bankrupt shall not be liable if, within *fourteen* days after he shall have had notice that the assignee has declined, he shall deliver up such conveyance or agreement or lease or agreement, to the person then entitled to the rent, or having so agreed to convey or lease, as the  
 45 case may be; and if the assignee shall not (upon being thereto required) elect whether he will accept or decline such land, or conveyance or agreement, or such lease or agreement, any person entitled to such rent, or having so conveyed or agreed to convey, or leased or agreed to lease, or any person claiming  
 50 under him, may apply to the Court, and the Court may order

Bankrupt not liable to rents or covenants in conveyance, leases, &c., and if creditors' assignee decline to determine whether he will accept conveyance, &c., any person entitled may apply to the Court.

the creditors' assignee so to elect, and to deliver up such conveyance or agreement for conveyance, or lease or agreement for lease, in case he shall decline the same, and the possession of the premises, or may make such other order therein as it shall think fit; provided, always, that in every case of a lease or an agreement for a lease it shall be lawful for the assignee to elect to take the same and the benefit thereof, and to keep possession of the premises up to some quarter or half-yearly day on which rent is made payable by the same lease or agreement, such day not being more than six months from the adjudication of Bankruptcy, and from and after such day to decline such lease or agreement for a lease. 5 10

**182.** If any bankrupt shall have entered into any agreement for the purchase of any Estate or interest in land, the vendor thereof, or any person claiming under him, if the assignee shall not (upon being thereto required) elect whether he will abide by and execute such agreement or abandon the same, may apply to the Court, and the Court may thereupon order him to deliver up the agreement and the possession of the premises to the vendor or person claiming under him, or may make such other order therein as such Court shall think fit. 15 20

**183.** All powers vested in any bankrupt which he might legally execute for his own benefit may be executed by the assignee for the benefit of the creditors, in such manner as the Bankrupt might have executed the same. 25

**184.** It shall be lawful for the Court, upon the application of the assignee, or of any purchaser from him of any part of the Bankrupt's Estate, to order the Bankrupt to join in any conveyance of such Estate or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt, and all persons claiming under him, shall be estopped from objecting to the validity of such conveyance; and all Estate, Right, or Title which such Bankrupt had therein shall be as effectually barred by such order as if such conveyance had been executed by him. 30 35

**185.** If any Bankrupt shall have granted, conveyed, assured, or pledged any real or personal Estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day by payment of money or otherwise, the official or creditors' assignees, as the case may be, may, before the time of the performance of such condition, make tender or payment of money or other performance, according to such condition, as fully as the Bankrupt might have done; and after such tender, payment or performance such real or personal Estate may be sold and disposed of for the benefit of the creditors. 40 45

**186.** In every case the assignee may, with the approbation of the Court, appoint the Bankrupt himself to superintend the Bankrupt may be appointed



management of the Estate, or to carry on the trade or business for behoof of the creditors, and in all or any other respects he may think fit to aid him in administering the Bankrupt's Estate and effects, in such manner and on such terms as he may think best for the benefit of the creditors.

to manage the estate.

**187.** If any Person adjudged bankrupt shall, at the Time of the Adjudication of Bankruptcy, be a Member of a Firm, it shall be lawful for the Court to authorize the Assignee, upon his Application, to commence or prosecute any Action at Law or Suit or other Proceeding in Equity, in the name of such Assignee and of the remaining Partner, against any Debtor of the Partnership, and such Judgment, Decree or Order may be obtained therein as if such Action, Suit, or other Proceeding had been instituted with the consent of such partner, and if such partner shall execute any release of the debt or demand for which such action, suit or other proceeding is instituted, such release shall be void; provided that every such partner shall have notice given him of such application, and be at liberty to show cause against it, and if no benefit be claimed by him by virtue of the said proceedings, he shall be indemnified against the payment of any costs in respect of such action suit or other proceeding in such manner as the Court may direct; and it shall be lawful for such Court, upon the application of such partner, to direct that he may receive so much of the proceeds of such action or suit as such Court shall direct.

How actions may be commenced if Bankrupt be a member of a firm.

**188.** The assignee, with the leave of the Court first obtained, may commence, prosecute, defend, or respond to any action at law or suit or other proceeding in equity which the Bankrupt might have commenced, prosecuted, defended, or responded to, and in such case the costs to which he may be put in respect of such suit, action or other proceeding shall be allowed out of the proceeds of the estate and effects of the Bankrupt; and with like leave the assignee may take such reasonable part of any debts due to the Bankrupt's Estate as may by composition be gotten, or may give time or take security for the payment of any debts, and may submit to Arbitration any difference or dispute between himself and any other person for or on account or by reason of any thing relating to the estate and effects of the Bankrupt.

Assignee may bring or defend suits on behalf of Bankrupt.

**189.** If the assignee shall agree in manner aforesaid to refer any matter in dispute to arbitration, such agreement of reference may be made a rule of any of Her Majesty's Superior Courts in Upper Canada, whether such agreement contain a clause to that effect or not.

Reference to arbitration.

**190.** All persons from whom the assignee shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the Adjudication of Bankruptcy, or petition for adjudication, be afterwards annulled or dis-

Persons from whom assignee has recovered discharged, if

adjudication, &c., annulled. missed, from all demands which may thereafter be made in respect of the same by the person against whom such adjudication was made, and all persons claiming under him; and all persons who shall, without action or suit, *bona fide* deliver up possession of any real or personal estate to the assignee, or pay any debt claimed by him, are hereby discharged from all claim of any such person as aforesaid in respect of the same, or any person claiming under him, provided the persons so delivering up any real or personal estate, or paying any debt, shall not have had notice of any action, suit, or other proceeding to dispute the petition for adjudication or adjudication, and such action, suit, or other proceeding shall not have been commenced and prosecuted within the time and in manner allowed by this Act. 5 10

Mortgagee may bid. **191.** The assignee, with the leave of the Court first obtained, may permit any mortgagee to bid at any sale of the mortgaged property. 15

Actions not to abate by death or removal of assignee. **192.** Whenever an assignee shall die, be removed, or a new assignee shall be appointed, no action at law or suit or proceeding in equity shall be thereby abated, but the Court in which any action, suit, or other proceeding is depending, may, upon the suggestion of such death or removal and new appointment, allow the name of the new assignee to be substituted in the place of the former; and such action, suit or other proceeding shall be prosecuted in the name of such new assignee, in the same manner as if he had originally commenced the same. 20 25

In case assignee begins a suit before time allowed to dispute Bankruptcy has elapsed. **193.** If the assignee shall commence any action or suit for any money due to the Bankrupt's Estate before the time allowed for the Bankrupt to dispute the Bankruptcy shall have elapsed, any defendant in any such action or suit shall be entitled, after notice given to such assignee, to pay the same or any part thereof into the Court in which such action or suit is brought, and all proceedings, with respect to the money so paid into Court, shall thereupon be stayed until such time shall have elapsed; and if within that time the Bankrupt shall not have commenced such action, suit, or other proceeding as allowed by this act, and prosecuted the same with due diligence, the money shall be paid out of Court to such assignee, but otherwise it shall abide the event of such action, suit, or other proceeding, and upon such event shall be paid out of Court, either to such assignee or to the person adjudged Bankrupt, as the Court shall direct; and after such payment into Court it shall not be lawful for the person adjudged bankrupt to proceed against the defendant for recovery of the same money. 30 35 40 45

Limitation of actions. **194.** Every action brought against any person for anything done in pursuance of this Act, shall be commenced within three months next after the fact committed; and the defendant

in any such action may plead the general issue, and give this Act and the special matter in evidence at the trial, and that the same was done by authority of this Act; and if it shall appear so to have been done, or that such action was commenced after the time limited as aforesaid for bringing the same, the Jury shall find for the defendant; and if there be a Verdict for the defendant, or if the plaintiff shall be nonsuited, or discontinue his action or suit, after appearance thereto, or if upon demurrer judgment shall be given against the plaintiff, the defendant shall receive such full and reasonable indemnity as to all costs, charges and expenses incurred in and about any such action as shall be taxed by the proper officer in that behalf, subject to review in like manner and by the same authority as any other taxation of costs by such officer.

Costs.

**195.** If it shall appear to any meeting of the Creditors summoned by the Assignee that the Debts of any Bankrupt can be discharged by means of money raised by way of mortgage or pledge of any of his property, and such meeting shall pass a resolution accordingly, it shall be lawful for the Assignee, when thereunto authorized by order of the Court, to execute such mortgage or pledge, with or without power of sale and other powers, and in such manner in all respects as shall be specified in such order; and the Court may order the execution of such mortgage or pledge by any other necessary parties, and give all necessary directions for the purpose of carrying into effect the resolution of the Creditors.

Property may be mortgaged if more beneficial.

**196.** In case of any dispute or difference between the official Assignee, the Creditors' Assignee, and the Creditors, or any of such persons, or any persons claiming under a trust deed, deed of composition or arrangement, as to or concerning the management of the Bankrupt's Estate or the Accounts thereof, or the declaration and payment of a dividend, or the right to any money or property being or claimed as part of the estate of any debtor, subject to the Jurisdiction of the Court, either party may apply to the Court; and it shall be lawful for the Court to summon and to examine upon oath the Official or Creditors Assignee, Trustee, or any other person whomsoever, touching such money, property, management and accounts, and all matters and things concerning the Bankruptcy or Trust Estate, and to direct such inquiries, and to give such directions, and make such orders relative thereto, as shall to the Court seem just and expedient, and to award costs, personally or in any other manner, against the Official or Creditors Assignee, Trustee or any other person; provided that in all cases in which a resolution has been come to by a majority of the Creditors assembled in a meeting, regard shall be had by the Court to such resolution, and the same shall not be varied or set aside by the Court, unless such resolution shall, in the opinion of the Court, be unjust or inequitable, and not fit to be binding and conclusive under this Act.

Court to determine all differences between assignees, creditors, &amp;c.

Sale of Book debts, &c.

**197.** At any time after the expiration of *Twelve Months* from adjudication, or at any earlier period with the approbation of the Court the Assignees may sell by auction or tender, or with the sanction of the Court by private contract, all or any of the book debts due or growing due to the Bankrupt, and the books relating thereto, and the goodwill of his trade or business, and assign the same to the purchaser; and such purchaser shall, by virtue of the assignment, have power to sue in his own name for the debts assigned to him, as effectually, and with the same privileges concerning proof of the requisites of Bankruptcy and other matters, as the Assignee himself. 5 10

Disposal of remaining papers, &c.

**198.** When the affairs of the Bankrupt are fully wound up, the Court may, subject to the directions of any general order, make from time to time such orders as in each case seem fit respecting the disposal or custody of any books, papers, or documents relating to property or affairs in the possession or under the control of the official assignee, the creditors' assignee, or any other person. 15

Assignee to be subject to orders of the Court.

**199.** The creditors' assignee shall, in his conduct as such, be subject to the orders of the Court; and it shall be lawful for the Court at all times to summon such assignee, and require him to produce all books, papers, deeds, writings, and other documents relating to the Bankruptcy in his possession, and to examine him thereupon upon oath. 20

Removal of creditors' assignee.

**200.** If the creditors' assignee shall wilfully fail to observe any of the directions herein contained, or shall be guilty of any neglect in the performance of his duty, or it shall be made to appear to the Court, on the application of any two or more creditors, that it would be for the benefit of the Estate that such creditors' assignee should not continue to have the management and administration of the Bankrupt's Estate, it shall be lawful for the Court either to appoint an official assignee to act jointly with such creditors' assignee, or to remove such creditors' assignee, and direct a choice of another creditors' assignee, or to appoint an official assignee alone to wind up and administer the Estate under the Bankruptcy. 25 30 35

#### AS TO THE LAST EXAMINATION.

Appointment of day for last examination.

**201.** The Court shall, forthwith after the choice of an assignee by the creditors, appoint a public sitting of the Court on a day not later than *sixty* days from the day of such choice, and shall give notice of such sitting in the Gazette, for the Bankrupt to pass his last examination, and also, unless the Court shall in any case otherwise direct, to make application for his discharge. 40

Statement of accounts by Bankrupt.

**202.** The Bankrupt shall prepare such statement of his accounts, and in such form as general orders or as the Court in 45

any case shall direct, and shall subscribe such statement, and file the same in Court *ten* days at least before the day appointed for the last examination, or adjournment thereof, and such statement may before such last examination be amended  
 5 from time to time as occasion shall require and the Court shall direct; and the Bankrupt shall make oath of the truth of such statement, whenever he shall be duly required by the Court so to do; and the last examination of the bankrupt shall in no case be passed unless his statement shall have been duly filed as  
 10 aforesaid.

**203.** In the preparation of such statement of his accounts Assistance in preparing it.  
 the Bankrupt shall be assisted by the official assignee, who shall prepare and file in Court, together with such statement, a report upon the state of the affairs of the Bankrupt, setting  
 15 forth such facts and particulars as may be required by the Court, or as it shall in the opinion of such Assignee be important for the Court to be informed of; Provided that if it shall in any case appear to the Court that there are special circumstances rendering it necessary that the Bankrupt should  
 20 be assisted in the preparation of such statement of accounts by some person other than the assignee, the Court may nominate some such person, to assist the Bankrupt in that behalf, and may allow to such person, out of the Bankrupt's Estate, such remuneration as to the Court, upon the taxation of such  
 25 person's bill of costs, shall seem just; and in such case the statement, so prepared, shall have appended thereto a certificate signed by the person appointed to assist the Bankrupt in the preparation thereof, expressing his approval or disapproval thereof, and the particulars and reasons of such disapproval.

**204.** The statement of accounts, when filed in Court, shall be open to the inspection of all creditors, who may take copies of and extracts from the same, subject to such regulations as  
 30 general orders shall direct. Statement to be open to creditors.

**205.** It shall be lawful for the Court, at the time appointed Court may adjourn examination sine die.  
 35 for the last examination of the Bankrupt, or at any enlargement or adjournment thereof, to adjourn such examination *sine die*; and in such case the Bankrupt shall be free from arrest or imprisonment for such time (if any) as such Court shall from time to time, by endorsement of the summons of the Bankrupt, think  
 40 fit to appoint.

#### AS TO PROOF OF DEBTS.

**206.** Every creditor of the Bankrupt may, after adjudication, prove his debt, by delivering or sending through the Post Office, before the appointment of the creditors' assignee, to the  
 45 official assignee, and after such appointment, to the creditors' assignee, a statement of such debt, and of the account, if any, between the creditor and the Bankrupt, together with a declaration, signed by the creditor, appended thereto, that such When and how debts may be proved.

statement is a full, true and complete statement of account between the creditor and the Bankrupt, and that the debt thereby appearing to be due from the estate of the Bankrupt to the creditor is justly due; and all bodies politic and public companies incorporated, or authorized to sue or bring actions, may prove by an agent, provided such agent shall, in his declaration, declare that he is such agent, and that he is authorized to make such proof; and such declaration, signed by such creditor and agent respectively as aforesaid, shall be in such form as General Orders shall direct.

False declaration & misdemeanor.

**207.** Any person who shall wilfully and corruptly make any declaration for proof of debt as aforesaid, knowing the same, or the statement of account to which the same shall be appended, to be untrue in any material particular, shall be deemed guilty of a misdemeanor, and shall be liable to undergo the pains and penalties imposed upon persons guilty of wilful and corrupt perjury.

Proof in Court or in Chambers.

**208.** Every creditor of the Bankrupt may also, after adjudication, prove his debt, by deposition in Court or in Chambers, or before a Registrar at any meeting of creditors elsewhere than in Court, or by affidavit, upon his own oath, or upon that of any clerk or other person in his employment; provided that where such deposition or affidavit shall be made by any other person than the creditor, the deponent shall, in his deposition or affidavit, set forth that he is duly authorized by his principal to make the deposition or affidavit, and that it is within his own certain knowledge that the debt was incurred, and for the consideration stated, and that to the best of his knowledge and belief the debt still remains unpaid and unsatisfied.

Statements to be examined by assignee.

**209.** The official or creditors' assignee, as the case may be, shall examine all the statements of account aforesaid, and compare the same with the books, accounts or other documents of the Bankrupt, and shall, from time to time, make out a list of the creditors who have proved their debts, stating the amount and nature of such debts, which list shall be open to the inspection of any creditor who has proved under the estate.

Examination of alleged creditors.

**210.** The Court may, on the application of the assignee, or of any creditor, or of the Bankrupt, or without any application, examine upon oath or otherwise any person tendering or who has made a proof, and may summon any person capable of giving evidence concerning such proof, and, in like manner, where the debt is tendered on affidavit or statement, as hereinbefore provided, may summon and examine on oath or otherwise the person who has made the affidavit or statement, and any other person capable of giving evidence concerning the debt sought to be proved.

Who may prove generally.

**211.** Any person with whom any Bankrupt shall have really and *bona fide* contracted any debt or demand before the

filing of the petition for adjudication of Bankruptcy shall, notwithstanding any prior Act of Bankruptcy committed by such Bankrupt, be admitted to prove the same as if no such Act of Bankruptcy had been committed, provided such person had not, at the time the same was contracted, notice of any Act of Bankruptcy by such Bankrupt committed.

**912.** The Court out of the estate and effects of the Bankrupt shall order payment of all duties and taxes assessed on the Bankrupt and due for the current year at the time of the Petition for adjudication of Bankruptcy. Payment of assessed taxes.

**913.** A person entitled to enforce against the Bankrupt payment of any money, costs or expenses by process of contempt issuing out of any Court shall be entitled to come in as a creditor under the Bankruptcy, and prove for the amount payable under the process, subject to such ascertaining of the amount as may be properly had by taxation or otherwise. Proof for costs enforceable, &c., by process of contempt.

**914.** In all cases in which the Bankrupt is liable to pay any rent or other payment falling due at fixed or stated periods, and the adjudication of Bankruptcy shall happen at any time other than one of such fixed or stated periods, it shall be lawful for the person entitled to such rent or other payment to prove for a proportionate part thereof up to the day of the adjudication of Bankruptcy, in such manner as if the said rent or payment grew due from day to day, and not at such fixed or stated periods as aforesaid. Proportionate payments.

**915.** No distress for rent made and levied after an Act of Bankruptcy upon the goods or effects of any Bankrupt, whether before or after the filing of the petition for adjudication of Bankruptcy, shall be available for more than six months' rent accrued prior to the date of the filing of such petition; but the landlord or person to whom the rent shall be due shall be allowed to come in as a creditor for the overplus of the rent due, and for which the distress shall not be available. Distress not available for more than six months' rent.

**916.** Where any person shall have been an apprentice or articed clerk to a Bankrupt at the time of the filing of a Petition for adjudication of Bankruptcy, the adjudication shall be and enure as a complete discharge of the indenture or articles whereby such apprentice or clerk was bound; and if any sum shall have been really and *bona fide* paid by or on the behalf of such apprentice or clerk, to the Bankrupt as a premium or fee, it shall be lawful for the Court, upon proof thereof, to order such sum to be paid out of the estate, to or for the use of such apprentice or clerk, as the Court shall think reasonable, regard being had to the amount of the sum paid by or on behalf of such apprentice or clerk, and to the time during which he shall have resided with the Bankrupt previous to the filing of such petition, and to the other circumstances of the case. Articed Clerks and apprentices.

Clerks' wages. **217.** When any Bankrupt shall have been indebted at the time of filing the petition for adjudication of Bankruptcy to any servant or clerk of such Bankrupt in respect of wages or salary, so much as shall be so due, not exceeding *three months' wages* or salary, provided that such wages or salary shall not exceed *one hundred dollars*, shall be paid to such servant or clerk out of the Estate, and such servant or clerk shall be at liberty to prove for any sum exceeding such amount. 5

Wages of laborers or workmen. **218.** When the Bankrupt shall have been indebted at the time of filing the petition for Bankruptcy to any labourer or workman of such Bankrupt in respect of the wages or labour of such labourer or workman, it shall be lawful for the Court, upon proof thereof, to order so much as shall be so due, not exceeding *twenty dollars*, to be paid to such labourer or workman out of the estate of such Bankrupt; and such labourer or workman shall be at liberty to prove for any sum exceeding such amount. 10 15

Mutual debts and credits may be set off. **219.** Where there has been mutual credit given by the Bankrupt and any other person, or where there are mutual debts between the Bankrupt and any other person, an account shall be stated between them, and one debt or demand may be set against another, notwithstanding any prior Act of Bankruptcy committed by such Bankrupt before the credit given to or the Debt contracted by him; and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively; and every debt or demand hereby made proveable against the estate of the Bankrupt may also be set off in manner aforesaid against such estate, provided that the person claiming the benefit of such sett-off had not, when such credit was given, notice of an Act of Bankruptcy by such Bankrupt committed. 20 25 30

Proof for debts not payable at the time. **220.** Any person who shall have given credit to the Bankrupt upon valuable consideration for any money or other matter or thing which shall not have become payable when such Bankrupt committed an act of Bankruptcy, and whether such credit shall have been given upon any bill, bond, note, or other negotiable security or not, shall be entitled to prove such debt, bill, bond, note, or other security as if the same were payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive at the rate of *six per centum per annum*, to be computed from the declaration of a dividend to the time such debt would have become payable according to the terms upon which it was contracted. 35 40

Proof by sureties, &c., of Bankrupt. **221.** Any person who, at the time of filing a petition for adjudication of Bankruptcy, shall be surety or liable for any debt of the Bankrupt, or bail for the Bankrupt, either to the Sheriff or to the action, if he shall have paid the debt, or any part 45



thereof in discharge of the whole debt, (although he may have paid the same after the filing of the petition,) if the creditor shall have proved his debt under the Bankruptcy, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the Bankruptcy which such creditor possessed or would be entitled to in respect of such proof; or if the creditors shall not have proved, such surety or other person shall be entitled to prove his demand in respect of such payment as a debt under the Bankruptcy, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, liable, or bail as aforesaid, after an Act of Bankruptcy committed by the Bankrupt, provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice of any Act of Bankruptcy by such Bankrupt committed.

**222.** If any Bankrupt shall, before the filing of a petition for Adjudication, have contracted any debt payable upon a contingency which shall not have happened before the filing of such petition, the person with whom such debt has been contracted may, if he think fit, apply to the Court to set a value upon such debt, and the Court is hereby required to ascertain the value thereof, and such person may thereupon prove for the amount so ascertained, and receive dividends thereon; or if such value shall not be so ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt, and receive dividends with the other creditors, not disturbing any former dividends; provided such person had not, when such debt was contracted, notice of any Act of Bankruptcy by such Bankrupt committed.

Proof in respect of debts contingent at the time of the Bankruptcy.

**223.** If any Bankrupt shall have contracted, before the filing of a petition for Adjudication, any debt payable by way of instalments, the creditor may prove for the amount of such instalments remaining due at the time of such petition.

Proof for instalments.

**224.** If any Bankrupt shall have contracted, before the filing of a petition for Adjudication, a liability to pay money upon a contingency which shall not have happened, and the demand in respect thereof shall not have been ascertained before the filing of such petition, in every such case, if such liability be not proveable under any other provision of this Act, the person with whom such liability has been contracted shall be admitted to claim for such sum as the Court shall think fit, and after the contingency shall have happened, and the demand in respect of such liability shall have been ascertained, he may prove for such demand, and receive dividends with the other creditors, and, so far as practicable, as if the contingency had happened and the demand had been ascertained before the filing of such petition, but not disturbing former dividends; provided such person had not at the time such liability was

Proof in respect of liability contingent at the Bankruptcy.

contracted notice of any Act of Bankruptcy by such Bankrupt committed; provided, also, that where any such claim shall not have, either in whole or in part, been converted into a proof within six months after the filing of such petition, it may, upon the application of the creditors' assignee, at any time after the expiration of such time, and if the Court shall think fit, be expunged, either in whole or in part, from the proceedings. 5

**As to interest.** 225. Upon all debts or sums certain, payable at a certain time or otherwise, whereupon interest is not reserved or agreed for, and which shall be overdue at the filing of the petition for adjudication, and proveable thereunder, the creditor shall be entitled to prove for interest, to be calculated at a rate not exceeding six per centum per annum, up to the date of the filing of such petition, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in Writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment. 10 15 20

**Costs of plaintiff or defendant.** 226. If any plaintiff in any action at law or suit in equity or petitioner in Bankruptcy shall have obtained any judgment, decree, or order against any person who shall thereafter become Bankrupt for any debt or demand in respect of which such plaintiff or petitioner shall prove under the Bankruptcy, such plaintiff or petitioner shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the petition for adjudication; and if any Defendant shall have obtained any judgment, decree, or order in any such action, suit, or in the matter of any such petition against any person who shall thereafter become Bankrupt, such defendant shall be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of such petition. 25 30 35

**Proving debt to be an election, not to proceed against Bankrupt by action.** 227. No creditor, who has brought any action or instituted any suit or other proceeding against any Bankrupt in respect of a demand prior to the petition for adjudication, or which might have been proved as a debt under the Bankruptcy, shall prove a debt under such Bankruptcy, or have any claim entered upon the proceedings, without relinquishing such action, suit or other proceeding, and the proving or claiming a debt under the Bankruptcy by any creditor shall be deemed an election by such creditor to take the benefit of such Bankruptcy with respect to the debt so proved or claimed; provided that such creditor shall not be liable to the payment to such Bankrupt or his assignee of the costs of such action, suit, or other proceeding so relinquished by him, and that where any such creditor shall have brought or instituted any action, suit, or 40 45

other proceeding against such Bankrupt jointly with any other person or persons, his relinquishing such action, suit, or other proceeding against the Bankrupt shall not affect such action, suit, or other proceeding against such other person or persons; 5 provided, also, that any creditor who shall have so proved or claimed, if the petition for adjudication be afterwards superseded or dismissed, may proceed in the action, suit, or other proceeding as if he had not so proved or claimed.

10 **228.** No creditor having security for his debt shall receive except in respect of any execution or extent served and levied by seizure and sale upon, or any mortgage of, or lien upon any part of the property of such Bankrupt before the filing of the petition for adjudication. Creditors having security for their debts.

15 **229.** The Court may at any time expunge or reduce a proof of debt, on such application and such evidence as it shall think sufficient, and for that purpose may summon and examine upon oath or otherwise the person who has proved, and every person capable of giving evidence concerning the alleged debt, and 20 may make such order as to the costs of any application as shall seem just. How proof may be expunged or reduced.

#### AS TO THE DISCHARGE OF THE BANKRUPT.

**230.** Forthwith after the Bankrupt shall have passed his last examination, and at the same sitting, unless the Court shall in any case otherwise direct, the Court shall proceed to 25 consider the question of granting an order of discharge to the Bankrupt, and the assignees or any creditor who has proved may be heard against the allowance of such discharge. Application for order of discharge.

**231.** Whether the application be opposed or not, the Court shall, by the order of discharge, suspend the order from taking 30 effect for such time, not being more than two years nor less than one from the date of the order, as the Court shall think fit, if it shall appear to the Court that the Bankrupt has done any of the Acts by this Act made misdemeanors, and the Court shall direct him to be prosecuted in respect thereof. When Order shall be suspended.

35 **232.** Whether the application be opposed or not, the Court, having regard to the Bankrupt's conformity to the Law of Bankruptcy, and to his conduct relative to his trade, business, property, or affairs, before and after adjudication, shall judge of any objection to an immediate order of discharge not founded 40 upon any such misdemeanor, and may either make an immediate order, or suspend the order from taking effect for such time not exceeding one year from the date of the order, as the Court shall think fit, or the Court may annex such conditions thereto as the justice of the case may require. Discretion of Court as to Discharge.

- When order to take effect.** **233.** In all other cases the order of discharge shall take effect immediately from its date, subject to the appeal herein-after provided.
- Limitation of suspension.** **234.** Where the Bankrupt shall, upon prosecution ordered by the Court, be convicted of any of the offences by this Act made misdemeanors, any suspension of the discharge ordered by the Court shall continue during such punishment, but shall not continue in force after the punishment imposed on the Bankrupt under such conviction has been executed fully, or remitted in whole or in part. **5**  
**10**
- Effect of discharge.** **235.** The order of discharge shall, upon taking effect, discharge the Bankrupt from all debts, claims, or demands proveable under his Bankruptcy, save as herein otherwise provided; and if thereafter any action shall be brought against him for any such debt, claim, or demand, he may plead in general that the cause of action accrued before he became Bankrupt, and may give this Act and the special matter in evidence; and the order of discharge shall be sufficient evidence of the Bankruptcy, and the proceedings precedent to the order of discharge. **15**  
**20**
- Release of Bankrupt when arrested for debt after discharge.** **236.** If a Bankrupt, after the order of discharge takes effect, be arrested or detained in custody for a debt, claim, or demand proveable under his Bankruptcy, where judgment has been obtained before the order of discharge takes effect, a Judge of a Superior Court of Law shall, on proof of the order of discharge, and unless there appear good reason to the contrary, direct the officer who has the Bankrupt in custody to discharge him, which shall be done accordingly, without fee. **25**
- As to partners.** **237.** The order of discharge shall not release or discharge any person who was a partner with the Bankrupt at the time of the Bankruptcy, or was then jointly bound, or had made any joint contract with him. **30**
- Contract after filing of petition not binding on Bankrupt.** **238.** After the order of discharge takes effect, the Bankrupt shall not be liable to pay or satisfy any debt, claim, or demand proveable under the Bankruptcy, or any part thereof, on any contract or promise made after adjudication, and if he be sued on any such contract or promise he may plead in general that the cause of action accrued pending proceedings in Bankruptcy, and may give this Act and the special matter in evidence. **35**
- Crown debts.** **239.** The discharge shall not discharge the Bankrupt from any debt due to the crown, or any debt or penalty with which he stands charged at the suit of the crown, or for an offence against a Statute relating to any Branch of the Public Revenue, or at the suit of a Sheriff or other Public Officer upon a Bail Bond entered into for the appearance of any person prosecuted for any such offence, nor from any debt or liability contracted **40**  
**45**

or incurred by him by reason of any action or proceeding for libel, slander, assault, battery, adultery, seduction, breach of promise of marriage, malicious arrest, malicious prosecution, malicious trespass, or malicious injury, or the malicious filing  
5 or prosecution of a petition for adjudication of insolvency or Bankruptcy.

**240.** Any contract or security made or given by a Bankrupt or other person, with, to, or in trust for any Creditor, for securing the payment of any money due by such Bankrupt at  
10 his Bankruptcy, as a consideration or with intent to persuade the creditor to forbear opposing the order for discharge, or to forbear to petition for a rehearing of or to appeal against the same, shall be void, and any money thereby secured or agreed to be paid shall not be recoverable, and the party sued on any  
15 such contract or security may plead in general that the cause of action accrued pending proceedings in Bankruptcy, and may give this Act and the special matter in evidence.

Consideration given to forbear opposition.

**241.** If any creditor of a Bankrupt shall obtain any sum of money, or any goods, chattels, or security for money, from  
20 any person as an inducement for forbearing to oppose, or for consenting to the allowance of the discharge of such Bankrupt, or to forbear to petition for the recall of the same, every such creditor so offending shall forfeit and lose for every such offence the *treble* value or amount of such money, goods, chattels, or  
25 security so obtained.

Obtaining goods, &c., to forbear opposition.

**242.** The order of discharge, whether suspended or not, shall be final and conclusive, and shall not be reviewed by the court, unless the Court see good cause to believe that the order was obtained on false evidence, or by reason of the suppression  
30 of evidence, or otherwise fraudulently; in any of which cases the Court may, if it think fit, upon the application of the Bankrupt or of a creditor who has proved, and subject to such deposit for costs, and to such notices, by advertisement or otherwise, as the Court shall think fit, grant a rehearing of the matter, and  
35 rehear it accordingly; and upon rehearing the Court shall make such order as shall seem just, in like manner, as it might upon an original hearing.

Rehearing.

**243.** If on such rehearing the Court shall annul or suspend the order of discharge, all persons having *bond fide* become  
40 creditors of the Bankrupt between the time of the order originally taking effect and the time of its being annulled or suspended on rehearing shall, as against any property acquired by the Bankrupt during the same period, and in priority to the original creditors, be admitted to prove and have dividends  
45 under the Bankruptcy.

Effect of suspension of order of discharge.

**244.** The order of discharge shall not be drawn up until after the expiration of the time allowed for appeal, or, if an  
Order when to be drawn up.

appeal be brought, until after the decision of the Court of appeal upon such appeal, and shall bear date either the day after the expiration of the time allowed for appeal, or the day of the decision of the Court of appeal, as the case may require.

Appeal  
against order  
of discharge.

**245.** At any time within six months after any order of discharge shall have been allowed, and subject to such order as to deposit of costs as General Orders shall direct, any creditor of the Bankrupt, whose debt amounts to one hundred dollars or upwards, or any creditors' assignee may apply to the Court of Appeal in Bankruptcy, that such order may be recalled, cancelled or suspended, and such Court on good cause being shown and having due regard to the general provisions of this Act may make such order recalling, cancelling, suspending or confirming the order of discharge, and with respect to the costs of the application as in their discretion they may deem just and proper. 5 10 15

Power of  
Court of ap-  
peal.

**246.** No such order of discharge shall be delivered to the Bankrupt until after the expiration of the time allowed for entering an Appeal; and if an Appeal be duly entered against the Judgment of the Court for the allowance of the order of discharge, or for the suspension thereof, and notice thereof be given to the Court in such manner as General Orders shall direct, the order of discharge shall be further kept by the Court, and abide the Judgment thereupon of the Court of Appeal in Bankruptcy; and upon any Appeal duly entered and prosecuted relating to the order of discharge, or to the Judgment of the Court as to any offence under this Act charged against the Bankrupt, the said Court of Appeal shall have power to rescind or vary the order of the Court below, or to make such other order thereon as to such Court of Appeal shall seem fit; and upon an order for the allowance of any order of discharge by the said Court of Appeal, whether with conditions or not, or after a suspension thereof by order of the said Court of Appeal, or not, such order of discharge may be allowed and signed by the Court below, or by the said Court of Appeal. 20 25 30 35

Form of order.

**247.** The order of discharge shall be in such form as General Orders shall direct, and shall be under the hand of the Judge and the Seal of the Court; and notice of the granting thereof shall be advertized in the *Gazette*.

#### AS TO DIVIDEND.

Dividend.

**248.** Immediately on the expiration of four months from the date of the adjudication of Bankruptcy, or as much earlier as, upon the representation of the assignees, the Court shall appoint, the creditors' assignee shall submit to a meeting of creditors to be called for that purpose, and to be held before the Judge or Registrar in Chambers, of which meeting ten days' notice shall be given in the *Gazette* and in one or more local news- 40 45

papers; a statement of the whole estate of the Bankrupt as then ascertained, of the property recovered, and of the property outstanding; specifying the cause of its being so outstanding and of all the receipts, and of all payments thereout, made 5 or to be made; and any creditor, who has proved, may examine such statement, and compare the receipts with the payments; and upon ascertaining what balance is then to the credit of the estate, the meeting shall, by resolution, declare whether any and what part of the net produce of the estate, 10 after making a reasonable deduction for future contingencies, shall be divided amongst the creditors.

**249.** If upon such examination it shall appear that the creditors' assignee has kept in his hands, at any time during the space of *one week*; more than the sum of *two hundred dollars* 15 belonging to the estate; the creditors may, upon establishing such fact to the satisfaction of the Court, and if the assignee shall not show cause to the contrary, debit such assignee with interest for the amount so kept, at any rate not exceeding *twenty* per centum by the year, for the time such moneys were 20 kept in his hands.

**250.** In the calculation of a dividend it shall be imperative to make provision for debts which shall appear from the Bankrupt's balance sheet to be due to persons resident in places so 25 distant from the Court that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed; and also debts, the subject of claims not yet determined by the Court.

**251.** In every case where joint and separate estates have to be administered, and where the Court shall not otherwise 30 direct, dividends of the joint and separate estates shall be declared at one and the same meeting, and notice of the time appointed for such dividends, when advertised, shall be given in one and the same advertisement, and the costs, charges and expenses of and incident to the meeting shall be apportioned by 35 the assignee between the joint and separate estates as may appear to be fair and reasonable, having regard to the work done for and the benefit received by each estate.

**252.** Within *ten* days after such meeting, or within such further time as the court may allow, the creditors' assignee 40 shall prepare lists of creditors entitled to dividend and blank warrants in such manner as general orders shall direct, and shall calculate and set opposite to the name of each creditor who has proved under the estate (subject to the provision herein contained as to dividends reserved), the dividend to 45 which he is entitled; out of the net produce of the estate so set apart for a dividend, and shall forward by Post to every such creditor a statement of the dividend to which he is so entitled, and such dividends shall be paid in such manner as General Orders shall direct.

Assignee not to keep moneys in his hands.

Where creditors reside at a distance.

Joint and separate dividends meetings.

Dividend list to be prepared by creditors' assignee.

Like proceedings at successive periods of four months.

**253.** The like proceedings for the making up and auditing of the accounts of the estate, and the declaration and payment of a dividend, which are herein directed to be had at the expiration of *four* months from the adjudication of Bankruptcy, shall be had at the successive expirations of every period of *four* months, or earlier, as the case may be, until the whole of the estate is divided amongst the creditors, and a dividend is declared to be final; provided that it shall be lawful for any such meeting of creditors as aforesaid to postpone the period of declaring a dividend, or at any time, in declaring a second dividend, to declare also that such second dividend shall be final, unless any action at law or suit in equity be depending, or any part of the estate be standing out not sold or disposed of, or unless some other estate or effects of the Bankrupt shall afterwards come to the assignee, in which case he shall, as soon as may be, convert such estate and effects into money, and within *two* months after the same shall be so converted the same shall also be divided in manner aforesaid.

Bemedy to compel payment of dividends.

**254.** No action for any dividend shall be brought against any assignee by any creditor who shall have proved under the Bankruptcy; but if he shall refuse to pay any such dividend, the Court may order payment thereof, with interest for the time that it shall have been withheld, and may also order the costs of the application personally against such assignee or otherwise as the Court shall judge fit.

Petitioning creditor compounding with debtor after Bankruptcy.

**255.** If any petitioning creditor shall after the Bankruptcy receive any money, satisfaction, or security for his debt or any part thereof, whereby he may receive more in the pound in respect of his debt than the other creditors, he shall forfeit his whole debt, and shall also repay or deliver up such money, satisfaction, or security, or the full value thereof, to the assignee of such Bankrupt, for the benefit of the creditors of the Bankrupt.

#### AS TO THE DISCHARGE OF THE CREDITORS' ASSIGNEE.

How discharge of creditors' assignee effected.

**256.** After a final dividend shall have been declared and paid, the creditors' assignee shall call a meeting of the creditors, to consider his application for a discharge, and at such meeting he shall lay before the creditors his books and papers of accounts, and all the documents relating to the Bankrupt's estate, and useful to be laid before the creditors, for the purpose of enabling them to consider the conduct and management thereof; and the creditors shall then come to a resolution expressing their opinion of the conduct of the creditors' assignee; and the creditors' assignee may thereafter apply to the Court for an order of discharge; and the Court shall thereupon take into consideration the accounts of the creditors' assignee, and the said resolution of the creditors expressing their opinion of his conduct, and may hear the creditors'



assignee and any of the creditors for or against such order, and may direct such inquiries and call for such evidence as the Court may think fit ; and the Court shall thereupon make such order of discharge, with or without conditions, or refuse the same, as to the Court shall seem fit, and the Justice of the case shall require.

**257.** The order for discharge shall operate to release the creditors' assignee from all claims and demands in respect of the Bankruptcy, of the creditors, or of any person who might have proved under the Bankruptcy, subject nevertheless to such conditions, if any, as shall be expressed in such order of discharge.

Effect of discharge.

**258.** Every creditors' assignee shall, before his discharge, file with the Registrar of the Court a list of unclaimed dividends on the estate, and of all debts remaining due to the estate, under his hand, and shall pay all moneys and other estate of the Bankrupt then in his hands into such chartered Bank as the Judge in whose Court the proceedings have been had may direct, to the credit of the estate.

Unclaimed dividends to be paid into Bank.

**259.** Where the creditors' assignee has obtained an order of discharge, in manner herein provided, the official assignee first appointed in the matter of the Bankruptcy shall, as to any estate and effects of the Bankrupt not realized at the time of such order of discharge, and as to all debts then remaining uncollected, and which shall not have been sold in manner herein provided, and as to any future acquired property of the Bankrupt, if made liable, represent the estate in all respects as the sole assignee thereof, and shall have and exercise all the rights, duties, powers and authorities conferred by this Act upon official and creditors' assignees.

Official assignee to act after discharge of creditors' assignee.

**260.** If any Creditors' Assignee who shall become bankrupt shall have retained or employed to his own use any part of the estate of the Bankrupt, he shall not receive his discharge until he shall have repaid the whole of the estate so retained or employed by him, with interest thereupon at the rate of six per centum per Annum.

In case assignee becomes Bankrupt and has employed to his own use part of Bankrupt estate.

**261.** All dividend Warrants shall be countersigned by the Registrar of the Court, who shall examine the same with the list filed with the proceedings, and ascertain that the same are correct, and that the total amount thereof agrees with the order for dividend.

Dividend warrants to be countersigned.

**262.** All dividend Warrants under any Bankrupt's Estate which shall not have been applied for within *Twelve* Calendar Months from the date of the dividend sitting shall forthwith, after the expiration of such *Twelve* Months, be delivered by the Creditors' Assignee to the Registrar of the Court, together with

Unpaid dividend warrants to be filed.

two lists thereof; and the Registrar shall thereupon compare such Warrants with the lists, and shall cancel the same; and one of such lists shall be filed with the proceedings, and the other shall be returned to the Assignee.

Unclaimed dividends.

**263.** All unclaimed dividends, and all moneys unclaimed, the produce of any Bankrupt's Estate, shall, after the expiration of the period of *Twelve Months* from the Dividend having been declared, or from the time at which any other moneys unclaimed shall have come to the hands of the Assignee, be transferred to the credit of the Estate of the Bankrupt generally. 5 10

AS TO ALLOWANCE TO THE BANKRUPT.

Court to make an allowance to Bankrupt.

**264.** It shall be lawful for the Court from time to time to make such allowance to the Bankrupt out of his estate until he shall have passed his last examination as shall appear to the Court to be necessary for the support of himself and his family; Provided, always, that no such allowance shall be made by the Court for any period after the adjournment of the last examination *sine die*; provided, also, that it shall be lawful for the Court, upon the application of the creditors' assignee, or of any creditor of the Bankrupt, who has proved his debt, and who shall have given to the Bankrupt, or left at his last known place of abode or business, *seven* days previous of his intention to make such application, to revoke such allowance as may previously have been made to the Bankrupt, either wholly or in part, and either absolutely or upon such terms as to the Court shall seem fit. 15 20 25

Proviso.

Allowance to be made on Bankrupt's application, and after notice and hearing by the Court.

**265.** The said allowance shall not be made by the Court to the Bankrupt except upon the application of the Bankrupt, and after he shall have given *seven* days previous notice of his intended application to the official or creditors' assignee, and after the Court shall have heard, for or against such application, the Bankrupt and the official or creditors' assignee, and the creditors of the Bankrupt, or any of such persons who may be desirous of being so heard; or any other person whom the Justice of the case may require. 30

If the proceeds of Estate pay 100 cents, in the \$, and have surplus, such surplus to be paid over to Bankrupt, after paying interest on his debts.

**266.** If the produce of the Estate of any Bankrupt shall be sufficient to pay *one hundred cents* in the dollar, and interest, as herein mentioned, and to leave a surplus, the Court may order such surplus to be paid to such Bankrupt, his executors, administrators, or assigns; and every such Bankrupt shall be entitled to recover the remainder, if any, of the debts due to him; but such surplus shall not be paid until all the creditors who have proved shall have received interest upon their debts, to be calculated and paid at the rate and in the order following, viz: all creditors whose debts are by law entitled to carry interest in the event of a surplus shall first receive interest on such debts at the rate of interest reserved, or if not reserved, at not. 35 40 45

exceeding the rate of *six per centum per annum*, to be calculated from the date of the filing of the petition for adjudication; and after such interest shall have been paid all other creditors who have proved shall receive interest on their debts from the date of such petition at such rate as the Court shall allow, provided it shall not exceed the rate of *six per centum per annum*.

**267.** Every person who shall be adjudged Bankrupt, shall be entitled to retain, for the use of himself and his family, under the name of excepted articles, such articles of household furniture, and tools, implements of trade, and other like necessities as he shall specify and select, not exceeding in the whole the value of *one hundred dollars*; and such excepted articles shall not be subject to be sold or disposed of in the Bankruptcy, or to be taken in execution at the suit of any creditor entitled to prove under the Bankruptcy; and in all cases there shall be filed with the proceedings in the Court an inventory of such excepted articles, with a valuation of the same and a certificate signed by the Appraiser or other person making such valuation, attesting the truth thereof, and stating when and where such articles were seen and valued; and the reasonable expenses and charge of and for such valuation, when taxed, shall be paid out of the proceeds of the Estate of the Bankrupt.

Certain articles to be retained by the Bankrupt.

They shall not be subject to execution, &c.

**268.** Upon the application of the bankrupt, of which application *seven days'* notice shall have been given to the creditor's assignee, the court may, if having regard to the probable value of the other property of the bankrupt, and to the general circumstances of the case, it shall so think fit, order that an inventory and valuation of the remainder of the Bankrupt's household furniture, tools, and implements of trade shall be made and delivered to the creditors' assignee; and that the same or such part of the same as the Bankrupt may by writing specify shall not be disposed of without further order of the Court; and the Court may permit the same to remain in the use and occupation of the Bankrupt, upon such terms and conditions, and with such security as to the Court may seem proper, so as to protect the same from being made liable to be sold for the payment of any rent, rates, or taxes which might become due thereafter for or on account of any house or premises wherein such property may be placed, and from being made liable to be sold for the payment of any debt, claim, or demand whatsoever by reason of being in the possession and occupation of the Bankrupt; and the Court may, at any time when it shall think it necessary so to do, order the same to be taken by the assignee, and to be sold for the benefit of the creditors.

Inventory and valuation of the rest of the Bankrupt's household furniture, tools, &c., and for what purpose.

#### AS TO CHANGE FROM BANKRUPTCY TO ARRANGEMENT.

**269.** At the meeting of creditors for the choice of an assignee; or at any meeting to be called for the purpose, and of

Majority of creditors may

resolve that  
the estate be  
wound up out  
Court.

which *ten* days' notice shall have been given in the Gazette, a majority of *three-fourths* in number and value of the creditors present or represented at such meeting may resolve that the estate ought to be wound up under a deed of arrangement, and that an application shall be made to the Court to stay proceedings in the Bankruptcy for a period not exceeding *two* months, and on such resolution being passed, it shall not be necessary to elect an assignee. 5

Resolution to  
be reported to  
the Court.

**270.** The Registrar shall report such resolution to the Court within *four* days from the date of such resolution, and the Bankrupt, or any creditor nominated in that behalf by the meeting, may then apply to the Court that the proceedings in Bankruptcy may be stayed in the terms of such resolution, and the Court, after hearing the Bankrupt, and such creditors as may desire to be heard for or against the resolution, and if it shall find that the resolution was duly carried, and that its terms are reasonable, and calculated to benefit the general body of the creditors under the estate, may confirm the same, and make order accordingly, and in such order shall give such directions as to the interim management of the estate as it shall deem expedient. 10 15 20

Deed of arrange-  
ment to be  
produced to  
the Court.

**271.** If the proceedings in Bankruptcy be stayed as herein provided, the Bankrupt, or any creditor nominated in that behalf by the meeting aforesaid, may, at any time within the period during which the proceedings are so stayed, produce to the Court a deed of arrangement, signed by or on behalf of *three-fourths* in number and value of the creditors of the Bankrupt; and the Court may consider the same, and may examine on oath the Bankrupt and any of the creditors who may desire to be heard in support of or in opposition to the deed, and may make such other inquiry as it may think necessary; and if the Court shall be satisfied that the deed has been duly entered into and executed, and that its terms are reasonable and calculated to benefit the general body of the creditors under the estate, it may by order make a declaration of the complete execution of the deed, and annul the Bankruptcy; and such deed shall thereafter be as binding in all respects on any creditor who has not executed the deed as if he had executed it. 25 30 35

Court to have  
jurisdiction to  
entertain the  
application.

**272.** Either before or after such order, the Court shall have jurisdiction to entertain any application of the Bankrupt, or of any party to the deed, or of any creditor or person claiming to be a creditor, respecting the disclosure, distribution, inspection, conduct, management, or winding up of the Bankrupt's estate and affairs, or any act or thing relating thereto, or respecting the execution of any of the trusts or provisions of the deed, or the audit or examination of the accounts of a trustee or inspector, or the taxation or examination of the costs or charges of any Attorney, Solicitor, Accountant, Auctioneer, Broker, or other person acting or employed under the deed, or generally 40 45

for the decision of any dispute or question, and shall also have jurisdiction to entertain any application of any such person as aforesaid, respecting any matter for the submission whereof to the Court provision is made by the deed, or any matter arising between any of the said persons, and any other person appearing and submitting to the jurisdiction of the Court.

**273.** The Court shall determine all questions arising under the deed according to the law and practice in Bankruptcy, so far as they may be applicable, and on entertaining any such application shall have power to make such order concerning the subject of the application and the costs of it as shall seem just, and to enforce such order as in Bankruptcy.

Questions to be decided according to law of Bankruptcy.

**274.** The Court shall have power for the purpose of any application under these provisions, or for the better execution of any powers given to the Court thereby, to summon, and to examine, upon oath or otherwise, the Bankrupt, and any party to the deed, and any creditor or person claiming to be a creditor, and any person known or suspected to have any of the estate in his possession, or any person supposed to be indebted to the estate or whom the Court may deem capable of giving any information, material to the full disclosure of the debtor's transactions and affairs, or to the carrying into effect the provisions of the deed; and the Court may exercise, as to the examination of such persons, and the production by them of such books, papers, deeds or documents as it shall deem requisite, the same powers that are vested in the Court with relation to the examination of persons and witnesses, and the production of books, papers, deeds, and documents, in matters of Bankruptcy.

Power of the Court to summon and examine.

**275.** If the resolution aforesaid shall not be duly reported, or if the Court shall refuse the application to stay proceedings, or if the deed of arrangement shall not be duly produced, or if upon its production, the Court shall not think fit to approve thereof, the Bankruptcy shall proceed as though no such resolution had been passed, and the period of time subsequent to such resolution shall not be reckoned in calculating periods of time prescribed by this Act, and the Court may make all necessary orders for resuming the proceedings in Bankruptcy.

Where Bankruptcy to be continued or resumed.

**276.** If the Bankruptcy be annulled, as herein provided, the order annulling the same shall be filed with the proceedings, and notice thereof shall be given in the *Gazette*.

Where Bankruptcy annulled.

**AS TO TRUST DEEDS FOR BENEFIT OF CREDITORS, COMPOSITION AND INSPECTORSHIP DEEDS EXECUTED BY A DEBTOR.**

**277.** Every deed or instrument made or entered into between a debtor and his creditors, or any of them, or a trustee on their behalf, relating to the debts or liabilities of the debtor, and his release therefrom, and the distribution, management,

Trust deeds when valid.

and winding up of his estate, or any of such matters; shall be as valid and effectual and binding on all the creditors of such debtor as if they were parties to and had duly executed the same, provided the following conditions be observed, that is to say :

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1. *Three-Fourths* in number and value of the creditors of such debtor whose debts shall respectively amount to *Fifty Dollars* and upwards shall in writing assent to or approve of such deed or instrument, within *Seven* days from and after the execution thereof by such debtor ;

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2. If a trustee or trustees be appointed by such deed or instrument, such trustee or trustees shall execute the same within *Seven* days after the day of the debtor's execution thereof ;

3. The execution of such deed or instrument by the debtor and every trustee shall be attested by an Attorney or Solicitor ;

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4. Within *Fourteen* days from the day of the execution of such deed or instrument by the debtor the same shall be produced and left at the office of the registrar, for the purpose of being filed ;

5. An affidavit by the debtor, that *Three Fourths* in number and value of the creditors of the debtor whose debts amount to *Fifty Dollars* or upwards did in writing assent to or approve of such deed or instrument within seven days from and after the execution thereof by such debtor, and that such assent was fairly given or obtained, and without collusion or fraudulent concert with any creditor, shall at the same time that such deed or instrument is produced and filed, be delivered to the registrar, who shall duly file the same.

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Deed to be filed in Court, on pain of nullity.

**278.** No deed, instrument, or agreement by which a debtor conveys or covenants or agrees to convey his estate and effects, or the principal part thereof, for the benefit of the creditors, or makes any arrangement or agreement with his creditors, or any person on their behalf, touching the distribution, inspection, conduct, management, or winding-up of his affairs or estate, and the release or discharge of such debtor from debts or liabilities, shall be valid, or good in law, unless the same shall, within *Fourteen* days from and after the execution thereof by such debtor, be filed in the Court of Bankruptcy in manner herein directed.

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Jurisdiction of the Court.

**279.** From and after the filing of every such deed or instrument in manner aforesaid, the debtor and creditors, and trustees, parties to such deed, or who have assented thereto or are bound thereby, shall, in all matters relating to the Estate and effects of such debtor, be subject to the jurisdiction of the Court of Bankruptcy, and shall respectively have the benefit

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of and be liable to all the provisions of this Act, in the same or like manner as if the debtor had been adjudged a Bankrupt, and the creditors had proved, and the trustees had been appointed creditors assignees under such Bankruptcy; and the  
 5 existing or future trustees of any such deed or instrument, and the creditors under the same, shall, as between themselves respectively, and as between themselves and the debtor and  
 against third persons, have the same powers, rights, and remedies, with respect to the debtor and his estate and effects, and  
 10 the collection and recovery of the same, as are possessed or may be used or exercised by Assignees or creditors with respect to the Bankrupt, or his Acts, Estate and effects in Bankruptcy.

**280.** After notice of the filing of such deed has been given  
 15 as aforesaid, no execution, sequestration, or other process against the debtor's property in respect of any debt, and no process against his person in respect of any debt, other than such process by writ or warrant as may be had against a debtor about to depart out of this province shall be available to any  
 20 creditor or claimant, without leave of the Court; and a certificate of the filing of such deed under the hand of the Registrar and the seal of the Court, shall be available to the debtor for all purposes as a protection in Bankruptcy.

**281.** In case any petition shall be presented for an adjudication in Bankruptcy against a debtor after his execution of  
 25 such deed or instrument as aforesaid, and pending the seven days allowed for obtaining the assent of creditors, or after such seven days, but pending the time allowed for the filing of such deed or instrument, all proceedings under such petition shall  
 30 be stayed, and in case such deed or instrument shall be duly filed as aforesaid, the petition shall be dismissed.

**282.** If a debtor cannot obtain the assent of *three-fourths* in value of his creditors, by reason of his being unable to ascertain by whom bills of exchange accepted by him are  
 35 holden, or by reason of the absence of creditors in a foreign country, or other similar circumstances, it shall be sufficient if he obtain the consent of *three-fourths* of all his other creditors to such deed or instrument as aforesaid; provided that in such case the deed or instrument be in such form, as is expressed in  
 40 Schedule (G.) to this Act annexed, which shall vest all the Estate and effects of the debtor in the trustees of such deed, and provided that all such other conditions as are hereinbefore required, be duly complied with.

**AS TO PETITION FOR ARRANGEMENT BETWEEN DEBTORS AND THEIR CREDITORS UNDER THE CONTROL AND SUPERINTENDENCE OF THE COURT.**

**283.** Any debtor desirous of making an arrangement with  
 45 his creditors under the control and superintendence of the

Protection to debtor.

Stay of proceedings.

Where creditors are not known.

Who may petition.

Court may petition under this Act, except as hereinafter provided.

- 284.** A debtor in custody for an offence under this Act shall not be entitled to petition for arrangement. 5
- 285.** A debtor who has once petitioned for arrangement shall not, without special leave of the court first obtained, be entitled to petition for arrangement a second time within *five* years, whether his first petition has resulted in an arrangement or not. 5
- 286.** The petition for arrangement shall be filed in the same Court in which a petition for Bankruptcy against himself would be filed by the arranging debtor, and shall be subject in all respects to the like regulations. 10
- 287.** Forthwith, upon the filing of the petition, the Court shall appoint an Official Assignee, who shall not be the Registrar, in the matter of the petition. 15
- 288.** The same law and practice as apply to petitions for Bankruptcy shall apply, so far as the same shall be applicable, to petitions for arrangement.
- 289.** Forthwith after the filing of the petition, notice of the same shall be given in the *Gazette* and after such notice has been gazetted, no Execution, Attachment, or other Process against the Petitioner's property in respect of any debt, shall be available without the leave of the Court. 20
- 290.** If at any time a petition for Bankruptcy, Summons or other proceeding having for its object the Bankruptcy of the Petitioner, is pending concurrently with the petition for arrangement, whether the petition for arrangement be filed before the other proceeding is originated or not, the Court, in which the petition for arrangement is pending, shall deal with the two proceedings as shall seem just. 25
- 291.** Forthwith on the filing of the petition the Court shall appoint the first meeting of the Petitioner's creditors, and notice of the time, place, and object of such meeting shall be given as aforesaid. 30
- 292.** The Petitioner shall file in Court, together with his petition, or within *three* days after the same has been filed, a full, true, and accurate Schedule or Statement of his debts and liabilities of every kind, and of the names and residences of his creditors, and of the causes of his inability to meet his engagements, and also a full account of his estate and effects, whether in possession, reversion, or expectancy, and of all debts and rights due to or claimed by him, and of all property of what kind soever, held in trust for him, and shall therein set forth 35

Not a debtor in custody.

Not a debtor who has before petitioned within five years.

Where petition is to be filed.

Official assignee.

What law to apply.

Execution, &c., to be stayed.

If proceedings in Bankruptcy instituted, Court to deal with the two proceedings.

First meeting of creditors.

Schedule of debts to be filed.

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such proposal as he is able to make for the future payment or compromise of such debts or engagements and shall furnish the Registrar with a copy of such account, and such statement shall be in such form as any general order shall direct, and shall be verified by the oath of the Petitioner; and if the Petitioner shall fraudulently make any statement in his schedule which shall be false in any material particular, or shall fraudulently omit from his schedule any material statement which ought to be contained therein, he shall be guilty of a misdemeanor.

**293.** The schedule may, with the leave of the Court, be amended from time to time before the second meeting of creditors hereinafter provided for. Amendment of Schedule.

**294.** The official assignee shall send by post or deliver to every person named in the schedule as a creditor or person claiming to be a creditor, or otherwise known by him to be a creditor or person claiming to be a creditor, to the amount of *twenty dollars* or upwards, notice of the filing of the Petition, and of the time, place, and object of the first meeting of creditors, and also an abstract of the schedule, and of any valuation of the Petitioner's property made after the filing of the Petition, and any other information respecting the Petitioner or his affairs that the official assignee may think useful to enable the creditors to judge of the Petitioner's proposal. Notice to creditors.

**295.** The first and second meetings of creditors shall be held in the presence and under the control of a Registrar sitting in Chambers, and the official assignee and Petitioner shall attend both meetings, and the Petitioner shall be subject to examination in all respect as in Bankruptcy. Meetings of creditors.

**296.** The creditors shall be at liberty to prove their debts before or at either of the meetings. Debts may be proved.

**297.** Such debts exclusively shall be proveable as would be proveable under an adjudication of Bankruptcy, and the proofs shall be made in all respects as they would be under such adjudication. What debts proveable.

**298.** If at the first meeting *three fourths* in number and value of the creditors who have then proved debts to the amount of *twenty dollars* each or upwards shall, personally or by attorney, assent to the Petitioner's proposal, or to any modification thereof, the Court shall appoint the second meeting of creditors for a day not earlier than *fourteen* days from such first meeting, and notice of such second meeting shall be given as aforesaid, and shall also be given in writing by post to every creditor to the amount of *twenty dollars* each or upwards, who was not present, personally or by attorney, at the first meeting, *seven* clear days at least before the day appointed for such second sitting. If three fourths assent, second meeting to be appointed.

Second mee-  
ting.

**299.** If at the second meeting, or any adjournment thereof sanctioned by the Court, *three fourths* in number and value of the creditors who have then proved debts to the amount of *twenty dollars* each or upwards shall, personally or by Attorney, accept the proposal or modification thereof assented to at the first Meeting, such proposal or modification shall be reduced into writing as the arrangement made between the petitioner and his creditors, and shall be signed by the creditors present personally or by Attorney at the second Meeting, or by some person on their behalf appointed for that purpose by the creditors present.

Arranging  
debtor to at-  
tend official  
assignee.

**300.** Forthwith after the grant of protection the petitioner shall, unless the Court shall in any case dispense with such attendance, attend at the office of the official assignee appointed to act in the matter of the petition, and give the official assignee such information as he may require for the purpose of ascertaining and reporting to the creditors (which he is hereby required to do at their first Meeting) the state of the petitioner's affairs.

Joint credi-  
tors.

**301.** The requisite *three fourths* of the creditors may comprise persons creditors not of the petitioner exclusively, but of him jointly with others.

Fraudulent  
concert to be  
void.

**302.** Any contract or security made or given by the petitioner or other person with, to, or in trust for a creditor for securing the payment of any money due by the petitioner at the time of the filing of his petition, as a consideration or with intent to persuade the creditor to assent to or accept the proposal or a modification thereof, shall be void, and the money secured or agreed to be paid shall not be recoverable, and the person sued on the contract or security may plead the general issue, and give this Act and the special matter in evidence.

Affidavit by  
Petitioner.

**303** Before the approval or confirmation of any resolution or agreement, under any petition for arrangement, or the making of any order or confirmation, as herein provided, the petitioner shall make and file an affidavit that the assent of his creditors to such resolution or agreement has been obtained fairly, and without collusion or fraudulent concert with any creditor or creditors.

Resolution  
may provide  
for manage-  
ment of estate.

**304.** The resolution or agreement embodying the arrangement may make such provision for the management of the estate, and the payment of the dividends, and the auditing of the accounts, as to the creditors shall seem fit.

Assignee to  
be subject to  
the Court, as  
in Bank-  
ruptcy.

**305.** The official assignee under such petition, and any trustee appointed by such resolution or agreement for carrying the same into effect, shall in all respects be subject to the orders of the Court in such and the like manner as if they had

been respectively the official and creditors assignees of a Bankrupt's Estate.

**306.** The Court shall have all such and the like jurisdiction, rights, powers and authorities in respect of such arrangement Court to have jurisdiction as in Bankruptcy.  
 5 as it would have in case of a Bankruptcy, due regard being had to the terms of the resolution or agreement embodying such arrangement, and shall exercise such of the same jurisdiction, rights, powers and authorities as shall be requisite for the due carrying such resolution or agreement into execution.

**307.** Except where otherwise expressly provided by such resolution or agreement, every question, matter and thing arising in respect of the arrangement and of such resolution or agreement shall be decided in such and the like manner as it would have been decided had it arisen under a Bankruptcy, and the proceedings under such arrangement and resolution or agreement shall be similar to the proceedings under a Bankruptcy, due regard being had to the terms of such resolution or agreement, and to the necessary difference between an arrangement under the Superintendence of the Court and a Bankruptcy ; and  
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 20 for the purposes of the determination of any question the date of the filing of the petition for arrangement shall be considered as corresponding to the date of the filing of a petition for adjudication of Bankruptcy. Proceedings to be similar to those in Bankruptcy.

**308.** If, after hearing the petitioner and such creditors as may desire to be heard for or against the arrangement, the Court shall be of opinion that the arrangement is reasonable and proper to be executed, and that due provision has been made for the payment of all creditors the amount of whose debt does not exceed the sum of *Twenty dollars*, it may approve of and confirm the same, and cause it to be filed and entered of record, and may grant to the petitioner protection, of the like validity and effect as a protection under an adjudication of Bankruptcy, from all process against his property and person in respect of any debt or liability proveable under the arrangement ; and thenceforth the arrangement shall be absolutely binding on the petitioner, and on all persons being his creditors at the time of filing the petition, or having any claim or demand against him proveable under the arrangement. Protection to petitioner.  
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**309.** Notice of the order of confirmation shall be forthwith given as aforesaid. Notice.  
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**310.** After the acceptance of the petitioner's proposal by the requisite proportion of the creditors at the second meeting, the majority in number and value of the creditors who have for the time being proved debts to the amount of *Twenty dollars* each or upwards shall, unless the arrangement expressly provide otherwise, be competent to determine and do, for and in the name of the creditors, every thing which under these provisions may be determined or done by the creditors. Majority of creditors to act for all.  
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- Trustee to be appointed.** **311.** The creditors shall appoint a trustee, who may be required to give such security, and shall have such powers, duties, and discretion for the purpose of carrying the arrangement into effect, for the management of the arranging debtor's property, the recovery and compromise of debts, and otherwise, in relation to the arrangement, as the creditors think fit; and the creditors may, if they think fit, appoint a committee of creditors to advise and assist such trustee. **5**
- Court may reject him.** **312.** The Court shall have power to reject any trustee appointed by the creditors who shall appear to the Court unfit for the appointment, and thereupon the creditors shall appoint another person to be trustee. **10**
- Remuneration of trustee.** **313.** The trustee may be paid for his services in such manner as the creditors determine, subject to the approval of the Court as to the mode of payment, and to taxation as to the amount. **15**
- Property to vest in him if so provided.** **314.** If the arrangement so provide, but not otherwise, the property of the arranging debtor shall vest as from the date of the arrangement in the trustee first appointed, and afterwards in the trustee for the time being, by virtue of his appointment, without conveyance or assignment, in like manner as the property of a person adjudged bankrupt vests in the assignee; and in that case the law and practice in Bankruptcy respecting the registration in certain cases of the certificate of the appointment of the assignee shall apply, so far as may be applicable, to the appointment of the trustee. **20**
- New Trustee.** **315.** The creditors may, at any time, with the approval of the Court, remove a trustee, and may from time to time, on the removal, death, or resignation of a trustee, appoint a new one, subject to the like provisions as apply to an original appointment. **30**
- Reference of questions to the Court.** **316.** The arranging debtor, or the trustee, or any creditor or person claiming to be a creditor, may bring before the Court by summons any question relating to the administration of the property of the arranging debtor. **35**
- Concurrence of creditors.** **317.** The certificate of the trustee, certifying the concurrence of the requisite proportion of creditors in any determination or act, shall be *prima facie* evidence of that concurrence.
- Court may examine on oath.** **318.** The Court shall have power to examine on oath or otherwise the arranging debtor and his witnesses, and any creditor, or person claiming to be a creditor, and his witnesses, and the trustee, and his witnesses, and to make any order as to the costs or the charges and expenses of any person that shall seem just. **40**

**319.** From the time of the filing of the petition the Court shall have the like powers as it has in bankruptcy to seize the petitioner's property, and to compel the attendance of, and to examine on oath or otherwise, the petitioner and his wife, and every person known or suspected to have any part of the petitioner's property in his possession, or supposed to be indebted to the petitioner, or to be capable of giving information concerning the petitioner's person, trade, business, calling, dealings, or property, and to compel the production of books, deeds, and other documents, and to enforce obedience by commitment or otherwise.

Power to seize property.

**320.** The Court may, if it think fit, at any time, on application of the arranging debtor and the creditors, by order, confirm any alteration in the arrangement, and the arrangement in the altered form shall thenceforth be as binding as if it had been originally adopted in that form.

Arrangement may be altered.

**321.** If the arranging Debtor shall die after the order of confirmation the Court may, if it think fit, direct that the proceedings shall go on as if he were living.

Death of arranging debtor.

#### AS TO ORDER OF DISCHARGE.

**322.** When the arrangement has been fully carried into effect, of which the certificate of the Trustee shall be *prima facie* evidence, then, subject to the provisions hereinafter contained, the Petitioner may apply to the Court for an order of discharge, of which application ten days notice shall be given to the Creditors in manner herein provided, and the Court, after hearing the arranging Debtor, and such Creditors as may desire to be heard for or against the order, may make an order of discharge, discharging the arranging Debtor from all debts due by him at the time of the filing of his Petition, and from all claims and demands proveable under the arrangement; and such order shall in all respects, and subject to the like appeal, have the same effect as an order of discharge in Bankruptcy.

Court may make order of discharge.

**323.** The Court, on being satisfied that the Trustee has duly performed his trust and duty, may make a declaration to that effect by order, which shall be a full release and acquittance to him in all Courts and for all purposes, for all things done or omitted by him in respect of the arrangement.

Discharge of Trustee.

**324.** The Petitioner shall not be at liberty to withdraw his Petition, but the Petition may at any time before order of discharge be dismissed by the Court, on the application of the Petitioner, on notice to the Trustee, or, if there be none, to such two Creditors as the Court shall direct.

Petition not to be withdrawn, but may be dismissed.

**325.** On dismissal of the Petition, the Court may make such order as to the Petitioner's property, its re-vesting in the

On dismissal, order as to re-vesting, &c.

Petitioner, and other matters connected therewith, as shall seem just.

Petition may be dismissed for non-compliance with these provisions.

**326.** If the arranging Debtor shall not duly comply with the provisions of this Act respecting arrangements, or any order of the Court thereunder, the Court may, if it think fit, dismiss the Petition, either on the application of the Trustee or the Creditors, or without any application. 5

If petition is dismissed—filing it to be an act of Bankruptcy.

**327.** Where a Petition for arrangement shall be for any cause dismissed, the filing of it shall be deemed an Act of Bankruptcy committed by such Debtor at the time of filing such Petition, in case a Petition for adjudication be presented within *two* months after the dismissal of the Petition for arrangement; and such Petition for adjudication may be founded upon the Petition for arrangement, and any Creditor to the amount required by this Act may proceed to adjudication in Bankruptcy upon such Petition for arrangement. 15

Validity of proceedings, where petition is dismissed.

**328.** If a Petition for arrangement be for any cause dismissed, all sales and dispositions of and dealings with property, and all payments made, and all acts done by or under the authority of the Official Assignee, Trustee, or by any person under the authority of the Court, according to these provisions, shall nevertheless be as valid as if the arrangement had been fully carried into effect, and an order of discharge had been made, but not further or otherwise. 20

When petition may be converted into Bankruptcy.

**329.** In the following cases the Court, either on the application of the Trustee or the Creditors, or without any application, shall order that all proceedings under the Petition for arrangement shall cease, and shall, without the presentation of any petition for adjudication or other proceeding, forthwith adjudge the Petitioner bankrupt absolutely, and such adjudication shall have relation back to the filing of the Petition as an Act of Bankruptcy: 25

1. If at the first meeting the Petitioner's proposal, or some modification thereof, be not assented to;
2. If at the second meeting the proposal or modification thereof assented to at the first meeting be not accepted; 35
3. If the Court do not confirm the arrangement as accepted;
4. If at any time it shall appear to the Court that the arranging Debtor has done any of the Acts by this Act made misdemeanors, whether he be prosecuted or convicted or not;
5. If at any time it shall appear to the Court that the arranging Debtor has not made a full disclosure of all that he ought to disclose, or that he is not desirous of making *bonâ fide* an 40

arrangement with all his Creditors, or that he has postponed the filing of his Petition longer than was excusable, or that he has after or within *three* months next before the filing of his Petition assigned, transferred, or made away with any part of his property, otherwise than in due course, or voluntarily done or suffered any thing by reason whereof any part of his property has been taken in execution.

**330.** On adjudication of Bankruptcy under the last foregoing provision, the proceedings shall go on as if there had been no Petition for arrangement; the Court shall direct who is to have the conduct of the Bankruptcy, and shall give such other directions as shall seem expedient on the transfer of the proceedings into Bankruptcy, and may, if it think fit, from time to time order that any of the ordinary proceedings under Bankruptcy the object of which shall appear to have been sufficiently effected under the arrangement be dispensed with.

Proceedings in Bankruptcy how to be conducted.

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## AS TO NOTICES.

**331.** All Notices by this Act or by General Orders required to be served on any person shall be sent by Post addressed to the last known place of business or abode of such person, subject to such regulations as to registration and otherwise as such General Orders shall direct, provided that this present clause shall not apply to or affect Notices by this Act or by any General Orders required to be personally served.

Notices to be sent by Post.

**332.** The Court of Bankruptcy for each District shall cause to be published a weekly paper to be called "The Bankruptcy Gazette" for such District, for the publication of all matters required or authorized to be published by this Act; or the Court may, in its discretion, arrange for the publication of such matters in some one newspaper within its District, such matters to be printed under the heading or title of "The Bankruptcy Gazette."

Court of Bankruptcy to cause Bankruptcy Gazette to be published.

**333.** The Court of Appeal in Bankruptcy, may order all matters required or authorized to be published by it, to be published in such of the said Gazettes as it may think proper.

Court of appeal may publish notices in said Gazette.

**334.** General Orders respecting the form and contents of Notices in the Gazette, and otherwise, may provide for Notices concerning more Bankruptcies than one being comprised in one advertisement, and may fix the price to be paid to the Printer of the Gazette for advertisements, which price the said Printer is hereby required to receive as such payment.

Advertisements.

## AS TO THE CALLING OF MEETINGS AND PROCEDURE THEREAT.

**335.** The creditors' assignee may, at any time, call a meeting of the creditors; and he shall call such meeting when

Creditors' assignee may call meetings.

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thereunto required by *one fourth* in value of the creditors who have proved their debts.

Notice to be  
by *Gazette*  
and letter.

**336.** Notice shall be given of all meetings of creditors by an advertisement in the *Gazette*, setting forth the days, hour, place and purpose of such meeting, at least *seven* days before the time appointed for such meeting, and also by a notice sent to every creditor who has proved his debt, specifying such particulars as aforesaid, and posted at least *seven* days before the time appointed for such meeting; provided that it shall be lawful for the Court, upon the application of the official assignee or creditors' assignee (as the case may be), and upon sufficient cause being shown in that behalf, to direct that a shorter notice of any meeting shall be given, and such notice shall thereupon become and be for all purposes valid and binding. 5 10 15

Proviso:  
Court may  
shorten notice.

Questions to  
be decided by  
majority.

**337.** All questions at any meeting of creditors shall be determined by a majority in value of those present and entitled to vote, unless in the cases herein otherwise provided for.

Creditors  
may appoint  
proxies.

**338.** Any creditor who has proved his debt may, by writing under his hand, in such form as General Orders shall direct, and attested by one witness, appoint and empower any other person to be his deputy at any meeting of the creditors, and to take part therein and vote thereat, on his behalf, provided that such appointment shall have been produced to the official assignee or the creditors' assignee, as the case may be, at least *three* days before the meeting at which such person claims to vote, and has been approved by him, and the official assignee or creditors' assignee may call for such evidence as he may think fit of the signature of the creditor to such authority; every creditor so appearing at any meeting by proxy, shall, for all the purposes of this Act, be considered as being present at such meeting. 20 25 30

#### AS TO THE MODE OF ASCERTAINING MAJORITIES.

Creditors to  
vote according  
to balance due  
to them on ac-  
count fairly  
stated.

**339.** In all matters wherein creditors shall vote, or wherein the assent or dissent of creditors shall be exercised in pursuance of or in carrying into effect this Act, every creditor shall be accounted such in respect of such amount only as upon an account fairly stated between the parties, after allowing the value of mortgaged property and other such available securities and liens, shall appear to be the balance due; and all disputes arising in such matters concerning any such amount shall, upon application duly made in that behalf, be examined into by the Court, who shall have power to determine the same; provided, always, that the amount in respect of which any such creditor shall vote in any such matter shall not be conclusive of the amount of his debt for any ulterior purpose, in pursuance of the provisions of this Act. 35 40 45



**340.** In all cases under this Act in which there is required a specified majority or proportion in number of the creditors of a Bankrupt, or any specified majority or any proportion in value of such creditors, no creditor, whose debt is under *Fifty Dollars*, shall be reckoned in number, but the debt due to such creditor shall be computed in value. How creditors under \$50 shall be counted.

**341.** In all cases under this Act in which there is required any specified majority or proportion in number of the creditors of any Bankrupt, or any specified majority or proportion in value of such creditors, it shall be lawful for the Court, by order, to make a declaration that such required majority or proportion has done the Act, matter or thing for which such majority or proportion is required; and the Court shall previously hear such evidence, and direct such inquiries and hear such persons for or against such order, as the justice of the case may require. Court may declare such majority to have acted.

**342.** The registrar shall, on the reasonable application of any Bankrupt or arranging debtor, or of any creditor of such Bankrupt or debtor who has proved his debt, or of the representative or creditor, who has proved his debt, of a deceased debtor, or of the Attorney of any such Bankrupt or other person, produce and show to such applicant every petition for Bankruptcy, or for arrangement, or for distribution, and every adjudication, order, and proceeding thereunder, in which the applicant is concerned; and such applicant shall have inspection, at all reasonable times, of all books, papers, and writings relating to such matter, in the possession of the official or creditors' assignee, or filed in Court, and the Registrar shall provide for any such applicant an Office copy of any such petition, order; or other proceeding, books, papers, and writings, or of any part thereof, as he may require, on payment of such fee or rate of charge as General Orders shall allow. As to inspection and copies of proceedings.

**343.** If the Bankrupt shall not (if he were within the Province at the time of adjudication) within *Twenty-one* days after the advertisement of the Bankruptcy in the *Gazette*, or (if he were in any place out of the Province at the date of the adjudication) within *four* months after such advertisement, have commenced an action, suit, or other proceeding to dispute or annul the petition for adjudication, and shall not have prosecuted the same with due diligence and with effect, the *Gazette* containing such advertisement shall be conclusive evidence in all cases as against such Bankrupt, and in all actions at Law or suits in equity brought by the Assignee for any debt or demand for which such Bankrupt might have sustained any action or suit had he not been adjudged Bankrupt, that such Person so adjudged Bankrupt became a Bankrupt before filing of the petition for adjudication, and that such petition was filed on the day on which the same is stated in the *Gazette* to bear date. If Bankrupt do not dispute petition, Gazette to be evidence of Bankruptcy as against Bankrupt, and persons whom he might otherwise have sued.

In certain actions by or against any person acting under the Bankruptcy, no proof required at trial of petitioning creditors' debt, &c. unless notice be given that those matters are to be disputed.

**344.** In any action, other than an action brought by the assignee for any debt or demand for which the Bankrupt might have sustained an action had he not been adjudged Bankrupt, and whether at the suit of or against the assignee, or against any person acting under the warrant of the Court, for any thing done under such warrant, no proof shall be required at the trial of the petitioning creditor's debt, or of the Act of Bankruptcy, unless the other party in such action shall, if defendant at or before pleading, and if plaintiff before issue joined, give notice in writing to such assignee or other person that he intends to dispute some and which of such matters; and in case such notice shall have been given if such assignee or other person shall prove the matter so disputed, or the other party admit the same, the Judge before whom the cause shall be tried may (if he think fit) grant a certificate of such proof or admission; and such assignee or other person shall be entitled to the costs occasioned by such notice, and such costs shall, if such assignee or other person shall obtain a verdict, be added to the costs, and if the other party shall obtain a verdict shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignee or other person.

The same in suits in Equity.

**345.** In all suits in equity, other than a suit brought by the Assignee for any debt or demand for which the Bankrupt might have sustained a suit in equity had he not been adjudged bankrupt, and whether at the suit of or against the Assignee, no proof shall be required at the hearing of the petitioning creditor's debt, or of the Act of Bankruptcy, as against any of the parties in such suit, except such parties as shall within ten days after rejoinder give notice in writing to the Assignee of their intention to dispute some and which of such matters; and where such notice shall have been given, if the Assignee shall prove the matter so disputed, the Court may direct the cost occasioned by such notice to be paid by the parties so giving such notice, and the service of such notice may be proved by affidavit upon the hearing of the cause.

Proceedings purporting to be sealed with the seal of the Court to be receivable in evidence.

**346.** Any petition for adjudication, or arrangement or distribution, adjudication of Bankruptcy, or order for distribution, assignment, appointment of Official or creditors' Assignee, certificate, deposition, or other proceeding or order in Bankruptcy, or under any of the provisions of this Act, appearing to be sealed with the seal of the Court, or any writing purporting to be a copy of any such Document, and purporting to be so sealed, shall, at all times, and on behalf of all persons, and whether for the purposes of this Act or otherwise, be admitted in all Courts whatever as evidence of such Documents respectively, and of such proceedings and orders having respectively taken place or been made, and be deemed respectively Records of the Court, without any further proof thereof; and no such document or copy shall be receivable in evidence unless the

same appear to be so sealed, except where otherwise in this Act specially provided.

**347.** All Courts, Judges, Justices, and persons judicially acting, and other Officers, shall take judicial notice of the signature of the Judge or of any Registrar of the Court, and of the seal of the Court, subscribed or attached to any judicial or official proceeding or document to be made or signed under the provisions of this Act.

Judicial notice to be taken of signature of Judge, &c.

**348.** If any person shall forge the signature of any Judge or Registrar, of the Court, or shall forge or counterfeit the seal of Court, or knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such Judge or Registrar, or a false or counterfeit seal of the Court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, every such person shall be guilty of Felony, and shall be liable to imprisonment in the Provincial Penitentiary for any term of years not less than two years.

Forging signature of Judge, seal of Court, &c.

**349.** A copy of the Gazette containing any such advertisement as is by this Act directed or authorized to be made therein shall be evidence of any matter therein contained, and of which notice is by this Act directed or authorized to be given by such advertisement; and all proceedings or notices required by this Act to be inserted in the Gazette shall be marked with the seal of the Court from which such proceedings or notices shall be issued, and certified by such Registrar of Court.

Advertisements when to be evidence and of what.

**350.** Any person who shall insert or cause to be inserted in the Gazette any advertisement under this Act, without authority, or knowing the same to be false in any material particular, shall be guilty of a Misdemeanor.

Inserting advertisements without authority.

**351.** Every adjudication of Bankruptcy, order appointing an official assignee, certificate of appointment of a creditors' assignee, and order of discharge, and also every order of the court declaring that a specified majority or proportion in number or value of the creditors of any Bankrupt have done the Act, matter, or thing for which such majority or proportion is required, shall, but subject and without prejudice to the right of appeal, under the provisions of this Act, be binding and conclusive upon and between all persons whomsoever and in all courts whatsoever.

Adjudication, appointment of assignee, &c., conclusive against all persons.

**352.** Every certificate of a trustee or inspector under any deed or memorandum of arrangement rendered obligatory on creditors who shall not have signed the same, or of any two of

Certificate of Trustee, &c., under arrangement to

be conclusive on all persons. the creditors, setting forth that a majority in number and *three-fourths* in value of the creditors have signed such deed or memorandum, shall, but subject and without prejudice to the right of applying to the Court to cancel such certificate, and to the right of appeal under the provisions of this Act, be binding and conclusive upon and between all persons whomsoever, and, in all Courts whatsoever. 5

Evidence of declaration of insolvency. **353.** A copy of a declaration of insolvency under this Act, purporting to be certified by a Registrar of the Court as a true copy, shall be received as evidence of such declaration having been filed. 10

Evidence as to insolvency abroad. **354.** A copy of any petition filed in any Court having Jurisdiction for the relief of insolvent debtors, or in bankruptcy, in any of Her Majesty's dominions, colonies, or dependencies, and of any vesting order, schedule, order of adjudication, or other proceedings, purporting to be signed by the officer in whose custody the same shall be or his deputy, certifying the same to be a true copy of such petition, vesting order, schedule, order of adjudication, or other order or proceedings, and appearing to be sealed with the seal of such Court, shall at all times be admitted under this Act as sufficient evidence of the same, and of such proceedings respectively having taken place, without any other proof whatever given of the same. 15 20

As to death of any witness. **355.** In the event of the death of any witness deposing to the petitioning creditor's debt or to an Act of Bankruptcy, under any bankruptcy, or under any petition for arrangement or distribution, the deposition of any such deceased witness, purporting to be sealed with the seal of the court, or a copy thereof, purporting to be so sealed, shall in all cases be received as evidence of the matters therein respectively contained. 25 30

Notices to agents of Corporations. **356.** If any accredited agent of any body corporate or public company shall have had notice of any Act of Bankruptcy, such body corporate or company shall be deemed to have had such notice.

Affidavits, &c. before whom taken. **357.** Any affidavit, declaration, or affirmation required to be sworn or made in relation to any matter under this Act, may be lawfully sworn— 35

1. In this Province, before the Court or any Registrar thereof or before any Judge of any of the Superior Courts in this Province, or before any Judge of a County Court or any Recorder in Upper Canada, or before any Commissioner authorized to take affidavits either in Upper or Lower Canada by any of the Superior Courts of Upper Canada, or before any Master or Master Extraordinary in Chancery in Upper Canada; 40

2. In Great Britain, Ireland or in any colony, island, plantation, or place under the dominion of Her Majesty before 45

any Court, Judge, or person lawfully authorized to take and receive affidavits, affirmations, or declarations;

3. In any foreign parts out of Her Majesty's dominion, before a magistrate, the oath being attested by a Notary, or before a  
5 British Minister, Consul or Vice-Consul;

And every such officer or other person is hereby authorized and required to administer the oath upon any such affidavit, or to take such affirmation or declaration; and all Courts, Judges, Justices, commissioners, and persons acting judicially shall  
10 take judicial notice of the seal or signature (as the case may be) of any such Court, Judge, Person, Consul or Vice-Consul, attached, appended, or subscribed to, any such affidavit or declaration, or to any other document to be used for the purposes of this Act, or of other Acts in relation hereto.

15 **358.** In all cases where a solemn declaration shall be made in lieu of an oath, solemn affirmation, or affidavit in any matter under this Act, such declaration shall be in the form prescribed in the schedule (H) to this Act annexed, or to the like effect. Declaration to be in form H.

**359.** All Bankrupts and the wives of such Bankrupts  
20 respectively, when required by the Judge, shall make and sign the declaration contained in the schedule (E) to this Act annexed, but such declaration shall not in any case exempt such Bankrupt or Bankrupt's wife from being examined upon oath, if the Court or any creditor shall so require. Bankrupt and his wife to be examined on declaration or oath.

#### SOLICITORS.

25 **360.** Every practising Attorney and Solicitor in Upper Canada may practise in Bankruptcy as such Attorney or Solicitor, and as to all matters administered in Chambers or before a Registrar may appear and plead without being obliged to employ Counsel. Solicitors in Bankruptcy.

#### AS TO COSTS.

30 **361.** The Court may, in all matters before it, award such costs as shall seem fit and just; and all costs so awarded shall be recoverable in the same manner as costs awarded by a rule of any of the Superior Courts may be recovered, and the like remedies may be had, upon an order of such Court for costs  
35 as upon a rule of any of the said Superior Courts for costs. Costs.

**362.** Every person summoned to attend before the Court as a person known or suspected to have any of the estate of the Bankrupt in his possession, or who is supposed to be indebted to the Bankrupt, shall have such costs and charges as the  
40 Court, after the examination of such person, shall in its discretion think fit; and every witness summoned to attend before Certain witnesses summoned to be paid their costs.

the Court shall have his necessary expenses tendered to him, in like manner as is now by law required upon service of a subpoena to a witness in an action at law.

AS TO MISDEMEANORS UNDER THIS ACT.

Certain acts  
by Bankrupts  
to be misde-  
meanors.

**363.** From and after the commencement of this Act, any Bankrupt who shall do any of the acts or things following, with intent to defraud, or defeat the rights of his creditors, shall be guilty of a misdemeanor, and shall be liable, at the discretion of the Court before which he shall be convicted, to punishment by imprisonment for not more than *two* years, or to any greater punishment attached to the offence by any existing statute :

1. If he shall not upon the day limited for his surrender, and before *three* of the clock of such day, or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing, to be served upon him personally or left at his usual or last known place of abode or business, and after the notice herein directed in the *Gazette* surrender himself to such Court (having no lawful impediment allowed by the Court), and sign or subscribe such surrender, and submit to be examined before such Court from time to time ;

2. If he shall not upon his examination fully and truly discover, to the best of his knowledge and belief, all his property, real and personal, inclusive of his rights and credits, and how and to whom, and for what consideration, and when he disposed of, assigned, or transferred any part thereof, except such part as has been really and *bonâ fide* before sold or disposed of in the way of his trade or business, if any, or laid out in the ordinary expense of his family, or shall not deliver up to the Court, or dispose as the Court directs of all such part thereof as is in his possession, custody, or power, except the necessary wearing apparel of himself, his wife, and children ; and deliver up to the Court all books, papers and writings in his possession, custody, or power relating to his property or affairs ;

3. If he shall, after adjudication, with intent to defraud his creditors, remove, conceal, or embezzle any part of his property to the value of *fifty dollars* or upwards ;

4. If, in case of any person having to his knowledge or belief proved a false debt under his Bankruptcy, he shall fail to disclose the same to his assignees within *one month* after coming to the knowledge or belief thereof ;

5. If he shall, with intent to defraud, wilfully and fraudulently omit from his Schedule any effects or property whatsoever ;

6. If he shall, after adjudication, with intent to conceal the state of his affairs, or to defeat the object of the Law of Bank-

ruptcy, prevent or withhold the production of any book, deed paper, or writing relating to his property, dealings or affairs ;

7. If he shall, after adjudication, or within *three* months next before adjudication, with intent to conceal the state of his affairs, or to defeat the object of the law of Bankruptcy, part with, conceal, destroy, alter, mutilate, or falsify, or cause to be concealed, destroyed, altered, mutilated, or falsified, any book, paper, writing, or security, or any document relating to his property, dealings, or affairs, or make or be privy to the making of any false or fraudulent entry or statement in or omission from any book, paper, or writing relating thereto ;

8. If he shall, within the like time, and with like intent to diminish the sum to be divided amongst his creditors, or to give an undue preference to any of his creditors, have concealed from the Court or his assignee, any debt due to or from him ;

9. If, within *three* months next before adjudication, he shall, being at the time unable to meet his engagements, fraudulently and with intent to diminish the sum to be divided amongst the general body of his creditors, or to give an undue preference to any of his creditors, have paid or satisfied any such creditor, either wholly or in part, or have made away with, mortgaged, encumbered, or charged any part of his property, of what kind soever ;

10. If he shall have contracted any of his debts by any manner of fraud or breach of trust, or by means of false pretences, or without having had any reasonable or probable expectation, at the time when such debts were contracted, of being able to pay the same ; or shall, by any manner of fraud, or by means of false pretences, have obtained the forbearance of any of his debts by any of his creditors ;

11. If, being a trader, he shall, under his Bankruptcy, or at any meeting of his creditors within *three* months next preceding thereto, have attempted to account for any of his property by fictitious losses or expenses ;

12. If, being a trader, he shall, within *three* months next before adjudication, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, have obtained on credit from any person any goods or chattels with intent to defraud.

361. If it shall at any time appear to the Court that the Bankrupt has been guilty of any of the offences in the next preceding section set forth, the Court shall have and may exercise such jurisdiction, rights, powers, and privileges, for the summoning, apprehending, committing, remanding, bailing, and otherwise proceeding in respect of such Bankrupt as are exer-

Power of Court as to such offences.

cised by and vested in Her Majesty's Justices of the Peace in respect of persons against whom a charge or complaint shall have been made before any one or more of the said Justices in respect of any felony or indictable misdemeanor committed within the limits of the jurisdiction of such Justice or Justices. 5

Court may direct reference to Crown officers.

**365.** The Court may direct the assignee to lay the papers before the Attorney General, or Solicitor General for his action thereon, either while the Bankruptcy is pending before the Court or when it has been brought to a conclusion.

Indictment.

**366.** In any indictment or information for any misdemeanor under this Act it shall be sufficient to set forth the substance of the offence charged, without alleging or setting forth any debt, Act of Bankruptcy, petition or adjudication, or any summons, warrant, order, rule or proceeding of or in any Court acting under this Act. 15

Persons disobeying orders of the Court.

**367.** If any person shall disobey any rule or order of the Court, duly made for enforcing any of the purposes and provisions of this Act, the Court may, by warrant in the form contained in the Schedule I. to this Act annexed, commit the person so offending to the Common Gaol of any County or City, where he shall be found or where he shall usually reside, there to remain, without bail or mainprize, until such Court, or the Court of Appeal in Bankruptcy, shall make order to the contrary. 20

#### AS TO THE DEFINITION AND EXPLANATION OF TERMS.

Definition of terms in this Act.

**368.** The terms and words hereinafter enumerated or explained, wheresoever occurring in this Act, shall be understood as hereinafter defined or explained, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such definition or explanation, that is to say : 30

Court.

The term "the Court" shall mean the Court of Bankruptcy where such construction is not inconsistent with the context ;

Annulling.

The term "annulling" shall mean also and include "super-  
seding ;"

Petition for adjudication.

The term "petition for adjudication" or "petition in Bankruptcy" shall mean any petition by or against a debtor for adjudication of Bankruptcy ; 35

Bankrupt.

The term "Bankrupt" shall mean any person who, on any petition for adjudication of Bankruptcy, shall have been adjudged by the Court to be a Bankrupt ; 40



The term "creditor" shall mean also any two or more **Creditor.**  
persons being partners, and incorporated and Joint Stock  
Companies ;

The term "assignee" shall mean the assignee of the estate **Assignee.**  
5 and effects of the Bankrupt or petitioner, chosen by the cre-  
ditors, and until such assignee shall be chosen, or where no  
such assignee shall be so chosen, shall mean the official  
assignee ;

The term "oath" shall include the declaration or affirmation **Oath.**  
10 of any person whom any Act of Parliament shall have au-  
thorized to make such declaration or affirmation in lieu of  
an oath ;

The term "Gazette" shall mean "The Bankruptcy Gazette" **Gazette.**  
15 Bankruptcy ;

In all cases in which any particular number of days is **Time.**  
prescribed by this Act, or shall be mentioned in any rule or  
order of Court which shall at any time be made under this  
Act, for the doing of any Act, or for any other purpose, the  
20 same shall be reckoned, in the absence of any expression to  
the contrary, exclusive of the first and inclusive of the last day,  
unless the last day shall happen to fall on a Sunday, Christmas  
Day, Good Friday, Tuesday in Easter Week, or a day ap-  
pointed for a Public Fast or Thanksgiving, in which case the  
25 time shall be reckoned exclusive of that day also, or unless  
such last day shall happen to fall on a Monday in Easter  
Week, in which case the time shall be reckoned exclusive of  
that day and the following day also ;

Words importing the singular number or the masculine **Number and**  
30 gender only shall be understood to include several matters as **gender.**  
well as one matter, and several persons as well as one person,  
and bodies corporate as well as individuals, and females as  
well as males ; and words importing the plural number shall  
be understood to apply to one matter as well as more than one,  
35 and to one person as well as more than one.

**369.** This Act shall come into force on the \_\_\_\_\_ day of **Commence-**  
next after the passing of this Act and shall apply to **ment of Act.**  
Upper Canada only. **Act limited to**  
U. C.

**370.** This Act may be cited as the Upper Canada Bank- **Short title.**  
40 ruptoy Act, 1861.

## SCHEDULE (A.)

The Eastern Bankruptcy District shall comprise,—

The United Counties of Stormont, Dundas and Glengarry ;

The United Counties of Prescott and Russell ;

The County of Carleton ;

The City of Ottawa ;

The United Counties of Lanark and Renfrew ;

The United Counties of Leeds and Grenville ;

The City of Kingston ;

The United Counties of Frontenac and Lennox and Addington ;

The County of Prince Edward ;

The County of Hastings ;

The Temporary Judicial District of Nipissing.

The Central Bankruptcy District shall comprise,—

The County of Ontario ;

The United Counties of York and Peel ;

The City of Toronto ;

The County of Halton ;

The County of Wentworth ;

The City of Hamilton ;

The Counties of Lincoln and Welland ;

The County of Waterloo ;

The County of Wellington ;

The County of Haldimand ;

The County of Grey ;

The United Counties of Northumberland and Durham ;

The United Counties of Peterborough and Victoria ;

The Provisional Judicial District of Algoma.

The Western Bankruptcy District shall comprise,—

The County of Essex ;

The County of Kent ;

The County of Lambton ;

The County of Middlesex ;

The City of London ;

The County of Norfolk ;

The County of Elgin ;

The County of Oxford ;

The County of Brant ;

The County of Perth ;

The United Counties of Huron and Bruce.

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SCHEDULE (B.)

*Fee Fund.*

## SCHEDULE (C.)

## WARRANT AGAINST DEBTOR ABOUT TO QUIT THE PROVINCE.

Whereas by evidence taken upon Oath it hath been made to appear to the satisfaction of me, the undersigned Judge of the Court of Bankruptcy, acting in the prosecution of a Petition for Adjudication of Bankruptcy filed and now in prosecution against A. B. of \_\_\_\_\_ in the County of \_\_\_\_\_, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, and under which the said A. B. has been adjudged bankrupt, that there is reason to suspect and believe that the said A. B. is about to quit the Province, or to conceal his goods and chattels, [*as the case may be,*] unless he be forthwith apprehended :

These are therefore to authorize and require you, immediately upon the receipt hereof, to take in your custody the said \_\_\_\_\_ and him safely convey to the Gaol of the County of \_\_\_\_\_ and him there to deliver to the Keeper of the said Gaol, who is hereby authorized and required to receive the said \_\_\_\_\_ into his custody there, and him safely keep and detain, without Bail, until this Court, or the Court of Appeal in Bankruptcy, shall make an Order to the contrary, and for so doing this shall be your sufficient Warrant.

Given under the seal of the Court of Bankruptcy, this  
day of \_\_\_\_\_ 186

J. B.,  
Judge.

To  
and his Assistants,  
and to  
Keeper of the said Gaol,  
or his Deputy there.

## SCHEDULE (D.)

*Search Warrant.*

Whereas by evidence duly taken upon Oath it hath been made to appear to the satisfaction of me, the undersigned Judge of the Court of Bankruptcy, acting in the prosecution of a Petition for Adjudication of Bankruptcy filed and now in prosecution against A. B. of \_\_\_\_\_ in the County of \_\_\_\_\_ bearing date the \_\_\_\_\_ day of \_\_\_\_\_

and under which the said A. B. has been adjudged bankrupt, that there is reason to suspect and believe that property of the said A. B. is concealed in the house [or other place, describing it, as the case may be,] of one C. D. of \_\_\_\_\_ in the County of \_\_\_\_\_ such house not belonging to the said Bankrupt: These are therefore, by virtue of the Upper Canada Bankruptcy Act, 1861, to authorize and require you, with necessary and proper assistants, to enter, in the day time, into the house [or other place, describing it, as the case may be,] of the said C. D. situate at \_\_\_\_\_ aforesaid, and there diligently to search for the said property, and if any property of the said Bankrupt shall be there found by you on such search, to seize the same, to be disposed of and dealt with according to the provisions of the said Act.

Given under my hand and the seal of the Court, at the Court of Bankruptcy \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord one thousand eight hundred and \_\_\_\_\_

A. B. (l. s.)

To  
and his Assistants.

*(If there be reason to suspect that the Bankrupt and his property are concealed, alter the warrant accordingly.)*

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#### SCHEDULE (E.)

##### *Form of Declaration to be made by the Bankrupt or the Bankrupt's wife.*

I, A. B., the person declared a Bankrupt under a petition for Adjudication of Bankruptcy filed on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord [or I, C. D., the wife of A. B., declared a Bankrupt under a petition for Adjudication of Bankruptcy filed on the \_\_\_\_\_ day of \_\_\_\_\_], do solemnly promise and declare, that I will make true answer to all such questions as may be proposed to me respecting all the property of the said A. B., and all dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said property, to the best of my knowledge, information, and belief.

(Signed,) A. B.

[or C. D., the wife of the said A. B.]

## SCHEDULE (F.)

(In Bankruptcy.)

*Warrant of committal of Bankrupt or other party for unsatisfactorily answering, or for refusing to sign his examination.*

Court of Bankruptcy.

WHEREAS *E. F.*, the said [ or *G. H.* of  
 in the county of ] was  
 on the day of duly sworn  
 and examined in this Court and the said was  
 again on the day of duly sworn and  
 examined in this Court, as by examination and deposition  
 of the said now on the file of proceedings in this  
 matter will appear :

And whereas the answers of the said , as now  
 so appearing in said examination and deposition, are unsatis-  
 factory [or the said refused to sign and  
 subscribed his said examination and deposition] ;

These are therefore to authorize and require you, imme-  
 diately upon the receipt hereof, to take into your custody the  
 said and him safely convey to the Gaol of the  
 County of and him there to deliver to the  
 Keeper of the said Gaol, who is hereby authorized and required  
 to receive the said into his custody there,  
 and him safely keep and detain, without bail, until this Court,  
 or the Court of Appeal in Bankruptcy, shall make an order to  
 the contrary, and for so doing this shall be your sufficient  
 warrant.

Given under the Seal of the Court, this day of  
 18

To *J. K.*,  
 Judge.  
 and to  
 Keeper of the said Gaol, or his Deputy there.

## SCHEDULE (G.)

This deed, made the day of between  
*A. B.* [the debtor], and *C. D.* and *E. F.* [the trustees], on  
 behalf and with the assent of the undersigned creditors of *A. B.*,  
 witnesseth that *A. B.* hereby conveys all his estate and effects to  
*C. D.* and *E. F.* absolutely, to be applied and administered



sworn, and full answers make to his satisfaction to such questions as shall be propounded to him.

Given under the seal of the Court of Bankruptcy, this  
day of 18

J. K.  
Judge.

*Warrant against person disobeying any Rule or Order of Court.*

WHEREAS by a Rule [or an Order] of this Court, bearing date the day of made for enforcing the purposes and provisions of the Upper Canada Bankruptcy Act, 1861, [or if of any other Act hereafter in force relating to the Subject Matters of this Act, or made or entered into by consent for carrying into effect any of such purposes or provisions, alter the recital accordingly], it was ordered, that, [ &c., &c., as in the Rule or Order ]

And whereas it is now proved that after the making of the said Rule [or Order], that is to say, on the day of , a copy of the said Rule [or Order] was duly served on the said personally, and the original Rule [or Order] at the same time shown to him, but the said then refused [or neglected] to obey the same, and hath not as yet obeyed the said Rule [or Order]

These are therefore to will, require and authorize you immediately upon receipt hereof to take into your custody the body of the said A. B., and him safely to convey to the Gaol of the County of and him there to deliver to the Keeper of the said Gaol, together with this Precept, and the Keeper of the said Gaol is hereby required and authorized to receive the said A. B. into his custody, and him safely to keep and detain, without bail or mainprise, until this Court, or the Court of Appeal in Bankruptcy, shall make order to the contrary; and for so doing this shall be your sufficient Warrant.

Given under my hand and the seal of the Court at the Court of Bankruptcy, this day of in the year of our Lord one thousand eight hundred and

A. B., [L. s.]  
Judge.

To or his assistant, and to the  
Keeper of the Goal of the County of