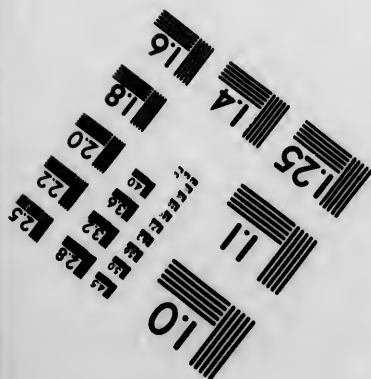
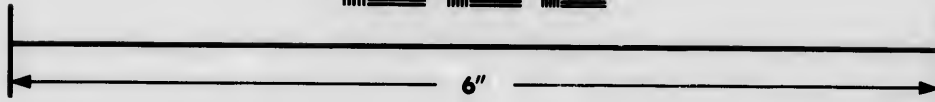
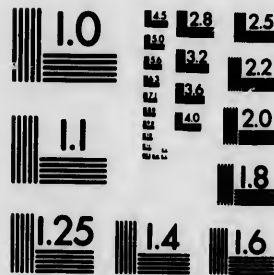


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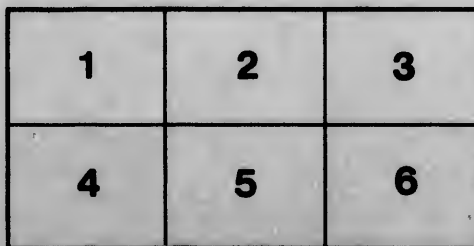
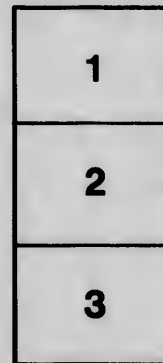
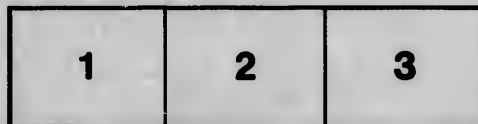
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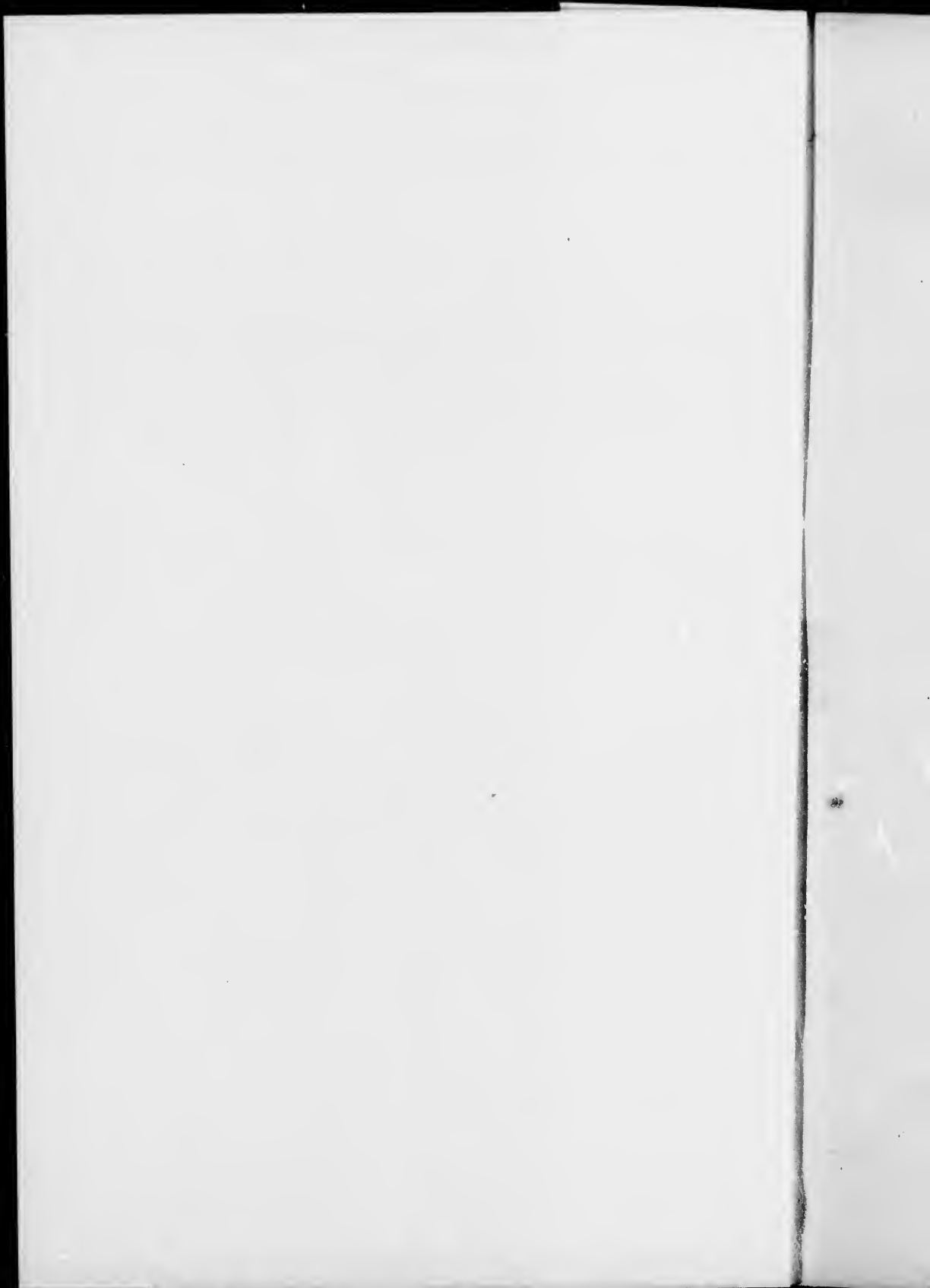
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THE INSOLVENT ACT OF 1864.

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THE
INSOLVENT ACT OF 1864,

WITH

TARIFF, NOTES, FORMS,

AND A

FULL INDEX.

BY JAMES D. EDGAR,

OF OSGOODH HALL BARRISTER-AT-LAW.

TORONTO :
ROLLO & ADAM, LAW PUBLISHERS,

KING STREET EAST.

1864.

TORONTO :
LOVELL & GIBSON, LAW AND GENERAL PRINTERS,
YONGE STREET.

W.

A.

TO THE HONORABLE
WILLIAM HENRY DRAPER, C.B.,

CHIEF JUSTICE OF UPPER CANADA,

This Volume

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P R E F A C E .

To attempt a comment upon an act which has never been in operation, in the absence of decisions to guide in its interpretation, and without the light of experience to display its defects or advantages, is a hazardous undertaking. In annotating the Insolvent Act of 1864, all these difficulties presented themselves; while the want of Rules to regulate the practice in Insolvency rendered the task more arduous and uncertain. Their absence, however, was an additional reason for endeavouring to explain the provisions of the Act.

It is presumed that each County Court Judge in Upper Canada will lay down and abide by certain rules for the guidance of himself, and the profession in his own Court. With a view to furnish suggestions upon this point, that may help us to arrive at some degree of uniformity in the practice, the Orders, promulgated by the Judges of the Superior Court in Lower Canada, have been printed in the Appendix.

It would be too much to expect that a statute, however carefully drawn, which introduces a new Court and Practice, and indirectly affects so many of the existing Laws, should be without many difficulties in its interpretation and application. In these notes attention has been drawn to some doubtful points, and efforts have been made, with the greatest diffidence, to explain others.

In any manual of reference the Index is a most important part; and the author is indebted to Mr. C. A. Jones, of Whitby, for valuable assistance in preparing a very full one of the Act and notes.

A table has also been carefully arranged, which will shew at a glance the majorities of creditors required in different proceedings under the act.

TORONTO, Michaelmas Term, 1864.

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INTRODUCTORY CHAPTER.

THE BANKRUPTCY AND INSOLVENCY LAWS THAT HAVE HITHERTO EXISTED IN UPPER CANADA—IMPERIAL ENACTMENTS APPLICABLE TO OUR LAW.

The act contained in the ensuing pages is not the first that has been passed to afford relief to bankrupts in Upper Canada. Twenty-one years ago the Statute of 7 Vic., c. 10, became law. It was entitled "An act to repeal an Ordinance of Lower Canada, intituled, '*An ordinance concerning bankrupts, and the administration and distribution of their estates and effects,*' and to make provision for the same object throughout the Province of Canada."

This act was assented to on the 9th Dec. 1843, and was only to continue in force for and during the term of two years, and from thence to the end of the then next ensuing Session of Parliament. The certificate, which the bankrupt might receive thereunder, had the effect of discharging him from all debts due by him at the date of the commission, and from all claims and demands made proveable under the commission. The provisions of this act extended only to traders, and the term "trader" was very strictly defined. This is a restriction that was preserved even in England, until the English Act of 1861, and before that time those who were not traders could not become bankrupt, but might become insolvent; or in other words, they might obtain protection for their persons against process, but not a discharge of their debts. After the passing of our 7 Vic., c. 10, the portion of the community who were

non traders naturally became desirous that they should also receive some protection against their creditors when they were willing to give up everything they had to pay their debts. The result of this feeling was the enactment of an Insolvency Law during the very next session of Parliament, (8 Vic , c. 48,) whereby a person who was not a trader within the meaning of 7 Vic., c. 10, might obtain at first an interim, and then a final order protecting his person from being taken or detained under any process whatever in respect of debts due to his scheduled creditors. The inconvenient distinction between traders and nontraders has, however, been completely abolished, as far as regards Upper Canada, except in one case, by our act of 1864; and it is presumed that 8 Vic. c. 48, which has been embodied in the consolidated statutes, (chapter, 18,) will now be entirely disused, and is in effect repealed.

Although the bankruptcy act of 7 Vic. was only to continue in force for about two years, the period of its operation was extended from session to session up to May 1849; and after that year provisions were made by different enactments, extending as late as 1856, to enable persons, in whose cases commissions had issued during the continuance of the act, to carry on proceedings in bankruptcy until they obtained certificates.

While the bankrupt act was in force, between the years 1843 and 1849, there were many instances of traders executing assignments for the benefit of creditors, at their request, for the purpose of avoiding the expense and delay attending proceedings in bankruptcy. And in some of these instances it happened that, notwithstanding the complete yielding up of all their property by such traders, some of their creditors afterwards declined becoming parties to such assignments. These traders, when the bankruptcy act was no long in force, found

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that they had, without any culpable negligence, allowed the opportunity of taking the benefit of its provisions to pass. In order to afford relief in such cases 14 & 15 Vic., c. 116 was passed: Its aim was to enable traders coming within the above description to avail themselves of the Insolvency Act, 8 Vic., c. 48, in the same manner as non-traders might have done. It also enacted that the Final Order granted under the last mentioned act should, as to such persons, operate as a discharge of all debts due up to the date of their several assignments, as fully and completely as a certificate under the bankruptcy act would have done. This was in addition to the protection afforded by the Final Order against all process.

The same act (32, Geo. 3, c. 1,) which introduced into Upper Canada the laws of England, as they stood on the 15th Oct., 1792, as the rule of decision in all controversies relative to property or civil rights, excepted the laws respecting the maintenance of the poor, *and respecting bankrupts*. The only authority of any English statutory provisions as to bankruptcy, or decisions founded upon that statute law, consists, therefore, in their analogy to our own law on the subject, and the assistance they thus afford in its interpretation. Direct reference has, however, been made by the Imperial Act, 24 & 25 Vic., c. 134, to bankruptcy proceedings in the Colonies. The filing of a Petition by or against a debtor, whether a trader or not, in any Court having jurisdiction for the relief of insolvent debtors, in Insolvency or Bankruptcy, in any of Her Majesty's Dominions, Colonies, or Dependencies, and the adjudication of an act of insolvency or bankruptcy on such petition, are for the purposes of that act, accounted conclusive evidence of an act of bankruptcy committed by such debtor at the time of filing such petition, (see sec. 75.)

In section 218 there is a provision that is to a great extent

auxiliary to our own act, and affords facilities for reaching property of a bankrupt in England, or any of the dominions of the Crown. It is as follows :—“ If any person who shall have been duly adjudged or declared bankrupt or insolvent in India or any of the foreign dominions, plantations or colonies of Her Majesty, shall be resident, or shall be possessed of property in England, Ireland or Scotland, or in any colony, plantation or foreign possession of the crown, it shall be lawful for the Assignee, Trustee or other Representative of the creditors of such bankrupt or insolvent to apply for and obtain an adjudication, of bankruptcy, sequestration, or insolvency, against such person in the court of bankruptcy in England, and in the proper Court in Scotland, Ireland, and such colonies, plantations, or foreign possessions of the Crown respectively, and by virtue thereof the same order and disposition shall be had and taken with respect to the person and property of a bankrupt or insolvent as would have been if he had been originally adjudged bankrupt or insolvent by the Court or Tribunal so applied to. Upon such application it shall not be necessary for the Assignee Trustee, or other Representative of the creditors of the person so declared bankrupt or insolvent as aforesaid, to give proof of any act of bankruptcy or petitioning creditor's debt, or to produce any other evidence than a duly certified copy, under the seal of the court, of the order or adjudication by which such person was found or adjudged bankrupt or insolvent.”

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AN ACT RESPECTING INSOLVENCY.

27 & 28 VIC.—CAP. XVII.

[Assented to 30th June, 1864.]

WHEREAS it is expedient that provision be made for the settlement of the estates of insolvent debtors, for giving effect to arrangements between them and their creditors, and for the punishment of fraud: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Preamble

1. This Act shall apply in Lower Canada to traders only, and in Upper Canada to all persons whether traders or non-traders.

Application of this Act.

Although this section seems to abolish the old and troublesome distinction between traders and non-traders as to Upper Canada, there is one case in which it is retained, (see below sec. 3, sub-sec. 2).

As an infant cannot trade, the provisions of the last mentioned clause will not apply to him, unless he has held himself out to be an adult and *sui juris*, (*Ex parte Adam*, 1 V. & B., 424); but there appears to be nothing to prevent him taking the benefit of the Act with this exception, (*Re Smedley*, 10 L. T. (N.S.) 432).

The criterion of a *fême covert* being capable of falling under the bankrupt laws appears to be her liability to be sued to execution for the debts she has contracted during coverture. If a married woman is so circumstanced as to be subject to a common law execution, there does not seem to be any reason why she should not likewise be subject to this statute execution, (Cooke, 40).

It is doubtful if our Act respecting the separate property of married women, (Con. Stats. U. C., c. 73), will affect the application of this Act to that class of persons. For although, under the provisions of that statute, a married woman possesses entire control over her property, which is liable to execution for her

torts, there is nothing to show that it is liable to execution at law for her contracts made during coverture. The separate estate may, of course, be reached in equity; but whether that would render it liable to attachment in bankruptcy proceedings is very questionable. It is probable, however, that a woman who has obtained an order protecting her earnings under the above mentioned Act may become bankrupt as to that portion of her estate.

A lunatic may be a bankrupt, provided the act of bankruptcy be committed during a lucid interval, (*Ex parte Priddey*, Cooke, 48; *Ex parte Stamp*, 1 DeG. 345).

OF VOLUNTARY ASSIGNMENTS.

Proceedings for voluntary assignment of an Insolvent estate; meeting of creditors to be called.

Schedules of creditors, &c.

Attestation.

Assets, books, &c.

2. Any person unable to meet his engagements, and desirous of making an assignment of his estate, or who is required so to do as hereinafter provided, may call a meeting of his creditors at his usual place of business, or at his option at any other place which may be more convenient for them; and such meeting shall be called by advertisement (Form A), stating in such advertisement the object of such meeting; and at such meeting he shall exhibit statements showing the position of his affairs, and particularly a schedule (Form B), containing the names and residences of all his creditors, and the amount due to each, distinguishing between those amounts which are actually overdue, or for which he is directly liable, and those for which he is only liable indirectly as endorser, surety or otherwise, and which have not become due at the date of such meeting; and also the particulars of any negotiable paper bearing his name, the holders of which are unknown to him,—which schedule shall be sworn to by the Insolvent, and may be corrected by him likewise under oath at the meeting at which it is so produced, also the amount due to each creditor, and a statement showing the amount and nature of all his assets; and he shall also produce his books of account, and all other documents and vouchers, if required so to do by any creditor:

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Under the provisions of this clause there can be little doubt that any person unable to meet his engagements may become bankrupt without producing assets. In England, until the Act of 1861, it was otherwise. Under the Act of 1849 it was necessary for a trader, on petitioning for adjudication of bankruptcy against himself, to make it appear to the satisfaction of the court that his available estate was sufficient to pay his creditors at least five shillings in the pound, clear of all charges of prosecuting bankruptcy. This was modified by the Act of 1854 to the extent of allowing adjudication of bankruptcy on petition of a trader who could make it appear that his available estate was sufficient to produce the sum of £150 at least. It was, indeed, held by Commissioner Holroyd, in a case under the recent English Act, (*Re Newmark*, 6 L. T. (N.S.) 755), that a debtor who petitioned the court without assets was in the situation of a pauper, and should have applied under the provisions of the statute applicable to such cases. As our Act has not provided for applications *in forma pauperis*, the usual procedure under this section must be used in every case of voluntary assignment. This decision, however, has not passed unchallenged. In a note to this case the view is taken that the non-possession of assets is no justification for the dismissal of a petition under the Act of 1861. The writer contends that as the language of the Act is "any debtor may petition," there is no qualification or restriction whatever, as regards the possession of any amount of property, large or small. And he comes to the conclusion that, however the non-possession of property may be an ingredient in arriving at a judgment upon the merits, it has nothing whatever to do with any question as to the jurisdiction of the Court, or the *locus standi* of a petitioner. The writer of an able article on "The New Bankrupt Law," in the *Law Times* of the 9th August, 1862, holds the same opinion, which is one that seems very much in accordance with the spirit of modern legislation upon the subject. The legislature and courts are now not hesitating to declare that the relief of the honest debtor is the primary, and the possession of his estate by his creditors the secondary aim of the bankruptcy laws. And see *Ex parte Morrison*, 10 Jur. (N.S.) 787, in which case it seems to be taken for granted that assets are not required.

On an appeal from an order of a Commissioner in bankruptcy, Lord Justice Turner pronounced a dictum which goes far to strengthen the argument for the application of our voluntary assignment clauses to cases where there are no assets. He is reported to have said, "I doubt whether in any case (where there is no fraud) a petition ought to be dismissed having regard to the new Act, which extends to all debtors, whether traders or not."

If an insolvent very shortly before he applies under the voluntary assignment clauses dispose of all his property for the purpose, among other things, of defraying the expenses of his solicitor in passing him through the court, and thereby leave nothing whatever for his creditors, his application may be refused, (*Re Dufaur*, 6 L. T. (N.S.) 195; *Re Wilson*, 6 L. T. (N.S.) 258). The fraud upon

creditors in using the assets to fee a solicitor, instead of bringing them in, seems to be the ground of these decisions.

It is submitted that that large class of persons who have heretofore made assignments for the benefit of their creditors are competent to take advantage of the voluntary assignment clauses of this Act, since production of assets is not required. And even if it were, there is still remaining in the person who has made such an assignment, a resulting trust which entitles him to any surplus after payment of the debts out of the estate. And this resulting trust is, in the eye of the law, an interest which he might possibly bring in as constituting his assets.

For the manner of publishing the advertisement mentioned in this clause, and the number of insertions that will be necessary, see below sec. 11, sub-sec. 1.

Notice by
post.

2. Each notice of such meeting sent by post, as hereinafter provided, shall be accompanied by a list containing the names of all the creditors of the Insolvent whose claims exceed one hundred dollars, and the aggregate amount of those under one hundred dollars ;

For the provisions as to sending notices see below sec. 11, sub-sec. 1.

Assignee ap-
pointed by
creditors.

Votes of cred-
itors.

Assignment.

3. At such meeting, the creditors may name an assignee, to whom such assignment may be made ; and if a vote be taken upon such nomination, each creditor shall only represent in such vote the amount of direct liabilities of the Insolvent to him, and the amount of indirect liabilities then actually overdue ; and thereafter the Insolvent shall make an assignment of his estate and effects to the assignee so chosen ;

The assignee that the creditors are empowered to nominate under this subsection may be resident out of the County within which the insolvent has his place of business, and he need be neither a creditor nor an official assignee.

If no assignee
be appointed
by creditors,
insolvent may
select one.

4. If no assignee be named at such meeting, or at any adjournment thereof, or if the assignee named refuses to act, or if no creditor attends at such meeting, the Insolvent may assign his estate to any solvent creditor resident within this Province, not related, allied, or of kin to him, and being such creditor for a sum exceeding five hun-

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dred dollars, or if he has no such creditor for so large a sum who will accept such assignment, then to the creditor otherwise competent and willing to accept, representing the largest claim upon him ; or he may make such assignment to any official assignee resident within the district or county within which the insolvent has his place of business and nominated for the purpose of this Act by the Board of Trade in such district or county, or if there be no Board of Trade therein, then by the nearest Board of Trade thereto ;

Or assign to an Official assignee.

5. If Any dispute arises at the first meeting of creditors as to the amount which any one of the creditors is entitled to represent in the nomination of an assignee, or upon any other question which may properly be discussed at such meeting, such dispute shall be decided by the votes of the majority in number of the creditors present, or represented by agents or proxies ; but if the dispute have reference to any pretension of any creditor as to the existence or amount of his claim, such creditor shall not vote upon the question ; but no neglect or irregularity in any of the proceedings antecedent to the appointment of the assignee shall vitiate an assignment subsequently made to an assignee competent to receive it under this Act ;

In case of dispute at first meeting of creditors, as to votes.

Irregularity not to vitiate appointment.

Although no neglect or irregularity in any of the proceedings antecedent to the appointment of an assignee shall vitiate the subsequent assignment, it will probably be held that an omission of any such proceedings would render the assignment one made "otherwise than in the manner prescribed by this Act," and an act of bankruptcy upon which proceedings in compulsory liquidation might be taken by a creditor.

6. The deed or instrument of assignment may be in the form C., or in any other form equivalent thereto, and if executed in Upper Canada shall be in duplicate ; and a copy of the list of creditors produced at the first meeting of creditors shall be appended to it ; and no particular description or

Form of Deed of assignment, &c.

Counterparts
of deed.

detail of the property or effects assigned need be inserted in such deed; and any number of counterparts of such deed required by the assignee shall be executed by the Insolvent at the request of the assignee, either at the time of the execution of such deed or instrument, or afterwards, to which counterparts no list of creditors need be appended;

A reference here to "Form D," in the appendix of forms, was probably omitted by some mistake. It seems clear that "Form D" is intended as an advertisement to be published by an assignee under a voluntary assignment forthwith upon the execution of the deed; and its publication seems taken for granted in sec. 5, sub-sec. 1 of this act.

Effect of assignment, as to estate of insolvent.

7. The assignment shall be held to convey and vest in the assignee, the books of account of the Insolvent, all vouchers, accounts, letters and other papers and documents relating to his business, all moneys and negotiable paper, stocks, bonds, and other securities, as well as all the real estate of the Insolvent, and all his interest therein, whether in fee or otherwise, and also all his personal estate, and moveable and immoveable property, debts, assets and effects, which he has or may become entitled to at any time before his discharge is effected under this Act, excepting only such as are exempt from seizure and sale under execution, by virtue of the several statutes in such case made and provided;

Exception.

The general rule as to the effect of the appointment of assignees is, that all property of the bankrupt, real and personal, in possession, remainder, reversion, or in action merely, (see below sec. 4, sub-secs. 9 and 10, of this Act), to which he was entitled at the date of the act of bankruptcy, or at any time before his discharge under this Act, is vested in the assignees by virtue of their appointment; and his acts thenceforth, with reference to this property, are considered to all intents and purposes as those of a stranger. To this section and this rule there is an important exception made by the 4th section of this Act. In the 7th sub-section it is provided that "no power vested in the insolvent, or property or effects held by him as trustee, or otherwise, for the benefit of others, shall vest in the assignee under this Act."

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were remitted to bankers in London with permission to discount them for a particular purpose, and they were not in fact discounted before the bankruptcy of the banker to whom they were remitted, they were ordered to be delivered up to the assignees, (*Ex p. Frowd, Mon. and McA.*, 262). Also, where a bankrupt was allowed by his assignees to remain in possession of his house and furniture, in order to assist in settling the affairs of the bankrupt estate, and the bankrupt traded and became bankrupt a second time, it was holden that the furniture, &c., still remained the property of the assignees, under the first commission, and did not pass under the second assignment, (*Walker v. Burnell, Doug.* 316; and see *Mullen v. Moss, 1 M. & S.* 335).

By 23 Vict., c. 25, the exemption clauses in the Con. Stats. U. C. (c. 19, sec. 151, and c. 22, sec. 254), are repealed, and the following provisions substituted:—

“The following chattels are hereby declared exempt from seizure under any writ issued out of any court whatever in this Province, namely:

“1. The bed, bedding, and bedsteads in ordinary use by the debtor and his family;

“2. The necessary and ordinary wearing apparel of the debtor and his family;

“3. One stove and pipes, and one crane and its appendages, and one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one table, six chairs, six knives, six forks, six plates, six teacups, six saucers, one sugar basin, one milk jug, one teapot, six spoons, all spinning wheels and weaving looms in domestic use, and ten volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use;

“4. All necessary fuel, meat, fish, flour, and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of forty dollars;

“5. One cow, four sheep, two hogs, and food therefor for thirty days;

“6. Tools or implements of, or chattels ordinarily used in, the debtor's occupation to the value of sixty dollars.”

A bequest to a bankrupt, if he should obtain his certificate, passes to his assignees, (*Davidson v. Chalmers; Perry v. Chalmers, 10 L. T. (N.S.)* 217).

Where after a deed of assignment for benefit of creditors by two partners one becomes bankrupt, the trustees under the deed are entitled only to the joint estate of the debtors, and not to the separate estate of either debtor, (*Re Lowden's Settlement, 10 L. T. (N.S.)* 261).

Although all the property acquired by a bankrupt up to the time of his discharge passes to his assignees, as well as the right of action respecting it, (see below. sec. 4, sub-sec. 9,) he may maintain an action for his personal labour, performed after the issuing of the writ of attachment, (*Chippendale v. Tomlinson, Cook, 428; Silk v. Osborne, 1 Esp. 140; and see Williams v. Chambers, 11 Jur. 798;*) and he may maintain an action with relation to after-acquired

property, (*Webb v. Fox*, 7 T. R. 391; *Fowler v. Down*, 1 B. & P. 44; *Evans v. Brown*, 1 Esp., 170; *Leroche v. Wakeman*, Peake, 140,) or sue upon a contract made with him, (*Cumming v. Roebuck*, Holt, 172,) unless the assignees interfere, (*Kitchen v. Bartsch*, 7 East, 53; *Herbert v. Sayer*, 2 Dow. & L. 49.)

Where the assignees and creditors of a bankrupt, who has not obtained his discharge, allow him to trade or contract debts without their interference or claim, it falls within the principle of a man having a lien standing by and allowing another to take a new security, whereby he is postponed; and the subsequent creditors of the bankrupt will be preferred to the creditors under the bankruptcy, (*Troughton v. Gitley*, Amb. 630; and see *Tucker v. Hernaman*, 17 Jur., 723.)

All property which an insolvent becomes entitled to up to the time of his discharge passes to the assignee, but it must not be supposed that the insolvent is discharged from any debts he may incur after the voluntary assignment or the issue of the writ.

Duplicate or authentic copy of assignment to be deposited, and where.

8. Forthwith upon the execution of the deed of assignment, the assignee, if appointed in Upper Canada, shall deposit one of the duplicates thereof, and if in Lower Canada, an authentic copy thereof, in the office of the proper Court; and in either case the said list of creditors shall accompany the deed or instrument so deposited;

The office of the clerk of the County Court, of the County in which the meeting of creditors is held, is the proper place for filing the duplicate deed of assignment.

Registration of deed of assignment, if the insolvent has real estate.

9. If the Insolvent possesses real estate, the deed of assignment may be enregistered in the Registry Office for the Registration Division or County within which such real estate is situate; and no subsequent registration of any deed or instrument of any kind executed by the Insolvent, or which otherwise would have affected his real estate, shall have any force or effect thereon; and if the real estate be in Upper Canada and the deed of assignment be executed in Lower Canada before Notaries, a copy of the deed certified under the hand and official seal of the Notary or other public officer in whose custody the original remains, may be registered without other evidence of the execution thereof, and without any memorial; and a

Assignment executed in L. C. or U. C. how registered in the other section of the Province.

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certificate of such registration may be endorsed upon a like copy; and if the property be in Lower Canada and the deed of assignment be executed in Upper Canada, it may be enregistered by memorial or at full length in the usual manner; but it shall not be necessary to enregister, or to refer on registration in any manner to the list of creditors annexed to the deed of assignment;

There would seem to be some very difficult questions likely to arise as to the registration of deeds of assignment under this clause. In the first place, as "no particular description or detail of the property or effects assigned need be inserted in such deed, (see above sub-sec. 6 of this section,) it is not easy to perceive that much will be gained by making a search to ascertain if such a deed is registered against a particular lot of land. It may be said that it will be the duty of every one investigating a title to search through every registered assignment in the office to ascertain whether any person through whom the title has passed has executed such an instrument; but there is no provision made for docketting these registrations, as there was when judgments were registered against lands. The difficulty of these searches may not be much for some years, but unless provisions are made to facilitate them they will become more troublesome every year.

Then, in the second place, the assignment must no doubt be registered by a memorial under Con. Stats., U.C., ch. 89, sec. 18, in every case but the exceptional one mentioned in this clause where the deed of assignment has been executed in Lower Canada before notaries. But in sec. 19 of the above mentioned act it is provided that every memorial "shall mention the lands contained in the Instrument or Will, and the City, Town, Townships or place in the County or Riding where the lands are situated, in the same manner in which the same are described in the instrument or will, or to the same effect." It is submitted that, although no particular description or detail of the real property need be inserted in the deed of assignment to render it a valid instrument to pass the estate of the assignor, a deed without that description could not be registered.

10. If such deed be executed in Upper Canada, according to the form of execution of deeds prevailing there, it shall have the same force and effect in Lower Canada as if it had been executed in Lower Canada before notaries; and if such deed be executed in Lower Canada before notaries it shall have the same force and effect in Upper Canada, as if it had been executed in

Deed executed in U. C. form to have force in L. C. and *vice versa*.

If Notarial.

Upper Canada, according to the law in force there; and copies of such deed, certified as aforesaid, shall constitute, before all courts and for all purposes, *prima facie* proof of the execution and of the contents of the original of such deed without production of the original.

It is not very clear to what the words in this clause "certified as aforesaid" can apply. The only previous mention of a certified copy of anything is in the preceding clause, and applies only to copies of deeds of assignment, executed in Lower Canada, affecting real estate in Upper Canada, that are certified before notaries, or other public officers in whose custody the original remains. If it is intended that this provision should extend to all copies desired as evidence of the contents of the original deeds, in both Upper and Lower Canada, the clerk of the County Court in which proceedings are taken will be the proper officer to certify to the copy in this part of the Province.

COMPULSORY LIQUIDATION.

In what cases the estate of an insolvent trader shall become subject to compulsory liquidation.

Debtor absconding.

3. A debtor shall be deemed insolvent and his estate shall become subject to compulsory liquidation:

a. If he absconds or is immediately about to abscond from this Province with intent to defraud any creditor, or to defeat or delay the remedy of any creditor, or to avoid being arrested or served with legal process, or if being out of the Province he so remains with a like intent, or if he conceals himself within this Province with a like intent;

It is held that a person going abroad for a legitimate purpose, and remaining abroad without making any provision for the payment of his debts, or sending money for that purpose, is remaining abroad with intent to delay his creditors; although he constantly stated in his letters his intention to come home in a month or six weeks, but fixed no definite time, (*Ex parte Cohn*, 2 L. T. (N.S.) 90, Bank.

See also note to sub-section 5, below, as to effect upon this act of bankruptcy of the limitation of three months for commencement of proceedings.

Secreting estate.

b. Or if he secretes or is immediately about to secrete any part of his estate and effects with

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intent to defraud his creditors or to defeat or delay their demands or any of them ;

c. Or if he assigns, removes or disposes of, or is Fraudulently about or attempts to assign, remove or dispose of assigning. any of his property with intent to defraud, defeat or delay his creditors or any of them ;

The intention to defraud, defeat or delay creditors, is the main ingredient in the three foregoing acts of bankruptcy. If this intention actually existed at the time the act was committed, it is little matter whether a creditor was thereby defeated or delayed, or not, (*Robertson v. Liddle*, 8 East. 487; *Wydown's case* 14 Ves. 86; *Chenowet v. Hay*, 1 M. & S. 676; *Aldridge v. Ireland*, 1 Taunt. 273; *Colkett v. Freeman*, 2 T. & R. 59). On the other hand, a creditor being in fact delayed by the act, is not of itself evidence of the debtor's intention in committing it, (*Ex parte Osborne*, 2 Ves. & B 177; *Fowler v. Padget*, 7 T. R. 509). The intent can only be evidenced by the debtor's acts or admissions. If a man admit that he committed the act with such an intent, it is almost conclusive evidence of it, and can scarcely be explained away, (*See Rawson v. Hay*, 2 Bing. 99). Anything said or written by the bankrupt before his bankruptcy, tending to show the intent of an act equivocal in itself, is admissible. (*Smith v. Cramer*, 1 Scott, 541; *Scott v. Thomas*, 6 Car. & P. 611.). If the necessary consequence of the debtor's act be that his creditors must be thereby defrauded, defeated or delayed, this is presumptive evidence of his intention to do so, (*Ramsbottom v. Lewis*, 1 Camp. 279; *Holroyd v. Whitehead*, 3 Camp. 530; *Ex p. Kilner*, 2 Dea. 325; 3 Mon. & A. 722). The presumption raised by circumstances attending the act may be rebutted by evidence that the debtor did not at the time entertain the intention imputed to him. For instance, he may prove that upon leaving the country he left a partner behind him, (*Ramsbottom v. Lewis, ubi supra*); or that his presence out of the Province was absolutely necessary in order to look after his concerns there, (*Ex p. Mutrie*, 5 Ves. 576; *Warner v. Barber*, 1 Holt, 175); or that previous to his departure he made arrangements that the interests of his creditors should be attended to in his absence, (*Ramsbottom v. Lewis, ubi supra*; and see *Windham v. Patterson*, 1 Stark. 144).

d. Or if with such intent he has procured his money, goods, chattels, lands or property to be seized, levied on or taken under or by any process or execution, having operation where the debtor resides or has property, founded upon a demand in its nature proveable under this Act and for a Or procuring it to be seized in execution.

sum exceeding two hundred dollars, and if such process is in force and not discharged by payment or in any manner provided for by law ;

An act of bankruptcy by procuring goods to be taken in execution is not committed till actual seizure, and when so committed is not carried back by relation to an earlier period, (*Belcher v. Gunmow*, 11 Jur. 286 ; *Gibson v. King*, 1 Car. & M. 458.) The mere allowing a judgment to go by default, under which judgment the debtor's goods are taken in execution, is, in itself, no procuring the goods to be taken in execution so as to constitute an act of bankruptcy, (*Gibson v. King*, *ubi supra*.)

Or being imprisoned in civil action.

e. Or if he has been actually imprisoned or upon the gaol limits for more than thirty days in a civil action founded on contract for the sum of two hundred dollars or upwards, and still is so imprisoned or on the limits ; or if in case of such imprisonment he has escaped out of prison or from custody or from the limits ;

In order to constitute this act of bankruptcy there must be an uninterrupted imprisonment for more than thirty days. If a man arrested be bailed out before the expiration of the thirty days, and afterwards render in discharge of his bail, and remain in custody thereafter, the thirty days will begin to run on the day of the render, and not on the day of the original arrest, (*Ex parte Dufrene*, 1 Ves. & B. 51 ; *Tribe v. Webster*, Willes, 464.)

Or refusing to appear.

f. Or if he wilfully neglects or refuses to appear on any rule or order requiring his appearance to be examined as to his debts under any statute or law in that behalf ;

Or to obey orders for payment.

g. Or if he wilfully refuses or neglects to obey or comply with any such rule or order made for payment of his debts or of any part of them ;

Or any order or decree in Chancery.

h. Or if he wilfully neglects or refuses to obey or comply with the order or decree of the Court of Chancery or of any of the judges thereof, for payment of money ;

Or assigning generally, ex-

i. Or if he has made any general conveyance or assignment of his property for the benefit of his

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creditors, otherwise than in the manner prescribed by this Act : cept under this Act.

This act of Bankruptcy can only be taken advantage of to place an estate in compulsory liquidation within three months after the assignment has been made, (see below, sub-sec. 5 ;) and it does not seem probable that creditors would desire to force a man through bankruptcy proceedings, who had recently made an assignment, and could have nothing more for them ; unless indeed, they could hope to set the assignment aside as being fraudulent under this act.

The only creditors who will be in a position to take advantage of this act of bankruptcy in order to enforce compulsory liquidation, are these who have not signed and become parties to the deed of assignment for the benefit of creditors. It has been recently decided in England that a creditor who has executed such a deed may not afterwards take advantage of the assignment as an act of bankruptcy whereon to found proceedings against the assignor. *Re a disputed adjudication*, 2 L. T. (N.S.) 77 Bank.) If a debtor execute a deed of assignment to trustees for the benefit of creditors he commits an act of bankruptcy although the trustees do not assent thereto, and refuse to execute the deed, (Ex. Parte Slann, 6, L. T. (N.S.) 400 Bank.)

An assignment intended to be made under the voluntary clauses of this act might, from some entire omission of a prescribed proceeding, be an act of bankruptcy under this paragraph, (see above, note to sec. 2, ss. 5.)

It has been held in one of the first decisions under this act, in Upper Canada, that this clause does not apply to assignments made before the 1st September, 1864, (Re Hogg, in County Court, York and Peel.)

2. If a trader ceases to meet his commercial liabilities generally as they become due, any two or more creditors for sums exceeding in the aggregate five hundred dollars, may make a demand upon him (Form E.) requiring him to make an assignment of his estate and effects for the benefit of his creditors : Demand of assignment, if trader does not meet his commercial liabilities.

This clause contains the only provision of this act that applies exclusively to traders in Upper Canada. It will be necessary, therefore, briefly to ascertain what classes of men are included within the meaning of the word "trader." In England this word was defined by statute in its relation to liability under the bankruptcy laws, as early as the reign of James the First. Any legislative enactment, however, upon the subject of bankruptcy in England, can have no force in this Province, and is only alluded to in order to explain and illustrate the conventional meaning of the word under notice. It is to be observed that the first Act passed by the Parliament of Upper Canada, (32 Geo. 3, c. 1; Con.

Stats. U. C., c. 9.) which introduced the law of England up to that date, especially excepts "any of the laws of England respecting the maintenance of the poor, or respecting bankruptcy."

It is submitted that the broad and general meaning of the word trader is, that he is a person who gains, or attempts to gain, his living by buying and selling. The words "seeking to gain his living by buying and selling," are used in the definition of the term in the English statute, 21 James I., c. 19, s. 2. The cases, therefore, which have been decided upon these words in that statute will furnish us with a very fair illustration of the sense in which the word "trader" ought to be understood.

There must be a buying and selling, or at least, an intent to sell; for a buying alone, without an intent to sell, or a selling alone without a buying, will not constitute such a trading, (1 Com. Dig. Bankrupt, A;) and the buying must be a purchase in the common and ordinary, and not merely in the legal acceptance of the term, (Per Lord Loughborough, in *Parker v. Wells*, Cooke, 58.) If a man purchase goods for his own use, that will not make him a trader, even though he afterwards sell such of them as he may not have occasion for; because he does not seek his living by the buying and selling, (see dictum of Lord Mansfield in *Wells v. Parker*, 11 T. R. 34; and see *Summersett v. Jarvis*, 3 Brod. & Bing. 2; 6 Moore 56.) If a man buy horses to sell again with a view to profit he is a trader; but if he sell only such as he bred and reared himself, he is not, (*Ex parte Gibbs*, 2 Rose, 38; *Wright v. Bird*, 1 Price, 20.) So if a fisherman purchase fish and sell them he is a trader, but if he sell only such fish as have been caught by him he is not; (*Heaney v. Birch*, 3 Camp. 233.) If a man made bricks from his own land, as a mode of enjoying the profits of it, even although he made the bricks entirely for sale, and purchased sand and fuel, &c. for the purpose of making them, he was held not to be a trader, (*Wells v. Parker*, *ubi supra*; Cooke, 52-63; *Sutton v. Weely*, 7 East, 442.) When a man purchases standing timber to sell again, with a view to profit, he has been held a trader; but if he sells only such as he cuts down upon his own land it would be otherwise, (*Holroyd v. Gwynne*, 2 Taunt. 178.) If the owner of an estate, with a view to its improvement build houses, and afterwards happens to sell or let them he cannot be called a trader, *Ex parte Neirincks*, 2 Mon. & A., 384.)

It has been held necessary, in order to make a man bankrupt as a trader by buying and selling, that there should have been a repeated practice of it; for a single act of buying and selling unaccompanied by an intention to continue it is not sufficient, (Cooke, 64; *Ex parte Blackmore*, 6 Ves. 3; *Ex parte Bowes*, 4 Ves. 168; *Hankey v. Jones*, Cowp. 748; and see *Bolton v. Sowerby*, 11 East 274; *Ex parte Duffaur*, 20 L. J. Bank, 38.) But if this intention exist, the extent of the trading, whether large or trifling, prior to the bankruptcy, will be immaterial, (*Patman v. Vaughn*, 1 T. R. 57; *Bartholomew v. Sherwood*, 1 T. R. 373.) A mere trifling buying and selling, quite collateral to a man's line of

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life, even though it yield him a profit, will not render him a trader; as, for instance, a schoolmaster who buys books, &c., and sells them to his scholars, (*Valentine v. Vaughan, Peake, 76; Newton v. Trigg, 1 Salk., 109.*)

The legality or illegality of the buying or selling, makes no difference; it has been held that a trader may become bankrupt, although he has not taken out a license necessary to legalize his trade, (*Sanderson v. Rowles, 4 Burr. 2066; Martin v. Nightingale, 11 Moore, 305.*) Even a smuggler might become bankrupt, (*Ex parte Megmot, 1 Atk. 199; Cobb v. Symonds, 1 D. & R., 111.*)

It is a question whether the limit of three months after an act of bankruptcy, that has been laid down as the time within which proceedings must be commenced, (see below, sub. sec. 5 of this sect.,) can be held to apply to the case of a trader ceasing to meet his commercial liabilities generally as they become due. From the moment a trader ceases to meet his liabilities when due, he would seem to be committing a continuing act of bankruptcy, that is not removed until either the debts are paid, or barred by the Statutes of Limitations.

It is enacted below, (sec. 12, sub-sec. 5,) that "all the provisions of this Act respecting traders, shall be held to apply equally to unincorporated trading companies and copartnerships; and the chief office or place of business of such unincorporated trading companies and copartnerships shall be their domicile for the purposes of this Act,"

A banker is a trader within the meaning of this clause,

A trader who has ceased to trade before 1st September, 1864, cannot be proceeded against under this and the two following sub-sections. But it is not necessary for the plaintiff expressly to state in his affidavits for the attachment that the defendant was a trader since the act came into force, (*Bagwell vs. Hamilton, 10 U. C. L. J., 305.*)

3. If the trader on whom such demand is made, contends that the claims of such creditors do not together amount to five hundred dollars, or that they were procured in whole or in part for the purpose of enabling such creditors to take proceedings under this Act; or that the stoppage of payment by such trader was only temporary, and that it was not caused by any fraud or fraudulent intent, or by the insufficiency of the assets of such trader to meet his liabilities, he may, within five days from such demand, present a petition to the judge praying that no further proceedings under this Act may be taken upon such demand; and, after hearing the parties and such evidence as may

Counter petition denying the truth of the allegations in such demand.

Judge to decide.

be adduced before him, the judge may grant the prayer of his petition and thereafter such demand shall have no force or effect whatever; and such petition may be granted with or without costs against either party; but if it appears to the judge that such demand has been made without reasonable grounds, and merely as a means of enforcing payment under color of proceeding under this Act, he may condemn the creditors making it to pay treble costs;

A perfectly solvent person may, no doubt, be very much injured in his business and reputation by malicious creditors making a demand upon him under these clauses. It is true that he may deny the allegations in the demand by a petition, and bring evidence before the court to prove the unfounded nature of the demand. Yet, all that the judge is empowered to do, should the petition be substantiated, is to condemn the creditors to pay treble costs. In the English Acts the Court is authorized to award satisfaction for the damages sustained by a malicious or unfounded petition being filed. It is presumed that the fact of a judge awarding treble costs against the creditors would not prevent their being rendered liable in an action of damages for maliciously abusing the provisions of the Act. Before the trader could bring such action, it is submitted that he would have to present his petition against further proceeding on the demand, and have the same stayed.

One very great hardship upon an honest debtor might be occasioned by these demands, inasmuch as he might in many instances have to disclose in his petition, and before action brought, the nature of defences which he may intend afterwards to set up against the claims which he has failed to settle.

If the petition be rejected or none be presented, &c.

4. If such petition be rejected; or if while such petition is pending, the debtor continues his trade, or proceeds with the realization of his assets; or if no such petition be presented within the aforesaid time, and the insolvent during the same time neglects to call a meeting of his creditors as provided by the second section of this Act; or if he does not complete such assignment within three days after such meeting, or if there be an adjournment thereof, then within three days after such adjournment; or if having given notice of a meeting of creditors, as required by the second section

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It has been held that an Act of bankruptcy concerted between the bankrupt and the applying creditor would not support a fiat, (*Ex parte* Gouthwate, 1 Rose, 87; *Ex parte* Brooks, 1 Buck, 257; *Baurford v. Baron*, 2 T. R., 594; *Eyre v. Birbeck*, 2 T. R., 395.) But a creditor not privy to such concerted act might avail himself of it, (*Ex parte* Bourne, 16 Ves. 145.) The bankrupt's agreeing to an act of bankruptcy at the suggestion of a friend, without any concert with the creditors was held to be no objection to the adjudication, (*Roberts v. Teasdale*, Peake, N. P., 27; *Simpson v. Sikes*, 6 M. & S., 295. Although these decisions were rendered nugatory in England by the provisions of 12 & 13 Vic., c. 106, it is presumed that they will be followed in our practice.

5. But no act or omission shall justify any pro- But proceed-
ceeding to place the estate of an insolvent in com- ings must be
pulsory liquidation, unless proceedings are taken taken within
under this Act in respect of the same, within three three months.

In order to justify proceedings to place an estate in compulsory liquidation, it would seem that the act of bankruptcy relied upon must have been committed during the existence of the debt of the creditor making the application, (*Baillie v. Grant*, 9 Bing. 121; 2 M. & Scott, 193.) If committed even on the same day that the application is made it will be sufficient, (*Ex parte* Dufrene, 1 Ves. & B., 51; *Hopper v. Richmond*, 1 Stark, 507).

Although this section provides that proceedings must be taken within three months after the act or omission relied upon, it should be remarked, that as to the first act of bankruptcy mentioned in section three, it may be a continuing one—*de die in diem*; for any one remaining abroad or concealing himself within the Province with intent to defeat or delay his creditors, commits a continuous act of bankruptcy until he comes back, or discovers himself. It is probable that the acts of negligence in sub-sec. 1, section three, marked *f*, *g*, and *h*, are continuous acts of bankruptcy, as long as the debtor neglects to comply with the rules or orders therein mentioned.

In expressing, above, the different acts of bankruptcy that shall render a man's estate subject to compulsory liquidation, there is a marked distinction in the tenses used. In the clauses marked *d*, *e*, and *i*, a past tense is employed, and in all the others the present or future. The legislature must be presumed

to have made this distinction advisedly, and the effect of it would seem to be that the act of bankruptcy, where the past tense is used, may have been committed before this act came into force, which would so far seem to have a sort of *ex post facto* operation.

The view taken by the learned Judge of the Counties of York and Peel in re Hogg, however, seems to lead to the conclusion that there was no intention that the act should be in this respect retrospective, and that consequently an assignment made before the act came into operation could not be taken advantage of by creditors as an act of bankruptcy.

Proceedings
for issue of
Writ of at-
tachment of
debtors estate,
in L. C.

6. In Lower Canada an affidavit may be made by a creditor for a sum not less than two hundred dollars, or by the clerk or other duly authorized agent of such creditor, setting forth the particulars of his debt, the insolvency of the person indebted to him, and any fact or facts which, under this Act, subject the estate of such debtor to compulsory liquidation (Form F), and upon such affidavit being filed with the Prothonotary of the district within which the insolvent has his place of business, a writ of attachment (Form G) shall issue against the estate and effects of the insolvent addressed to the sheriff of the district in which such writ issues, requiring such sheriff to seize and attach the estate and effects of the insolvent, and to summon him to appear before the court to answer the premises, within such time as is usual therein for the return of ordinary writs of summons; and such writ shall be accompanied by a declaration setting forth such facts and circumstances as are necessary to be proved to sustain the issue thereof; and shall be subject as nearly as can be to the rules of procedure of the court in ordinary suits, as to its issue, service, return and subsequent proceedings;

Declaration to
accompany
writ.

The same in
U. C.

7. In Upper Canada, in case any creditor by affidavit of himself or any other individual (Form F), shows to the satisfaction of the judge that he is a creditor of the insolvent for a sum of not less than two hundred dollars, and also shews by the

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affidavits of two credible persons, such facts and circumstances as satisfy such judge that the debtor is insolvent within the meaning of this Act, and that his estate has become subject to compulsory liquidation, such judge may order the issue of a writ of attachment (Form G) against the estate and effects of the insolvent, addressed to the sheriff of the county in which such writ issues, requiring such sheriff to seize and attach the estate and effects of the insolvent and to summon him to appear before the court to answer the premises, within such time as is usual therein for the return of ordinary writs of summons; and such writ shall be accompanied by a declaration setting forth such facts and circumstances as are necessary to be proved to maintain the issue thereof, and shall be subject as nearly as can be to the rules of procedure of the Court in ordinary suits as to its issue, return, and subsequent proceedings;

Declaration
to accompany
writ.

Some doubt may arise as to the nature of the debt of the creditor who can apply under this section. The interpretation clause of this Act (see below sec. 12, sub-sec. 5), gives the meaning of the word "creditor," and says it "shall be held to mean every person to whom the insolvent is liable, whether primarily or secondarily, and whether as principal or surety."

It would seem, however, to be a question whether the debt of the applying creditor must not be a debt, for which, if payable at the time, an action at law could be maintained by and in the name of the creditor; and whether an equitable debt is sufficient, (*Ex parte Hawthorne*, Mont. 132); although such a debt may certainly be proved under bankruptcy. It has been held that the assignee of a bond could not be an applying creditor within the meaning of the English Act, (*Ex parte Lee*, 1 P. W. 782; *Medlicot's case*, 2 Str. 899; *Ex parte Sutton*, 11 Ves. 163). A debt barred by the Statutes of Limitations is insufficient, (*Quantrock v. England*, 2 W. Bl. 703; *Ex parte Dewdney*, 15 Ves. 479); so is a debt founded upon an illegal consideration, (*Wells v. Girling*, 1 Brod. and B. 447). The debt must not be a claim for damages, unless ascertained and fixed by judgment; therefore interest, even on a bill of exchange, cannot be the subject of an applying creditor's debt, unless expressed to be payable upon the face of the instrument, and it cannot be added to the principal to make up the amount required to constitute the creditor's debt, (*Cameron v. Smith*, 2 B. & A. 305; *Ex parte Greenway*, Buck. 412; *Ex parte Burgess*, 8 Tann. 660; 2 Moon, 745).

There seems to be no reason why application might not be made for a writ of

attachment against a person who has already taken the benefit of our Act for the relief of Insolvent Debtors, Con. Stats. U. C., ch. 26. (See *Jellis v. Mountford*, 4 B. & A. 256).

Unascertained damages claimed against an insolvent for a tort cannot be the debt relied on by an applying creditor; nor, on the other hand, does a discharge under this act operate to free a man from any debt due as damages for personal wrongs, (see below, sec. 9. sub-sec. 5.)

The ordinary formal parts of a declaration should be used in setting out the facts and circumstances to be proved; and it might be well, in the absence of any regulation on the subject in Upper Canada, for practitioners to adhere to the requisites for the intituling of insolvency pleadings, given in Rule 6 of the Lower Canadian orders, (for which see appendix.) A certain amount of uniformity and regularity may at least be secured in that way until something is authoritatively prescribed. The declaration that is to accompany the writ is answered by way of petition, (see below, sub-sec. 12), and not by plea.

Notice of issue
of writ.

8. Immediately upon the issue of a writ of attachment under this Act, the Sheriff shall give notice thereof by advertisement thereof (Form H);

How writ
shall be exe-
cuted.

9. Under such writ of attachment the Sheriff shall, by himself or by such agent or messenger as he shall appoint for that purpose, whose authority shall be established by a copy of the writ addressed to him by name and description, and certified under the hand of the Sheriff, seize and attach all the estate and effects of the insolvent wherever situate, including his books of account, moneys and securities for money, and all his office or business papers, documents, and vouchers of every kind and description; and shall return, with the writ, a report under oath of his action thereon;

Return.

In whose cus-
tody property
attached shall
be placed in
L. C.

10. If the Board of Trade in the County or District in which is situate the place of business of the debtor, or if there be no Board of Trade in such County or District, then the Board of Trade nearest thereto, has appointed official assignees for the purposes of this Act, the Sheriff shall place the estate and effects attached in the custody of

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one of such official assignees, who shall be guardian under such writ; but if not he shall appoint as guardian such solvent and responsible person as may be willing to assume such guardianship;

11. The person so placed in possession shall forthwith proceed to make an inventory of the estate and effects of the defendant; and also such statements of his affairs as can be made from the books, accounts and papers attached; and he shall file such inventory in the Court on the return day of the writ; and shall produce such statements at the meeting of creditors called for the appointment of an official assignee;

Duty of such person.

Inventory, &c

12. Except in cases where a petition has been presented as provided for by the third paragraph of this section, the alleged insolvent may present a petition to the Judge at any time within five days from the return day of the writ, but not afterwards, and may therefore pray for the setting aside of the attachment made under such writ, on the ground that his estate has not become subject to compulsory liquidation; and such petition shall be heard and determined by the Judge in a summary manner, and conformably to the evidence adduced before him thereon;

Petition to set aside attachment.

To be decided summarily.

13. Immediately upon the expiration of five days from the return day of the writ, if no petition to quash or to stay proceedings be filed, or upon the rendering of judgment on the petition to quash, if it be dismissed, the Judge upon the application of the plaintiff, or of any creditor intervening for the prosecution of the cause, shall order a meeting of the creditors to be held before him or any other Judge, at a time and place named in such order, and after due notice thereof, for the purpose of giving their advice upon the appointment of an official assignee;

Meeting of creditors for appointment of official assignee.

The notice of this meeting of creditors shall be given by publication thereof for two weeks in the *Canada Gazette*, and in a newspaper published at or nearest to the place where the meeting is to be held, if such newspaper be published within ten miles of such place, and notices of the meeting must also be sent by mail, (See below, sec. 11, sub-sec. 1.) It is very difficult, however, to see how the Judge could have notices sent to "all creditors, and to all representatives of foreign creditors within the Province," when there has been no list of creditors brought before him at this stage of the proceedings.

Who may be appointed official assignee.

14. At the time and place appointed, and on hearing the advice of the creditors present upon oath (Form I.) the Judge shall appoint some person to be such official assignee, which person shall be the person proposed by the creditors present, if they are unanimous; and if they are not unanimous, then the judge may appoint either one of the persons proposed by the creditors, or one of the official assignees named by the Board of Trade;

The person who is here designated as the "official assignee" is much the same as the creditors' assignee in England. It would seem that the number of creditors present at the meeting for the appointment of an assignee is not material; it has been held that even if one only be present he may elect himself, (Cooke, 286.)

A solicitor, who is thenceforth to conduct the proceedings under the bankruptcy, may be appointed by the assignee as soon as he is chosen, (*Ex parte Tomlinson*, 2 Rose, 66.) This may be either the Solicitor who applied for the writ of attachment, or another. The assignee may also remove the solicitor he has appointed, (*Ex parte Hardy*, 1 Rose, 395.)

Debtor may petition for suspension of proceedings.

15. Instead of petitioning to quash the attachment, the debtor may, within the like delay, petition the judge to suspend further proceedings against him, and to that end to submit such petition to a meeting of the creditors and the debtor to be called for that purpose, in order that the creditors may determine whether the proceedings against the debtor shall be suspended or not;

Schedule to be produced with the petition.

16. The debtor shall produce with such petition a schedule of his estate, and a list of his creditors, with the amount of his indebtedness to each, and

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the places of their respective residences, or places of business, together with particulars of any negotiable paper on which his name appears, the holders of which are unknown to him; the whole under oath;

17. Upon the schedule of the estate and the list of creditors being furnished by the debtor, sworn to as aforesaid, the Judge, instead of ordering a meeting of creditors to be called for the appointment of an official assignee, shall order a meeting of creditors to be called by advertisement for the purpose of taking into consideration the prayer of such petition, and at such meeting shall take and record by a writing under his hand the opinion of the creditors thereon;

Duty of Judge in such case.

Meeting to be called.

18. The Judge shall postpone the meeting so called if it appears that the creditors have not been properly and reasonable notified, or that important omissions have been made in the creditors' list;

Postponement of meeting.

19. The Judge shall preside at such meeting of creditors, and the question which they shall decide shall be, "Shall the debtor be proceeded against under this Act or not?" And if the decision of the majority in number and three-fourths in value of the creditors for sums above one hundred dollars, present or represented, be in the negative, it shall be in force for three calendar months thereafter, during which time no other proceedings in insolvency shall be commenced against the debtor, based upon any act or omission of his which took place previous to the institution of the proceedings so stayed by the decision of the creditors;

Judge to preside at such meeting.

Question to be decided thereat, and how.

The effect of a decision of the creditors under this clause not to proceed against the insolvent seems to be to entitle the latter to have the attachment discharged, and to get a stay of any other proceedings in insolvency, based upon acts of bankruptcy committed before the issue of the attachment. If this be the true interpretation of the question put to the creditors, it effects a great deal

more than a suspension of proceedings. In fact it is more effectual to quash the writ than a petition under sub-sec. 12, above, would be, for it not only sets the writ aside, but gives the insolvent protection for three months from other proceedings. At the end of this time the creditors would have to take their steps to place the estate in compulsory liquidation *de novo*. It is scarcely probable that it could have been intended that a mere suspension of proceedings should be the result of a negative answer from the creditors. The guardian is supposed to have taken possession of everything that belonged to the insolvent, and the latter would be very little benefitted by his effects remaining quietly in the guardian's hands for three months.

Proceedings
on decision of
meeting.

20. If the decision at such meeting be not in the negative, the judge shall at once proceed thereat to take the advice of the creditors as to the appointment of an official assignee, and shall appoint such assignee as hereinbefore provided.

In case of
question as to
amount of any
creditor's
claim.

21. If any question arises at such meeting respecting the amount of any creditor's claim, it shall be decided by the judge upon a hearing of the parties, and from an inspection of the schedules and list so sworn to by the debtor, and of the statement of the debtor's affairs prepared and produced at such meeting by the guardian, or person entrusted with the writ of attachment ;

Effect of ap-
pointment of
official as-
signee.

22. Upon the appointment of the official assignee the guardian shall deliver the estate and effects attached, to the official assignee ; and by the effect of his appointment, the whole of the estate and effects of the insolvent, as existing at the date of the issue of the writ, and which may accrue to him by any title whatsoever, up to the time of his discharge under this Act, and whether seized or not seized under the writ of attachment, shall vest in the said official assignee, in the same manner and to the same extent, and with the same exceptions as if a voluntary assignment of the estate of the insolvent had been at that date executed in his favor by the insolvent ;

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follows:

23. An authentic copy or exemplification under the hand of the proper officer of the Court, of the order of the Judge appointing an official assignee, may be registered at full length in any registry office, without any proof of the signature of the officer and without any memorial; and such registration shall have the same effect as to the real estate of the insolvent and in all other respects, as the registration of a deed of assignment under this Act;

Effect of registration of order of appointment.

As to the registration of a deed of assignment under this Act, see above, sec. 2, sub-sec. 9, and note.

24. Immediately upon his appointment, the official assignee shall give notice thereof by advertisement (Form K), requiring by such notice all creditors of the insolvent to produce before him their claims, and the vouchers in support thereof.

Notice of appointment.

OF ASSIGNEES.

4. The Board of Trade at any place, or the Council thereof, may name any number of persons within the County or District in which such Board of Trade exists, or within any County or District adjacent thereto in which there is no Board of Trade, to be official assignees for the purposes of this Act, and at the time of such nomination shall declare what security for the due performance of his duties, shall be given by each of such official assignees before entering upon them; and a copy of the resolution naming such persons, certified by the Secretary of the Board, shall be transmitted to the Prothonotary or Clerk of the Court in the District or County within which such assignees are resident:

Boards of Trade may name official assignees.

Security.

Notice of nomination.

The several Boards of Trade in Toronto, Hamilton, London, Kingston, and Ottawa, appointed official assignees under the authority of this clause at an early period after the act came into force. The names of those appointed are as follows:

By the Toronto Board:—Messrs. Thomas Clarkson, Thomas Gordon, Joseph Blakely, Samuel Spreull, F. A. Whitney, Henry Joseph, Henry Hewlett, W. T. Mason, and George Wightman for the City of Toronto; Messrs. M. Teefy and Robert Beekman, for the Counties of York and Peel; Archibald Barker, for York and Ontario; James Holden, for Ontario; J. Cassie Halton, of Port Hope; E. A. McNaughton, Cobourg; N. E. Hatton, Peterborough; S. C. Wood, Lindsay; S. M. Sandford, Barrie.

By the Hamilton Board:—For the County of Wentworth, Messrs. Willson, McKeand, and William Powis, of Hamilton. For the County of Waterloo, Mr. Henry F. J. Jackson, of Berlin, and Mr. Alexander McGregor, of Galt. For the County of Brant, Mr. A. W. Smith, of Brantford. All appointed by this Board have found the security required.

By the London Board:—For the County of Middlesex, Messrs. Thomas Churcher, and Lawrence Lawrason, of London. For the County of Oxford, Mr. James McWhirber, of Woodstock.

By the Kingston Board:—Messrs. James Shannon, Charles H. Voight, and Roderick M. Rose.

By the Ottawa Board:—For the City of Ottawa and Counties of Carlton and Russell, Francis Clemow. For the Counties of Lanark and Renfrew, Roderick Ross.

The security that the Toronto Board of Trade requires from each official assignee, before entering upon his duties, is a Bond from the European Assurance and Guarantee Association, to the amount of \$5,000. Up to the time of going to press, Mr. W. T. Mason is the only one of those nominated, who is known to have complied with this requisite; but no doubt the others will do so, if their services are required.

It is to be observed that by sub-section 6, below, the creditors may, by resolution, order further security to be given by the official assignee; but it is highly improbable that any security will, in the great majority of cases, be required, in addition to what has been taken by the Board of Trade, especially when it is so large as that which the Toronto Board has insisted upon having.

Security to be given by assignee.

2. Such security shall be taken in the name of office of the President of such Board of Trade, for the benefit of the creditors of any person whose estate is, or subsequently may be, in process of liquidation under this Act; and in case of the default of any such assignee in the performance of his duties, his security may be enforced and realized by the assignee who shall be appointed his successor, who may sue in his own name as such assignee upon such security;

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3. The assignee shall call meetings of creditors, whenever required in writing so to do by five creditors, stating in such writing the purpose of the intended meeting; or whenever he is required so to do by the judge, on the application of any creditor, of which application he shall have notice; or whenever he shall himself require instructions from the creditors; and he shall state succinctly in the notice calling any meeting, the purposes of such meeting;

Meeting of creditors, when to be called by assignee.

4. The assignee shall be subject to all rules, orders and directions, not contrary to law, or the provisions of this Act, which are made for his guidance by the creditors at a meeting called for the purpose; and until he receives directions from the creditors in that behalf, if there be a Bank or agency of a Bank in the County in which the insolvent has his place of business, or within fifteen miles of such place, he shall deposit weekly, at interest, in the name of the estate, all moneys received by him, in the Bank or Bank-agency in or nearest to the place where the insolvent so carries on business;

Assignee to be subject to certain rules.

Deposit of moneys.

5. The assignee shall attend all meetings of creditors, and take and preserve minutes of such meetings, signed by himself, and signed and certified at the time by the chairman, or by three creditors present at the meeting; and copies of, and extracts from, such minutes, certified by the assignee, shall be *prima facie* evidence of the proceedings purporting to be recorded in such minutes; and he shall also keep a correct register of all his proceedings, and of all claims made to or before him;

To attend all meetings of creditors.

And keep minutes, &c.

6. The assignee shall give such security and in such manner as shall be ordered by a resolution of the creditors, and shall conform himself to such

Security to be given to creditors.

The Bond.

How kept.

Powers of insolvent vested in assignee.

It is probable that the general jurisdiction of the Court of Chancery in all matters relating to trusts would place it in the power of that Court to appoint a new trustee in case of the bankruptcy of a former one; although it was thought necessary to clothe the Court in England with that power by statute, (6 Geo. 4, c. 16, s. 79; 12 & 13 Vic. c. 106, s. 130.) These provisions, however, do not render it imperative on the Court to remove a trustee from the trust upon his bankruptcy; but he will be removed if his bankruptcy in the smallest degree endangers the trust, (*in re.*, *Bridgman's Trust*, 6 Jur. (N. S.) 1065.) In case of the bankruptcy of a trustee the Court of Chancery may appoint a receiver to act in his stead, (*Ex parte Ellis*, 1 Atk., 101; *Langley v. Hawke*, 5 Mad., 46.)

Winding up affairs.

directions in respect thereof, and in respect of any change or modification thereof or addition thereto, as are subsequently conveyed to him by similar resolutions; and in every case except where the security has been taken in the name of the President of the Board of Trade, and is not required to be changed, the bond or instrument of security shall be taken in favor of the creditors, by the name of the "Creditors of A. B., an insolvent, under the Insolvent Act of 1864," and shall be deposited in the office of the Court, and in case of default by the assignee on whose behalf it is given, may be sued upon by any assignee who shall be subsequently appointed, in his own name as such assignee;

7. All powers vested in any insolvent which he might legally execute for his own benefit, shall vest in, and be executed by the assignee, in like manner and with like effect as they were vested in the insolvent, and might have been executed by him; but no power vested in the insolvent or property or effects held by him as Trustee or otherwise for the benefit of others, shall vest in the assignee under this Act;

8. The assignee shall wind up the affairs of the insolvent, by the sale, in a prudent manner, of all bank and other stocks, and of all movables belonging to him, and by the collection of all debts; but

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in all of such respects shall be guided by the direction of the creditors, given as herein provided ;

9. The assignee, in his own name as such, may sue for the recovery of all debts due to the insolvent, and may take, both in the prosecution and defence of suits, all the proceedings that the insolvent might have taken with respect to the estate, and may intervene and represent the insolvent in all suits or proceedings by or against him, which are pending at the time of his appointment, and on his application may have his name inserted therein, in the place of that of the insolvent ;

Assignee's right of action, &c.

If the assignee decline to prosecute a suit, the creditors are entitled to do so, upon indemnifying the assignee against costs, &c., (10 L. J. (N. S.) 102.)

To a suit for foreclosure against the assignee of the estate of a bankrupt mortgagor, the bankrupt is not a necessary party, (*Torrance v. Winterbottom*, 2 Grant, 487.)

10. If a partner in an unincorporated trading Company or co-partnership, becomes insolvent within the meaning of this Act, and an assignee is appointed to the estate of such insolvent, the assignee shall have all the rights of action and the remedies against the other partners in such Company or co-partnership, which any partner could have or exercise by law against his co-partners after the dissolution of the firm ; and may avail himself of such rights of action and remedies, as if such co-partnership or Company had expired by efflux of time ;

When the insolvent is a partner in a trading company, &c.

11. After having acted with due diligence in the collection of the debts, if the assignee finds there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he may report the same to the creditors at a meeting thereof duly called for the purpose ; and with their sanction he may obtain an order of the Judge to sell the same by public auction,

As to doubtful debts due estate : sale may be ordered.

after such advertisements thereof as may be required by such order; and pending such advertisements, the assignee shall keep a list of the debts to be sold, open to inspection at his office, and shall also give free access to all documents and vouchers explanatory of such debts; but all debts amounting to more than one hundred dollars shall be sold separately;

Proviso.

Rights of purchaser of debt.

12. The person who purchases a debt from the assignee, may sue for it in his own name as effectually as the insolvent might have done, and as the assignee is hereby authorized to do; and a bill of sale (Form L.,) signed and delivered to him by the assignee, shall be *prima facie* evidence of such purchase without proof of the handwriting of the assignee; and no warranty, except as to the good faith of the assignee, shall be created by such sale and conveyance, not even that the debt is due;

Sale of insolvent's real estate: notice.

13. The assignee may sell the real estate of the insolvent, but only after advertisement thereof, for the same time and in the same manner as is required for the actual advertisement of sales of real estate by the Sheriff in the district or place where such real estate is situate, and to such further extent as the assignee deems expedient; but the period of advertisement may be shortened to not less than two months by a resolution of the creditors passed at a meeting called for the purpose, and approved of by the Judge; and if the price offered for any real estate at any public sale duly advertised as aforesaid, is in the opinion of the assignee too small, he may withdraw such real estate, and sell it subsequently under such directions as he receives from the creditors;

Power to withdraw: and sell afterwards.

The time and manner of advertising the sales of real estate by the sheriff in Upper Canada are pointed out in the Common Law Procedure Act, (Con. Stats. U. C., ch. 22, s. 267), which enacts as follows:—

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"Before the sale of real estate upon execution against lands and tenements, the sheriff shall publish an advertisement of sale in the *Canada Gazette*, at least six times, specifying,—

"First: The particular property to be sold ;

"Second : The names of the plaintiff and defendant ;

"Third: The time and place of the intended sale ; and he shall for three months next preceding the sale also publish such advertisement in a public newspaper of the county in which the land lies, or shall for three months put up and continue a notice of such sale in the office of the Clerk of the Peace, or on the door of the Court House, or place in which the Court of General Quarter Sessions for such county is usually holden ; but nothing herein contained shall be taken to prevent an adjournment of the sale to a future day."

14. The sale of real estate in Upper Canada so made by the assignee, shall have the same effect as if the same had been made by a Sheriff in Upper Canada, under a writ of execution issued in the ordinary course ; and in Lower Canada, such sales shall have the same effect as if made by a Sheriff under a similar writ ; and the deed of such sale which the assignee executes, (Form M.) shall have precisely the same effect as a Sheriff's deed has in that part of the Province within which the real estate is situate ; but he may grant such terms of credit as he may deem expedient, and as may be approved of by the creditors for any part of the purchase money ; and if no previous hypothec or mortgage remains upon such real estate, he shall be entitled to reserve a special hypothec or mortgage by the deed of sale, as security for the payment of such part of the purchase money ; and such deed may be executed before witnesses, or before Notaries, according to the exigency of the law of the place where the real estate sold is situate ;

Effect of sale of real estate by assignee in U. C. and L. C. respectively.

Credit for purchase money.

Reserving mortgage therefor.

This section gives the same effect to a sale of real estate by an assignee as if the sale had been made by a sheriff under a writ of execution. The title that is given by a sheriff's sale is the title that was in the execution debtor at the time the writ was placed in the Sheriff's hands. It therefore seems clear that a purchaser from an assignee under a voluntary assignment would obtain the title of the insolvent in the property at the date of the assignment ; and in the

case of a compulsory liquidation the assignee would convey the title that the insolvent had at the time the writ of attachment was placed in the Sheriff's hands, (see above, sec. 3, sub-sec. 22.)

The sale of the interest of an insolvent mortgagor in the mortgaged lands, by an assignee, will be governed, no doubt, by the same regulations as a similar sale by a sheriff. The Common Law Procedure Act, (Con. Stats., U. C., c. 22, sec. 258,) provides for such cases as follows:—

“The effect of such seizure or taking in execution, sale and conveyance of any such mortgaged lands and tenements, shall be to vest in the purchaser, his heirs and assigns all the legal and equitable interest of the mortgagor therein, at the time the writ was placed in the hands of the Sheriff or other officer to whom the same is directed as well as at the time of such sale, and to vest in such purchaser his heirs and assigns, the same rights as such mortgagor would have had if such sale had not taken place; and the purchaser, his heirs or assigns may pay, remove, or satisfy, any mortgage, charge or lien, which at the time of such sale existed upon the lands or tenements so sold, in like manner as the mortgagor might have done, and thereupon the purchaser, his heirs and assigns, shall acquire the same estate, right and title, as the mortgagor would have acquired in case the payment, removal or satisfaction, had been effected by the mortgagor.” It is probable that the provisions for a discharge of the mortgage by the mortgagee upon receiving payment of the amount due, from the purchaser, in sales by the Sheriff, would be applicable to sales by an assignee. For such provisions see the section of the Com. Law Procedure Act quoted above.

It is submitted that the power here granted to the assignee of reserving a special mortgage by the deed of sale as security for the payment of part of the purchase money, is a very unusual one in Canadian conveyancing; and probably the assignee will be held entitled to take a mortgage back in a separate instrument from the deed of sale, or be able only to give a bond for a deed. The object might be gained in one instrument by a grant to the vendee to hold to his own use until default made by him in some of the payments of the purchase money, and after such default to the use of the vendor, (the assignee.)

Duty of assignee selling real estate in L. C.

15. In Lower Canada, before advertising any sale of real estate the assignee shall procure, at the expense of the estate, from the Registrar of the County wherein such real estate is situate, a certificate containing the names and residences as shewn by the Registry books of all persons enregistered as hypothecary creditors upon such real estate; and he shall himself deposit in the nearest post office a notice with the postage paid thereon,

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addressed to each of such creditors by the name and to the address contained in such certificate, and also a notice addressed to each creditor at any other place where the assignee has reason to believe such creditor to be then resident, and also a notice addressed to any other person whom the assignee has reason to believe to be then the creditor of such hypothecary claim,—informing the creditors of the day fixed for the sale of the real estate, and of the time within which the hypothecary creditors are required to file their claims under this Act; and before the day of sale he shall file in the office of the Court the certificate of the Registrar with a return thereon under oath as to his doings in respect of such notices; and the assignee shall be directly liable for any neglect of the duty imposed upon him by this section, to any party suffering damage in consequence of such neglect;

Notice to registered incumbrances.

And other hypothecary creditors.

Certificate of Registrar to be filed.

Liability of assignee for neglect.

16. The assignee shall be subject to the summary jurisdiction of the Court or Judge in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and the performance of his duties may be enforced by the Judge on summary petition in vacation, or by the Court on a rule in term, under penalty of imprisonment, as for contempt of Court, whether such duties be imposed upon him by the deed of assignment, by instructions from the creditors validly passed by them under this Act and communicated to him, or by the terms of this Act;

Assignee to be subject to summary jurisdiction of the Court.

17. Before the period at which dividends may be declared, any assignee may be removed by the Judge, upon proof of fraud or dishonesty in the custody or management of the estate, upon the application of any creditor; and if such removal takes place, or if the assignee dies more than fifteen days before the said period, the Judge may

Removal of assignee by a Judge for misconduct.

Appointment of another.

appoint another assignee in the same manner as he can appoint an assignee to an estate in compulsory liquidation ; but if the assignee is removed or dies within fifteen days of the said period, the Judge shall order a meeting of creditors to be held for the purpose of appointing another assignee, and shall cause notice of such meeting to be given by advertisement ;

The period at which dividends may be declared is upon the expiration of two months from the first insertion of the advertisements giving notice of an assignment, or of the appointment of an official assignee, (see below, sec. 5, sub-sec. 1.) For the time and manner of giving the notice of this meeting of creditors see below, sec. 11, sub-sec. 1.

Removal of assignee by creditors.

18. Any assignee may be removed after the period at which dividends may be declared, by a resolution passed by the creditors present or represented at a meeting duly called for the purpose ; and if the removal has been effected by an order of the Judge, or if the assignee dies within fifteen days before the said period, or if the removal is effected by the creditors after the said period, they shall have the right of appointing another assignee, either at the meeting by which he is removed, or at any other called for the purpose ;

Appointment of another.

Assignee removed to remain accountable.

19. The assignee so removed shall, nevertheless, remain subject to the summary jurisdiction of the Court, and of any Judge thereof, until he shall have fully accounted for his acts and conduct while he continued to be assignee ;

Remuneration of assignee.

20. The remuneration of the assignee shall be fixed by the creditors at a meeting called for the purpose ; but if not so fixed before a final dividend is declared, shall be put into the dividend sheet at a rate not exceeding five *per centum* upon the cash receipts, subject to objection by any creditor as exceeding the value of the services of the assignee, in the same manner as any other item of the dividend sheet ;

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21. Upon the death of an assignee the estate of the insolvent shall not descend to the heirs or representatives of the assignee, but shall become vested in any assignee who shall be appointed by the creditors in his place and stead ; and until the new assignee is appointed, the estate shall be under the control of the Judge ;

What shall be done with the estate in the event of his death.

22. After the declaration of a final dividend the assignee may prepare his final account, and after due notice by advertisement may present a petition to the Judge for his discharge from the office of assignee ; and from the time of the first advertisement thereof, to the time of the presentation of such petition, he shall keep such final account open for inspection at his office ;

How assignee may obtain his discharge.

23. The assignee shall produce and file with such petition a bank certificate of the deposit of any dividends remaining unclaimed, or of any balance in his hands, and thereupon the Judge, after hearing the parties, may refuse, or grant conditionally or unconditionally, the prayer of such petition.

Assignee to file a certificate with his petition for discharge.

OF DIVIDENDS.

5. Upon the expiration of the period of two months from the first insertion of the advertisements giving notice of an assignment, or of the appointment of an official assignee, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than six months, the assignee shall prepare and keep constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of the estate and at similar intervals shall prepare dividends of the estate of the insolvent :

Accounts to be kept and dividends prepared by assignee.

What debts may rank for payment out of insolvent's estate and how

Sureties of insolvent paying for him.

2. All debts due and payable by the insolvent at the time of the execution of a deed of assignment, or at the time of the issue of a writ of attachment under this Act, and all debts due but not then actually payable, subject to such rebate of interest as may be reasonable, shall have the right to rank upon the estate of the insolvent; and any person then being as surety or otherwise liable for any debt of the insolvent who subsequently pays such debt, shall stand in the place of the original creditor, if such creditor has proved his claim on such debt; or if he has not proved shall be intitled to prove against and rank upon the estate for such debt, to the same extent and with the same effect as such creditor might have done;

A landlord has an advantage over other creditors in his power of distress, as long as the goods of the bankrupt remain upon the premises, (*Ex parte Plummer*, 1 Atk. 103; *Buckley v. Taylor*, 2 T. R. 600; *Briggs v. Sowry*, 8 M. & W., 729.) Upon the sale of the goods by the landlord he will be entitled to six years arrears of rent out of the proceeds under 4 Will. 4, c. 1, sec. 45. If the landlord once allow the goods to be taken off the premises he, of course, loses his remedy by distress, but he may prove upon the estate for the amount of rent due up to the assignment or issue of the writ of attachment, (*Ex parte Desharmes*, 1 Atk. 103.) He cannot distrain and prove for the same rent, (*Ex parte Grove*, 1 Atk. 103)

Contingent claims, provision for payment of.

In certain cases Judge may order estimate of value to be made.

3. If any creditor of the insolvent claims upon a contract dependent upon a condition or contingency, which does not happen previous to the declaration of the first dividend, a dividend shall be reserved upon the amount of such conditional or contingent claim until the condition or contingency is determined; but if it be made to appear to the judge that such reserve will probably retain the estate open for an undue length of time, he may, unless an estimate of the value thereof be agreed to between the claimant and the assignee, order the assignee to make an award upon the value of such contingent or conditional claim, and thereupon the assignee shall make an award after

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the same investigation, and in the same manner and subject to a similar appeal, as is hereinafter provided for the making of awards upon disputed claims and dividends, and for appeals from such awards; and in every such case the value so established or agreed to shall be ranked upon as a debt payable absolutely;

4. In the preparation of the dividend sheet due regard shall be had to the rank and privilege of every creditor, which rank and privilege, upon whatever they may legally be founded, shall not be disturbed by the provisions of this Act; but no dividend shall be paid to any creditor holding collateral security from the Insolvent for his claim, until the amount for which he shall rank as a creditor on the estate as to dividends therefrom, shall be established as hereinafter provided; and such amount shall be the amount which he shall be held to represent in voting at meetings of creditors, and in computing the proportion of creditors, whenever under this Act such proportion is required to be ascertained;

Preparation of dividend sheet.

Creditors holding collateral security.

5. A creditor holding security from the Insolvent, or from his estate, shall specify the nature and amount of such security in his claim, and shall therein on his oath put a specified value on such security; and the assignee, under the authority of the creditors, may either consent to the retention of such security by the creditor at such specified value, or he may require from such creditor an assignment and delivery of such security, at an advance of ten per centum upon such specified value, to be paid by him out of the estate so soon as he has realized such security, in which he shall be bound to the exercise of ordinary diligence; and in either of such cases the difference between the value at which the security is retained or assumed and the amount of the claim of

Duty of such secured creditors, and power of assignee.

such creditor, shall be the amount for which he shall rank and vote as aforesaid ;

How creditors shall rank for payment of claims.

6. The amount due to a creditor upon each separate item of his claim at the time of the assignment, or of the appointment of the official assignee, as the case may be, shall form part of the amount for which he shall rank upon the estate of the insolvent, until such item of claim be paid in full, except in cases of deduction of the proceeds of collateral security as hereinbefore provided ; but no claim or part of a claim shall be permitted to be ranked upon more than once, whether the claim so to rank be made by the same person or by different persons ;

In case insolvent owes individually and as co-partner.

7. If the insolvent owes debts both individually and as a member of a co-partnership, or as a member of two different co-partnerships, the claims against him shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other after all the creditors of that other have been paid in full ;

Allowance to insolvent.

8. The creditors, or the same proportion of them that may grant a discharge to the debtor under this Act, may allot to the insolvent by way of allowance, any sum of money, or any property they may think proper ; and the allowance so made shall be inserted in the dividend sheet, and shall be subject to contestation like any other item of collocation therein, but only on the ground of fraud or deceit in procuring it, or of the absence of consent by a sufficient proportion of the creditors ;

The proportion of creditors required to grant a discharge to a debtor under this act, is the majority in number of those of the creditors of the insolvent who are respectively creditors for sums of one hundred dollars and upwards, and who represent at least three-fourths in value of the liabilities of the insolvent, (see below, sec. 9; sub-sec. 1.)

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9. No costs incurred in suits against the Insolvent after due notice of an assignment or of the issue of a writ of attachment in compulsory liquidation has been given according to the provisions of this Act, shall rank upon the estate of the insolvent; but all the taxable costs incurred in proceedings against him up to that time, shall be added to the demand for the recovery of which such proceedings were instituted; and shall rank upon the estate as if they formed part of the original debt;

No costs in suits against insolvent allowed after notice.

10. Clerks, and other persons in the employ of the Insolvent in and about his business or trade, shall be collocated in the dividend sheet by special privilege for any arrears of salary or wages due and unpaid to them at the time of the execution of a deed of assignment or of the issue of a writ of attachment under this Act, not exceeding three months of such arrears;

How clerks and servants shall rank for wages.

A similar privilege in the English Acts has been held not to be limited to yearly servants only, though it must be a continued and not a mere weekly hiring, (*Ex parte Collyer*, 2 Mon. & A., 30.) The misconduct of the clerk may deprive him of the benefit of this provision, (*Ex parte Hampson*, 2 M. D. & D. 462.) Where the clerk had left the service several months before the bankruptcy, but the leaving was not voluntary, he was held to be within the section as clerk to the bankrupt, (*Ex parte Sanders*, 2 Mon. & A. 684.)

11. So soon as a dividend sheet is prepared, notice thereof (Form N) shall be given by advertisement, and after the expiry of six juridical days from the day of the last publication of such advertisement, all dividends which have not been objected to within that period shall be paid;

Notice of dividend sheet.

For the manner of publishing this advertisement see below, sec. 11, sub-sec. 1.

12. If it appears to the assignee on his examination of the books of the insolvent or otherwise, that the insolvent has ordinary, hypothecary or privileged creditors who have not filed claims before such assignee, it shall be his duty to reserve

Provision in case it appears that all the creditors have not filed claims.

dividends for such creditors according to the nature of the claims, and to notify them of such reserve, which notification may be by letter through the post, addressed to such creditor's residence as nearly as the same can be ascertained by the assignee; and if such creditors do not file their claims and apply for such dividends previous to the declaration of the last dividend of the estate, the dividends reserved for them shall form part of such last dividend;

Case of objections to or disputes concerning dividends provided for.

13. If any dividend be objected to, within the said period of six days, and any dispute arises between the creditors of the insolvent or between him and any creditor, as to the correct amount of the claim of any creditor, or as to the ranking or privilege of the claim of any creditor upon such dividend sheet, the assignee shall obtain from the creditor whose claim or ranking is disputed, his statements and vouchers in support thereof, and from the Insolvent or opposing creditor, a statement showing his pretensions as to the amount thereof, and shall hear and examine the parties and their witnesses under oath, which oath the assignee is hereby empowered to administer; and shall take clear notes in writing of the parole evidence adduced before him, and shall examine and verify the statements submitted to him, by the books and accounts of the Insolvent and by such evidence, vouchers and statements as may be furnished to him; and shall make an award in the premises, and as to the costs of such contestation, which award shall be deposited in the Court and shall be final, unless appealed from within three days from the date of its communication to the parties to the dispute;

Assignee's duty to examine, &c.

Execution of his award.

14. The award of the assignee as to costs, may be made executory by execution in the same manner as an ordinary judgment of the Court, by

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an order of the Judge upon the application of the party to whom costs are awarded made after notice to the opposite party ;

15. The creditors may by resolution authorize and direct the costs of the contestation of any claim or any dividend to be paid out of the estate, and may make such order either before or pending any such contestation ;

Costs of contesting any claim, &c.

16. Pending any appeal, the assignee shall reserve a dividend equal to the amount of dividend claimed ;

Pending appeal.

17. All dividends remaining unclaimed at the time of the discharge of the assignee shall be left in the bank where they are deposited for three years, and if still unclaimed, shall then be paid over by such bank with the interest accrued thereon, to the Provincial Government, and if afterwards duly claimed shall be paid over to the persons entitled thereto, with interest at the rate of three per centum per annum from the time of the reception thereof by the Government ;

Unclaimed dividends,—how dealt with.

18. If any balance remains of the estate of the insolvent, or of the proceeds thereof, after the payment in full of all debts due by the Insolvent, such balance shall be paid over to the Insolvent upon his petition to that effect, duly notified to the creditors by advertisement and granted by the Judge.

Balance of estate after payment of debts.

Where the estate of the bankrupt is sufficient to pay twenty shillings in the pound, and a surplus still remains, interest should be allowed on all debts proved before the assignee, where the debt by express contract, or statutory enactment bears interest, or where a contract to pay it is to be implied, before the surplus is handed over to the bankrupt, (*Re Langstaffe*, 2 Grant, 165.

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OF LEASES.

How unexpired leases held by the insolvent, shall be dealt with if the rent be less than the value of the premises.

Sale of his interest.

Unexpired leases not within the preceding section.

Cancelling the lease, and

6. If the insolvent holds under a lease property having a value above and beyond the amount of any rent payable under such lease, the assignee shall make a report thereon to the Judge, containing his estimate of the value of the estate of the leased property in excess of the rent; and thereupon the Judge may order the rights of the insolvent in such leased premises to be sold, after notice by advertisement of such sale; and at the time and place appointed such lease shall be sold, upon such conditions, as to the giving of security to the lessor, as the Judge may order; and such sale shall be so made subject to the payment of the rent and to all the covenants and conditions contained in the lease; and all such covenants and conditions shall be binding upon the lessor and upon the purchaser, as if the purchaser had been himself lessee and a party with the lessor to the lease:

2. If the insolvent holds under a lease extending beyond the year current under its terms at the time of his insolvency, property which is not subject to the provisions of the last preceding section, or respecting which the Judge does not make an order of sale, as therein provided, the creditors shall decide at any meeting which may be held more than three months before the termination of the yearly term of the lease current at the time of such meeting, whether the property so leased should be retained for the use of the estate, only up to the end of the then current, or if the conditions of the lease permit of further extension, also up to the end of the next following yearly term thereof, and their decision shall be final;

3. From and after the time fixed for the retention of the leased property for the use of the estate,

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the lease shall be cancelled and shall from thenceforth be inoperative and null; and so soon as the resolution of the creditors as to such retention has been passed, such resolution shall be notified to the lessor, and if he contends that he will sustain any damage by the termination of the lease under such decision, he may make a claim for such damage, specifying the amount thereof under oath, in the same manner as in ordinary claims upon the estate; and the assignee shall proceed forthwith to make an award upon such claim, in the same manner, and after similar investigation and with the same right of appeal as is herein provided for in the case of claims or dividends objected to;

right of the lessor in such case.

4. In making such claim, and in any award thereupon, the measure of damages shall be the difference between the value of the premises leased when the lease terminates under the resolution of the creditors, and the rent which the Insolvent had agreed by the lease to pay during its continuance; and the chance of leasing or of not leasing the premises again, for a like rent, shall not enter into the computation of such damages; and if damages are finally awarded to the lessor he shall rank for the amount upon the estate as an ordinary creditor.

Measure of damages to lessor.

OF APPEAL.

7. There shall be an appeal to the Judge from the award of an assignee made under this Act, which appeal shall be by summary petition of which notice shall be given to the opposite party and to the assignee; and the assignee shall attend before the Judge at the time and place indicated in such notice, and shall produce before him all evidence, notes of evidence, books, or proved extracts from books, documents, vouchers or papers

Proceedings in appeal from award of assignee.

having reference to the matter in dispute; and thereupon the Judge may confirm such award, or modify it, or refer it back to the assignee for the taking of further evidence, by such order as will satisfy the ends of justice :

The notice of appeal must be one clear day's notice if the party to be served reside within fifteen miles of the place where the petition is to be heard; and one more day is to be allowed for each additional fifteen miles, (See below, sec. 11, sub-sec. 9.)

And on appeal from decision of the Judge.

Appeal must be allowed.

As to appeal to a single Judge in U. C.

Notice of appeal must be given within a certain period.

2. If any of the parties to such appeal are dissatisfied with such order of the Judge, they may appeal from his judgment in Lower Canada to the Court of Queen's Bench for Lower Canada on the Appeal Side thereof, and in Upper Canada to either of the Superior Common Law Courts or to the Court of Chancery, or to any one of the Judges of the said Courts; first obtaining the allowance of such appeal in Lower Canada by a Judge of the Superior Court, and in Upper Canada by a Judge of any of the Courts to which such appeal may be made; and in either case the Judge shall be guided in allowing the same by the amount to which the assets of the estate may be affected by the final decision of the question at issue, as well as by his opinion upon the pretensions of the appellant; but any appeal to a single Judge in Upper Canada may in his discretion be referred, on a special case to be settled, to the full Court, and on such terms in the meantime as he may think necessary and just;

3. Such appeal shall not be permitted unless the party desiring to appeal applies for the allowance of the appeal, with notice to the opposite party, within five days from the day on which the judgment of the Judge is rendered, nor unless within five days after the allowance thereof, he causes to be served upon the opposite party and upon the assignee, a petition in appeal setting

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forth the petition to the Judge, and his decision thereon, and praying for its revision, with a notice of the day on which such petition is to be presented, and also within the said period of five days causes security to be given before the Judge by two sufficient sureties, that he will duly prosecute such appeal, and pay all costs incurred by reason thereof by the respondent ;

And security.

The length of notice to be given of the application for the allowance of the appeal is not specially provided for in this place, and the general provisions of sec. 11, sub-sec. 9 must regulate it. There would seem to be a difficulty, however, in case the person served with notice had no solicitor, and resided some hundred miles from Toronto, where the application must be made. For one clear day's notice must in any case be given, and one extra day for every fifteen miles distance from the place where the proceeding is to be taken must be added, while only five days after judgment rendered are allowed to make the application.

4. The petition in appeal, when the appeal is to a Court, shall be presented on one of the first four days of the term next following the putting in of the security in appeal, and shall not be thereafter received ; and when the appeal is to a Judge, the petition shall be presented within ten days after putting in security, and shall not thereafter be received ; and on or before the day of the presentation of the petition, the assignee shall file in the office of the Court of Appeal, or of the Court to which the Judge appealed to belongs, the evidence, papers, and documents which had been previously produced before the Judge, and thereupon the appeal shall be proceeded with and decided according to the practice of the Court ;

Presenting of petition in appeal.

Filing documents.

5. If the party appellant does not present his petition on the day fixed for that purpose, the Court or Judge selected to be appealed to as the case may be, shall order the record to be returned to the assignee, and the party respondent may on the following or any other day during the same

In case petition is not presented in due time,

term produce before the Court, or within six days thereafter before such Judge, the copy of petition served upon him, and obtain costs thereon against the appellant ;

Costs in appeal.

6. The costs in appeal shall be in the discretion of the Court or of the Judge appealed to, as the case may be ;

Decision of one Judge in L. C. to be subject to review.

7. In Lower Canada any order of a Judge made under any of the foregoing sub-sections, shall be subject to review under the provisions of any Act passed during the present Session, in the same manner and upon the same conditions as judgments of the Superior Court for Lower Canada ; and in such cases the provisions respecting appeal to the Court of Queen's Bench hereinbefore made, shall apply to the judgments of the Court of Review.

OF FRAUD AND FRAUDULENT PREFERENCES.

What shall be deemed fraudulent contracts or conveyances.

8. All gratuitous contracts or conveyances, or contracts or conveyances without consideration, or with a merely nominal consideration, made by a debtor afterwards becoming an insolvent with or to any person whomsoever, within three months next preceding the date of the assignment or of the issue of the writ of attachment in compulsory liquidation, and all contracts by which creditors are injured, obstructed, or delayed, made by a debtor unable to meet his engagements, and afterwards becoming an insolvent, with a person knowing such inability or having probable cause for believing such inability to exist, or after such inability is public and notorious, are presumed to be made with intent to defraud his creditors :

Contracts or conveyances

2. A contract or conveyance for consideration by which creditors are injured or obstructed, made

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by a debtor unable to meet his engagements with a person ignorant of such inability, and before it has become public and notorious, but within thirty days next before the execution of a deed of assignment or of a writ of attachment under this Act, is voidable, and may be set aside by any Court of competent jurisdiction, upon such terms as to the protection of such person from actual loss or liability by reason of such contract, as the Court may order ;

made by insolvent voidable in certain cases.

3. All contracts or conveyances made and acts done by a debtor, with intent fraudulently to impede, obstruct, or delay his creditors in their remedies against him, or with intent to defraud his creditors, or any of them, and so made, done, and intended with the knowledge of the person contracting or acting with the debtor, and which have the effect of impeding, obstructing, or delaying the creditors in their remedies, or of injuring them, or any of them, are prohibited, and are null and void, notwithstanding that such contracts, conveyances, or acts be in consideration or in contemplation of marriage ;

Fraudulent contracts or conveyances by insolvent void.

Questions will be likely to arise as to property given to a man, determinable in the event of his bankruptcy. A settlement of property to a man until he becomes bankrupt, and then over to his wife and children, has been held to be void so far only as it related to the property of the husband, it being considered as a fraud upon the bankrupt laws ; but it would be valid as far as it related to the property of the wife, (*Lester v. Garland*, 5 Sim. 205 ; Mon. 471.) The construction of such provisions in wills or settlements depends entirely upon the exact nature and form of the trust or condition annexed to the bequest. The intention to prevent the property passing to the donee's assignees has frequently been frustrated by the erroneous way in which the instrument attempting to carry out such intention has been drawn. There seems to be nothing to prevent the creation of such a limitation or condition to an estate, as that it shall cease and be forfeited, and the interest pass to the bankrupt's wife and children, in the event of bankruptcy ; but the object may be endangered by any attempt to combine with such limitation or condition a stipulation for maintenance, or any direct personal benefit continuing for the bankrupt. (*See Tyrell v. Hope*, 2 Atk. 558 ; and *Lester v. Garland*, *ubi supra*.)

Whatever interest the husband has by law in his wife's property, and has the power to dispose of, will pass to his assignees. (See Com. Dig. Bankrupt, D. 12; *Mace v. Cadell*, Cowp. 232.) The assignees of a husband in England are not allowed to reduce any of his wife's estate into possession in equity, without making a reasonable settlement upon the wife. (see *Rankin v. Barnard*, Mad. 32; and *Story's Eq. Juris.*, § 1412;) but, as by our Married Women's Act, the husband is deprived of all right to reduce his wife's estate into possession, his assignees can claim no such power, even upon terms of making a settlement upon her.

In what case preferential sales, &c., shall be deemed fraudulent.

4. If any sale, deposit, pledge, or transfer, be made by any person in contemplation of insolvency, by way of security for payment to any creditor, or if any goods, effects, or valuable security be given by way of payment by such person to any creditor, whereby such creditor obtains or will obtain an unjust preference over the other creditors, such sale, deposit, pledge, transfer, or payment, shall be null and void, and the subject thereof may be recovered back for the benefit of the estate by the assignee, in any Court of competent jurisdiction; and if the same be made within thirty days next before the execution of a deed of assignment, or the issue of a writ of attachment under this Act, it shall be presumed to have been so made in contemplation of insolvency;

The effect of bankruptcy upon a fraudulent preference is not to divest the transferee of the property, but, notwithstanding the bankruptcy, it continues vested in the transferee, subject to be divested by the assignees at their election; and the commencement of an action of trover, which may be discontinued at any time, and which assumes that the goods came into the possession of the defendant lawfully, is not an election on the part of the assignee to avoid the transfer. Therefore, where goods had been transferred by a trader before his bankruptcy by way of fraudulent preference, and the transferee, after the appointment of the assignees, had brought an action against a third party for an illegal and excessive distress upon the goods so transferred, the defendant could not set up the bankruptcy as a defence, when the assignees had done no other act in assertion of their rights than commencing an action of trover for the same goods, (*Newnham v. Stevenson*, 15 Jur., 360; 20 L. J. C. P. 111.)

When payments shall be

5. Every payment made within thirty days next before the execution of a deed of assignment, or

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the issue of a writ of attachment under this Act, by a debtor unable to meet his engagements in full, to a person knowing such inability, or having probable cause for believing the same to exist, is void, and the amount paid may be recovered back by suit, in any competent Court, for the benefit of the estate ; Provided always, that if any valuable security be given up in consideration of such payment, such security or the value thereof, shall be restored to the creditor before the return of such payment can be demanded ;

deemed fraudulent.

Proviso.

Preferential transfers have not been to any great extent the subject of legislation in England, but they are deemed void by the Courts as being a fraud upon the bankrupt laws, (*Crosby v. Couch*, 2 Camp. 166 ; 11 East. 256 ; *Alderson v. Temple*, 4 Burr. 2235 ; 1 W. Bl. 660. Although the period of thirty days before, &c., is given in this section, as the time in which a payment made by a debtor unable to meet his engagements to a person cognizant thereof, would be void, there can be little doubt that, under English authorities, preferential payments made before that time may be held void as being against the spirit of, and a fraud upon, the act. It has been held that if a party voluntarily make a payment, by which the equal distribution of his property in bankruptcy will be defeated, such payment is a fraudulent preference, though the bankrupt in making it did not intend to benefit, and in fact did not benefit the particular creditor. For instance, where a bankrupt paid off a mortgage on property settled to the use of his wife, who had joined in such mortgage, without previous notice to, or request by the creditor, to whom it would have been equally beneficial to retain the mortgage, the bankrupt intending only by such payment to liberate his wife's property for his own and her benefit ; this has been, nevertheless, held to be a fraudulent preference, (*Marshall v. Lamb*, 5, Q. B. 115 ; 7 Jur. 850.) The mortgage, however would come under the description of valuable securities in this clause, and the creditor would be entitled to have it restored.

The words of this section, as they stand, would seem to apply to all payments made within thirty days, and to render them void whether made voluntarily or under the compulsion of a *bond fide* creditor. It would be against the spirit of the cases on the point, however, if a payment made under the pressure, for instance, of a law suit should be held void if made within that period ; (See *DeTastel, v. Carroll*, 1 Stark. 88 ; *Ex parte DeTastel*, Mon. 138, 153 ; *Atkins v. Seward*, Mannings Index, 62, pl. 181 ; *Thompson v. Freeman*, 8 T. R. 155 ; *Kinnear v. Johnstone*, 2 F. & F. 753 ; *Pennell v. Heading*, 2 F. & F. 744, Erle C. J.)

6. Any transfer of a debt due by the insolvent, made within thirty days next previous to the execution of the Act, shall be deemed fraudulent, if the transferee knew at the time of the transfer that the transferor was insolvent, and that the debt was due by the transferor to the creditor to whom the debt was transferred.

Transfer of debts due by

insolvent, to be void in certain cases.

cution of a deed of assignment, or the issue of a writ of attachment under this Act, or at any time afterwards, to a debtor knowing or having probable cause for believing the insolvent to be unable to meet his engagements, or in contemplation of his insolvency, for the purpose of enabling the debtor to set up by way of compensation or set-off the debt so transferred, is null and void as regards the estate of the insolvent; and the debt due to the estate of the insolvent shall not be compensated or affected in any manner by a claim so acquired; but the purchaser thereof may rank on the estate in the place and stead of the original creditor;

Certain other frauds defined, as regards L. C.

7. Any trader in Lower Canada, and any person whosoever in Upper Canada, who purchases goods on credit or procures advances in money, knowing or believing himself to be unable to meet his engagements, and concealing the fact from the person thereby becoming his creditor, with the intent to defraud such person, or who by any false pretence obtains a term of credit for the payment of any advance or loan of money, or of the price or any part of the price of any goods, wares or merchandise, with intent to defraud the person thereby becoming his creditor, and who shall not afterwards have paid the debt or debts so incurred, shall be held to be guilty of a fraud, and shall be liable to imprisonment for such time as the Court may order, not exceeding two years, unless the debt or costs be sooner paid; and if such debt or debts be incurred by a trading company, then ever member thereof who shall not prove himself to have been ignorant of the incurring, and of the intention to incur, such debt or debts, shall be similarly liable; Provided always, that in the suit or proceeding taken for the recovery of such debt or debts, the defendant be charged with such fraud, and be declared to be guilty of it by the judgment rendered in such suit or proceeding;

Punishment.

Proviso.

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8. In Upper Canada in every such suit or proceeding whether the defendant appear and plead, or make default, the plaintiff shall be bound to prove the fraud charged, and upon his proving it the Judge who tries the suit or proceeding shall immediately after the verdict rendered against the defendant for such fraud (if such verdict is given) adjudge the term of imprisonment which the defendant shall undergo; and he shall forthwith order and direct the defendant immediately to be taken into custody and imprisoned accordingly; but such judgement shall not effect the ordinary remedies for the revision thereof, or of any proceeding in the case.

As to like case in U. C.

OF COMPOSITION AND DISCHARGE.

9. A deed of composition and discharge executed by the majority in number, of those of the creditors of an Insolvent who are respectively creditors for sums of one hundred dollars and upwards, and who represent at least three-fourths in value of the liabilities of the Insolvent subject to be computed in ascertaining such proportion, shall have the same effect with regard to the remainder of his creditors, and be binding to the same extent upon him, and upon them, as if they were also parties to it; and such a deed may be validly made either before, pending, or after proceedings upon an assignment, or for the compulsory liquidation of the estate of the insolvent; and the discharge therein agreed to shall have the same effect as an ordinary discharge obtained as hereinafter provided;

When and to what extent a deed of composition shall be binding.

When such deed may be made.

The deed of composition referred to in this clause may be validly made either before, pending, or after proceedings under this act. Yet the facilities for having it executed by the proper proportion of creditors are very different at these different times. It may be no easy matter for an insolvent always to ascertain the exact number and value of his creditors with sufficient accuracy to satisfy the assignee that the deed has been executed by the requisite proportion. If the

period of two months, allowed to creditors to bring in their claims, has elapsed, there will be very little difficulty in telling whether the deed has been properly executed or not.

This section, from analogy to decisions upon the English Act, would seem not to be retrospective so as to bring within its provisions a deed of composition executed before the statute came into operation, as against a creditor who had not executed it, (*Marsh v. Higgins*, 1 P. R. 253; 19 L. J., C. P. 337); but it would probably apply to instruments entered into, but inchoate, at the time of the act coming into force, and since completed, (*Waugh v. Middleton*, 8 Exch. 352; 22 L. J. 109; *Lambert v. Bibby*, 24 L. J. 301.)

An unreasonable provision in a composition deed will render it invalid against nonassenting creditors, (*Baldwin v. Pell*, 10 L. J. (N.S.) 493; and see *Armitage v. Baker*, 10 L. T. (N.S.) 526; *Hudson v. Barclay*, 10 L. J. (N. S.) 587; *Woods v. Foote*, 1 H. & C: 841, in error; *Leigh v. Pendleberry*, 10 Jr. (N.S.) 296.

Trustees of a composition deed, before they allow a creditor to sign, are bound to ascertain the validity of his claim, as by signing he becomes a *cestui que trust*, and the trustees, except in cases of fraud, are bound to pay such dividends as may be declared, (*Lancaster v. Ellice*, 31 L. J. 789; 8 Jur. (N.S.) 1167.)

It was formerly held under the English Acts, whose provisions are somewhat analagous in this respect to those of our own act, that a deed of assignment was not binding on a creditor who had not executed it, unless such deed provided for the distribution of *the whole* of the debtor's effects, (*Tetley v. Taylor*, 1 El. & Bl. 582; 17 Jur. 130; *Fisher, v. Bell*, 12 C. B. 363.) The Chancellor, (Lord Westbury,) has recently settled the conflicting decisions upon this point. He has decided that a complete *cessio bonorum* is not indispensable to the validity of such a deed as against non-assenting creditors, (*Ex parte Morgan* 7 L. T. (N. S.) 730; and see *Ex parte Rawlings*, 7 L. T. (N. S.) 582.)

Notice and time within which opposition to composition must be made.

If none be so made.

2. If the Insolvent procures a deed of composition and discharge to be duly executed as aforesaid, and deposits it with the assignee pending the proceedings upon a voluntary assignment or for compulsory liquidation, the assignee, after the period hereinbefore fixed as that after which dividends may be declared has elapsed, shall give notice of such deposit by advertisement; and if opposition to such composition and discharge be not made by a creditor, within six juridical days after the last publication of such notice, by filing with the assignee a declaration in writing that he

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objects to such composition and discharge, the assignee shall act upon such deed of composition and discharge according to its terms; but if opposition be made thereto within the said period, or if made be not withdrawn, then he shall abstain from taking any action upon such deed until the same has been confirmed, as hereinafter provided;

The period alluded to as "hereinbefore fixed as that after which dividends may be declared," is "upon the expiration of two months from the first insertion of the advertisement giving notice of an assignment, or of the appointment of an official assignee," (see 5, sub. sec. 1;) and for the notice required, see below sec. 11, sub-sec. 1 of this act.

3. The consent in writing of the said proportion of creditors to the discharge of a debtor after an assignment, or after his estate has been put in compulsory liquidation, absolutely frees and discharges him from all liabilities whatsoever (except such as are hereinafter specially excepted) existing against him and proveable against his estate, which are mentioned and set forth in the statement of his affairs annexed to the deed of assignment, or which are shewn by any supplementary list of creditors furnished by the insolvent, previous to such discharge, and in time to permit the creditors therein mentioned obtaining the same dividend as other creditors upon his estate, or which appear by any claim subsequently furnished to the assignee, whether such debts be exigible or not at the time of his insolvency, and whether direct or indirect; and if the holder of any negotiable paper is unknown to the insolvent, the insertion of the particulars of such paper in such statement of affairs, with the declaration that the holder thereof is unknown to him, shall bring the debt represented by such paper, and the holder thereof, within the operation of this section;

Effect of consent of creditors to debtors discharge.

If the holder of any negotiable paper is unknown.

There can be little doubt that this act is so far retrospective as to discharge a debtor from liabilities existing against him before it came into force. Were it otherwise, it would be of very little benefit to the community for years to come.

It must be recollected that a discharge does not relieve an insolvent from any debt contracted by him after a voluntary assignment, or the issue of a writ in compulsory liquidation, and before his discharge.

Effect of discharge as regards persons as secondarily liable for debts of insolvent.

4. A discharge under this Act shall not operate any change in the liability of any person or company secondarily liable for the debts of the insolvent, either as drawer or endorser of negotiable paper, or as guarantor, surety or otherwise, nor of any partner or other person liable jointly or severally with the insolvent for any debt, nor shall it affect any mortgage, *hypothèque*, lien or collateral security held by any creditor as security for any debt thereby discharged ;

Certain debts excepted from operation of discharge.

5. A discharge under this Act shall not apply, without the express consent of the creditor, to any debt for enforcing the payment of which the imprisonment of the debtor is permitted by this Act, nor to any debt due as damages for personal wrongs, or as a penalty for any offence of which the insolvent has been convicted, or as a balance of account due by the insolvent as an assignee, tutor, curator, trustee, executor or public officer ; nor shall such debts, nor any privileged debts, nor the creditors thereof, be computed in ascertaining whether a sufficient proportion of the creditors of the insolvent have done, or consented to any act, matter or thing under this Act ; but the creditor of any debt due as a balance of account by the insolvent as assignee, tutor, curator, trustee, executor or public officer, may claim and accept a dividend thereon from the estate without being in any respect affected by any discharge obtained by the insolvent ;

But the creditor may accept the dividend.

Proceedings to obtain confirmation of discharge.

6. An insolvent who has procured a consent to his discharge or the execution of a deed of composition and discharge, within the meaning of this Act, may file in the office of the court the consent or deed of composition and discharge, and may

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then give notice (Form O.) of the same being so filed, and of his intention to apply by petition to the Court in Lower Canada, or in Upper Canada to the Judge, on a day named in such notice, for a confirmation of the discharge effected thereby; and notice shall be given by advertisement in the *Canada Gazette* for two months, and also for the same period, if the application is to be made in Upper Canada, in one newspaper, and if in Lower Canada in one newspaper published in French, and in one newspaper published in English, in or nearest the place of residence of the insolvent; and upon such application, any creditor of the insolvent may appear and oppose such confirmation, either upon the ground of fraud or fraudulent preference within the meaning of this Act, or of fraud or evil practice in procuring the consent of the creditors to the discharge, or their execution of the deed of composition and discharge, as the case may be, or of the insufficiency in number or value of the creditors consenting to or executing the same, or of the fraudulent retention and concealment by the insolvent of some portion of his estate or effects, or of the evasion, prevarication or false swearing of the insolvent upon examination as to his estate and effects, or upon the ground that subsequent to the passing of this Act the insolvent has not kept an account-book shewing his receipts and disbursements of cash, and such other books of account as are suitable for his trade, or if, having at any time kept such book or books, he has refused to produce or deliver them to the assignee;

Creditors may oppose, and on what grounds.

7. If the insolvent does not apply to the Court or Judge for a confirmation of such discharge within two months from the time at which the same has been effected under this Act, any creditor for a sum exceeding two hundred dollars, may cause to be served a notice in writing upon

If confirmation be not demanded within two months proceedings may be taken to

annul the discharge.

Petition for annulling and proceedings consequent thereon.

the insolvent requiring him to file in the Court the consent, or the deed of composition and discharge, as the case may be; and may thereupon give notice (Form P.) as hereinbefore provided with regard to applications for confirmation of discharge, of his intention to apply by petition to the Court in Lower Canada, or in Upper Canada to the Judge, on a day named in such notice, for the annulling of the discharge; and on the day so named may present a petition to the Court or Judge, in accordance with such notice, setting forth the reasons in support of such application, which may be any of the reasons upon which a confirmation of discharge may be opposed; and upon such application, if the insolvent has not, at least one month before the day fixed for the presentation thereof, filed in the office of the Court the consent or deed under which the discharge is effected, the discharge may be annulled without further enquiry, except as to the service upon him of the notice to file the same; but if such consent or deed be so filed, or if upon special application, leave be granted to him to file the same at a subsequent time, and he do then file the same, the Court or Judge, as the case may be, shall proceed thereon as upon application for confirmation of such discharge;

Power of Court or Judge.

8. The Court or Judge, as the case may be, upon hearing the application to confirm or to annul the discharge, the objections thereto, and any evidence adduced, shall have power to make an order, either confirming the discharge absolutely, suspensively, or conditionally, or annulling the same; and such order shall be final, unless appealed from in the manner herein provided for as to appeals from the Court or Judge;

For the practice relating to discharges see below in the note to sub-section 12 of this section.

The manner of appeal from the decision of the judge that is alluded to in this

clause and the provisions of was only made awards made appeal is five days or some credit has not proved himself to appeal which appeal

On dismissal of Lords Justice costs, (*Ex parte* practice was

9. Until he, has completed proof of the under the insolvent; reversed in by confirmation authentic copy shall be charge as

10. If, a date of a from the of thereunder not obtained tors, a copy of a deed apply to Judge in his discharge ion, (Form provided for discharge

11. Upon insolvent

clause and the twelfth clause of the same section, is probably to be found in the provisions of section 7 of this act; although it would there seem that reference was only made to appeals from the judgment of the County Court judge upon awards made by assignees. The time for applying for the allowance of the appeal is five days under sec 7, and it is presumed that only the insolvent himself or some creditor who has proved against the estate can apply. A creditor who has not proved his debt prior to the order granting his discharge, cannot qualify himself to appeal against such order, by proving his debt during the time within which appeal is permitted, (*Re Monck & Brooks*, 10 L. T. (N. S.) 634.)

On dismissing an appeal against an order wholly refusing a certificate, the Lords Justices, in England, were of opinion that it should be dismissed *with costs*, (*Ex parte Johnstone*, 5 L. T. (N. S.) 228, Ch. on appeal.) The former practice was to dismiss an appeal in such cases without costs.

9. Until the Court or Judge, as the case may be, has confirmed such discharge, the burden of proof of the discharge being completely effected under the provisions of this Act, shall be upon the insolvent; but the confirmation thereof, if not reversed in appeal, shall render the discharge thereby confirmed, final and conclusive; and an authentic copy of the judgment confirming the same shall be sufficient evidence, as well of such discharge as of the confirmation thereof;

Effect of confirmation.

10. If, after the expiration of one year from the date of an assignment made under this Act, or from the date of the issue of a writ of attachment thereunder, as the case may be, the insolvent has not obtained, from the required proportion of creditors, a consent to his discharge, or the execution of a deed of composition and discharge, he may apply to the Court in Lower Canada, or to the Judge in Upper Canada by petition, to grant him his discharge, first giving notice of such application, (Form Q.) in the manner hereinbefore provided for notice of application for confirmation of discharge;

When insolvent may apply to the Court or judge for discharge.

11. Upon such application any creditor of the insolvent may appear and oppose the granting of

Opposing such application.

ch discharge upon any ground upon which the confirmation of a discharge may be opposed under this Act ;

Judgment of Court.

12. The Court or Judge, as the case may be, after hearing the insolvent, and the objecting creditors, and any evidence that may be adduced, may make an order either granting the discharge of the insolvent absolutely, conditionally, or suspensively, or refusing it absolutely ; and such order shall be final, unless appealed from in the manner herein provided for appeals from the Court or Judge ;

From this section it will be seen that although a discharge may be given conditionally or suspensively, yet when the condition is fulfilled, or the time of suspension has expired, all orders of discharge possesses the same value, and there are among them no classifications, or meritorious or degrading distinctions whatever. The legislature has followed in this the late English act which materially altered the law on the point by abolishing the classification of certificates of discharge that existed under the provisions of 12 & 13 Vic, c. 106. By that act the commissioner had to certify as to the cause of bankruptcy :— either that the bankruptcy had arisen from unavoidable losses and misfortunes, in which case the certificate was designated as of the first class ; or that the bankruptcy had not wholly arisen from unavoidable losses and misfortunes, in which case the certificate was designated as of the second class ; or that the bankruptcy had not arisen from unavoidable losses and misfortunes, in which case the certificate was designated as of the third class. To this last class a certain stigma was deservedly attached ; while a first class certificate was justly prized by its possessor as a passport by which he might again enter into business with an untarnished reputation for honesty at least. The reason given for the change was the uncertainty and capriciousness with which the several judges gave the different classes of certificates ; but the wisdom of the step has been very much questioned in England.

An order of discharge may be granted subject to any condition touching any salary, pay, emoluments, profit, wages, earnings, or income which may afterwards become due to the bankrupt, and touching after acquired property of the bankrupt, (Re Anderson 6 L. T. (N.S.) 637, Bank. ; Re Inman, 6 L. T. (N.S.) 655, Bank.) It seems that it is not in the discretionary power of the Court to refuse or suspend the order of discharge, when the bankrupt has not been guilty of conduct amounting to a fraud under this act, (see *Ex parte Udall, re Mew*, 6 L. T. (N.S.) 732, ch. on appeal ; *Ex parte Glass and Elliott, re Boswall*, 6 L. T. (N.S.) 407.

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Much the same effect as a refusal of a discharge has been obtained in England by an adjournment of a debtor's examination, *sine die*. Where an attorney was adjudicated a bankrupt as a bill broker, and on his final examination it appeared that he had lost large sums on horse racing, his examination was adjourned *sine die* with a view to prevent him obtaining his certificate. (Re Parsons, 6 L. T. (N. S.) 61, Bank. Irish.)

It seems to have been the English practice to adjourn the last examination of a bankrupt *sine die* when he had been guilty of an offence, but not such an offence as would justify an absolute refusal of an order of discharge, (*Ex parte Grummett*, 10 L. T. (N.S.) 680; but this decision was reversed by the Chancellor in the same case on appeal, (*Grummett v. Grummett*, 10 Jur. (N.S.) 738,) where it was held that the adjournment of the last examination must be governed by the same rules as the granting of the order of discharge.

A discharge cannot be refused because applied for to get rid of damages in an action of seduction, (*Ex parte Crabtree, Re Taylor*, 10 L. T. (N. S.) 361;) nor does the fact of damages and costs being recovered against a bankrupt in an action for breach of promise of marriage afford any ground for opposition to his discharge, (*Re Pearse*, 9 L. T. (N. S.) 349.)

13. Every discharge or composition or confirmation of any discharge or composition, which has been obtained by fraud or fraudulent preference, or by means of the consent of any creditor procured by the payment of such creditor of any valuable consideration for such consent, shall be null and void.

Discharge, &c. obtained by fraud to be void.

EXAMINATION OF THE INSOLVENT AND OTHERS.

10. Immediately upon the expiry of the period of two months from the first insertion of the advertisement giving notice of an assignment, or of the appointment of an official assignee, the assignee shall call a meeting, by advertisement, of the creditors, for the public examination of the insolvent, and shall summon him to attend such meeting; and at such meeting the insolvent may be examined on oath, sworn before the assignee, by or on behalf of any creditor present, in his turn; and the examination of the insolvent shall be reduced to writing by the assignee, and signed by

When and how insolvent may be examined before the assignee.

Examination to be reduced to writing.

Signing and
attesting it.

the insolvent; and any questions put to the insolvent at such meeting which he shall answer evasively, or refuse to answer, shall also be written in such examination, with the replies made by the insolvent to such questions; and the insolvent shall sign such examination, or if he refuse to sign the same, his refusal shall be entered at the foot of the examination, with the reasons of such refusal, if any, as given by himself; and such examination shall be attested by the assignee and shall be filed in the office of the court;

Examination
of insolvent
before the
Judge.

2. The insolvent may also be from time to time examined as to his estate and effects upon oath, before the Judge, by the assignee or by any creditor, upon an order from the Judge obtained without notice to the Insolvent, upon petition, setting forth satisfactory reasons for such order—and he may also be examined in like manner upon a *subpœna* issued as of course without such order, in any action in which a writ of attachment has been issued against his estate and effects; which *subpœna* may be procured by the plaintiff, or by any creditor intervening in the action for that purpose, or by the assignee;

Examination
by assignee or
creditor, on
application
for discharge,
&c.

3. The insolvent may also be so examined by the assignee or by any creditor, on the application of the insolvent for a discharge or for the confirmation or annulling of a discharge, at any stage of such proceeding or upon any petition to set aside an attachment in the proceedings for the compulsory liquidation of his estate;

Other persons
may be ex-
amined.

4. Any other person who is believed to possess information respecting the estate or effects of the insolvent, may also be from time to time examined before the Judge upon oath, as to such estate or effects, upon an order from the Judge to that effect, which order the Judge may grant upon petition,

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setting forth satisfactory reasons for such order, without notice to the insolvent or to the person to be so examined;

A witness appearing upon an order granted by the Judge, under this clause, is not bound to be sworn until his expenses are paid.

But the insolvent who appears by virtue of the same order is not entitled to claim payment of his expenses before being sworn, and he may be examined before as well as at or after the meeting mentioned in sub-sec. 1, above, (*Worthington vs. Taylor*, 10 U. C. L. J. 304.)

5. The insolvent shall attend all meetings of his creditors, when summoned so to do by the assignee, and shall answer all questions that may be put to him at such meetings touching his business, and touching his estate and effects; and for every such attendance he shall be paid such sum as shall be ordered at such meeting, but not less than one dollar;

Insolvent to attend meetings of his creditors.

6. Any person summoned for examination or under examination under this Act shall be subject to proceedings and punishments similar to those which may be taken against or inflicted upon ordinary witnesses; and on application, the Judge may at his discretion order an allowance to be made to persons so examined, of a like amount to that allowed to witnesses in civil cases, and order them to be paid such allowance out of the estate or otherwise.

Conduct of witnesses.

Their costs.

OF PROCEDURE GENERALLY.

11. Notice of meetings of creditors and all other notices herein required to be given by advertisement, without special designation of the nature of such notice, shall be so given by publication thereof for two weeks in the *Canada Gazette*, also in Lower Canada in every issue during two weeks of one newspaper in English and one in French, and in Upper Canada, in one news-

Notices under this Act, how to be given.

paper in English, published at or nearest to the place where the proceedings are being carried on, if such newspapers are published within ten miles of such place; and in any case the assignee or person giving such notice shall also address notices thereof to all creditors and to all representatives of foreign creditors, within the Province, and shall mail the same with the postage thereon paid, at the time of the insertion of the first advertisement;

Decision of questions at meetings of creditors.

2. All questions discussed at meetings of creditors shall be decided by the majority in number of all creditors for sums above one hundred dollars, present or represented at such meeting, and representing also the majority in value of such creditors, unless herein otherwise specially provided; but if the majority in number do not agree with the majority in value, the meeting may be adjourned for a period of not less than fifteen days, of which adjournment notice by advertisement shall be given; and if the adjourned meeting has the same result, the views of each section of the creditors shall be embodied in resolutions, and such resolutions shall be referred to the Judge, who shall decide between them;

What may be done at first meeting of creditors if called for ordering affairs generally, &c.

3. If the first meeting of creditors which takes place after the expiry of the period of two months from the date of the deed of assignment or of the appointment of an official assignee, be called for the ordering of the affairs of the state generally, and it be so stated in the notices calling such meeting, all the matters and things respecting which the creditors may vote, resolve or order, or which they may regulate under this Act, may be voted, resolved or ordered upon and may be regulated at such meeting, without having been specially mentioned in the notices calling such meeting, notwithstanding anything to the contrary in this Act contained, due regard being had, how-

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ever, to the proportions of creditors required by this Act for any such vote, resolution, order or regulation ;

Very extensive, but quite necessary powers, are given to the creditors at their first meeting. They should not fail on that occasion to give their attention to all the different points on which they are empowered to act. They should regulate the security to be given by the assignee, and the remuneration that he is to receive ; give general and particular instructions to the assignee, and act upon his report on the many questions that may have arisen. They might also have the insolvent examined before them under the authority of the last section.

4. The claims of creditors (Form R) shall be furnished to the assignee in writing, and shall specify what security, if any, the creditor holds for the payment of his claim, and when required by this Act shall also contain an estimate by such creditor of the value of such security ; and if the creditor holds no security, then it shall also be so therein stated ;

Claims of creditors ; form of.

5. The claims shall be attested under oath, taken in Canada before any Judge, Commissioner for taking Affidavits, or Justice of the Peace, and out of Canada, before any Judge of a Court of Record, any Commissioner for taking Affidavits appointed by any Canadian Court, the Chief Municipal Officer for any Town or City, or any British Consul or Vice-Consul, or before any other person authorized by any statute of this Province for taking affidavits to be used in this Province ;

How to be attested.

For the proper person to make this affidavit see below, sub-sec. 8.

Certain creditors are by special enactment entitled to prove their debts against the estate of a bankrupt. By 10 & 11 Vic., c. 10, (Con. Stats. Canada, c. 59,) an owner of goods that have been pledged by an agent entrusted with the possession of them is entitled to redeem the same upon certain terms. Section 21 of the consolidated act provides for the rights of the creditor in case of the bankruptcy of such agent as follows :—

“In case of the bankruptcy of any such agent, and in case the owner of the goods redeems the same, he shall, in respect of the sum paid by him on account of the agent for such redemption, be held to have paid the same for the use of

such agent before his bankruptcy, or in case the goods have not been so redeemed the owner shall be deemed a creditor of the agent for the value of the goods so pledged, at the time of the pledge, and may in either case prove for, or set off the sum so paid, or the value of such goods, as the case may be."

A wife may not prove against her husband's estate for arrears of alimony payable to her under an order of the Court of Chancery, (*Ex parte Rice* 10 L. T. (N. S.) 103.)

One of several makers of a joint and several promissory note in favour of a third party having paid the debt secured by the note, may not prove upon the note against some of the co-makers under their bankruptcy. His remedy is by contribution from each of his co-contractors *pro portione*, (*Ex parte Schenk, re Viner*, 10 L. T. (N. S.) 44.)

Supplement-
ary oath in
certain cases.

6. Before the preparation of a dividend sheet, the assignee may require from any creditor a supplementary oath declaring what amount, if any, such creditor has received in part payment of the debt upon which his claim is founded, subsequent to the making of such claim, together with the particulars of such payment; and if any creditor refuses to produce or make such oath before the assignee within a reasonable time after he has been required so to do, he shall not be collocated in such dividend sheet;

Upon a creditor coming in to prove against an estate upon a judgment debt, the consideration thereof may be inquired into on the ground of fraud, (*Re Sowerby*, 6 L. T. (N. S.) 581. A creditor cannot prove for a debt that is due under a parol contract where the Statute of Frauds requires the contract to be in writing, (*Re The Pentreguinea Fuel Company, Ex parte Acraman*, 8 Jur. (N. S.) 706.)

Claims se-
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7. If, in Lower Canada, any claim be secured by *hypothèque* upon the real estate of the insolvent or if it consists of any *hypothèque* or *privilege* upon such real estate or any part thereof, the nature of such *hypothèque* or *privilege* shall be summarily specified in such claim; but unless such claim be filed with the assignee, with the deeds and documents in support thereof, within six days from the day of sale of the property affected thereby, or if not, unless leave to file the same be afterwards

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obtained from the Judge upon special cause shewn, previous to the distribution of the proceeds of such real estate, or unless a dividend upon such claim has been reserved by the assignee, such claim shall not be entitled to any preferential collocation upon the proceeds of such real estate ;

8. Any affidavit required under this Act may be made by the party interested, or by the agent in that behalf having a personal knowledge of the matters therein stated ;

Who may make affidavits under this Act.

9. One clear day's notice of any petition, motion or rule, shall be sufficient if the party notified resides within fifteen miles of the place where the proceeding is to be taken, and one extra day shall be sufficient allowance for each additional fifteen miles of distance between the place of service and the place of proceeding, and service of such notice shall be made in such manner as is now prescribed for similar services in that section of the Province within which the service is made ;

Notices of proceedings.

10. The Judge shall have the same power and authority in respect of the issuing and dealing with Commissions for the examination of witnesses, as are possessed by the ordinary Courts of Record in the section of the Province in which the proceedings are being carried on ;

Commissions for examination of witnesses.

The issue of commissions for the examination of witnesses in Courts of Record in Upper Canada is principally regulated by the following sections of chapter 32, Con. Stats., U. C. :—

“Sec. 19.—In case the plaintiff or defendant in any action in either of the superior Courts of Common Law, or in any County Court, is desirous of having at the trial thereof, the testimony of any aged or infirm person resident within Upper Canada, or of any person who is about to withdraw therefrom, or who is residing without the limits thereof, the Superior Court in which the action is pending, or a judge of either of such Courts, or the County Court in which the action is pending, or a judge thereof, may, upon the motion of such plaintiff or defendant, and upon hearing the parties, order the issue of one or more Com-

mission or Commissions, under the seal of the Court in which the action is pending, to one or more Commissioner or Commissioners, to take the examination of such person or persons respectively.

Sec. 20.—Due notice of every such Commission shall be given to the adverse party to the end that he may cause the witnesses to be cross-examined.

Sec. 21.—In case the examination of any witness or witnesses taken without the limits of Upper Canada, pursuant to any such Commission, be proved by an affidavit of the due taking of such examination, sworn before, and certified by the Mayor or Chief Magistrate of the city or place where the same has been taken, and in case such commission with such examination and affidavit thereto annexed be returned to the Court from which such commission issued close under the hand and seal of one or more of the Commissioners, the same shall *prima facie* be deemed to have been duly taken, executed and returned, and shall be received as evidence in the cause, unless it is made to appear to the Court in which such examination is returned and published, or before which the same is offered in evidence, that the same was not duly taken; or that the deponent is of sound mind, memory, and understanding, and living within the jurisdiction of the Court at the time such examination is offered in evidence to such Court."

Rules, &c.,
may be served
in any part of
this Province.

11. All rules, orders and warrants, issued by any Judge or court in any matter or proceeding under this Act, may be validly served in any part of this Province upon the party affected or to be affected thereby; and the service of them or any of them may be validly made in such manner as is now prescribed for singular services in that part of the Province within which the service is made; and the person charged with such service shall make his return thereof, and on oath, or, if a sheriff or bailiff in Lower Canada, may make such return under his oath of office;

Certain ss. of
caps. 79 and
80, Con. Stat.
of Canada to
apply.

12. The fourth, fifth, seventh, eighth, ninth, tenth, eleventh, and thirteenth sections of chapter seventy-nine of the Consolidated Statutes of Canada shall apply to proceedings under this Act; and the whole of chapter eighty of the said Consolidated Statutes shall also apply to proceedings under this Act, in the same manner and to the same extent as to proceedings before Courts of Record in Upper and Lower Canada;

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The sections of chapter 79 Con. Stat. Can., referred to here, relate to the service and effect of subpoenas in one part of the Province that have been issued in the other.

13. The forms appended to this Act, or other forms in equivalent terms, shall be used in the proceedings for which such forms are provided; but in every petition, application, motion, contestation, or other pleading under this Act, the parties may state the facts upon which they rely in plain and concise language, to the interpretation of which the rules of construction applicable to such language in the ordinary transactions of life shall apply; and no allegation or statement shall be held to be insufficiently made, unless by reason of any alleged insufficiency the opposing party be misled or taken by surprise;

Forms appended to be used.

In other cases ordinary language to be sufficient.

14. The rules of procedure as to amendments of pleadings, which are in force at any place where any proceedings under this Act are carried on, shall apply to all proceedings under this Act; and any judge before whom any such proceedings are being carried on shall have full power and authority to apply the appropriate rules as to amendments, to the proceedings so pending before him; and no pleading or proceeding shall be void by reason of any irregularity or default which can or may be amended under the rules and practice of the court;

Amendment of proceedings.

15. The death of the insolvent, pending proceedings upon a voluntary assignment or in compulsory liquidation, shall not affect such proceedings, or impede the winding up of his estate; and his heirs or other legal representatives may continue the proceedings on his behalf to the procuring of a discharge, or the confirmation thereof, or of both;

Effect of death of insolvent pending proceedings.

The death of the bankrupt after the act of bankruptcy, and the commencement of proceedings under this act, but before the appointment of assignees may occasion some curious results. For instance, if a bankrupt be seized or possessed

of lands in joint tenancy his moiety of course passes to the assignees by their appointment, and they unquestionably hold as tenants in common with the person seized or possessed of the other moiety. But a question will arise as to whether the death of the bankrupt before the actual execution of the appointment of the assignees would have the effect of preventing survivorship.

Costs to compel compulsory liquidation.

16. The costs of the action to compel compulsory liquidation shall be paid by privilege as a first charge upon the assets of the insolvent; and the costs of the judgment of confirmation of the discharge of the insolvent, or of the discharge if obtained direct from the Court, and the costs of winding up the estate, being first submitted at a meeting of creditors, and afterwards taxed by the judge, shall also be paid therefrom;

Rules of practice and tariff of fees in L.C.

17. In Lower Canada rules of practice for regulating the due conduct of proceedings under this Act before the Court or Judge, and tariffs of fees for the Officers of the Court, and for the Advocates and Attorneys practising in relation to such proceedings, shall be made forthwith after the passing of this Act, and when necessary repealed or amended, and shall be promulgated, under or by the same authority and in the same manner as the rules of practice and tariff of fees of the Superior Court for Lower Canada, and shall apply in the same manner and have the same effect in respect of the proceedings under this Act, as the rules of practice and tariff of fees of the Superior Court apply to and affect the proceedings before that Court; and bills of costs upon proceedings under this Act, may be taxed and proceeded upon in like manner as bills of costs may now be taxed and proceeded upon in the said Superior Court;

Taxation of costs.

Rules and tariff in U. C.

18. In Upper Canada the Judges of the Superior Courts of Common Law, and of the Court of Chancery, or any five of them, of whom the Chief Justice of Upper Canada, or the Chancellor, or the

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Chief Justice of the Common Pleas, shall be one, shall have power to frame and settle such forms, rules and regulations as shall be followed and observed in the proceedings on insolvency under this Act, as they may deem to be necessary, and to fix and settle the costs, fees and charges which shall or may be had, taken or paid in all such cases by or to Attorneys, Solicitors, Counsel, Officers of Courts, whether for the Officer or for the Crown, as a fee for the fee fund or otherwise, Sheriffs, Assignees or other persons whom it may be necessary to provide for.

GENERAL PROVISIONS.

12. In all cases of sales of merchandise to a trader in Lower Canada subsequently becoming insolvent, the exercise of the rights and privileges conferred upon the unpaid vendor by the one hundred and seventy-sixth and one hundred and seventy-seventh articles of the *Coutume de Paris*, is hereby restricted to a period of fifteen days from the delivery of such merchandise :

Rights of unpaid vendor under *Coutume de Paris*, restricted.

2. In Lower Canada, every trader who marries, having previously executed a contract of marriage by which he gives or promises to give or to pay, or cause to be paid to his wife, any property or effects, or any sum of money, shall cause such contract of marriage to be enregistered in the registration division in which he has his place of business, within thirty days from the execution thereof; and every trader already married, having such marriage contract with his wife, shall enregister the same as aforesaid, if it be not there already enregistered, within three months from the passing of this Act; and every person not a trader, but hereafter becoming a trader, and having such a contract of marriage with his wife, shall cause such contract to be enregistered as aforesaid (if it

In L. C. marriage contracts of traders to be registered within a certain period.

Provision in default of such registration.

be not previously there enregistered), within thirty days from becoming such trader; and in default of such registration the wife shall not be permitted to avail herself of its provisions in any claim upon the estate of such insolvent for any advantage conferred upon or promised to her by its terms; nor shall she be deprived by reason of its provisions of any advantage or right upon the estate of her husband, to which, in the absence of any such contract, she would have been entitled by law;

Judgments in actions *en séparation de biens*, to be rendered only on certain conditions.

3. No judgment shall be rendered against any trader in Lower Canada in any action against him by his wife *en séparation de biens* or *en séparation de corps et de biens*, unless the institution of such action is advertised continuously for one month in the *Canada Gazette*, and in two newspapers published in or nearest to the place of residence of such trader, one in French, the other in English; nor unless such action be brought in the district within which the defendant has his domicile; and any creditor of the defendant in any such suit may intervene therein for the purpose of examining such debtor respecting his estate and effect, without becoming liable for any costs either to the plaintiff or to the defendant, and may also intervene therein, and oppose the demand of the plaintiff, or subsequently contest the validity of any judgment rendered therein, subject to the ordinary rule as to costs;

Creditors may intervene.

Interpretation.

"Before Notaries."

"Judge."

"Court."

4. The words "before Notaries" shall mean executed in Notarial form according to the law of Lower Canada; the words "the Judge" shall, in Lower Canada, signify a Judge of the Superior Court for Lower Canada, having jurisdiction at the domicile of the insolvent; and in Upper Canada a Judge of the County Court of the County or Union of Counties in which the proceedings are carried on, and the words "the Court" shall, in

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Lower Canada, signify the said Superior Court, and in Upper Canada the County Court, unless it is otherwise expressed or unless the context plainly requires a different construction; but the twenty-fourth and twenty-fifth sections of the seventy-eighth chapter of the Consolidated Statutes for Lower Canada, including subsection number two of the said twenty-fifth section, shall apply in Lower Canada to proceedings under this Act;

Certain provisions to apply.

Until the act of 1861 the County Courts had no jurisdiction in bankruptcy in England. By 1 & 2 Will. IV., c. 56, "the Court of Bankruptcy" was established and consisted of four judges, constituting the Court of Review, and six commissioners. The Court of Review was abolished by 10 & 11 Vic., c. 10, and its jurisdiction transferred to such one of the Vice Chancellors as the Lord Chancellor should from time to time appoint; and the Court of Bankruptcy consisted of five London, and ten district Commissioners. Under the last act the County Courts have jurisdiction in all cases where a debtor makes himself a bankrupt, and states on filing his petition that his debts do not exceed £300. The bankruptcy Court in London, and also the creditors at the first meeting, have the power to transfer the proceedings in bankruptcy from a District to a County Court.

5. The word "Assignee" shall mean the official assignee appointed in proceedings for compulsory liquidation as well as the assignee appointed under a deed of voluntary assignment; the word "day" shall mean a juridical day; the word "Creditor" shall be held to mean every person to whom the insolvent is liable, whether primarily or secondarily, and whether as principal or surety; but no debt shall be doubly represented or ranked for, either in the computation for ascertaining the numbers and proportion of creditors, or in the allotment or payment of dividends; the word "collocated" shall mean ranked or placed in the dividend sheet for some dividend or sum of money; and all the provisions of this Act respecting traders, shall be held to apply equally to unincorporated trading Companies and co-partnerships; and the chief office or place of business of such unincor-

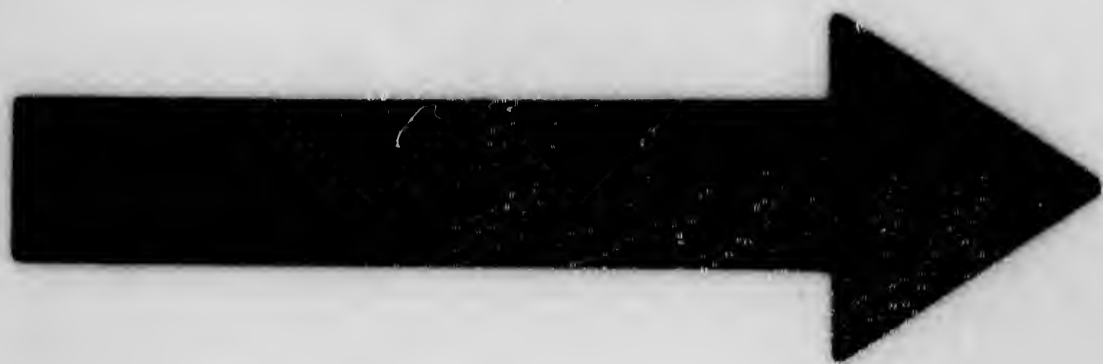
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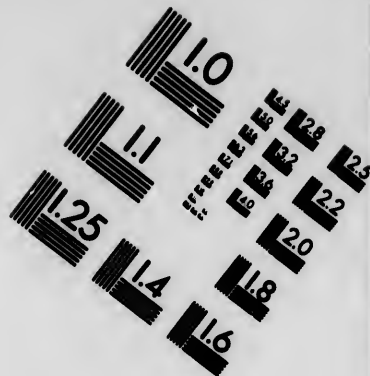
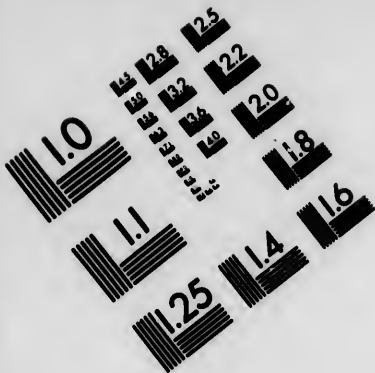
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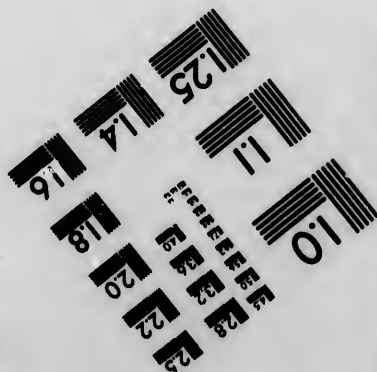
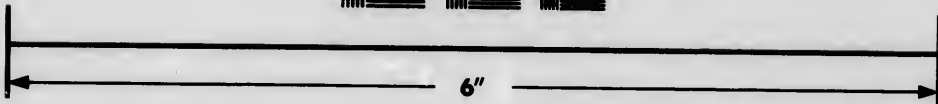
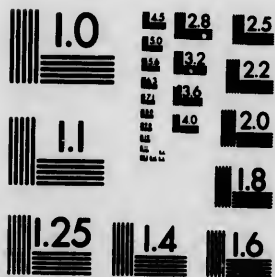
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Application to Act to companies, &c.





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porated trading Companies and co-partnerships shall be their domicile for the purposes of this Act ;

Assignees to be agents within the meaning of Con. Stat. Canada, cap. 92, sec. 43, &c.

6. Every assignee to whom an assignment is made under this Act, and every official assignee appointed under the provisions of this Act, is an agent within the meaning of the forty-third, forty-fourth, forty-sixth, forty-eighth and forty-ninth sections of the ninety-second chapter of the Consolidated Statutes of Canada ; and every provision of this Act, or resolution of the creditors, relating to the duties of an assignee or official assignee, shall be held to be in direction in writing, within the meaning of the said forty-third section of the said chapter ; and in an indictment against an assignee or official assignee under any of the said sections, the right of property in any moneys, security, matter, or thing, may be laid in "the creditors of the insolvent (*naming him*), under the Insolvent Act of 1864," or in the name of any assignee subsequently appointed, in his quality as such assignee ;

The references in this sub-section are to portions of the "Act respecting offences against person and property." The forty-third section of that act relates to the *mala fide* misapplication, contrary to written instructions, of money or security for money, entrusted to bankers, merchants, brokers, attorneys or other *agents* ; and creates such an offence a misdemeanor. Under the forty-fourth section if any person acting in any of the above capacities is intrusted with any chattel, valuable security, &c., for any special purpose, without authority to sell or pledge the same, and in *mala fide* does negotiate or pledge the same for his own benefit, such offender shall be guilty of a misdemeanor. Section forty-six relates to factors and agents pledging goods, &c., and renders this offence also a misdemeanor, while sections forty-eight and forty-nine relate to other remedies against, and convictions of agents. Were it not for the protection against frauds on the part of assignees that this provision gives the creditors, they might be sometimes in a worse position after the assignment than before.

Deed of assignment, &c., thereof, or a duly authenticated copy of the order

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of the judge appointing an official assignee, or a duly certified extract from the minutes of a meeting of creditors, according to the mode in which the assignee or official assignee is alleged to be appointed, shall be *prima facie* evidence in all courts, whether civil or criminal, of such appointment, and of the regularity of all proceeding at the time thereof and antecedent thereto ;

to be *prima facie* evidence.

8. One per centum upon all moneys proceeding from the sale by an assignee, under the provisions of this Act, of any immoveable property in Lower Canada, shall be retained by the assignee out of such moneys, and shall by such assignee be paid over to the Sheriff of the District, or of either of the counties of Gaspé or Bonaventure, as the case may be, within which the immoveable property sold shall be situate, to form part of the Building and Jury Fund of such District or County ;

Percentage for Building and Jury Fund in L. C.

9. The Governor in Council shall have all the powers with respect to imposing a tax or duty upon proceedings under this Act, which are conferred upon the Governor in Council by the thirty-second and thirty-third sections of the one hundred and ninth chapter of the Consolidated Statutes for Lower Canada, and by the Act intituled : *An Act to make provision for the erection or repair of Court Houses and Gaols at certain places in Lower Canada*, (12 Vic., cap. 112.)

Power to impose a tax on proceedings in L. C.

13. This Act shall be called and known as "The Insolvent Act of 1864," and shall come into force and take effect on and after the first day of September next.

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APPENDIX OF FORMS.

FORM A.

(Vide Sec. 2, Sub-sec. 1.)

INSOLVENT ACT OF 1864.

The creditors of the undersigned are notified to meet at
in _____ on _____ the _____th day of
at (*eight*) o'clock _____ for the purpose of
receiving statements of his affairs, and of naming an Assignee
to whom he may make an assignment under the above Act.

(Domicile of debtor, and date)

(Signature.)

(The following is to be added to the notices sent by post.)

The Creditors holding direct claims and indirect claims,
maturing before the meeting, for one hundred dollars each and
upwards, are as follows: (*names of creditors and amount due*)
and the aggregate of claims under one hundred dollars is \$

(Domicile of debtor, and date.)

(Signature.)

FORM B.

(Vide Sec. 2, Sub-sec. 1.)

INSOLVENT ACT OF 1864.

In the matter of A. B., an insolvent.

Schedule of Creditors.

1. Direct Liabilities.

Name.	Residence.	Nature of Debt.	Amount.	Total.
2. Indirect liabilities, maturing before the day fixed for the first meeting of creditors.				
Name.	Residence.	Nature of Debt.	Amount.	
3. Indirect liabilities, maturing after the day fixed for the first meeting of creditors				
Name.	Residence.	Nature of Debt.	Amount.	
4. Negotiable paper, the holders of which are unknown.				
Date.	Name of Maker.	Names liable to Insolvent.	When due.	Amount.

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of the second part, accepting thereof as assignee under the said Act, and for the purpose therein provided, all his estate and effects real and personal of every nature and kind whatsoever.

To have and to hold to the party of the second part as assignee for the purposes and under the Act aforesaid.

And a duplicate of the list of creditors exhibited at the first meeting of his creditors, by the said party of the first part, is hereto annexed.

In witness whereof, &c.

or

Done and passed, &c.

FORM D.

INSOLVENT ACT OF 1864.

In the matter of

A.B. (*or* A.B. & Co.)
an Insolvent.

The creditors of the insolvent are notified that he has made an assignment of his estate and effects, under the above Act, to me, the undersigned assignee, and they are required to furnish me within two months from this date, with their claims, specifying the security they hold, if any, and the value of it; and if none, stating the fact; the whole attested under oath, with the vouchers in support of such claims.

(Place

date)

(Signature of assignee.)

(NOTE.—There is no reference to this form in the body of the Act; but it is evidently the form of an advertisement to be published by an assignee under a voluntary assignment, immediately upon his appointment.)

has rendered himself liable to have his estate placed in compulsory liquidation under the above mentioned Act; and my reasons for so believing are as follows: (*state concisely the facts relied upon as rendering the debtor insolvent, and as subjecting his estate to be placed in compulsory liquidation.*)

And I have signed; (*or I declare that I cannot sign,*)
 this day of 186 .

and if the deponent cannot sign,
 add—*the foregoing affidavit having
 been first read over by me to the de-
 ponent.*

(NOTE.—The form of jurat given here is evidently for Lower Canada, and that used above in the affidavit in "Form B." is a proper one for Upper Canada.)

FORM G.

(*Vide Sec. 3, Sub-sec. 7.*)

INSOLVENT ACT OF 1864.

PROVINCE OF } VICTORIA, *by the Grace of God of the*
 CANADA. } *United Kingdom of Great Britain and*
 District of Quebec. } *Ireland, Queen, Defender of the Faith.*

To the Sheriff of our District (*or County*) of

No.

GREETING :

We command you at the instance of
 to attach the estate and effects, moneys and securities for
 money, vouchers, and all the office and business papers and
 documents of every kind and nature whatsoever
 of and belonging to
 if the same shall be found in (*name of district or other territo-
 rial jurisdiction*) and the same so attached, safely to hold,
 keep and detain in your charge and custody, until the attach-

ment thereof, which shall be so made under and by virtue of this Writ, shall be determined in due course of Law.

We command you also to summon the said
to be and appear before Us, in our Court for
at in the County (or Dis-
trict) of on the day of
then and there to answer the said
of the plaint contained in the declaration hereto annexed, and
further to do and receive what, in our said Court before Us,
in this behalf shall be considered; and in what manner you
shall have executed this Writ, then and there certify unto Us
with your doings thereon, and every of them, and have you
then and there also this Writ.

IN WITNESS WHEREOF, We have caused the Seal of our
said Court to be hereunto affixed, at aforesaid
, this day of
in the year of our Lord, one thousand eight hundred and
sixty- in the

FORM H.

(Vide Sec. 3, Sub-sec. 8.)

INSOLVENT ACT OF 1864.

A. B.,
Plff.

C. D.,
Deft.

A writ of attachment has issued in this cause, of which
all persons interested in the estate of the defendant, and all
persons having in their possession, custody or power, any
portion of the assets of the defendant, or who are in any way
indebted to him, are required to take notice.

(Place date (Signature,))

Sheriff.

FORM I.

(Vide Sec. 3, Sub-sec. 14.)

INSOLVENT ACT OF 1864.

I swear that I (*or, the firm of which I am a member, or, A. B. of whom I am the duly authorized agent in this behalf,*) am (*or is*) a creditor of the Insolvent, and that I will give my advice in the appointment of an assignee to his estate, honestly and faithfully and in the interest of his creditors generally.

FORM K.

(Vide Sec. 3, Sub-sec. 24.)

INSOLVENT ACT OF 1864.

In the matter of

A. B. (*or A. B. & Co.*),
an insolvent.

The creditors of the insolvent are notified that I, the undersigned (*name and residence*), have been appointed official assignee of his estate and effects: and they are required to produce before me within two months from this date, their claims upon the said estate under oath, specifying the security they hold, if any, and the value of it, and if none, stating the fact, with vouchers in support of such claims.

(Place date,)

(*Signature.*)
Official Assignee.

FORM L.

(Vide Sec. 4, Sub-sec. 12.)

INSOLVENT ACT OF 1864.

In the matter of

A. B.,
an insolvent.

In consideration of the sum of \$ _____ whereof quit ;
C. D., assignee of the insolvent, in that capacity hereby sells
and assigns to E. F. accepting thereof, all claim by the Insol-
vent against G. H. of (*describing the debtor*) with the evidences
of debt and securities thereto appertaining, but without any
warranty of any kind or nature whatsoever.

C. D., *Assignee.*
E. F.

FORM M.

(Vide Sec. 4, Sub-sec. 14.)

This deed, made under the provisions of the Insolvent Act
of 1864, the _____ day of _____ &c.,
between A. B. of _____ &c., in
his capacity of assignee of the estate and effects of
an insolvent, under a deed of assignment executed on the
_____ day of _____ at _____ in
Canada, (*or under an order of the Judge made at*
on the _____ day of _____) of the one part,
and C. D., of _____ &c., of the other part, witnesseth :
That he, the said A. B., in his said capacity, hath caused the
sale of the real estate hereinafter mentioned, to be advertised
in the *Canada Gazette* from the _____
day of _____ to the _____
day of _____ inclusive, and hath adjudged and doth
hereby grant, bargain, sell and confirm the same, to wit :
unto the said C. D., his heirs and assigns for ever, all (*in*
Upper Canada insert "the rights and interests of the Insolven'

in) that certain lot of land, &c., (*insert here a description of the property sold*): To have and to hold the same, with the appurtenances thereof, unto the said C.D., his heirs and assigns for ever. The said sale is so made for and in consideration of the sum of \$
 in hand paid by the said C.D. to the said A.B., the receipt whereof is hereby acknowledged (*or of which the said C.D. hath paid to the said A.B., the sum of*
 the receipt whereof is hereby acknowledged), and the balance or sum of \$ the said C. D. hereby promises to pay the said A.B., in his said capacity, as follows, to wit—(*here state the terms of payment*)—the whole with interest payable and, as security for the payments so to be made, the said C.D. hereby specially mortgages and hypothecates to and in favour of the said A.B., in his said capacity, the lot of land and premises hereby sold. In witness,

A.B. [L.S.]
 C.D. [L.S.]

Signed, sealed, and delivered
 in the presence of
 E.F.

FORM N.

(*Vide* Sec. 5, Sub-sec. 11.)

INSOLVENT ACT OF 1864.

In the matter of

A.B. (*or* A.B. & Co.,)
 an Insolvent.

The Creditors of the Insolvent are notified that a dividend sheet has been prepared, and will remain open to inspection and objection at my office (*describing it*) every day between the hours of ten and five o'clock until the day of after which the dividends therein allotted will be paid.

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FORM O.

(Vide Sec. 9, Sub-sec. 6.)

INSOLVENT ACT OF 1864.

PROVINCE OF CANADA, } In the (*name of Court*)
 District (*or County*) of } In the matter of A.B. (*or*
 A B & Co.), an Insolvent.

Notice is hereby given that the undersigned has filed in the office of this Court, a consent by his creditors to his discharge (*or a deed of composition and discharge, executed by his creditors*), and that on the day of next, at ten of the clock in the forenoon, or as soon as counsel can be heard, he will apply to the said Court (*or to the judge of the said Court, as the case may be*) for a confirmation of the discharge thereby effected in his favor, under the said Act.

(Place date.)
 (Signature of Insolvent, or of his Attorney *ad litem*.)

FORM P.

(Vide Sec. 9, Sub-sec. 7.)

INSOLVENT ACT OF 1864.

PROVINCE OF CANADA, } In the (*name of Court*)
 District (*or County*) of } In the matter of A. B., an
 Insolvent.

Notice is hereby given that the undersigned creditor of the insolvent has required him to file, in the office of this Court, the consent of his creditors, or the deed of composition and discharge executed by them, under which he claims to be discharged under the said Act ; and that on the day of next, at ten of the clock in the forenoon, or as soon as counsel can be heard, the undersigned will apply to the said Court (*or to the judge of the*

f such dis-

ad litem.)

claimant in this behalf, and have a personal knowledge of the matter hereinafter deposed to, or a member of the firm of claimants in the matter, and the said firm is composed of myself and of E. F. of)

2. The insolvent is indebted to me (or to the claimant) in the sum of _____ dollars, for (here state the nature and particulars of the claim, for which purpose reference may also be made to accounts or documents annexed.)

3. I (or the claimant) hold no security for the claim,) or I or the claimant hold the following, and no other, security for the claim, namely : (state the particulars of the security.)

To the best of my knowledge and belief, the security is of the value of _____ dollars.

)
B. (or A.B.
vent.

day of
, or as soon
apply to the
case may be)

Sworn before me at }
this day of }

ad litem.)

agent of the

TABLE OF MAJORITIES

OF CREDITORS REQUIRED BY THE INSOLVENT ACT OF 1864, IN
DIFFERENT PROCEEDINGS.

SECTIONS & SUB-SECTIONS.	ACT TO BE DONE.	MAJORITY REQUIRED.
Sec. II. Sub-Sec. 3.	To appoint assignee in case of voluntary assignment.	Majority in value of creditors representing only direct liabilities of Insolvent, and indirect liabilities actually overdue.
Sec. II. Sub-Sec. 5.	To decide dispute at first meeting of creditors as to amount which any creditor entitled to represent in nomination of assignee in cases of voluntarily assignment, or any other question proper for such meeting.	Majority in number of creditors present, or represented by agents or proxies.
Sec. III. Sub. Sec. 14.	To appoint official assignee in case of compulsory liquidation.	Creditors present must be unanimous or Judge to make appointment.
Sec. III. Sub-Sec. 19.	To decide if debtor to be proceeded against under this act.	Majority in number and three-fourths in value of creditors for sums above \$100 present or represented.
Sec. IV. Sub-Sec. 18.	To remove assignee, or appoint new assignee.	Majority in number of creditors present or represented.
Sec. V. Sub-Sec. 8.	To direct allowance for maintenance of bankrupt.	Majority in number of creditors for \$100, who also represent three-fourths in value of insolvent's liabilities.
Sec. IX. Sub-Sec. 1.	To execute deed of composition and discharge.	The like.
Sec. XI. Sub-Sec. 2.	To decide all other questions at meetings of creditors.	The majority in number and value of creditors for sums above \$100 present or represented.

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LOWER CANADIAN RULES AND ORDERS,

*Made by the Judges of the Superior Court for Lower Canada, under
and by virtue of the Statutes 27 and 28 Vict. cap. 17, inti-
tuled: "An Act respecting Insolvency."*

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

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

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

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

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

6. Proceedings on applications for discharge of Assignee ;
7. Appeals.

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

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

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

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

9. All proceedings before a Judge or Court shall be entered

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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their claims, specifying the security therefor, with the vouchers in support of such claims, as required by such notice.

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

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

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

26. The Assignee shall, on the third juridical day of each month, after he shall have commenced to deposit Estate moneys in a Bank or Bank Agency, as required by the said Act, file of record in the case an account of the Estate, shewing the balance thereof in his hands, or under his control, made up to the last day of the preceding month. And no moneys so deposited, shall be withdrawn without a special order of the Court, entered in the docket of proceedings in the case, or upon a dividend sheet prepared and notified, as required by the said Act, or unless otherwise ordered by the Creditors, under the powers conferred upon them by the said Act.

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

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GENERAL ORDER
OF
DECEMBER, 1864,
AND
TARIFF OF FEES

For Insolvency proceedings in Upper Canada, promulgated by the Judges of the Superior Courts of Common Law, and of the Court of Chancery, under 27 and 28 Victoria, c. 17.

ORDER.

Whereas it is provided by the Insolvent Act of 1864, amongst other things, that the Judges of the Superior Courts of Common Law, and of the Court of Chancery in Upper Canada, or any of them of whom the Chief Justice of Upper Canada, or the Chancellor, or the Chief Justice of the Common Pleas, shall be one, shall have power to fix and settle the costs, fees, and charges which shall be had, taken, or paid, in all cases and proceedings under the said act, by or to attorneys, solicitors, counsel, officers of Courts, whether for the officers or for the Crown, as a fee for the fee fund, or otherwise, sheriffs, assignees, or other persons, whom it may be necessary to provide for ;

And whereas the Chief Justice of Upper Canada, and the Judges of the Superior Courts of Common Law and Equity, at Toronto, have assumed the duty so imposed upon them ;

In pursuance, therefore, of the power so contained in the Insolvent Act of 1864, the following table of costs has been

framed by the Chief Justice and Judges, and it is hereby declared, determined, and adjudged, that all and singular the costs and fees mentioned in the said table, and no other or greater, shall be allowed on taxation, or taken or received, by any counsel or attorney, sheriff or officer, respectively, for any services rendered under the said Insolvent Act of 1864.

Toronto, December , 1864.

T A R I F F .

Fees to solicitor or attorney, as between party and party, and also as between solicitor and client :

Instructions for voluntary assignment by debtor, or for compulsory liquidation, or for petition, where the statute expressly requires a petition, or for brief, where matter is required to be argued by counsel, or is authorized by the judge to be argued by counsel, or for deeds, declarations, or proceedings on appeal	\$2 00
Drawing and engrossing petitions, deeds, affidavits, notices, advertisements, declarations, and all other necessary documents or papers when not otherwise expressly provided for, per folio of 100 words, or under	0 20
Making other copies when required.....	0 10
When more than <i>five</i> copies are required of any notice or other paper, five only to be charged for, unless the notice or paper is printed, and in that case printer's bill to be allowed in lieu of copies, drawing schedule, list, or notice of liabilities, per folio, when the number of creditors therein does not exceed twenty..	0 20
When the number of creditors therein exceeds twenty, then for every folio of 100 words over twenty	0 10
Every common affidavit of service of papers, including attendance.	0 50
Every common attendance.....	0 50
Every special attendance on judge	2 00
For every hour after the first	1 00
To be increased by the judge in his discretion.	
Every special attendance at meetings of creditors, or before assignee, acting as arbitrator	1 00
Fee on writ of attachment against estate and effects of insolvent, including attendance	2 00

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Fees on rule of Court or order of judge	\$1 00
Fee on sub ad test., including attendances.....	1 00
Fee on sub duces tecum, including attendance.....	1 25
And, if above 4 folios, then for each additional folio, over such 4 folios	0 10
Fee on every other writ.....	1 00
Every necessary letter	0 50
Costs of preparing claim of creditors, and procuring same to be sworn to, and allowed at meeting of creditors, in ordinary cases, where no dispute	1 00
Costs of solicitor of petitioning creditor, for examining claims filed up to appointment of assignee, for each claim so examined ...	0 50
Costs of assignee's solicitor for examining each claim required by assignee to be examined.....	0 50
Preparing for publication advertisements required by the statute, including copies and all attendances in relation thereto	1 00
Preparing, engrossing, and procuring execution of bonds or other instruments of security	2 00
Mileage for the distance actually and necessarily travelled—per mile	0 10
Bill of Costs, engrossing, including copy for taxation, per folio.....	0 20
Copy for the opposite party	0 50
Taxation of Costs.....	0 50

No allowance to be made for unnecessary documents or papers, or for unnecessary matter in necessary documents or papers, or for unnecessary length of proceedings of any kind. In case of any proceedings not provided for by this tariff, the charges to be the same, as for like proceedings, as in the tariffs of the Superior Courts.

COUNSEL.

Fee on arguments, examinations, and advising proceedings, to be allowed and fixed by the judge as shall appear to him proper under the circumstances of the case.

FEE FUND.

Every warrant issued against estate and effects of insolvent debtors.	\$1 00
Every other warrant or writ	0 30
Every summary rule, order, or fiat	0 30
Every meeting of creditors before judge.....	0 50
If more than an hour.....	1 00
If more than one on same day, \$2.00, to be apportioned amongst all.	

Every affidavit administered before judge	0 20
Every certificate of proceedings by judge of County Court for transmission to a Superior Court or a judge thereof.....	0 50
Every bankrupts certificate	1 00
Every taxation of costs	0 15

FEEES TO CLERK.

Every Writ, or Rule, or Order.....	0 50
Filing every affidavit or proceeding.....	0 10
Swearing affidavit	0 20
Copies of all proceedings of which copy bespoken or required, per folio of 100 words.....	0 10
Every certificate	0 30
Taxing costs.....	0 50
Taxing costs and giving allocatur.....	0 65
For every sitting under commission, per day	1 00
If more than one on same day, \$2.00 to be apportioned amongst all.	
Fee for keeping record of proceedings in each case	1 00
For any list of debtors proved at first meeting, (if made.)	0 50
For any list of debtors at second meeting	0 50
Any search	0 20
A general search relating to one bankruptcy, or the bankruptcy of one person or firm	0 50

SHERIFF.

Same as on corresponding proceedings in Superior Courts.

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