

New Zealand.



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1883, No. 10.]

AN ACT to consolidate and amend the Law relating to Bankruptcy. Title.
[8th September, 1883.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:— Short Title. Commencement of Act.

1. The Short Title of this Act is "The Bankruptcy Act, 1883." This Act shall, except as to the power of making any rules or appointments for the purposes of this Act, come into operation on the first day of January, one thousand eight hundred and eighty-four.

2. In this Act, if not inconsistent with the context,—

Interpretation.

- “Adjudication,” “order of adjudication,” mean an order of a Court adjudging a person a bankrupt :
- “Assignee” means the Official Assignee appointed under this Act ; and, where used alone, means the Assignee having charge of any particular estate :
- “Debt provable in bankruptcy” includes any debt, demand, or liability by this Act made provable in bankruptcy :
- “District Court” means a Court holden by virtue of any Acts for the time being in force relating to District Courts :
- “Gazette” means the *New Zealand Gazette* :
- “Advertised” means published in two or more newspapers published or generally circulated within the place in which the proceeding or matter is taken or pending :
- “Judge in Bankruptcy” means a Judge of the superior Court in Bankruptcy as herein defined :
- “Local Court” means a District Court having local jurisdiction in bankruptcy :
- “Prescribed” means prescribed by this Act or by the rules respectively herein defined :
- “Property” means and includes money, goods, and every description of property whether real or personal, and every estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined, and shall also include things in action as well as in possession :
- “Registrar” means the Registrar of the superior Court or the deputy for the time being of any such Registrar :
- “Rules” means the rules in force, or to be made, under this Act :
- “Superior Court” means the Court of Bankruptcy having jurisdiction throughout the colony :
- “The Court” means the Court having jurisdiction as by this Act provided :
- “This Act” includes all or any Acts or Act amending the same, and all rules made thereunder respectively.

Joint-stock companies not subject to Act.

3. No association or company incorporated or registered under any Act in force for the time being relating to the incorporation or registration of associations or companies shall be subject to the provisions of this Act.

Aliens subject to Act.

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

COURTS OF BANKRUPTCY.

Constitution.

Court of Bankruptcy for the colony established. Superior Court.

5. There shall be in and for the colony a Court of law and of equity, being a Court of record, and called the Court of Bankruptcy (hereinafter referred to as “the superior Court”), which shall have jurisdiction throughout the colony in all matters of bankruptcy or appertaining thereto.

For convenience of administration the judicial districts established for the purposes of the Supreme Court, as they may from time to time exist, shall be districts for the purposes of this Act.

6. The District Courts in the colony shall, within the limits of their jurisdiction, be local Courts of Bankruptcy.

District Courts to be local Courts of Bankruptcy.

But, notwithstanding anything in this Act contained, the Governor may from time to time exclude any District Court from having jurisdiction in bankruptcy, and for the purposes of bankruptcy jurisdiction may attach the district within its ordinary jurisdiction, or any part thereof, to the Supreme Court or to any other District Court or Courts, and may from time to time revoke or alter any order so made.

7. Every Court having jurisdiction in bankruptcy, and the officers of such Courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy; and an order of the Court seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by such order, the like jurisdiction which the Court which made the request, as well as the Court to which the request is made, could exercise in similar matters within their respective jurisdictions.

Courts to be auxiliary to each other.

8. The Court shall not be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeals lie from its decisions except in manner directed by this Act.

Each Court to have independent jurisdiction.

Jurisdiction of Courts.

9. Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy shall have full power—

General powers of Courts in bankruptcy.

- (1.) To make orders or decrees in relation to the real and personal property of any debtor or bankrupt who may become or be subject to the provisions of this Act, in the same manner as the Supreme Court, in its jurisdiction at law or in equity, can make any orders or decrees respectively;
- (2.) To decide all questions of priorities, and all other questions whatsoever, whether of law or of fact, arising in any case of bankruptcy coming within the cognizance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case;
- (3.) To hear, determine, and make order—

(a.) In any matter of bankruptcy whatever, so far as the Assignees are concerned, relating to the disposition of the estate and effects of the bankrupt, or of any estate or effects taken under the bankruptcy, and claimed by the Assignees for the benefit of the creditors, or relating to any acts done or sought to be done by the Assignees in their character of Assignees by virtue or under colour of the bankruptcy, and also in any application for an order of discharge; and

(b.) In any matter whatever in which the Assignees claim any property from third parties for the benefit of creditors, or in relation to the setting aside of alleged fraudulent deeds or other transfers of property; and also

(c.) In any other matter, whether in bankruptcy or

not, where the Court, by virtue of this Act, has jurisdiction over the subject of the petition or application ;

(4.) To punish any bankrupt or creditor as herein provided, and to inflict fines in a summary way on any of the officers of the Court (other than the Official Assignee) who shall be guilty of any negligence, wilful or unnecessary delay, or other misconduct whatsoever ;

(5.) To review, rescind, or vary any order or decree made by it in pursuance of this Act.

Questions of law may be reserved for superior Court.

10. If any question of law or fact arises under a bankruptcy petition in a local Court which the parties to the question desire, or which one of them and the Judge of the local Court desire, to be tried in the first instance in the superior Court, the question shall be determined in the latter Court, and the proceedings, or such of them as may be required, shall be transmitted to the superior Court for the purposes of the determination.

Issues of fact may be tried before a jury.

11. If in any proceeding in bankruptcy there arises any question of fact which either of the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may direct such trial to be had, and such trial may be had accordingly in the superior Court in the same manner as if it were the trial of an issue in the Supreme Court and in the local Court in the manner in which jury trials in ordinary cases are by law held in District Courts.

Transfer of Jurisdiction.

Proceedings may be transferred to another Court on creditor's application.

12. Where the creditors resolve, by a special resolution, that it will be more convenient that the bankruptcy proceedings in any local Court of Bankruptcy should be transferred to the superior Court of Bankruptcy or to any other local Court, or where the Judge of a local Court certifies that in his opinion the bankruptcy would be more advantageously conducted in the superior Court or in some other local Court, the petition shall be transferred to, and all subsequent proceedings thereon had in, the superior Court or such other local Court.

Jurisdiction of Court to which proceedings transferred.

13. Cases shall be transferred from one Court to another in such manner as may be prescribed.

On proceedings being transferred to any Court such Court shall thenceforth have exclusive jurisdiction in the matter of such proceedings, but shall not have power to transfer the same to any other Court.

All orders, affidavits, and proceedings made, used, or taken before the transfer shall have the same effect as if they had originally been orders, affidavits, and proceedings of and in the Court to which the transfer is made.

Appeals.

Appeal to lie to Court immediately superior.

14. Decisions in bankruptcy matters shall be subject to appeal as follows :—

(1.) An appeal shall lie from the decision of a local Court to the superior Court, and no further, unless the Judge hearing the appeal permits a further appeal to the Court of Appeal :

(2.) An appeal shall lie from the decision of the superior Court to the Court of Appeal :

(3.) The decision of the Court of Appeal shall be final :

(4.) No appeal shall be entertained under this Act except in conformity with such rules of Court as may for the time being be in force in relation to the appeal.

15. The time of appeal shall be limited to twenty-one days from the date of the decision or order to be appealed from ; but the Court appealed to may, if it thinks fit, allow an appeal to be commenced and prosecuted notwithstanding the expiration of that time. Time of appeal.

16. The proceedings under this Act shall not be stayed by appeal unless the Court from which the appeal is brought think fit to order proceedings to be stayed. Effect of appeal.

The Court appealed to may in any case, either on motion before the hearing of an appeal or when deciding thereon, order any such proceedings to be taken as in the circumstances appear to it proper for the due and convenient prosecution of the proceedings under the bankruptcy, although the time fixed for such proceedings has expired.

Powers of Judges, Registrars, &c.

17. The offices of Judges in Bankruptcy shall be filled by such of the Judges of the Supreme Court as may be assigned to hold such office by the Governor, and every Judge so assigned shall hold the office of Judge in Bankruptcy in addition to the office of Judge of the Supreme Court. Supreme Court Judges may be Judges in Bankruptcy.

18. Every Judge in Bankruptcy may exercise in any part of the colony all the powers of the Court ; and every such Judge shall have all the powers, jurisdiction, and privileges possessed by any Judge of the Supreme Court, and the orders and decrees of such Judge shall be of the same force as if they were judgments or decrees of the Supreme Court. Judges in Bankruptcy to have all powers, &c., of Judges of Supreme Court.

19. Every Judge in Bankruptcy may sit in Chambers, and when sitting in Chambers shall have the same jurisdiction and may exercise the same powers as if sitting in open Court. Judge may sit in Chambers.

Any matter, except the public examination of a bankrupt and the granting of an order of discharge, may be heard and disposed of by a Judge in Chambers. Business in Chambers.

20. Every Judge of a local Court of Bankruptcy shall, for the purposes of this Act, in addition to his ordinary powers as a District Court Judge, have all the powers and jurisdiction of a Judge of the Supreme Court, and the orders of such Judge may be enforced accordingly, in manner prescribed. Powers of local Court Judges.

21. All orders and decrees of a local Court of Bankruptcy made under the provisions of this Act shall have the same effect as if they were orders or decrees made by the Supreme Court, and may be enforced by the local Court in the same manner. Enforcement of orders and decrees of local Courts.

22. The Registrars, Clerks, and other subordinate officers of the Supreme Court shall hold the same offices respectively in the Court of Bankruptcy, and shall perform and discharge therein the like offices and duties, or as may be assigned to them by a Judge of the Court, or by general rules. Officers of Supreme and District Courts to be officers in Bankruptcy Courts.

In the same manner Clerks and other officers of District Courts shall hold the same offices respectively in the local Courts of Bankruptcy.

Registrar may act in absence of Judge.

23. The Registrar may, during any vacation, or during the illness or absence from any other cause of a Judge of the Court, act for such Judge, with all the jurisdiction, power, and authority of such Judge.

Registrar to sit in Chambers.

24. A Registrar shall sit at Chambers for despatch of such part of the business of the Court as he is authorized to carry out either by the provisions of this Act, or by delegation of the Judge, or by any general rules, and subject thereto as a Judge of the Court from time to time directs, and while so sitting shall have the same power and jurisdiction as a Judge of the Court at Chambers would have, and an order made by him shall be an order of the Court.

Registrar's order may be discharged or varied.

25. Any order made by a Registrar at Chambers as aforesaid may be discharged or varied by a Judge at Chambers or in Court.

Limitation of powers of Registrars.

26. No Registrar shall at any time have the power of holding a sitting for the public examination of a bankrupt, or of granting orders of discharge, or of committing any person for contempt of Court, or of committing any person to prison, or of hearing appeals under this Act.

Solicitors may practice in Bankruptcy Courts unaided by counsel.

27. Every barrister or solicitor of the Supreme Court shall be and may practise as a solicitor of and in the Court of Bankruptcy, and in matters before Judges or Registrars in Court or in Chambers, and solicitors may appear and be heard without being required to employ counsel.

If any person, not being such barrister or solicitor, practises in the Court of Bankruptcy as solicitor, he shall be deemed guilty of a contempt of Court, besides being liable to a penalty provided in any other Act in respect of practice by unqualified or disqualified persons.

Rules of Procedure.

Rules of procedure may be made; to be similar to District Court rules.

28. The Governor in Council, with the concurrence of at least two of the Judges of the superior Court, may from time to time, subject to the provisions of this Act, frame rules regulating—

- (a.) The practice of the Court, whether as to any original or appellate jurisdiction under this Act, the summoning of juries and witnesses, and the several forms of proceedings to be used in the Court in all matters under this Act;
- (b.) The proceedings at meetings of creditors, the notice to be given thereof, and the places where the same shall be held, the mode of voting thereat, and the manner in which proxies may be appointed and vote at such meetings;
- (c.) The forms of petitions, summonses, and notices to be filed, issued, or given under this Act, the mode in which the same shall be served, and what shall be deemed sufficient service thereof;
- (d.) The transference of proceedings from one Court to another, or from an abolished Court to another;
- (e.) The mode of making-out and amending statements of assets, debts, and liabilities of bankrupts;

- (f.) The mode of proving and amending of proofs of debt, and the mode of valuing debts provable under this Act and of securities held by creditors, the giving or withholding interest or discount on or in respect of debts or dividends;
- (g.) And generally any other matter or thing, whether similar or not to those above enumerated, in respect to which it may be expedient to make rules for carrying into effect the objects of this Act.

29. Any of such rules may in like manner be repealed, varied, or altered as occasion may require, and all rules made under the powers hereby given shall take effect from a day to be fixed in and by such rules. Rules may be varied.

All such rules, and any repeal, variation, or alteration thereof, shall respectively be published in the *Gazette*.

Until rules have been made in pursuance of this Act, and so far as any such rules when made do not extend, the rules, practice, and procedure hitherto or for the time being in force under the Acts hereby repealed shall be deemed to be in force under this Act and shall be observed until altered or revoked. Existing rules to be in force in meantime.

30. All summonses and processes shall be sealed or stamped with the seal of the Court. Seal of Court.

OFFICIAL ASSIGNEES AND AUDITORS.

Assignees.

31. There shall be appointed by the Governor for each district of the Supreme Court constituted under the provisions of "The Supreme Court Act, 1882," an Official Assignee or Official Assignees of bankrupts' estates, who shall be officers of the Court: Official Assignees to be appointed as officers of the Court.

Provided that one person may be appointed for more than one district. Such appointments shall be held during the pleasure of the Governor.

A notification in the *Gazette* of an appointment of an Official Assignee shall be sufficient evidence of the appointment of the person therein named. Gazette to be evidence of appointment.

32. Every person so appointed shall give security to the satisfaction of the Governor, and in such amount as the Governor shall in each case require, not being to a less amount than two thousand pounds. Security to be given by Assignees.

And the Governor in any case may from time to time vary the amount of the security required from any Assignee, either by diminishing or increasing the amount thereof, so that no person shall at any time be required as Official Assignee to give security to a less amount than two thousand pounds at any one time.

33. Official Assignees shall be paid such salaries as shall from time to time be appropriated by the General Assembly for the purpose. Remuneration of Assignees.

34. Every Official Assignee shall have a public office open to the public for such hours as shall be from time to time fixed as the hours of business in the offices of the Supreme Court. Assignee to have a public office.

35. The following provisions shall be in force relating to Official Assignees:— Disqualifications of Assignees.

- (1.) No person shall be capable of acting as Assignee for any bankrupt estate if he is a creditor thereof; and in such

case the Court shall appoint some fit person, not being a creditor, to be Assignee in the particular matter, who shall give such security for due performance of his duties as the Court shall require :

- (2.) If an Assignee dies, or becomes incapable of acting, or resigns, or leaves the colony, or becomes bankrupt, he shall, *ipso facto*, vacate his office, and another shall be appointed in his place :
- (3.) No payments shall be allowed in the accounts of an Assignee in respect of the ordinary duties which are required by statute or rules to be performed by him.

Powers of Assignee as receiver.

36. An Assignee under this Act—

- (1.) Shall have the same powers as if he were a receiver appointed by the Supreme Court, and shall account to the Court :
- (2.) Shall not, unless the Court otherwise order, incur any expense beyond such as is requisite for the protection of the bankrupt's property :
- (3.) May apply to the Court for advice and direction :
- (4.) Shall, as far as is practicable, consult the wishes of the creditors with respect to the administration of the bankrupt's property, and for that purpose may, if he thinks it advisable, summon meetings of the persons claiming to be creditors.

General duties of Assignees.

37. It shall also be the duty of an Assignee—

- (1.) Immediately on taking possession to send to his office all the bankrupt's books, papers, and documents relating to the bankrupt's business :
- (2.) If the creditors or, in the event of their appointment, the supervisors require the bankrupt to file an account of his trading the Assignee shall, without delay, examine the bankrupt respecting the manner in which he kept his books, the date of his last stock-taking and of those preceding, and respecting any matter which may enable the Assignee to judge of a fitting time for the bankrupt to commence his accounts, so that as well as may be the objects the creditors or supervisors have in view may be attained :
- (3.) To dispose of any perishable goods without delay, and take prompt action in any matter necessary to protect the estate from loss before supervisors can be appointed :
- (4.) To advertise the order of adjudication, the bankrupt's examination, the date of the creditors' meetings, and such other matters as it may be necessary to advertise for the purpose of the bankruptcy ;
- (5.) To summon and preside at the meetings of creditors :
- (6.) To issue forms of proxy for use at such meetings :
- (7.) To report to the creditors as to any proposal which the bankrupt may have made with respect to the mode of liquidating his affairs :
- (8.) To receive proofs of debts, and accept or reject them, subject to appeal to the Court :

(9.) To take such part as may be directed by the creditors in the public examination of the bankrupt.

38. The Assignee of a bankrupt's estate shall make a report to the Court as to the conduct of the bankrupt, and as to the manner in which he has kept his books of accounts. Assignees to report on conduct of bankrupt.

39. In case of the subsequent appointment of an Assignee in the place of an Assignee formerly acting in respect of a bankrupt's estate, the property of the bankrupt shall pass from Assignee to Assignee, and shall vest in the Assignee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever. On change of Assignee, property to vest in successor.

40. The Court may, upon the application of the Assignee, appoint any fit person or persons to be deputy or deputies of the Assignee in the management of any particular bankrupt's estate or estates. Every deputy so appointed shall, with respect to the matters placed under his management, have all the powers and duties of an Assignee, and shall receive such remuneration, and give such security, as the Court shall in each case direct. Every deputy shall act under the control and direction of the Assignee of the district. Assignee may appoint deputy.

ACTS OF BANKRUPTCY.

41. The following facts shall be deemed acts of bankruptcy:—

- (1.) That the debtor has, in New Zealand or elsewhere,—
 - (a.) Filed a debtor's petition in bankruptcy; or
 - (b.) Made, whether voluntarily or otherwise, a conveyance or assignment of his property to a trustee or trustees for the benefit of any one or more of his creditors; or
 - (c.) Made a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof:
- (2.) That the debtor has, with intent to defeat or delay his creditors, departed out of New Zealand, or being out of New Zealand remained out of New Zealand, or departed from his dwelling-house, or departed from his usual place of business and residence, or otherwise absented himself, or begun to keep his house:
- (3.) That possession has been taken under execution issued against the debtor on any legal process:

Provided that, if the execution be satisfied within five days after possession has been taken thereunder, the act of bankruptcy shall, *ipso facto*, be annulled.

What shall be deemed acts of bankruptcy.

PROCEEDINGS IN BANKRUPTCY.

Petition and Adjudication.

42. (1.) All proceedings in bankruptcy shall be commenced by a petition filed in the Court, praying that a debtor be adjudged a bankrupt. Bankruptcy petitions may be filed by debtor or creditor.

(2.) A bankruptcy petition may be filed either by the debtor, or by a creditor or creditors.

43. A bankruptcy petition shall be filed,—

- (1.) Where the debtor is resident in the colony, in the local

Court wherein to be filed.

Court for the district comprising the place where he shall have resided or carried on business for the greater part of the six months immediately preceding the time when the petition is filed, or, if such place be not within the district of a local Court, then in the Supreme Court for the district :

(2.) Where the debtor is in custody, in the local Court having jurisdiction for the district comprising the place in which he is in custody, and, if such place shall not be within the district of any local Court, then in the Supreme Court for the district :

(3.) Where a debtor is absent from New Zealand, or the petitioning creditor cannot ascertain the place of his residence, the petition shall be filed in the local Court having jurisdiction for the district comprising the place in which the debtor last resided for three months, or for the longest time under three months; or, if such place shall not be within the district of any local Court, then in the Supreme Court for the district.

On debtor's petition,
he is adjudged
bankrupt.

44. (1.) A debtor's petition shall be in the Form A in the First Schedule to this Act, shall allege that the debtor is unable to pay his debts, and the signature thereto shall be attested by the Registrar or by a solicitor or a Justice of the Peace.

(2.) On the presentation of a debtor's petition, the Official Assignee shall take immediate possession of the debtor's property or business pending the order of adjudication, and the Court shall forthwith adjudge the debtor a bankrupt.

Creditor's petition.
Allegations.

45. (1.) A creditor's petition shall be attested in the same manner as a debtor's petition, and shall allege that the debt due from the debtor to the petitioning creditor, or, if two or more creditors join in the petition, that the aggregate amount of debts due to the several petitioning creditors, amounts to a sum not less than fifty pounds, and that the debtor has committed an act of bankruptcy.

(2.) The alleged act of bankruptcy must have occurred within six months before the presentation of the petition.

(3.) The debt of the petitioning creditor must be a liquidated sum due or growing due.

(4.) If the petitioning creditor is a secured creditor, he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudicated a bankrupt, or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated.

Identification of
petitioner.

46. The identity of a petitioning debtor or creditor shall be deemed to be proved if the signature of the petitioner to the petition is attested by the Registrar or by a solicitor or a Justice of the Peace.

On creditor's petition,
debtor summoned to
appear in Court.

47. On the filing of a creditor's petition in the Court, a summons shall be issued out of such Court calling upon the debtor to appear before such Court on some convenient day appointed by the Registrar, and show cause why he should not be adjudged bankrupt.

A copy of such summons and petition shall be forthwith served

upon the debtor either personally or in such other mode as may be prescribed or may in any particular case be directed by the Court.

48. The Court may, at any time before such summons is disposed of, summon before it and examine any person who may be stated by affidavit to be capable of giving information concerning any act of bankruptcy alleged to have been committed by the debtor, and may require any person so summoned to produce any books and documents in his custody, possession, or power. Court may take evidence.

49. If the Court shall, after hearing the evidence adduced by and on behalf of all parties, be satisfied that the debtor has committed or permitted an act of bankruptcy, and that whether the act of bankruptcy proved shall or shall not be the same as the act of bankruptcy stated in the petition, and that the debtor is indebted to the petitioner or the petitioners in the sum of fifty pounds or upwards, then the Court may adjudge the debtor bankrupt. Court may adjudge debtor bankrupt.

50. The date of an order of the Court adjudging a person to be a bankrupt shall be the date of the adjudication for the purposes of this Act. Date of adjudication.

51. A notice of an order of the Court adjudging the debtor to be bankrupt having been made, and of the date of such order, shall in every case be forthwith advertised by the Assignee, and a copy of such notice shall be served upon the bankrupt in the prescribed manner. Notice of adjudication to be advertised.

52. The order of adjudication shall be final and conclusive with respect to the validity of the adjudication and to the existence of all requisites thereto; and the order shall not be liable to be disturbed or impeached at law or in equity, or otherwise, on any ground whatever, nor shall any of the requisites to adjudication be disputed or required to be proved in any action, suit, or proceeding. Order of adjudication to be final and conclusive.

53. The bankruptcy of a debtor shall be deemed to have relation back and to commence at the time of the act of bankruptcy on which the order is made adjudging him a bankrupt; or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at the time of, the first of the acts of bankruptcy that may be proved to have been committed by the bankrupt within twelve months next preceding the order of adjudication. Adjudication to relate back to prior acts of bankruptcy.

But the bankruptcy shall not relate to any prior act of bankruptcy, unless it be that at the time of committing such prior act the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in bankruptcy, and unless such debt or debts are still remaining due at the time of the adjudication.

Vesting of Property in Assignee.

54. On the filing of a debtor's petition the property of the debtor shall vest in the Official Assignee pending the order of adjudication, and shall, after the order of adjudication has been made, become divisible among the creditors of the bankrupt in proportion to the debts proved by them in the bankruptcy. On adjudication property to vest in Assignee.

55. The Court may, if it thinks fit, on the application of any creditor or creditors at any time after the presentation of a creditor's petition against a debtor, and before adjudication, appoint the Official Assignee to be the receiver and manager of the debtor's estate or of Assignee appointed interim receiver.

any part thereof, and direct him to take immediate possession of his property or business, or any part thereof, pending the order of adjudication.

Count may restrain actions, &c.

56. When on a bankruptcy petition there has been made an order of adjudication, or the Official Assignee has been appointed receiver and manager of the debtor's estate, all proceedings to recover any debt provable under the petition shall be stayed on notice of the order being given in the prescribed manner; but the Court may, on application by any creditor or person interested, allow any proceedings commenced to be continued on such terms and conditions as it thinks just.

After advertising, execution, &c., not available.

57. After the making of an order of adjudication no execution, attachment, or other process against the debtor's property in respect of any debt provable under the bankruptcy, and no process against his person in respect of any debt provable under the bankruptcy, other than such process as may be had against a debtor about to depart out of New Zealand, shall be available without leave of the Court.

Bankrupt to deliver books of account, &c., to Assignee.

58. The bankrupt shall deliver up to the Assignee, at his public office, all books of account, papers, and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person; and such bankrupt shall furnish from time to time such information and particulars as may be necessary to enable the Assignee or any person employed by him to prepare the bankrupt's balance-sheet of his estate and effects.

Bankrupt to furnish verified statement of assets and liabilities, &c.

59. (1.) The bankrupt shall, within three days after filing his petition, or when adjudicated bankrupt on a creditor's petition, then within three days after such adjudication, or within such extended time as the Court may for special reasons allow, make out and deliver to the Assignee, at his public office, a statement showing the particulars of the bankrupt's assets, debts, and liabilities, the names, residences, and occupations of his creditors, and the securities held by them respectively, and he may from time to time add to or amend such statement.

Every such statement, addition, and amendment shall be verified by the bankrupt by a statutory declaration.

(2.) Any person may, personally or by agent, upon payment of a fee of one shilling, inspect this statement at all reasonable times, and take any copy thereof or extract therefrom.

(3.) No bankrupt shall be deemed to be protected by the provisions of this Act unless he shall submit the statement above mentioned within the time and in the manner therein expressed.

Bankrupt may be appointed to conduct his trade or business for creditors.

60. In any case under this Act the Assignee may, with the sanction of the Court, appoint the bankrupt himself to superintend the management of the estate or to carry on the trade or business on behalf of the creditors, and in all or any other respects to aid in administering the bankrupt's estate and effects in such manner and on such terms as the Assignee may think best for the benefit of the persons interested in the estate.

Meetings of Creditors.

General meetings.

61. General meetings of creditors shall be held and may be

adjourned in the prescribed manner, and subject to the prescribed regulations. At any such meeting—

(1.) A person shall not be entitled to vote as a creditor unless at or previously to the meeting he has, in the prescribed manner, proved a debt provable under the bankruptcy to be due or owing to him. Votes of creditors.

(2.) A creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

(3.) A secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due or owing to him after deducting the value of his security; and the amount of such balance shall, until the security be realized, be determined in the prescribed manner:

He may, however, at or previously to the meeting of creditors, give up the security to the Assignee, and thereupon he shall rank as a creditor in respect of the whole sum due to him.

(4.) A secured creditor shall, in this Act, mean any creditor holding any mortgage, charge, lien, or security on the property of the debtor, or any part thereof, whether given directly or indirectly through another person as security for a debt due to such creditor.

(5.) Votes may be given either personally or by proxy, and every person holding a proxy shall have the same power of taking part in the proceedings as the creditor whom such proxy represents would have had had he been present: Proxies.

Every person holding a proxy for a creditor, before he shall be entitled to vote upon any resolution of creditors, shall produce such proxy signed in the presence of a Justice of the Peace, a solicitor of the Supreme Court, or a Postmaster:

A proxy shall be in force until the holder of the proxy has received notice of the revocation thereof:

A person holding a proxy for a creditor shall not use it for the purpose of voting for the appointment of himself as supervisor unless he is specially authorized to do so by the instrument of proxy.

(6.) An ordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting and voting on such resolution.

(7.) A special resolution shall be decided by an actual majority in number of the entire body of creditors, representing three-fourths in value of the whole of the liabilities of the bankrupt, present personally or by proxy at the meeting and voting on such resolution.

62. The Assignee may at any time call a general meeting of the creditors, and shall call such meeting when required by one-fourth in value of the creditors who have proved their debts. Meetings to be convened by Assignee.

He may adjourn any meeting from time to time and place to place.

He shall preside at every such meeting, and shall produce to the meeting and to any adjournment thereof all books of account, deeds,

and papers then in his possession relating to the property of the bankrupt.

The minutes of any general meeting of creditors, upon proof of signature of the person presiding at such meeting, shall be *prima facie* evidence in all Courts of justice of what passed at such meeting.

First meeting of creditors.

63. (1.) The Assignee shall summon the first general meeting of creditors at some convenient place for a day not later than seven days after the adjudication, unless the Court, for any special reason, shall deem it expedient that the meeting be summoned for a later day.

(2.) He shall forthwith advertise a notice of the time and place appointed for such meeting, and a copy of such notice shall be served upon the bankrupt in the prescribed manner, and sent by post-card to the creditors who are not resident in the district.

(3.) He may adjourn the first meeting from time to time and from place to place.

Bankrupt to attend all meetings.

64. The bankrupt shall, unless prevented by sickness or other cause satisfactory to the meeting, attend the first and other meetings of his creditors, and any adjourned meeting, and shall submit to such examination and give such information as the meetings respectively require, and if he fails to do so he shall be deemed guilty of a contempt of Court.

May be examined on oath as to his affairs.

Any such examination may be on oath if the Assignee shall think fit, and for that purpose the Assignee may administer the oath to the bankrupt, and the statements of the bankrupt upon any such examination shall be taken down in writing, and shall be signed by him if required by the Assignee.

Persons compellable to give evidence.

65. No debtor or other person who is summoned or examined by the Court, or by the Assignee, under any of the powers given by this Act, shall be excused from answering any question on the ground that the answer may criminate or tend to criminate such debtor or person.

No statement made by any debtor or person in answer to any question put by or before such Court or Assignee shall, in criminal proceedings, be admissible in evidence against any person; except upon a charge of perjury against such debtor or person in respect of his sworn testimony upon such examination.

Supervisors.

Two creditors to be elected for advising with Assignee as to administration.

66. (1.) At the first general meeting of creditors, or at any subsequent meeting, the creditors may, by resolution, appoint some fit persons, not exceeding two in number, and being creditors qualified to vote at the meeting, to be supervisors for the purpose of superintending the administration of the bankrupt's property.

(2.) The creditors may determine what remuneration shall be paid out of the estate to the supervisors for their services, but so that the sum to be paid to them shall not exceed the scale set forth in the Second Schedule to this Act.

ADMINISTRATION OF PROPERTY.

Collection of Assets.

Assignee may take opinion of Court on

67. The Assignee may apply to the Court, upon a statement in writing, verified by statutory declaration, for the opinion, advice, or

direction of the Court on any question respecting the management of the estate, and notice of such application shall be served upon, and the hearing thereof may be attended by, all persons interested, or such of them as the Court shall think expedient.

any matter, and thereby be indemnified.

The Assignee, acting upon the opinion, advice, or direction of the Court, shall be deemed to have discharged his duty in the subject-matter of the application, provided that he shall not have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction.

68. The bankrupt shall, to the utmost of his power, aid in the realization of his property and the distribution of the proceeds amongst his creditors; and—

Bankrupt to aid to realize property, and to give full information thereon.

- (1.) Shall produce a statement of his affairs to the first meeting of creditors and shall be publicly examined thereon on a day to be named by the Court, and subject to such adjourned examination as the Court shall direct; and
- (2.) Shall give such inventory of his property, such list of his creditors, and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the Assignee, execute such powers of attorney, conveyance, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the Assignee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference to any particular bankruptcy, or made on the occasion of any special application by the Assignee or any creditor.

If the bankrupt wilfully fail to perform the duties imposed on him by this section, or if he fail to deliver up possession to the Assignee of any part of his property which is divisible amongst his creditors, and which may for the time being be in the possession or under the control of such bankrupt, he shall be guilty of an offence under this Act, and shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

69. The Assignee may sue and be sued by the official name of "The Official Assignee in Bankruptcy of the Property of _____" (*inserting the name of the bankrupt*), and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding upon himself and his successors in office, carry on the business, and do all other acts necessary or expedient to be done in the execution of his office.

Assignee may sue in official name.

70. The Assignee or any person acting under him may, with the leave of the Court, seize any property of the bankrupt available for the benefit of his creditors under this Act in the possession of any person.

Assignee may seize property of bankrupt.

71. The property of the bankrupt divisible amongst his creditors shall not comprise the following particulars:—

What property not divisible amongst creditors.

- (1.) Property held by the bankrupt in trust for any other person;
- (2.) The tools (if any) of his trade, and the necessary wearing

apparel of himself, his wife and children, and his furniture to the value, inclusive of tools, apparel, and furniture, of twenty-five pounds, or to such further value as the creditors in general meeting may determine.

Property coming to bankrupt before discharge to vest in Assignee.

72. Save as is excepted in the last foregoing section, all such property as may belong to or be vested in the bankrupt at the time of the adjudication, and all property which shall come to the bankrupt between the date of the bankruptcy and his discharge, shall become absolutely vested in the Assignee for the time being for the benefit of the creditors of the bankrupt.

After bankruptcy bankrupt not to recover or release property.

73. After the bankruptcy neither the bankrupt nor any person claiming through or under him shall have power to recover any property, or to make any release or discharge thereof, nor shall the same be attached for any debt of the bankrupt by any person, and the Assignee for the time being shall have the like remedy to recover the same in his official name as the bankrupt himself might have had if his estate had not been brought under this Act.

Power of appointment in bankrupt.

74. No bankrupt after the bankruptcy shall execute, whether before or after he obtains his discharge, any power of appointment, or any other power vested in him, so as to defeat or destroy any contingent or other estate or interest in any property to which he may be beneficially entitled at any time before his discharge, in default of appointment or otherwise in case of non-execution of the power.

Powers vested in bankrupt.

75. Powers vested in the bankrupt, which he might legally execute for his own benefit, may be executed by the Assignee for the benefit of the creditors, as the bankrupt might have executed the same.

Avoidance of voluntary settlements.

76. Any settlement of property made by a debtor, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor be adjudicated a bankrupt under this Act within three years after the date of such settlement, be void as against the Assignee, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement.

Avoidance of marriage settlements.

77. Any contract made by a debtor in consideration of marriage for the future payment to or for the settlement upon or for his wife or children of any money or property wherein he had not, at the date of his marriage, any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, upon his being adjudicated a bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against the Assignee.

For the purposes of this and the last foregoing section the term "settlement" shall include any conveyance or transfer of property.

Avoidance of fraudulent preferences.

78. Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered, whether the act be voluntary or under pressure from a creditor, by any person unable to pay his

debts as they become due from his own moneys, in favour of any creditor, or any person in trust for any creditor, shall, if the person making, taking, paying, or suffering the same be adjudicated a bankrupt under this Act within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the Assignee. But this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration.

79. (1.) If a debtor makes any payment or gives or delivers any satisfaction or security to a creditor in respect of a debt the consideration for which was either wholly or partly antecedent to the date of the payment, gift, or delivery, and is adjudicated a bankrupt within three months after that date, and whether the payment, gift, or delivery was voluntarily made, or under pressure from a creditor, the Court may declare the payment, gift, or delivery to be void as against the Assignee in the bankruptcy.

Avoidance of preferential payments.

(2.) If a debtor pays any money or delivers any property to a creditor who has presented a bankruptcy petition against him, and within sixty days after the payment or delivery another bankruptcy petition is presented against the debtor, and he is adjudicated bankrupt thereon, the payment or delivery shall be void against the Assignee in the bankruptcy.

80. Every bill of sale shall be null and void as against the Assignee of a bankrupt's estate if it has been executed within six months prior to the order of adjudication being made, except as to money actually advanced or paid, or the actual value of goods or chattels sold or supplied by the grantee of the bill of sale to the grantor contemporaneously with the execution thereof.

Avoidance of bills of sale.

81. Subject as aforesaid, if the bankrupt at the time of the bankruptcy has in his possession, order, or disposition, by the consent and permission of the true owner thereof, any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the Court may order the same to be sold, disposed of, or applied for the benefit of the creditors under the bankruptcy.

Property in order and disposition of bankrupt.

82. Nothing in the last foregoing section contained shall—

- (1.) Affect any transfer or assignment of any ship, or any share thereof, made as a security for any debt by way of mortgage duly registered according to the enactments relative to the registration of ships for the time being in force; or
- (2.) Prejudice or affect any *bond fide* security, lease, or bailment of chattels held over or in respect of any such goods or chattels which has been duly registered under any Act or Acts providing for the registration thereof; or
- (3.) Be held to apply to consignments of goods held by the bankrupt in the ordinary course of his business for sale on account of any other person, the identity and ownership of which can be proved to the satisfaction of the Assignee or of the Court, and in respect of which the owner shall tender payment to the Assignee of all advances made thereon by the bankrupt, and of all charges due thereon to the bankrupt's estate, and shall surrender to the Assignee

Saving of bailments of chattels, consignments, &c.

any acceptances granted by the bankrupt in his favour by way of advance thereon.

Transactions not
invalidated.

83. Nothing in this Act contained shall render invalid—

(1.) Any payment made in good faith to any debtor before the date of the advertising of the adjudication of the bankruptcy by a person not having at the time notice of an act of bankruptcy committed by the debtor, and available for adjudication against him ;

(2.) Any payment or delivery of money or goods belonging to a debtor made to such debtor by a depositary of such money or goods before the date of the bankruptcy, who had not, at the time of such payment or delivery, notice of an act of bankruptcy committed by the debtor, and available for adjudication against him.

Transactions in
relation to the pro-
perty of a bankrupt
which shall be valid.

84. The following transactions by and in relation to the property of a bankrupt shall be valid, notwithstanding any prior act of bankruptcy :—

Any disposition or contract with respect to the disposition of property by conveyance, transfer, charge, delivery, of goods, payment of money, or otherwise howsoever, made by any bankrupt in good faith and for valuable consideration before the advertising of the adjudication of the bankruptcy with any person not having, at the time of making of such disposition of property, notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication.

Leases, &c.

85. Where, at the time of the bankruptcy, the bankrupt holds a lease, or agreement for a lease, with or without an agreement or covenant to purchase, or holds land subject to a perpetual yearly rent reserved by the conveyance or agreement for conveyance thereof, the following provisions shall have effect :—

(1.) The liability of the bankrupt in respect thereof shall absolutely cease :

(2.) The Assignee shall, by writing signed by him and filed in the Court within one month after the bankruptcy, if the existence of such lease, agreement, or holding as aforesaid shall have been stated in the bankrupt's statement of assets and liabilities, or otherwise within one month after notice in writing of the existence of such lease, agreement, or holding shall have been given to the Assignee, elect whether or not to take the lease, agreement, or conveyance, and the bankrupt's estate shall continue liable until such election as if there had been no bankruptcy :

(3.) If the Assignee elects to take the lease, agreement, or conveyance, the bankrupt's estate shall continue liable as if there had been no bankruptcy :

(4.) If the Assignee does not elect to take the lease, agreement, or conveyance within the time limited in that behalf, the land comprised therein shall go and remain to and with the person then entitled to the immediate reversion therein, subject nevertheless to any incumbrances then affecting the same, but without prejudice to the rights of the lessor.

86. Where, before the bankruptcy, the bankrupt has entered into an agreement for the purchase of any estate or interest in lands, the vendor thereof, or any person claiming under him, if the Assignee does not within one month, on being required, elect to complete or abandon the agreement, may apply to the Court, and the Court may thereupon order the Assignee to deliver up the agreement and the possession of the property to the vendor or person claiming under him, or may make such other order as the Court thinks fit.

Agreements for purchase.

87. When the bankrupt has any Government stock, funds, or annuities, or any of the stock of any public company in New Zealand, standing in his name in his own right, all persons whose acts or consents are necessary in this behalf shall, at the request of the Assignee, transfer such stock, funds, or annuities into the name of the Assignee, and pay all dividends then due or thereafter to accrue due thereon to the Assignee.

Stock, funds &c.

88. Where the bankrupt has any property of any kind whatsoever, or any right, title, or interest in any property whatsoever, anywhere other than in New Zealand, of which he may by law dispose, he shall forthwith, upon the request of the Assignee, execute all necessary assurances for granting and assigning the same to the Assignee for the benefit of the creditors of the bankrupt.

Property out of New Zealand.

89. Any treasurer or other officer of any bank, or solicitor, or other agent of the bankrupt, having any money or securities belonging to the bankrupt in his custody, possession, and power as such officer or agent which he is not by law entitled to retain as against the bankrupt or the Assignee, shall, on demand, pay and deliver the same to the Assignee.

Money or securities in hands of third persons.

90. If any person on examination under the provisions of this Act shall admit that he is indebted to the bankrupt, the Court may at any time thereafter, on application of the Assignee, and on proof that such person has refused to pay the amount admitted to be owing by him to the Assignee when the same had become payable, order him to pay to the Assignee, at such time and in such manner as the Court thinks expedient, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not as the Court thinks fit, with or without the costs of the order.

Court may order payment of debts due to bankrupt.

91. Every debtor and other person who shall be in possession of the whole or any part of the estate of any bankrupt after the said estate shall have become vested in the Assignee thereof shall, with respect to the estate so in his possession, be deemed to be a bailee within the meaning of "The Larceny Act, 1867."

Sub-debtors deemed to be bailees.

92. At any time after the expiration of six months from adjudication, or sooner with the sanction of the Court, the Assignee may sell by public auction or public tender, or with the approval of the supervisors (if any), and if not, then with the sanction of the Court, by private contract, all or any of the book-debts due or growing due to the bankrupt, and the books relating thereto, and the goodwill of his trade or business, and assign the same to the purchaser; and the purchaser may, by virtue of the assignment, sue for and recover in his own name the debts assigned to him.

Book debts may be sold.

In no case shall the bankrupt be allowed to be the purchaser unless the Court gives its special sanction in that behalf.

Bankrupt not to be purchaser.

Enforcing Surrender of Property.

Bankrupt may be arrested, and books, &c., seized.

93. The Court, at the instance of the Assignee or any creditor, may, at any time after the filing of a petition in bankruptcy by or against a debtor,—

- (1.) If it appear to the Court that there is probable reason for believing that the debtor is about to go abroad or quit his place of residence, with a view of defeating, delaying, or embarrassing proceedings under this Act ;
- (2.) If it appear to the Court that there is probable cause for believing that the debtor is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of for the purposes of this Act, or that there is probable ground for believing that he has concealed, or is about to conceal or destroy, any of his goods or chattels, or any of his books, documents, or writings,—

by warrant cause a debtor to be arrested and kept in custody until he shall find sureties to the satisfaction of the Court that he will appear and attend from time to time as the Court shall order until he is discharged by the Court ; and may cause any books, papers, moneys, goods, and chattels belonging to such debtor wheresoever they may be found to be seized, and kept until such time as the Court may direct :

Application for discharge.

Provided that any person arrested upon any such warrant, or any person whose books, papers, moneys, goods, or chattels have been seized under any such warrant, may apply at any time after such arrest or seizure to the Court for a summons on the Assignee or creditor aforesaid to show cause why the person arrested should not be discharged out of custody, or why his books, papers, moneys, goods, or chattels should not be delivered up to him ; and the Court may make such order therein as it shall think fit.

Trustee may break open house of bankrupt and seize property.

94. The Assignee or any other person may, if thereunto authorized by a warrant issued by the Court, break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be, and seize and take possession of his property there.

May search house, &c., of other persons under warrant.

95. Where the Court is satisfied that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to the Assignee and his assistants, or other persons appointed by the Court, who may execute the same according to the tenor thereof, and shall in respect to the execution thereof have the like protection as is allowed by law in respect of the execution of a search-warrant for property supposed to be stolen.

Magistrate may back warrant.

96. Where a Justice of the Peace residing in or near the place where a search-warrant of the Court is to be executed is satisfied that property to which the warrant relates is concealed in a house or place other than that mentioned in the warrant, the Justice may back the warrant, describing thereon such other house or place, and thereupon the warrant may be executed according to the tenor thereof as backed.

97. If the bankrupt or any member of his family shall refuse when required by the Assignee to quit and deliver up possession of any tenement forming part of the property vested in the Assignee under the bankruptcy, the Assignee may apply to the Court for a summons calling upon such person to show cause why he should not forthwith quit and deliver up possession of the premises, and on the hearing of the said summons the Court may make such order as the case may require, and such order shall be enforceable as any other order of the Court.

Bankrupt refusing to quit may be brought before Court.

98. The Court, upon the application of the Assignee, may from time to time order that, for such time as the Court thinks fit, not exceeding three months from the date of such order, post letters addressed to the bankrupt shall be redirected, sent, or delivered by the Postmaster-General or the officers acting under him to such Assignee or otherwise as the Court directs, and the same shall be done accordingly.

Court may order letters of bankrupt to be sent to Assignee.

99. The Assignee may summon before him and examine on oath the bankrupt or his wife, or any other person whomsoever known or suspected to have in his possession any of the property of the bankrupt, or supposed to be indebted to the bankrupt, or whom he may deem capable of giving any information respecting the bankrupt, his trade dealings or property, and may require such person to produce any documents in his custody or power relating to the dealings or property of the bankrupt.

Assignee may examine certain persons.

The examination of every such person shall be committed to writing, and such person, on being required to do so, shall sign the same; and if any person so summoned refuses or neglects to come before such Assignee at the time appointed, having no lawful impediment, then the Court may, on the application of the Assignee, by warrant, cause such person to be apprehended and brought up for examination before the Court, and all expenses occasioned by such apprehension and examination before the Court shall be paid by the person apprehended and examined, if it shall appear to the Court that the evidence given by him was necessary for the purposes of the estate.

100. The bankrupt, and every other person attending on any such summons, may have such expenses allowed to him or them as general rules direct; and no person so summoned to attend shall be liable to any penalty or punishment for failing to obey the summons unless the reasonable expenses of his attendance have been first paid or tendered to him.

Witnesses' expenses.

101. If the bankrupt or any other person refuses, when required by the Court or Assignee, as the case may be, to be sworn, or refuses, without reasonable excuse, to answer any question put by the Court or Assignee, or does not fully answer to the satisfaction of the Court or Assignee any such question, or refuses to produce any documents in his custody or power after having been duly required to produce the same, or refuses to sign his or her examination when required by the Court or Assignee, or does not produce all books and documents which he or she is required by the Court or Assignee to produce, if in his or her possession or under his or her control, the Court may, by warrant, commit him or her to such prison as the Court think fit, there to remain without bail until he or she submits to the Court and does the thing which he or she has so refused or failed to do.

Persons refusing to be sworn, &c., may be committed.

Requisites of
warrant.

102. Any such warrant of commitment need not set forth or specify any part of the examination of the person committed, but shall refer to the examination as remaining on the file of proceedings, and shall specify the date thereof; but where any person is committed for refusing to answer or not fully answering a question on examination, that question shall be specified in the examination.

Copy of examination
to be given to person
committed.

103. A copy of the examination of the person so committed shall be delivered personally to him or her within forty-eight hours from his or her actual lodgment in prison, and in default thereof the person committed shall be discharged from custody either by the Court committing such person, or by the order of any Court or Judge before whom such person is brought, with such costs (if any) as the Court or Judge thinks fit.

Person not to be
discharged for
informality.

104. Any person committed as aforesaid may apply at any time for an order for his discharge, and the Court may thereon make such order as it shall think fit; and if the Court or Judge before whom such person is brought, on consideration of the whole examination, is of opinion that the answering therein is satisfactory, the Court or Judge may order the discharge of the person committed; but such person shall not be discharged by reason only of any informality.

Proofs of Debt or Demand.

Proof deemed
election.

105. The proving or claiming of a debt or demand under this Act shall be deemed an election by the creditor to take the benefit of the bankruptcy with respect to that debt or demand, and any action, suit, or proceeding by the creditor to recover such debt or enforce such demand shall be *ipso facto* restrained.

Creditors may prove
debt or demand.

106. Every person with whom the bankrupt has, before the bankruptcy, contracted a debt, and every person to whom the bankrupt has before that time become liable in respect of a demand, may prove the amount of such debt or demand.

Delivery and
amendment of
proofs.

107. (1.) Every creditor shall send or deliver his proof of debt as soon as may be after adjudication.

(2.) The proof shall be sent or delivered to the Assignee. It may be sent through the post office in the ordinary way of sending letters.

(3.) The Assignee shall have power to accept or reject proofs, either wholly or in part, subject to appeal to the Court.

(4.) A creditor may, with the leave of the Assignee, amend his proof, and thereupon shall be entitled to be paid, out of any money for the time being available for dividend, any dividend or share of dividend he may have failed to receive by reason of the inaccuracy of his original proof, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

Every amendment of a proof shall be made subject to the same formalities as an original proof, and shall be declared to in the same manner.

(5.) A secured creditor shall state in his proof the particulars of his security and the value at which he estimates it, and shall be deemed to be a creditor only in respect of the balance due to him after deducting the value so estimated.

(6.) A secured creditor shall, on application made by any person interested, within a prescribed time after the date of adjudication, and on payment of the value of his security as estimated in his original or amended proof, give up his security to be dealt with as part of the property of the bankrupt for the benefit of the creditors.

(7.) No proof shall be admitted or amended after the expiration of three months from the date of the adjudication, except under special circumstances approved by the Court as sufficient to justify the delay.

108. Every creditor may prove his debt or demand by delivering or sending as aforesaid to the Assignee a statement of his debt, and of the account, if any, between him and the bankrupt. Mode of proof by declaration.

Every such statement shall have indorsed thereon or annexed thereto a statutory declaration made by the creditor or by his attorney that such statement is a true and complete statement of accounts between him and the bankrupt, and that the debt thereby appearing to be due from the bankrupt's estate to the creditor is justly due.

109. Companies and other bodies incorporated or authorized to sue may prove by an agent, who shall be deemed the claimant, and who shall in his declaration declare that he is such agent, and that he is authorized to make such proof. Proof by companies.

110. Where the Assignee has disallowed any proof, unless such disallowance shall be appealed against within thirty days thereafter, and reversed on appeal, the same shall be final and conclusive as to the right of the creditor to prove for the debt or claim in respect of which the proof has been disallowed. Disallowed proofs.

111. The Assignee shall have power to summon before him, and to examine on oath or otherwise, any person who has tendered or made a proof, whether preferential or otherwise, or who has made a declaration or statement, and may also summon before him any such person or any person capable of giving evidence concerning such proof, or the debt sought to be proved; and in case any person so summoned shall neglect or refuse to attend, or shall refuse to be sworn or to give evidence, the Assignee may obtain a Judge's order to bring the person so neglecting or refusing before the Court for examination. Assignee may examine persons on oath.

All costs incident to such order and examination shall be paid by the person so neglecting or refusing, unless the Court shall otherwise order.

112. Where mutual credit has been given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, or where any person entitled to prove in respect of any debt or demand is indebted or liable to the bankrupt in respect of any debt or demand, the account between the bankrupt and such person shall be stated, and one debt or demand may be set against another, and no more than what appears due on either side on the balance of account shall be claimed or paid on either side. Mutual debts may be set off.

113. When a debt or sum certain on which interest is not reserved or agreed for is due at the time of the bankruptcy, and is provable, the creditor may prove also for interest at eight pounds per centum per annum from the time when the debt or sum was payable, if it was payable by virtue of a written instrument at a certain time, or if not, then from the time when demand of payment was made in writing, Interest.

with a notice in writing that interest would be claimed from that demand until payment.

Proof of debts not payable at time of bankruptcy.

114. Any creditor in respect of a debt not payable at the time of the bankruptcy, whether on a negotiable instrument or not, may prove the debt as if it was payable presently, allowing thereout discount at eight pounds per centum per annum from the date of proof until the time when the debt is payable.

Proof of debt payable by instalments.

115. Where the bankrupt has, before the bankruptcy, contracted a debt payable by instalments, the creditor may prove for the aggregate amount of the instalments unpaid, allowing thereout discount at eight pounds per centum per annum from the amount of each instalment from the date of proof until the due date of such instalment.

Rights of creditor of joint debtor.

116. If one partner of a firm become bankrupt, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat; but shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

Proof where bankrupt member of partnership.

117. Where the bankrupt is, at the time of the bankruptcy, liable as member of two or more partnerships carrying on distinct trades and having distinct estates, or as a sole trader, and also as member of a partnership on a bill of exchange, promissory note, or other negotiable instrument, or on any contract, the creditor to whom the bankrupt is so liable may prove against each of the estates on which the liability attaches, notwithstanding that at the time when the liability accrued he had notice of the connection between the partnerships, or between the sole trader and the partnership.

Unliquidated damages.

118. Where the bankrupt is, at the time of the bankruptcy, liable under a contract or promise to a demand in the nature of unliquidated damages, then, notwithstanding that such contract or promise has not been broken before the bankruptcy, the creditors may agree with the person claiming as to the amount to be allowed as assessed damages, and, if the parties do not agree, the Court may direct the damages to be assessed by any Court of competent jurisdiction, and may give all necessary directions for that purpose, and in any case the damages assessed may be proved under the bankruptcy.

Proof for moneys ordered to be paid.

119. A person entitled to enforce against the bankrupt payment of any money, costs, or expenses by process of contempt issuing out of any Court may prove for the amount payable under the process, subject to such ascertaining of the amount as may be properly had by taxation or otherwise.

Proof on bill of sale.

120. A creditor secured by a bill of sale which under the provisions of this Act is declared wholly or in part void against the Assignee in the bankruptcy shall be entitled to prove for so much of the money which is justly owing to him and is not admitted to be secured under the said bill of sale.

Half-year's rent to be paid by assignee; no distress necessary.

121. In any case where any sum of money is due by a bankrupt for rent, such rent, not exceeding one half-year's rent accrued due before the date of the adjudication of bankruptcy, shall be paid by the assignee in priority of all other debts (including those mentioned in section one hundred and thirty-seven), but a person entitled to

more than one-half year's rent may prove for the excess, and it shall not be necessary for the landlord to levy a distress.

122. Where the bankrupt is liable to pay a rent or to make any other payments falling due at fixed periods, and the bankruptcy happen at a time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the day of bankruptcy, as if it grew due from day to day.

Proof for money falling due at fixed periods.

123. The obligee in a bottomry or respondentia bond and the assured in a policy of assurance made on good or valuable consideration may claim against the estate of the obligor or insurer, and after the loss or contingency has happened may prove and receive dividends as if the loss or contingency had happened before the bankruptcy.

Proof on bottomry or respondentia bond.

124. Where a policy of insurance on a ship or on goods has been effected with the bankrupt as a subscriber or underwriter, the person effecting the policy may prove in respect thereof, although he was not beneficially interested in the ship or goods.

On policy of insurance.

125. If the bankrupt is, at the time of the bankruptcy, liable on a covenant, contract, or promise to pay premiums on a policy of insurance, or to make any other periodical payment, or to repay to any person or indemnify any person against such payments, the covenantee or other person entitled to the benefit of the covenant, contract, or promise may prove for the value of the bankrupt's liability thereunder.

Proof under covenant, contract, &c.

126. Where the bankrupt has, before the bankruptcy, contracted a debt payable on a contingency which has not happened before the bankruptcy, the creditor may, before the contingency happens, prove for the value of the debt and receive dividends.

Debt payable on contingency.

127. Where the bankrupt has, before the bankruptcy, contracted a liability to pay money on a contingency which has not happened before the bankruptcy, then, if the liability is not provable under any other section of this Act, the person with whom the liability has been contracted may claim for such sum, and, after the contingency has happened and the demand has been ascertained, may prove in respect therefor and receive dividends as nearly as may be as if the contingency had happened and the demand had been ascertained before the bankruptcy, not disturbing former dividends; but if the claim is not wholly or in part converted into a proof within six months from the bankruptcy, it may any time thereafter be expunged wholly or in part by order in Court.

Liability to pay money on contingency.

128. An annuity creditor of the bankrupt, by whatever assurance the annuity is secured, whether there were or not any arrears due at the bankruptcy, may prove for the value of the annuity, regard being had to its original price and to the diminution of its value caused by the lapse of time to the date of the bankruptcy.

Annuity creditor.

129. Where any person is entitled to an annuity granted by the bankrupt he shall not sue any person who is surety for payment thereof until the annuitant has proved for the value of the annuity and for the arrears thereof.

Payment of annuity by surety.

If the surety after such proof pays the amount proved, he shall be thereby discharged from all claims in respect of the annuity, and if the surety does not, before any payment of the annuity subsequent to the bankruptcy becomes due, pay the amount proved, he may be sued for the accruing payments of the annuity, until the annuitant, either by

dividends from the estate of the bankrupt or by payments from the surety, has received the amount proved, with interest at eight per centum per annum from the time of notice to the surety of the proof and of the amount thereof.

After such receipt by the annuitant the surety shall stand in his place in respect of such proof for the amount received by the annuitant from the surety, and the bankrupt's order of discharge shall discharge him from all claims of the annuitant or of the surety in respect of the annuity.

Payment of debt by surety.

130. Where any person is, at the time of the bankruptcy, surety or liable for any debt or liability of the bankrupt, and pays or satisfies the debt or liability, or any part of it in discharge of the whole, although he does so after the bankruptcy, the following provisions shall have effect:—

- (1.) If the creditor has proved, the surety or person liable may stand in his place in respect of the proof:
- (2.) If the creditor has not proved, the surety or person liable may prove for the payment made by him as a debt, not disturbing former dividends, and may receive dividends.

Proof for calls.

131. Where the bankrupt is, at the time of the bankruptcy, a member of a company registered under any Act relating to the registration of joint-stock companies or mining companies, and not in the course of being wound up under that Act, he shall be by virtue of the bankruptcy absolutely discharged from all liability in respect of such membership, and shall be deemed to have ceased to be a member as from the date of the bankruptcy; and the company may prove for the amount of calls made before the bankruptcy in respect of the shares held by the bankrupt and not paid, and may claim for the value, estimated as the Court directs, of the liability to calls to be made within one year after the bankruptcy in respect of such shares.

Proof for costs.

132. Every person who, under a verdict, judgment, decree, order, or rule in or of a Court of law or equity, or other Court, obtained before the bankruptcy, would have been entitled to recover costs from the bankrupt if he had not become bankrupt, may prove for the amount of such costs when taxed, although the taxation is not had before the bankruptcy.

Proof after action brought.

133. A creditor who has brought an action or instituted a suit against a bankrupt in respect of a debt or demand provable under this Act shall not prove a claim in respect of that debt or demand without first relinquishing the action or suit: Provided always as follows:—

- (1.) Such creditor shall not be liable by reason thereof to pay the costs of the action or suit:
- (2.) Where the action or suit is against the bankrupt jointly with any other person, the relinquishment thereof, as against the bankrupt, shall not affect the action or suit as against such other person:
- (3.) If the bankruptcy be annulled, the creditor may proceed in the action or suit as if he had not proved or claimed.

Distribution of Assets.

Assignee to realize property.

134. The Assignee shall, with all convenient speed after his appointment, proceed by the best means in his power, subject never-

theless to the provisions of this Act, to convert the property of the bankrupt into money.

135. The Assignee shall pay all money from time to time received by him into such bank as the Court shall direct, to the joint credit of himself and the supervisors, if any, and where there is no supervisor to his own credit as "Official Assignee for the bankrupt estate of . . ."

Assignee to pay
moneys into bank.

A separate account for each estate shall be kept by the Assignee of all money paid into or withdrawn from the bank in respect thereof; and all money required for the purposes of any estate shall be withdrawn from the sum to the credit of such estate at the bank aforesaid by cheques to be signed by the Assignee and countersigned by the supervisors (if any) of the estate; and where there are none, then by cheques to be signed by the Assignee alone.

136. If any Assignee at any time retains in his hands a sum exceeding twenty pounds for more than six days, he shall pay interest on the amount so retained in excess of twenty pounds at the rate of twenty pounds per centum per annum, and shall, unless he explains the retention to the satisfaction of the Court, be liable to be dismissed from his office, and to pay any expenses occasioned by reason of his default.

Penalty for retaining
moneys in hand.

137. All costs, charges, allowances, and expenses properly incurred by or payable by the Assignee in the execution of his office under this Act shall be paid in priority of any debts.

Preferential debts to
be paid.

The debts hereinafter mentioned shall be paid in priority of all other debts excepting rent, as provided by section one hundred and twenty-one.

Between themselves such debts shall rank equally, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves, that is to say,—

- (1.) All wages or salary of any clerk or servant in the employment of the bankrupt at the date of the order of adjudication, and not exceeding three months' wages or salary, and not exceeding one hundred pounds;
- (2.) All wages of any artisan, labourer, or workman, whether skilled or unskilled, in the employment of the bankrupt at the date of the order of adjudication, and not exceeding three months' wages at current rates;
- (3.) All wages of any artisan, labourer, or workman, whether skilled or unskilled, in the employment of the bankrupt at piecework at the date of the order of adjudication, and not exceeding the amount earned at such piecework in the three months preceding such order.

And any such clerk, servant, artisan, labourer, or workman may prove for any sum exceeding that amount.

Provided, however, that no bankrupt shall be entitled to apply for or receive his final discharge until the amounts owing to all persons mentioned in the preceding subsections one, two, and three of this clause who have claims against his estate shall have been fully paid and satisfied.

The matters hereinafter mentioned shall, unless the Court shall order otherwise, be paid in priority of all other debts excepting the

debts hereinbefore mentioned. Such matters between themselves shall rank equally, and shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

- (1.) The costs and expenses incurred by a creditor in issuing the execution whereon the debtor was adjudged bankrupt.
- (2.) The costs and expenses incurred by a debtor in filing his petition, and other matters consequent thereon.
- (3.) All rates and taxes due from the bankrupt at the date of the order of adjudication, and having become due and payable within six months next before that date.
- (4.) Any sum ordered by the Court to be paid out of the bankrupt's estate to or for the use of an apprentice, under section one hundred and thirty-eight of this Act.

Preferential claims of apprentices.

138. Where at the time of the bankruptcy any person is apprenticed to the bankrupt, the bankruptcy shall, as between the bankrupt and the apprentice, be a complete discharge of the liability of the bankrupt and apprentice respectively under the deed or articles.

If any money has been paid by or on behalf of such apprentice to the bankrupt as an apprentice-fee, the Court, on proof thereof, may, if it think fit, order such sum as the Court thinks reasonable to be paid out of the bankrupt's estate to or for the use of the apprentice, regard being had to the amount paid by him or on his behalf, and to the time during which he resided or served with the bankrupt under the deed or articles before the bankruptcy.

It shall be the duty of the bankrupt, at the request and cost of the apprentice, to assign the apprentice to any person to be named by him in that behalf, and the service of the apprentice with the bankrupt shall, to the extent of the time of such service, be deemed to have been good service under the deed or articles between him and the bankrupt.

Allowance to bankrupt.

139. The Assignee shall from time to time pay to the bankrupt such allowance (if any) out of his estate, until he has obtained or been refused his discharge, or had his discharge suspended, as the creditors in general meeting shall, by resolution, consider necessary for the support of the bankrupt and his family, or as the Court may, on review of such resolution or in the absence of such resolution, direct.

Application of proceeds of property.

140. The Assignee shall, subject to the provisions of this Act, pay and apply the proceeds arising from the bankrupt's property in manner following; that is to say,—

- (1.) In payment of all preferential debts and sums of money directed or authorized by this Act to be paid to creditors or others in priority to the general creditors;
- (2.) In payment to and amongst all other creditors who have proved their debts rateably in proportion to the amounts of their respective proofs.

Dividends.

First dividend to be declared within three months, or meeting of creditors to be summoned.

141. The Assignee shall file in the Court his first accounts and declare the first dividend (if any) within three months after the date of the first meeting of creditors, and succeeding dividends at intervals from each other not exceeding three months, until the final dividend

is declared, unless such periods, or any of them, shall be enlarged by resolution of the creditors passed at any of their meetings.

Notice of the time and place where any dividend will be paid shall be advertised, and sent by post-card to the creditors who are not resident in the district.

In the event of the Assignee not declaring a dividend at the respective prescribed times, he shall summon a meeting of the creditors, and explain to them his reasons for not declaring the same.

142. Notwithstanding anything contained in the last foregoing section, any creditor who has proved his debt may apply to the Court at any time for an order requiring the Assignee to proceed with the distribution of the assets of any estate forthwith in such manner as the Court may direct, having regard to the circumstances of the case.

Creditor may apply for summary distribution of assets.

In any such case the Court may make such order as it shall think most fitting, or may refuse to make any such order.

143. In the calculation and distribution of a dividend it shall be obligatory on the Assignee to make provision for debts provable, appearing from the bankrupt's statements or otherwise to be due or owing to persons resident in places so distant from the place where the Assignee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in respect of claims not yet determined.

Calculation and distribution of dividend.

144. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid a dividend or dividends out of any moneys for the time being remaining in the hands of the Assignee available for future distribution amongst the creditors; but he shall not be entitled to disturb the distribution of any dividend declared before he proved his debt.

Creditors proving after dividend declared.

145. Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on application of any person interested, be declared together, and the expenses of and incident to such dividends shall be fairly apportioned by the Assignee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Joint and separate properties.

The creditors of the bankrupts jointly shall not receive any dividend out of the separate property of any one of such bankrupts until his separate creditors have received the full amount of their respective debts; nor shall any separate creditor receive a dividend out of the joint property until the creditors of the bankrupts jointly have received the full amount of their respective debts.

146. When the Assignee has converted into money all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the supervisors (if any), be realized without needlessly protracting the bankruptcy, he shall declare a final dividend, advertise notice of the time at which it will be distributed, and apply the proceeds as directed by this Act. He shall also give notice of the dividend by post-card to creditors who are not resident in the district.

Final dividend when property realized.

147. If the bankrupt's estate shall not have been wholly divided within twelve months after the filing of the petition for adjudica-

Final dividend to be declared within eighteen months.

tion by or against him, the Assignee shall advertise not less than twenty-one days' notice of a day, which shall be within fifteen months of the filing of the aforesaid petition, upon which he will pay a final dividend, and he shall give notice of the dividend by post-card to the creditors who are not resident in the district.

Upon the day so appointed, the Assignee shall distribute the balance in hand of the property of the bankrupt among such creditors as have proved their debts; and such dividend shall be final, unless any part of the estate or effects of the bankrupt shall afterwards come to the Assignee, in which case he shall, as soon as may be, convert such estate and effects into money, and within two months after the same is converted shall divide the same in manner aforesaid.

Surplus after
payment of
creditors, &c.

148. The bankrupt shall be entitled to any surplus remaining after payment of all claims proved by his creditors, and of the costs, charges, and expenses of the proceedings under this Act, and the Assignee shall on demand pay over the same to him.

DISCHARGE OF BANKRUPT.

Examination of Bankrupt.

Bankrupt to be
publicly examined in
Court as to his
affairs.

149. (1.) Where a debtor has been adjudicated bankrupt, the Court shall hold a public sitting, on a day to be appointed by the Court, for the examination of the bankrupt, and the bankrupt shall attend thereat, and shall be examined as to his conduct, dealings, and property.

Notice of the time and place so appointed shall be advertised by the Assignee, at least one week prior to the time fixed for such examination, and shall be sent by post-card to creditors who are not resident in the district.

(2.) Any creditor who has proved his claim may, without any notice to the bankrupt, examine him.

(3.) The Court may adjourn the examination from time to time.

(4.) The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him.

(5.) The bankrupt shall not be deemed to have passed his public examination until the Court, by order, declares that his affairs have been sufficiently investigated, and that his examination is finished.

Close of Bankruptcy.

On composition
approved or property
realized, bankruptcy,
may be closed.

150. When a composition has been approved by the Court, or the Assignee reports to the Court that the whole property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can, in the opinion of the Assignee, be realized without needlessly protracting the bankruptcy, the Court may make an order that the bankruptcy has closed, and the bankruptcy shall be deemed to have closed at and after the date of the order.

Notice of the order closing the bankruptcy shall be advertised, and a production of copies of the newspapers containing the notice shall be conclusive evidence of the order having been made, and of the date and effect thereof.

Annulling of Adjudication.

151. In any of the cases following, the Court may, by order, on the application of any person interested, annul the adjudication, and thereupon the adjudication shall be annulled from and after the date of the order annulling it, that is to say,—

Court may annul adjudication in certain cases.

- (1.) Where, in the opinion of the Court, an order of adjudication ought not to have been made; or
- (2.) Where it is proved to the satisfaction of the Court that the debts of the bankrupt are fully paid or satisfied; or
- (3.) Where a bankruptcy is closed, and the bankrupt has passed his public examination, or is closed in consequence of approval of a composition, and in either of such cases the Court, after examining the Assignee as to the bankrupt's conduct and affairs, is satisfied that the bankruptcy has been caused by misfortune without any misconduct on the part of the bankrupt.

For the purposes of this section any debt disputed by the bankrupt shall be considered as paid or satisfied if he enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs.

A notice shall be forthwith advertised of every order annulling an adjudication.

Discharge of Bankrupt.

152. (1.) When a bankrupt has passed his public examination he may apply to the Court for an order of discharge, and the Court may appoint a day for hearing the application.

Application for discharge.

(2.) The application may be made either after the close of the bankruptcy or during its continuance, but in the latter case shall not be made except with the assent of a majority in number representing three-fourths in value of the creditors present or represented by proxy or signified in the prescribed manner, or if no sufficient number of creditors appear at the meeting called for that purpose, then on a certificate by the Assignee that the bankrupt has duly surrendered his property, and that, in the opinion of the Assignee, there is no further occasion for the bankrupt's services in the bankruptcy.

153. Notice of the appointment by the Court of the day for hearing the application for discharge shall be advertised by the bankrupt at least two weeks prior to the day so appointed, and sent by post-card to the creditors who are not resident in the district.

Notice of appointment for hearing.

154. Any creditor who has proved his claim may, without notice to the bankrupt, and notwithstanding any resolution recommending the discharge of the bankrupt, oppose the bankrupt's application for an order of discharge, and may examine him as to any matter or thing relating to his estate, and as to his transactions and conduct, and as to the alleged causes of his inability to pay his debts.

Court to examine Assignee and hear objections of creditors who have proved.

155. The Court may adjourn the hearing of any such application as it shall think fit, and may require any opposing creditor to furnish the bankrupt before the time appointed for the adjourned hearing with a written statement of his objections to the bankrupt's discharge.

Adjournment of hearing. Objections to be stated in writing.

Order of discharge to be in absolute discretion of Court.

156. The Court, at the hearing, shall examine the Assignee as to the bankrupt's conduct and affairs, and in its own absolute discretion may either grant, refuse, or suspend an order of discharge, as it shall think fit, and that notwithstanding the certificate filed as aforesaid shall either recommend an immediate discharge, or shall recommend that the discharge be refused or suspended.

Court may grant, suspend, or refuse discharge.

157. If on the hearing of an application for an order of discharge it appear to the Court that the bankrupt has been guilty of any offence under this Act, or where the Court is satisfied, upon the representation of any creditor, supervisor, or Assignee, that there is ground to believe that the bankrupt has been guilty of any such offence, or where the Court is of opinion that the bankrupt has been guilty of misconduct or gross negligence in the conduct of his business, the Court may either—

- (a.) Refuse an order of discharge; or
- (b.) Suspend the same from taking effect for such time as the Court may think fit; or
- (c.) Grant an order of discharge, subject to any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings, or income which may afterwards become due to the bankrupt, and touching after-acquired property of the bankrupt.

Conditional order of discharge.

158. The Court, as one of the conditions referred to in the last-preceding section, may order that the bankrupt shall not be entitled to his discharge until there shall have been paid out of his estate, during the continuance of the bankruptcy and thereafter, dividends or a composition amounting in the whole to so many shillings in the pound as the Court, in its discretion, may fix, or that security for the payment thereof has been found to the satisfaction of the creditors.

And the Court may, by further order, rescind any such prior order, or vary the same, but so that the amount appointed to be paid by the original order shall not be augmented.

Subsequent application for discharge.

159. The bankrupt shall, at any time after his estate has paid the whole amount of dividends or composition fixed by the Court as aforesaid, be entitled to apply for and obtain his discharge in the same manner as if such amount had originally been paid out of his estate.

Subsequent unconditional discharge.

160. In case of failure to pay the whole of the amount so fixed as aforesaid, the Court may at any time grant an order of discharge to the bankrupt on his application, if the Court shall be satisfied that the failure to pay such amount has arisen from circumstances for which the bankrupt cannot justly be held responsible.

Discharge not to release debts due to the Crown.

161. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust wilfully committed by himself, nor from any debt or liability whereof he has obtained forbearance by any fraud; but it shall release him from all other debts provable under the bankruptcy with the exception of—

- (1.) Debts due to the Crown;
- (2.) Debts with which the bankrupt stands charged at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the Sheriff or other public officer on a bail-bond entered

into for the appearance of any person prosecuted for any such offence.

And he shall not be discharged from such excepted debts unless the Colonial Treasurer certify in writing his consent to his being discharged therefrom.

162. An order of discharge shall be sufficient evidence of the bankruptcy and of the validity of the proceedings thereon; and, in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

Order of discharge
evidence of bank-
ruptcy, &c.

PUNISHMENT OF FRAUDULENT DEBTORS.

Misdemeanours.

163. Any person adjudged bankrupt shall, in each of the cases following, be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour, that is to say,—

Offences deemed
misdemeanours, &c.

- (1.) If he does not, to the best of his knowledge and belief, fully and truly discover to the Assignee all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud :
- (2.) If he does not deliver up to the Assignee, or as he directs,—
 - (a.) All such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud ;
 - (b.) All books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud :
- (3.) If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud :
- (4.) If, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fail for the period of a month to inform the assignee thereof :
- (5.) If, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :
- (6.) If, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he—
 - (a.) Conceals, destroys, mutilates, or falsifies, or is

privity to the concealment, destruction, mutilation, or falsification, of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;

(b.) Makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;

(c.) Fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission, in any document affecting or relating to his property or affairs:

(7.) If, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he—

(a.) Conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied he had no intent to defraud:

(b.) Fraudulently removes any part of his property of the value of ten pounds or upwards.

(8.) If, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors, within four months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses:

(9.) If, within four months next before the presentation of a bankruptcy petition by or against him, he,—

(a.) By any false representation or other fraud, has obtained any property on credit, and has not paid for the same;

(b.) Under the false pretence of carrying on business and dealing in the ordinary course of trade obtains any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud;

(c.) Pawns, mortgages, pledges, or disposes of, otherwise than in the ordinary way of trade, any property which he has obtained on credit, and has not paid for, unless the jury is satisfied that he had no intent to defraud:

(10.) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy.

164. If any person who is adjudged a bankrupt after the presentation of a bankruptcy petition by or against him, or within four months before such presentation, quits New Zealand and takes with him, or attempts or makes preparation for quitting New Zealand and for taking with him, any part of his property to the amount of twenty pounds or upwards which ought by law to be divided amongst his creditors, he shall, unless the jury is satisfied that he had no intent to defraud, be guilty of felony, punishable with imprisonment for any term not exceeding two years, with or without hard labour.

Penalty for absconding with property.

165. If any creditor in any bankruptcy or under any deed of composition with creditors in pursuance of this Act wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

False claim, &c.,
a misdemeanour.

166. Every Court having jurisdiction in bankruptcy shall have all powers and jurisdiction requisite for the purpose of committing for trial any bankrupt where there is, in the opinion of the Court, ground to believe that the bankrupt has been guilty of any offence which is by statute made a misdemeanour in cases of bankruptcy, and for granting or refusing bail to any such bankrupt.

Power to commit
offenders for trial.

167. Where a bankrupt is committed for trial under this Act the prosecution shall be conducted as an ordinary criminal prosecution, and all the expenses of the prosecution shall be allowed and paid out of any moneys appropriated by the General Assembly for criminal prosecutions, unless the Court shall order the same to be paid out of the bankrupt's estate.

Prosecutions to be
deemed public
prosecutions.

168. Every misdemeanour under this Act shall be deemed to be an offence within and subject to the provisions of "The Vexatious Indictments Act, 1870."

Vexatious
Indictments Act
to apply.

169. In an indictment for an offence under this Act it shall be sufficient to set forth the substance of the offence charged, in the words of this Act, specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, adjudication, or any proceedings in, or order, warrant, or document of, any Court acting under this Act.

Substance of offence
in indictment to be
sufficient.

170. No indictment shall be quashed for any technical defect therein, or any formal defect therein appearing on the face thereof, but every such indictment shall be amended by the Judge and the trial proceed as if such defects respectively had not occurred, and a conviction shall be had in every case where the evidence at the trial manifests that an offence has been committed.

Indictments may be
amended.

Summary Jurisdiction.

171. If any bankrupt has committed any of the offences herein-after enumerated the Court may, at the final examination of the bankrupt, or on the hearing of the application for his discharge, by order under the seal of the Court, adjudge such bankrupt to be imprisoned in such prison as the Court may appoint, for any term not exceeding twelve months, with or without hard labour; that is to say, if the bankrupt—

Court may punish
offenders for mis-
conduct or for
fraudulently
obtaining credit.

- (1.) Has carried on trade by means of fictitious capital; or
- (2.) Could not have had, at the time when any of his debts were contracted, any reasonable or probable ground of expectation of being able to pay the same; or
- (3.) Has, with intent to conceal the true state of his affairs, wilfully omitted at any time to keep proper books or accounts; or
- (4.) Has, within three years before the commencement of the bankruptcy, failed to keep usual and reasonable books and

accounts setting forth truthfully the state of his business transactions; or

- (5.) Has put any of his creditors to unnecessary expense by frivolous or vexatious defence to any action or suit to recover any debt or money due from him; or
- (6.) Has, in incurring any debt or liability, obtained credit under false pretences, or by means of any other fraud; or
- (7.) Has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property; or
- (8.) Has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him; or
- (9.) If the Court is of opinion that his bankruptcy is attributable to rash and hazardous speculations, or unjustifiable extravagance in living.

Penalty in cases where no special penalty is provided.

172. If any person shall be guilty of an offence against this Act, for which no special penalty is provided, he shall for every such offence be liable to be summarily sentenced by the Court to pay a penalty not exceeding twenty pounds, or to be imprisoned for any term not exceeding three months with or without hard labour in such prison as the Court may appoint.

RELEASE OF ASSIGNEE, ACCOUNTS, AUDIT.

Assignee to keep books of account.

173. Every Assignee under this Act shall keep proper books of account showing a debtor and creditor account of his receipts and payments and of the balance belonging to each estate of which he is Assignee, in such form as may be prescribed, and shall, whenever required by the Court, verify the same by statutory declaration.

Audit of accounts.

174. The said books of account shall be audited at least four times in every year by an auditor to be appointed by the Governor, and for the purposes of such audit the Assignee shall furnish the Auditor aforesaid with such vouchers and information respecting the accounts as he may require, and the said Auditor may at any time require the production of and inspect any books or accounts kept by the Assignee.

If the Assignee refuses or neglects to furnish any such vouchers or information, or to give due facilities for such inspection, he shall be deemed guilty of contempt of Court.

Auditors to be paid out of estate.

175. All Auditors so appointed shall be paid in respect of the accounts audited by them respectively such sums as the Court shall fix in consideration of their services in each case. All sums so to be paid shall be defrayed out of the bankrupt's estate, and shall be allowed as part of the costs of administering the same; but if there be no estate shall be paid out of the unclaimed dividend account hereinafter mentioned, under an order of the Court in that behalf.

Audited accounts to be open to inspection.

176. The accounts so audited shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

When final dividend declared, Assignee to file balance-sheet of estate.

177. When notice of the distribution of a final dividend in any estate is advertised, or within ten days after such advertising, the Assignee shall file in the Court a statement of accounts and balance-

sheet, showing in detail his receipts and payments in respect to such estate.

Every such statement shall be verified by a statutory declaration, and shall be open to inspection, without any fee, by the bankrupt, or by any creditor or any person interested.

178. Notice of the filing of every such statement of accounts shall be advertised, and thereupon the Assignee shall apply to the Court for a report on his accounts, and the Court shall refer the accounts to an Auditor, requiring him to furnish a report thereon accordingly.

Auditor's report thereon.

179. Upon such report being furnished to the Court by the Auditor, the Assignee may apply to the Court for an order releasing him from his office in respect to the estate, and shall advertise notice of his application for an order of release, and of the time at which such application will be heard by the Court. He shall also send the notice by post-card to the creditors who are not resident in the district.

Application for release to be sent to creditors.

180. The hearing of the application shall be appointed for a day not being less than fourteen days and not exceeding thirty days after the making the application. On the hearing, the Court shall take into consideration the Auditor's report, and any objection which may be urged by any creditor or person interested against the release of the Assignee, and shall either grant or withhold the release accordingly subject nevertheless to an appeal as is granted in respect to appeals from decisions in bankruptcy.

Hearing of application. Court may grant or withhold release. Appeal.

181. Where the release of an Assignee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the Assignee with the consequences of any act or default he may have done or made contrary to his duty.

Penalties on Assignee.

182. An order of the Court releasing the Assignee of a bankruptcy shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as Assignee of the bankrupt.

Effect of order of release.

But any such order may be revoked on proof that it was obtained by fraud.

Surplus Moneys.

183. Forthwith on the making an order releasing the Assignee from his office in respect to any estate, the Court shall, by order, direct the bank in which any moneys belonging to such estate are lodged to pay such moneys into the Public Trust Office, and the Public Trustee shall hold the same subject to the claims of any person who may afterwards appear to be entitled thereto.

Balance of estate moneys to be paid into the Public Trust Office.

184. All such moneys shall be deemed to be placed in the Public Trust Office subject to the Acts relating to such office, and subject also to this Act.

Moneys deemed to be in Public Trust Office.

185. All unclaimed dividends, and any other undivided surplus or other money unclaimed, the produce of any bankrupt's estate, shall, after the expiration of twelve months from the declaration of the final dividend, or from the time at which the surplus or other money became undivided or unclaimed in the Public Trust Office, be carried to an Unclaimed Dividend Account, and shall be deemed one common and general cash, and may be promiscuously issued to answer the demands thereon.

Unclaimed dividends, &c., to be carried to a special account.

Subject to order
of Court.

186. Money for the time being standing to the credit of the Unclaimed Dividend Account shall be subject to the order of the Court for the payment thereof of any dividend or for the distribution of any money in the matter to which any part thereof originally belonged, or for the payment thereof of any money required for the purposes of this Act, and authorized to be so applied.

Investment of
unclaimed divi-
dends, &c.

187. The investment, realization, and disposition of all or any moneys standing to the credit of the Unclaimed Dividend Account, and of any profits accruing therefrom, shall be subject to the Acts relating to the Public Trust Office.

COMPOSITION WITH CREDITORS.

Terms and form of
composition.

188. (1.) The creditors may, at the first or any subsequent meeting, pass a preliminary ordinary resolution that a composition be accepted in satisfaction of the debts due to them from the bankrupt.

(2.) The preliminary resolution shall not have effect unless it is confirmed by a subsequent special resolution.

(3.) The confirming resolution shall not be passed unless there has been circulated among the creditors, not less than seven days before the meeting at which it is to be passed, a notice stating generally the terms of the proposal for composition and a report of the Assignee as to the proposal.

(4.) For computing the requisite majority of creditors for the passing such confirming resolution as aforesaid—

No creditor who is not resident in the colony, or who has not resident therein a known duly authorized agent, shall be reckoned either in number or value.

No creditor, whose debt shall not exceed ten pounds, shall be reckoned in number, but such debt shall be computed in value only, subject as hereinafter mentioned.

If the proposal for composition provides for the payment in full of all creditors whose respective debts do not exceed a certain amount, that class of creditors shall not be reckoned either in number or value.

(5.) When the confirming resolution has been passed, the Assignee shall, within four days thereafter, report to the Court as to the composition, and any creditor, without giving notice, shall be entitled to attend the Court and be heard when the report is presented.

Approval thereof by
the Court.

If the Court is of opinion either—

(a.) That the terms of the composition are not reasonable or not calculated to benefit the general body of creditors under the bankruptcy, or

(b.) That the bankrupt has committed any such misconduct as would justify the Court in refusing, qualifying, or suspending his discharge,

the Court may refuse to approve the composition, but otherwise shall approve it, and the approval may be testified by the Judge of the Court embodying the terms of the composition in an order of the Court, or signing the deed of composition containing the terms.

(6.) A composition so approved by the Court shall be binding on all the creditors, so far as relates to any debts due to them and provable under the bankruptcy.

(7.) The approval of the Court shall be conclusive as to the validity of the composition.

(8.) The provisions of any composition under this section may be enforced by the Court on a motion made in a summary manner by any person interested; and any disobedience of an order of the Court made on the motion shall be deemed a contempt of Court.

189. Forthwith after the Court has approved a composition the bankrupt shall execute a deed of composition for carrying into effect the proposal; and such deed shall be produced to the Court by the Assignee. Bankrupt to execute deed of composition.

It shall not be necessary, in any such deed, to affix or attach any plans thereon, but a quotation of the sections or parcels of land referred to in any such deed by the official number of such sections shall be sufficient for all purposes, provided that such quotation is sufficient to identify the land.

The costs incident to the preparing and execution of such deed shall be appointed by the Court, but shall not exceed the amount set forth in the Second Schedule hereto.

190. The Court, if satisfied that the deed is in conformity with the composition as approved, shall direct the deed to be entered and filed in the Court, and may annul the adjudication of bankruptcy, and the deed shall thereupon be binding in all respects upon all the creditors as if they had severally executed the same; and the property of the bankrupt shall vest and be dealt with thereafter as provided in the deed. Deed to be filed.

If the adjudication of bankruptcy is annulled as aforesaid the Assignee shall thereupon be deemed to be released. Adjudication may be annulled, and Assignee released.

191. When any such deed of composition has been entered by the Registrar, he shall indorse thereon the fact of such entry and filing in the Court, and shall deliver the deed to the Assignee, who shall forthwith have the deed registered in such Deeds or Land Registry Office as may be necessary, and on such registration being effected shall return the deed to the file in the Court. Deed to be registered, and to pass land according to the terms thereof.

The registration of any such deed shall be sufficient to pass any land affected thereby, and to vest such land in accordance with the terms expressed in the deed.

192. Notwithstanding the approval of a composition, and whether the adjudication of bankruptcy be annulled or not, the Court, from and after the passing of the preliminary resolution, shall continue to have exclusive jurisdiction in the following matters, namely,— Jurisdiction of Court after approval of composition.

- (1.) To enforce in any respect the execution of the trusts, powers, covenants, or other provisions of the deed of composition;
- (2.) To entertain any application of the bankrupt, or of any trustee or inspector acting under the deed, or of any creditor or person claiming to be a creditor, respecting the custody, distribution, inspection, management, or winding up of the bankrupt's property or affairs, or any act or thing relating thereto done or happening after the execution of the deed by the bankrupt;
- (3.) The claim of any person to be a creditor;
- (4.) The audit or examination of the accounts of a trustee or inspector;

- (5.) The taxation or examination of the costs or charges of a solicitor, accountant, auctioneer, broker, or other person acting or employed under the deed ;
- (6.) Any matter for the submission whereof to the Court provision is made by the deed.

On any such application the Court may proceed and direct and authorize proceedings with respect to the summoning and examination of the bankrupt and witnesses, and otherwise, as in bankruptcy, and may make such order concerning the subject of the application and the costs of it as seems just, which order shall be enforceable as an order in bankruptcy.

Questions to be determined as in bankruptcy.

193. The Court shall determine all questions arising under the deed of composition according to the law and practice in bankruptcy, so far as the same are applicable.

Bankruptcy proceedings resumed if no composition approved.

194. If a composition is not approved within one month after the passing of the preliminary resolution, the proceedings in bankruptcy shall, immediately on the expiration of that period, go on as if there had been no resolution, and that period shall not be reckoned in the calculation of time for any purposes under this Act.

Distinct compositions in cases of partnership.

195. Where the adjudication is against members of a partnership, the joint creditors and each class of separate creditors may make distinct compositions, and, if so made, the majorities of creditors required for passing the confirming resolution aforesaid shall be distinct majorities of each such class, but otherwise the joint and separate creditors shall have votes as one body. The delay of any one of such classes of creditors in accepting, or their failure to accept, a composition shall not prevent any other of such classes from accepting such composition.

Debts incurred by fraud.

196. Where a bankrupt makes any composition with his creditors he shall remain liable for the unpaid balances of any debt which he incurred or increased, or whereof, before the date of the composition, he obtained forbearance by any fraud: Provided the defrauded creditor has not assented to the composition otherwise than by proving his debt and accepting dividends.

Bankruptcy revived if default made in terms of composition.

197. If the bankrupt, whether his bankruptcy is closed or not, makes default in payment of any sum due in pursuance of a composition under this section, the Court shall, on application by the person to whom the sum is due, order that the bankruptcy be revived, and thereupon the bankruptcy shall be revived, and continue as if the composition had not been approved.

WITNESSES AND EVIDENCE.

Court may take evidence in any matter.

198. The Court acting under this Act may, in any matter within its jurisdiction, summon and examine any person, and may take evidence orally (to be taken down by a shorthand writer or otherwise) before the Court, or by written interrogatories, or on affidavit, or by commission abroad, or as the Judge in any case thinks fit.

Form of statutory declaration.

199. Any declaration required by this Act to be made may be made in the Form B in the First Schedule to this Act.

Affidavit, &c., made out of colony.

200. An affidavit or declaration made out of the colony may be used in any matter under this Act if sworn or made,—

(1.) In any place in the British dominions, before a Court or Judge, or before a person authorized to administer oaths or take declarations, and subscribing his name to the jurat or attestation as purporting to have such authority;

(2.) In any place out of the British dominions, before a British Minister, Consul, or Vice-Consul;

and judicial and official notice shall be taken of the seal or signature of such Court or person affixed or subscribed to any writing purporting to attest the swearing of any such affidavit or the making of such declaration.

201. If any person wilfully and corruptly makes any declaration for the purposes of this Act, knowing the same, or any statement on or to which it is indorsed or appended, to be untrue in any material particular, he shall be deemed guilty of perjury. Making false declaration perjury.

202. In case of the death of a witness whose evidence has been received by any Court in any proceeding under this Act, his deposition purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to. Deposition of deceased witness admitted.

203. Any petition, order, certificate, deposition, or proceeding under this Act purporting to be sealed with the seal of the Court, or any writing purporting to be a copy thereof and to be so sealed, shall, either for purposes of this Act or not, be admitted as evidence of the document which it purports to be or whereof it purports to be a copy, and of the making of the orders and taking of the proceedings therein stated or referred to by the person at the time and in the manner therein or thereon stated or appearing, and shall be a record of the Court under the seal whereof it purports to be without further notice. Petitions, &c., to be admitted as evidence.

204. Judicial and official notice shall be taken of the signature of any Judge, Registrar, or Clerk acting under this Act, attached or subscribed to any judicial or official proceeding or document purporting to be made or signed in a matter of bankruptcy or other matter under this Act. Judicial notice of signature of Judge, &c.

205. The production of copies of the newspapers containing any notice or advertisement by this Act directed or authorized to be advertised therein shall be admitted as conclusive proof in all legal proceedings of any matter therein contained and by this Act directed or authorized to be advertised. Newspapers evidence of matters contained therein.

206. General rules respecting the form and contents of notices or advertisements may provide for notices concerning more bankruptcies or more deeds or other matters than one being comprised in one advertisement. Notices of various matters may be comprised in single advertisement.

It shall not be necessary to publish a copy of any order of Court made under this Act, and publication of notice of any such order shall, for the purposes of evidence, have the same effect as publication therein of a copy of the order, and all expenses for advertising shall be limited accordingly.

207. If any person inserts or causes to be inserted in any newspaper any notice or advertisement under or purporting to be under this Act without authority, or knowing the same to be false in any material particular, he shall be guilty of an offence against Unauthorized or false advertisement.

this Act, and shall for every such offence be liable on summary conviction to a penalty not exceeding twenty pounds, or to imprisonment for any term not exceeding three months with or without hard labour.

Notices.

Service of documents.

208. Documents by this Act required to be served on or sent to any person, and not by this Act directed to be served personally, may be sent by post addressed to the last known place of business or abode of such person, subject to such regulations respecting registration and other things as general rules direct.

Service on agents deemed to be good service.

209. Notices required to be served on any person, corporation, or company, not resident or carrying on business in the colony, shall be deemed to be duly served for the purposes of this Act if served on the attorney or recognized agent within the colony of such person, corporation, or company.

Effect of notice to agent of company.

If any accredited agent of a corporation or company has, in the course of his agency, notice of any act of bankruptcy, the corporation or company shall be deemed to be affected by such notice.

Service on foreign creditors not necessary unless having agents in the colony.

210. Notices required to be served within a limited time shall not be required to be served on a creditor who is not resident in the colony, or who has not resident therein a known duly authorized agent.

MISCELLANEOUS PROVISIONS.

Person adjudged bankrupt beyond the colony.

211. If any person who has been adjudged or declared bankrupt or insolvent by any British Court out of New Zealand, and has not obtained his discharge or certificate, is seised of or entitled to any real property in New Zealand, the Assignee, Trustee, or other representative of his creditors may apply for, and, on proof of such bankruptcy or insolvency, and of the absence of the discharge or certificate, and without further evidence obtain adjudication against him in the superior Court; and such adjudication shall have the like effect and consequences as if he had been originally adjudged bankrupt by that Court.

Bankrupt may inspect books, &c.

212. A bankrupt may at all reasonable times before discharge inspect his books and documents in the presence of the Assignee or any person appointed by the Assignee, and may bring with him each time any person to assist him.

Bankrupt may examine petitions, orders, &c.

213. The proper officer of the Court, and the Assignee of any bankrupt's estate, on the reasonable application of the bankrupt, or of his solicitor, or of any creditor who has proved, or of his solicitor, shall produce and show to the applicant all petitions, orders, proceedings, books, and documents relating to the bankruptcy, and the applicant may have copies or extracts thereof or therefrom as general rules direct.

Bankrupt to attend Assignee notwithstanding discharge.

214. The bankrupt, after his order of discharge takes effect, shall notwithstanding such discharge, on demand in writing given to him or left at his usual or last known place of abode or business, attend the Assignee to settle any accounts between his estate and any debtor to or creditor of the same, or attend any Court to give evidence respecting the same, or do any act necessary for getting in or protecting his estate; for which attendance he shall be entitled to be paid by the Assignee out of the estate such sum as the Assignee shall reasonably think fit.

215. The Assignee may, with the sanction of the Court, after seven years from adjudication in each case of bankruptcy, deliver up to the bankrupt, or his personal representatives, all books of accounts deposited with him as Assignee, or destroy, or otherwise dispose of them as the Court shall think fit.

Disposal of bankrupt's books and papers.

216. The proceedings in any bankruptcy shall not be annulled or set aside by reason of any defect, misnomer, inaccurate description, or by the omission of anything required to be done in or concerning any such proceedings, provided that no person is injuriously affected thereby respectively; and the Court may, in any case where any such omission has been made or error committed, direct the same to be rectified and shall order the proceedings to be continued upon such terms as it shall think best and most conducive to the interests of all persons concerned.

Proceedings not to be avoided for errors.

217. If any bankrupt shall die after adjudication, the Court may proceed in the bankruptcy as if such bankrupt were living.

Proceedings not to abate by death.

Protection of Persons in Execution of Act.

218. No action or proceeding shall lie against any Assignee or other person acting under the authority or in the execution or intended execution or in pursuance of this Act for any alleged irregularity or trespass, or any act or thing done or omitted by him under this Act, unless notice in writing (specifying the cause of the action or proceeding, and the name and residence of the intending plaintiff or prosecutor, and of his solicitor or agent in the matter) is given by the intending plaintiff or prosecutor to the intended defendant one month at least before the commencement of the action or proceeding;

Action against Assignee or other person.

Nor unless the action or proceeding is commenced within three months next after the act or thing complained of is done or omitted, or, in case of a continuation of damage, within three months next after the doing of such damage has ceased.

And any such action shall be laid and tried in the place where the cause of action arose, and not elsewhere.

219. In any such action the defendant may plead generally that the act or thing complained of was done or omitted by him as Assignee or (as the case may be) when acting otherwise under the authority or in the execution or intended execution or in pursuance of this Act, and may give all special matter in evidence.

Defendant may plead generally.

220. On the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action not stated in his notice.

Plaintiff confined to notice.

221. The plaintiff in any such action shall not succeed if tender of sufficient amends is made by the defendant before the commencement of the action; and, in case no tender has been made, the defendant may, by leave of the Court in which the action is brought, at any time pay into the Court such sum of moneys as he think fit, whereupon such proceeding and order shall be had and made in and by the Court as may be had and made on the payment of money into Court in an ordinary action.

Defendant may tender amends.

Protection of Officers.

222. No action shall be brought against any Assignee, bailiff, assistant, or other person for anything done in obedience to any warrant of the Court, unless a demand for a perusal of such warrant

No action against Assignees, &c., on warrant, unless perusal of same refused.

and for a copy thereof has been left at the usual place of abode of such Assignee, bailiff, assistant, or person by the party intending to bring such action, or by his solicitor or agent, in writing, signed by the party demanding the same, nor unless compliance with the demand has been refused or neglected for six days after such demand.

On proof of warrant, verdict to be for defendant if petitioning creditor not made defendant.

223. If, after such demand and compliance therewith, any person brings an action against such Assignee, bailiff, assistant, or person, without making the petitioning creditor (if any and if living) a defendant, the jury at the trial of the action, on production and proof of the warrant, shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the Court by which the warrant was granted.

If petitioning creditor made defendant, verdict to be for Assignee, &c., on proof of warrant.

224. If such action was brought against the petitioning creditor and such Assignee, bailiff, assistant, or person, the jury shall, on proof of the warrant, give the verdict for such Assignee, bailiff, assistant, or person, notwithstanding any such defect of jurisdiction.

If verdict against petitioning creditor, plaintiff to have full costs.

225. If the verdict is given against the petitioning creditor, the plaintiff shall recover his costs against him, to be taxed so as to include such costs as the plaintiff is liable to pay to such Assignee, bailiff, assistant, or person.

Petitioning creditor personally liable.

226. In any action brought against the petitioning creditor, either alone or jointly with such Assignee, bailiff, assistant, or person, for anything done in obedience to the warrant, proof by the plaintiff that a defendant is petitioning creditor shall be sufficient for the purpose of making him liable in the same manner and to the same extent as if the act complained of in the action had been done by him personally.

Assignee not liable if order of adjudication reversed, &c.

227. The Assignee shall not be liable in any action, suit, or proceeding for or by reason of any act or thing whatsoever done by him under or by virtue of any order of adjudication which may be afterwards reversed or set aside.

Stamps.

Certain documents exempt from stamp duty.

228. Every instrument for effecting a composition with creditors under this Act; and

Every deed, conveyance, assignment, surrender, or other assurance, relating solely to freehold or leasehold property, or to any mortgage, charge, or other encumbrance on, or any estate, right, or interest in, any real or personal property, which is part of the estate of any bankrupt, and which, after the execution of such deed, conveyance, assignment, surrender, or assurance, either in law or in equity, is or remains the estate of the bankrupt or of the Assignee under the bankruptcy; and

Every power of attorney, proxy paper, writ, order, certificate, affidavit, declaration, bond, or other instrument, or writing, relating solely to the estate of any bankrupt or to any bankruptcy under this Act,—

Shall be exempt from stamp duty (except in respect of fees under this Act) and from any other duty.

Fees.

Fees payable.

229. There shall be payable in respect of proceedings under this Act the fees and percentages set forth in the Second Schedule to this Act, and such other fees shall be paid in respect of other matters under this Act as general rules from time to time direct.

All such fees shall be paid into the Public Account and form part of the Consolidated Fund.

Costs.

230. The Court may, in all matters before it, award such costs as to it shall seem fit, and may appoint the costs to be allowed to solicitors and others in respect of proceedings under this Act, in addition to the costs actually paid out of pocket, other than fees to counsel; and the Court may make such orders as to the taxation of costs as it shall think fit.

Costs allowed at a fixed scale.

The amount of such costs shall be regulated as far as may be according to the scale of costs set forth in the Second and Third Schedules to this Act.

Where in any matter no special costs are appointed, the Judge shall fix the costs at the time of the hearing.

231. No costs shall be paid except upon an order of the Judge, and costs shall not exceed the scale set forth in the Second and Third Schedules hereto, except the Judge specially orders such increase.

Costs to be paid only on order of Judge.

No bankrupt shall pay any money to his solicitor for costs, except such money as may be required for cash payments of fees of Court, and any necessary advertisements, and any money so paid either before or after adjudication shall be recoverable by the Assignee before the Court in a summary way.

No costs shall be allowed in any case as between solicitors and their clients.

No costs allowed as between solicitor and client.

232. No solicitor shall have or be deemed to have any lien on any deed or instrument in his possession belonging to a bankrupt, except for the actual amount of costs owing to him in respect to the preparation of such deed or instrument: Provided always that this section shall not affect any rights existing on the coming into operation of this Act.

Solicitor to have no lien on deeds, &c.

233. If on any application made to the Court in any matter relating to any bankruptcy the Court is of opinion that the application is vexatious, or frivolous, or otherwise unnecessary, it may order that the solicitor by whom such application is made shall not be paid any costs by any person in respect of such application.

No costs to be allowed for frivolous or unnecessary applications to Court.

Repeals.

234. Where any Act or document refers to any enactment repealed by this Act such Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

References to repealed Acts to refer to this Act.

235. The several Acts enumerated in the Fourth Schedule hereto are hereby repealed; but this repeal shall not affect—

Acts repealed.

The past operation of any of the said repealed Acts; or

Savings.

The validity or invalidity of anything done or suffered; or

Any right or privilege acquired, or duty imposed, or title or obligation or liability accrued or incurred before the commencement of this Act by or under any such repealed Act.

The institution or continuance of any course of proceeding under or in relation to any declaration of insolvency, petition, or deed of arrangement executed or filed, or order

made, or thing done, under any such Act before the commencement of this Act, or affect any of the incidents or consequences of any such petition, deed, order, or thing;

The institution or prosecution of any proceeding in respect of any offence committed, or any penalty or forfeiture incurred, against or under any such repealed Act.

All estates and persons brought under the operation of the said repealed Acts or any of them before the commencement of this Act shall be subject to the provisions of the said Acts as if the same had not been repealed, or may, if so ordered by the Court, be dealt with under the provisions of this Act.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

FORM A.

Debtor's Petition.

I, A.B., of [*residence and occupation*], hereby petition to be adjudged a bankrupt, as I am unable to pay my debts.

Witness to signature—C.D., A.B.
Registrar [*or Solicitor, or Justice of the Peace*].

FORM B.

Statutory Declaration.

I, A.B., of [*residence and occupation*], do solemnly and sincerely declare that [*Insert facts*]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the General Assembly of New Zealand intituled "The Justices of the Peace Act, 1882."

Declared at _____, this _____ day _____, 18____, before me—
C.D., A.B.
Justice of the Peace [*or Solicitor, or Notary Public*].

SECOND SCHEDULE.

FEEES.

	£	s.	d.	£	s.	d.
Filing petition by a debtor or a creditor				3	0	0
For the net value of the estate realized by Assignee, including debts collected,—						
On the first amount of £1,000, or any less sum... ..	5	0	0	per cent.		
On the next amount of £1,000, or any less sum	2	10	0			"
On all further sums	1	0	0			"

COSTS.

Supervisors, remuneration to, on the net receipts from the bankrupt's property, not exceeding—						
On the first amount of £1,000, or any less sum	2	10	0	per cent.		
On the next amount of £1,000, or any less sum	2	0	0			"
On all further sums	1	0	0			"
To Assignee's solicitor, including all services until release, not exceeding	20	0	0			
To bankrupt's solicitor, including all services until discharge, not exceeding	10	0	0			
To solicitor for creditors or supervisors, including all services until discharge, not exceeding	20	0	0			
To solicitor for preparing deed of composition, inclusive of all charges whatsoever in relation thereto—						
Where the estate amounts to £500, or any less sum... ..	5	5	0			
Where the estate exceeds £500	10	10	0			

THIRD SCHEDULE.

COSTS IN RESPECT OF TRIALS.

Where the claim involved does not exceed £200—			
On the amount recovered	...	...	5 0 0 per cent.
Where the claim involved does not exceed £500—			
On the first amount of £200, or any less sum recovered	...	...	5 0 0 "
On all further sums recovered	...	...	2 10 0 "
Where the claim involved exceeds £500—			
On the first amount of £250, or any less sum recovered	...	...	5 0 0 "
On the next amount of £250, or any less sum recovered	...	...	2 10 0 "
On all further sums recovered	...	...	0 10 0 "

FOURTH SCHEDULE.

ACTS REPEALED.

- 1876, No. 65.—The Debtors and Creditors Act, 1876.
 1878, No. 26.—The Debtors and Creditors Act Amendment Act, 1878.
 1879, No. 29.—The Debtors and Creditors Act Amendment Act, 1879.
 1878, No. 10.—The Fraudulent Debtors Act, 1878.

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