

New Zealand.

ANNO TRICESIMO PRIMO

VICTORIÆ REGINÆ.

No. 18.

AN ACT to amend the Law of Bankruptcy Title.
in New Zealand. [10th October 1867.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows that is to say—

PART I.

PRELIMINARY.

1. This Act shall be divided into parts as follow—

Division of Act.

PART I.—Preliminary.

PART II.—Jurisdiction in Bankruptcy Courts and Officers.

PART III.—Acts of Bankruptcy in general.

PART IV.—Debtor Summons.

PART V.—Declaration of Insolvency.

PART VI.—Adjudication.

PART VII.—Choice of Trustee and Supervisors.

PART VIII.—Secured Creditors Meetings.

PART IX.—Last Examination and Accounts.

PART X.—Order of Discharge.

PART XI.—Consequences of Adjudication with respect to Property.

PART XII.—Possession Collection and Management of Estate.

PART XIII.—Proof.

PART XIV.—Dividends Preferential Payments Allowances
Surplus.

PART XV.—Accountant in Bankruptcy Control of Trustees
Audit Release.

PART XVI.—Transfer out of Bankruptcy.

PART XVII.—Change from Bankruptcy to Arrangement.

PART XVIII.—Arrangement by Deed.

PART XIX.—After-acquired Property in Bankruptcy and Arrange-
ment.

PART XX.—Misdemeanours in Bankruptcy and Arrangement.

PART XXI.—Miscellaneous Provisions respecting Bankruptcy and
Arrangement.

PART XXII.—Surplus Funds in Bankruptcy Fees Stamps and
General Rules.

2. The Short Title of this Act shall be "The Bankruptcy Act 1867." Short Title.

3. "The Debtors and Creditors Act 1862" and "The Debtors and Creditors Act Amendment Act 1865" and "The Debtors and Creditors Acts Amendment Act 1866" are hereby respectively repealed except so far as the said Acts repeal any or any part of former Acts and Ordinances but this repeal shall not affect the past operation Repeal clause.

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of any such Act or the validity or invalidity of anything done or suffered or any right title obligation or liability accrued before the commencement of this Act by or under any such Act nor shall this Act interfere with the prosecution or affect the course of proceeding under or in relation to any petition or deed registered 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 nor shall this Act interfere with the institution or prosecution of any proceeding in respect of any offence committed or any penalty or forfeiture incurred against or under the Acts hereby repealed or any of them and all estates and persons brought under the operation of the said Acts hereby repealed 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.

Commencement.

4. Except as in this Act expressly provided and except with respect to the appointment of officers in which respect this Act shall take effect from its passing this Act shall take effect from and immediately after the first day of December one thousand eight hundred and sixty-seven which time is in this Act referred to as the commencement of this Act.

Extent of Act.

5. The provisions of this Act relating to bankruptcy shall have effect only in cases where adjudication of bankruptcy is made after the commencement of this Act but every act of bankruptcy petitioning creditors debt or other thing existing or done before the commencement of this Act which if it had existed or been done after the commencement of this Act would have authorized proceedings in bankruptcy or have supported adjudication in bankruptcy shall be sufficient to authorize proceedings in bankruptcy and to support adjudication of bankruptcy under this Act.

Payment to creditor.

6. Where under this Act any sum is required to be paid to a creditor or other person the tender of or the securing or compounding to the satisfaction of the creditor or other person of or for such sum shall be deemed payment thereof.

Computation of time.

7. Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding then in the computation of such limited time the same shall be taken as exclusive of the day of such date or of the happening of such event and as commencing at the beginning of the next following day and the act or proceeding shall be done or taken at the latest on the last day of such limited time according to such computation unless such last day is a Sunday or falls upon any one of the holidays mentioned in the rules of procedure of the Supreme Court in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being one of the days in this section specified. Where by this Act any act or proceeding is directed to be done or taken on a certain day then if that day happens to be one of the days in this section specified such act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being one of the days in this section specified.

Interpretation.

8. In this Act the term "District Court" means a District Court holden by virtue of "The District Courts Act 1858" and of any other Acts for the time being in force relating to the District Courts established under the provisions of the said Act.

The term "the Court" means except where it is expressly otherwise provided the court wherein the matter or proceeding to which the provision in which that term is used relates is pending or is to be taken.

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The term *Gazette* shall mean such *Gazette* or newspaper as the judge or judges of each judicial district of the Supreme Court shall from time to time by general order specify and publication in such *Gazette* or newspaper is referred to as gazetting. The term "the Bank" means the bank at which for the time "the public account is kept."

PART II.

JURISDICTION IN BANKRUPTCY COURTS AND OFFICERS.

9. The Supreme Court of New Zealand shall have throughout New Zealand and the District Courts shall also have within their respective districts jurisdiction in bankruptcy and for the other purposes of this Act. Jurisdiction.

10. The Supreme Court and each District Court in relation to any case for the time being under the cognizance of such District Court shall hear determine and make order in any matter of bankruptcy as far as the trustee is concerned relating to the disposition of the bankrupt's estate or of any property taken under the bankruptcy or claimed by the trustee for the benefit of the creditors or relating to any act done or sought to be done by the trustee in his character of trustee by virtue of the bankruptcy and also in any matter of bankruptcy as between the trustee and any creditor or other person appearing and submitting to the jurisdiction of the court. Jurisdiction.

11. Orders of District Courts under this Act shall be enforceable as orders of Districts Courts under their ordinary jurisdiction are enforceable. Orders of District Court.

12. Every court having jurisdiction under this Act may award such costs as the court thinks fit and costs so awarded shall be recoverable as any other costs awarded under the authority of such courts and the like remedies shall be available on an order under this Act for costs as under any other order of such courts. Costs.

13. The Supreme Court and the District Courts shall be auxiliary to each other for all purposes of this Act in such manner as general rules direct. Courts auxiliary.

14. Any Registrar of the Supreme Court and the Clerk of any District Court may during vacation or during the illness or absence from any other reasonable cause of any judge of his respective court act for such judge with all the jurisdiction power and authority of such judge. Registrar and clerk.

15. A Registrar of the Supreme Court 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 any general rules and subject thereto as a judge 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 but a registrar at chambers shall not commit any person to prison or hear an application for adjudication or respecting an order of discharge if such application is opposed. Registrar at chambers.

16. Any party shall be at liberty to take the opinions of a judge on any point or matter arising in proceedings before a registrar at chambers and an order made by a registrar at chambers may be discharged or varied by a judge at chambers or in court. Opinion of judge.

17. Proceedings at chambers shall be on summons. Proceedings.

18. In every District Court the clerk shall tax bills of costs charges fees and disbursements of solicitors attorneys accountants auctioneers valuers and others employed in matters under this Act before that court (unless that court otherwise directs) subject to review by that court. Taxing costs.

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- Reference to registrar. 19. The Judge of every District Court may refer any taxable bill or any question thereon to the Registrar or Taxing Master of the Supreme Court.
- Taxing costs. 20. The Registrar or Taxing Master of the Supreme Court shall tax bills of costs charges fees and disbursements of solicitors attorneys accountants auctioneers valuers and others employed in matters under this Act in the Supreme Court and in the Court of Appeal and taxable bills referred to him by a judge of a District Court subject to review by the Supreme Court.
- Fees &c. 21. All charges fees and disbursements of any auctioneer appraiser broker valuer clerk accountant or other person claimed against a bankrupt estate for any services rendered under the bankruptcy may be taxed and settled by the registrar or taxing master in such manner and subject to such conditions as general rules direct and no more than the amount of the bills so settled shall be recoverable.
- Provisional trustee. 22. The registrar or if there be no registrar the deputy registrar at each office of the Supreme Court shall be the provisional trustee of every estate brought under this Act at that office and the clerk of each District Court shall be the provisional trustee of that court Provided that whenever it shall be made to appear to the Governor that in any judicial district of the Supreme Court it is expedient that some other person should be appointed to perform the duties of provisional trustee in such districts instead of the registrar deputy registrar and clerk of the District Courts in such judicial district it shall be lawful for the Governor to appoint such person as he shall think fit for such judicial district to be provisional trustee who shall be subject to the Supreme Court and to all District Courts within such judicial district in relation to any estate in respect of which he is by order of any of such courts directed to act And whenever any person shall be so appointed for any judicial district the registrar deputy registrar and clerks of District Courts within such judicial district shall cease to act as provisional trustee under this Act.
- Officers not interested. 23. No clerk or other officer of a District Court shall either by himself or by his partner be directly or indirectly engaged as solicitor attorney or agent for any party in any proceeding under this Act in the court of which he is clerk or officer.
- Right of appeal. 24. Where a case has been commenced in any District Court there shall be a right of appeal to the Supreme Court and no further and where a case has been commenced in the Supreme Court there shall be a right of appeal to the Court of Appeal and no further subject to such provisions respecting notice of appeal deposit or other security procedure evidence and other matters as general rules direct.
- Time for appeal. 25. 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.
- Conduct of appeal. 26. The proceedings under a bankruptcy shall not be stayed by appeal but on cause shewn the court from which the appeal is brought may if it thinks fit order proceedings to be stayed The Court of Appeal may in any case either on motion before the hearing of an appeal or when deciding thereon order any such proceeding to be taken as in the circumstances appear to it proper for the due and convenient prosecution of the bankruptcy although the time fixed for such proceeding has expired.

PART III.

ACTS OF BANKRUPTCY IN GENERAL.

- Acts of bankruptcy. 27. The following shall be deemed to be acts of bankruptcy within the meaning of this Act—

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- (1.) If any person with intent to defeat or delay his creditors does any of the following things namely depart out of New Zealand or being out of New Zealand remains out of New Zealand or makes or causes to be made in New Zealand or elsewhere a fraudulent conveyance surrender gift delivery or transfer of all or any part of his property
- (2.) Or if any person on arrest or commitment to prison for debt or under attachment for non-payment of money or on detention for debt remains in custody or in prison for one month or on arrest or commitment to prison for any cause remains in custody or in prison for one month after a detainer for debt lodged against him and not discharged
- (3.) Or if any person arrested committed or detained for debt or under attachment or for non-payment of money escapes out of custody or prison
- (4.) Or if any person after the filing of a petition for the adjudication of bankruptcy against him by a creditor pays gives or delivers to that creditor money or any satisfaction or security for his debt or any part thereof with the intent that the petitioning creditor may receive more than other creditors
- (5.) Or if a person with intent to defeat or delay his creditors does any of the following things namely departs from his dwelling-house or otherwise absents himself or begins to keep his house or suffers himself to be arrested or taken in execution for any debt not due or yields himself to prison or procures himself to be arrested or taken in execution or procures his personal property or any part thereof to be attached sequestrated or taken in execution or suffer execution of a judgment decree or order to be levied by seizure and sale of his personal property or of any part thereof

such person shall be deemed thereby to have committed an act of bankruptcy.

28. If any person petitions a British Court out of New Zealand having jurisdiction in bankruptcy or insolvency or for the relief of insolvent debtors praying adjudication of bankruptcy against himself or relief as an insolvent debtor or if in a British Court out of New Zealand having jurisdiction of bankruptcy or insolvency or for the relief of insolvent debtors a petition for adjudication of bankruptcy or insolvency or to the like effect is filed by a creditor against any person and such adjudication is made thereon the debtor shall be deemed to have committed an act of bankruptcy at the time of that adjudication which act of bankruptcy shall have the same effect for the purposes of this Act as if it had been committed in New Zealand.

Petitions out of New Zealand.

PART IV.

DEBTOR SUMMONS.

29. Any creditor whether under any judgment or otherwise may deliver to the debtor personally or to some adult inmate at his usual or last known place of abode or business an account in writing of the particulars of his (the creditor's) demand with a notice subjoined requiring immediate payment of the amount thereof and may file an affidavit of the truth of the debt either in the Supreme Court or any District Court having jurisdiction in the place where the debtor resides at the option of the creditor And in this part of this Act the court in which the affidavit is filed is referred to as the Court.

Notice to debtor and affidavit of debt.

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- Summons to debtor.** 30. The court may thereupon issue a summons requiring the debtor to appear before the court and stating the purpose for which he is summoned (which summons is in this Act referred to as a debtor summons).
- Summons how served.** 31. A summons shall be served on the debtor against whom it is issued either personally or in such manner as the judge shall in each case direct by delivery thereof to some adult inmate at his usual or last-known place of abode or business.
- Non-appearance of trader.** 32. If the debtor does not appear according to the summons (unless he is prevented from so doing by some impediment allowed by the court or unless the summons is by consent or for other good cause discharged by the court) the debtor shall be deemed to have committed an act of bankruptcy at the end of fourteen days from the service of the summons unless in the meantime he pays the amount of the demand or gives sufficient security for the payment of the same to the satisfaction of the creditor.
- Denial of claim.** 33. If the debtor appears according to the summons he shall be at liberty to dispute the alleged demand and the interest of the alleged creditor of the demand or either of those matters and for that purpose to adduce evidence and to cross-examine the creditor on the affidavit on which the summons was issued and the court unless such demand or interest is disproved to its satisfaction shall thereupon require the debtor to state whether he admits or denies the demand or any and what part thereof.
- Admission of whole demand.** 34. If the debtor admits the whole demand the court shall require him to sign an admission in writing of the whole demand and he shall be deemed to have committed an act of bankruptcy at the end of fourteen days from the signing of such admission unless in the meantime he pays the whole amount of the demand or gives security for the payment thereof to the satisfaction of the creditor.
- Denial of whole demand.** 35. If the debtor denies the whole demand the court shall require him to sign a declaration in writing to the effect that he has to the best of his judgment and belief a good defence on the merits to the whole demand and if he fails to make such a declaration he shall be deemed to have committed an act of bankruptcy at the end of fourteen days from the service of the summons unless in the meantime or within such enlarged time (if any) as the court allows he pays the whole amount of the demand or gives such security as aforesaid.
- Admission of part and denial of part.** 36. If the debtor admits part of the demand and denies the residue thereof the following provisions shall have effect—
- (1.) With respect to the part admitted the court shall require him to sign an admission thereof in writing and he shall be deemed to have committed an act of bankruptcy at the end of fourteen days from the signing of such admission unless in the meantime he pays the amount admitted or gives such security as aforesaid.
 - (2.) With respect to the residue denied the court shall require him to sign a declaration in writing to the effect that he has to the best of his judgment and belief a good defence on the merits to that part of the demand and if he fails to make such a declaration he shall be deemed to have committed an act of bankruptcy at the end of fourteen days from the service of the summons unless in the meantime or within such enlarged time (if any) as the court allows he pays the residue denied or gives such security as aforesaid.
- Failure to sign admission to be deemed denial.** 37. If the debtor when required by the court fails to sign an admission of the whole demand or an admission of part thereof then whether he makes any statement or not and whatever is the nature of

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his statement (if any) he shall be deemed for the purposes of this part of this Act to deny the whole demand.

38. Where the court requires the debtor to sign a declaration of a good defence to a demand or to part thereof the court may also if it thinks fit at the same time require him to enter into a bond in such sum and with such surety or sureties not exceeding two as the court directs conditioned for the payment of any money recovered with any costs given in any action brought or to be brought in any court of competent jurisdiction for the recovery of the amount of the demand or of such part thereof as the case may be and if he fails to enter into such bond he shall be deemed to have committed an act of bankruptcy at the end of fourteen days from the service of the summons unless in the meantime or within such enlarged time (if any) as the court allows he pays the amount of the demand or of such part thereof as the case may be or gives such security as aforesaid.

Bond for demand or part denied.

39. Notwithstanding anything in this part of this Act a debtor shall not be deemed to have committed an act of bankruptcy in any of the several cases in this part of this Act specified unless a petition for adjudication of bankruptcy against him is presented within three months from the filing of the affidavit on which the summons was issued.

Limitation of time.

40. In any proceeding by debtor summons on reasonable cause shown the court may from time to time if and as it thinks fit enlarge the time for requiring the debtor to state whether he admits or denies the demand or any and what part thereof or to make a declaration or to enter into a bond or to give security as aforesaid.

Enlargement of time.

41. An admission of the whole or of part of a demand made after service of a debtor summons and signed out of court by the person summoned (his signature being attested by a solicitor) may be filed in the court and when so filed shall have the same effect as an admission of the whole or of that part of the demand (as the case may be) signed by him in court would have.

Admission of demand out of court.

42. Where the demand of a creditor is against persons carrying on business in partnership the delivery to any one of the partners personally or to some adult inmate at his usual or last known place of abode or business and also at the place of business of the partnership of such an account and notice as are required in the case of a single debtor shall be sufficient to authorize the court to issue a debtor summons not only against the partner to or for whom such account and notice are delivered but also against any other or others of the partners.

Notice &c. in cases of partnership.

43. In any proceeding by debtor summons the court may allow to either party such costs as it thinks just and the court may if it thinks fit direct that the costs of either party shall abide the event of any action brought or to be brought for the recovery of the demand or any part thereof in which case those costs shall be deemed part of the costs of the action and shall be recoverable accordingly.

Cost of proceedings.

44. Where proceedings are taken by debtor summons and the creditor in any action against the debtor summoned recovers by verdict or otherwise only part of the demand stated in his affidavit or of the part thereof not admitted by the debtor the costs of the action shall be in the discretion of the judge before whom the action is tried or in case the action is not brought to trial then of the judge or one of the judges of the court in which the action was brought.

Costs of action.

PART V.
DECLARATION OF INSOLVENCY.

45. A debtor whether in prison or in custody for debt or on attach- Filing of declaration.

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ment for non-payment of money or under process of contempt for such non-payment or in detention for debt or not may file a declaration signed by him (his signature being attested by a solicitor) that he is unable to meet his engagements with his creditors (in this Act referred to as a declaration of insolvency) in the Supreme Court of New Zealand or in one of the District Courts of New Zealand. And in this part of this Act the court in which the declaration is filed is referred to as the court.

Provisional trustee receiver.

46. On and after the filing of the declaration the provisional trustee shall become and be the receiver of the property of the debtor filing the same and as such shall act and account as directed by rules to be made by the Supreme Court.

Stay of actions.

47. After the filing of the declaration the court may on the application of the debtor or of any creditor of the debtor proving his debt to the satisfaction of the court restrain any action suit or proceeding against the debtor on such terms as the court thinks fit.

Notice gazetted.

48. Notice of the filing of the declaration shall be gazetted.

Executions &c. stayed.

49. After notice of the filing of the declaration has been gazetted no execution attachment or other process against the debtor's property in respect of any debt and no process against his person in respect of any debt other than such process by writ or warrant as may be had against a debtor about to depart out of New Zealand shall be available without leave of the court.

List of creditors and property.

50. Within four days after the filing of the declaration the debtor shall file in the court a list signed by him showing the names residences and occupations of his creditors and the respective amounts due to them and a statement showing his property and the estimated value thereof and he may from time to time add to or amend such list or statement and every such list statement addition and amendment shall be verified by his affidavit.

Inspection of list and statement.

51. Any person stating himself to be a creditor of the debtor filing the declaration may subject to the payment of the prescribed fees (if any) inspect the list of creditors and statement of property filed and have a copy thereof or extracts therefrom.

Declaration out of bankruptcy in certain cases.

52. Until the expiration of twenty-one days after the notice has been gazetted the debtor shall not be deemed to have committed an act of bankruptcy by filing the declaration but if within three days after the expiration of that period of twenty-one days proceedings to obtain adjudication against him are taken by a creditor or if proceedings are not so taken by a creditor then if within two days after the expiration of that period of three days such proceedings are taken by the debtor then and in either of those cases but not otherwise the debtor shall be deemed to have committed an act of bankruptcy by filing the declaration.

Saving for intermediate transactions.

53. Adjudication on such act of bankruptcy shall not prejudicially affect any payment made or thing done by the bankrupt between the act of bankruptcy and the adjudication provided the same is made or done with the consent or approval of the provisional trustee.

PART VI.

ADJUDICATION.

Petition.

Petition for adjudication.

54. Proceedings to obtain adjudication of bankruptcy shall be by petition (in this Act referred to as a petition) for adjudication.

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55. A petition for adjudication filed by a debtor or by a creditor Court for proceedings. may be filed at the petitioner's option as follows—

- (1) In the Supreme Court of New Zealand in the judicial district where the debtor has resided for the six months next before the filing of the petition or for the longest time within that period unless he is in custody and then in the judicial district where he is in custody
- (2) In any District Court having jurisdiction in the place where the debtor has resided for the six months next before the filing of the petition or for the longest time within that period of six months unless he is in custody and then in the district court having jurisdiction in the place where he is in custody

Provided always that where the debtor is absent from New Zealand the petition shall be filed in the Supreme Court in the judicial district in which the debtor last resided for six months or for the longest time under six months.

56. The creditors of any person by or against whom a petition for adjudication is filed may before or after adjudication resolve that the proceedings under the petition shall be transferred from the court in which it is filed to such other court as they think fit and the court in which the petition is filed shall unless there appears good reason to the contrary make order accordingly. Transfer by auditors.

57. The court in which a petition for adjudication is filed may before or after adjudication on the application of a creditor or of the debtor or of the trustee and on being satisfied regard being had to the nature of the debtor's transactions the situation of his property the residence of his principal creditors or other circumstances that the proceedings under the adjudication could be more beneficially and conveniently prosecuted in another court by order transfer the petition to that other court and an appeal shall not lie against such order. Transfer by court.

58. On a petition being transferred to any court that court shall have jurisdiction under the petition and shall not have power to transfer it to any other court and all orders affidavits and proceedings made used or taken thereunder 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. Procedure &c. on transfer.

Creditor's Petition.

59. A creditor or creditors shall not be entitled to petition for adjudication except in respect of a debt or debts of the respective amounts following— Petitioning creditor's debt.

One person or two or more persons being partners in respect of a debt of fifty pounds or upwards

Two persons not being partners in respect of a debt of seventy pounds or upwards

Three or more persons not being partners in respect of a debt of one hundred pounds or upwards.

60. A creditor either on a bond or negotiable instrument or not in respect of a sum payable at a certain time which has not arrived at the date of an act of bankruptcy may petition or join in petitioning for adjudication. Immature debts.

61. A person entitled to petition for adjudication against all the members of a partnership may petition for adjudication against any one or more of the members thereof. Petition against partners.

62. A creditor's petition for adjudication shall be verified by affidavit of the petitioner or if a corporation or company or a body empowered Verification of creditor's petition.

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by Act of the General Assembly or otherwise to sue and be sued are petitioners then by affidavit of some person on behalf of the petitioners stating in his affidavit his authority in that behalf.

Witnesses &c.

63. Where a creditor petitions for adjudication the court may before adjudication summon before it any person whom it believes capable of giving information concerning any act of bankruptcy committed by the debtor and may require any person so summoned to produce any books and documents in his custody possession or power appearing to the court necessary to establish the act of bankruptcy.

Adjudication.

64. Where a creditor petitions for adjudication the court on proof of the petitioning creditor's debt and the act of bankruptcy shall adjudge the debtor bankrupt.

Limitation of time.

65. Where a creditor petitions for adjudication the debtor (except as in this Act expressly otherwise provided) shall not be liable to be adjudged bankrupt on an act of bankruptcy committed more than three months before the filing of the petition.

Debtor's Petition.

Petition by debtor.

66. A debtor may petition for adjudication against himself on an act of bankruptcy constituted by filing a declaration of insolvency as in this Act provided but not on any other act of bankruptcy.

Statement &c. by debtor.

67. A debtor petitioning for adjudication against himself shall file in the court a full and true statement verified by his oath of his debts and liabilities of every kind and of the names and residences of his creditors and of the causes of his inability to meet his engagements and of his property and the estimated value thereof.

Adjudication.

68. Where a debtor petitions for adjudication against himself the court on the application of the petitioner shall adjudge the petitioner bankrupt which adjudication shall be absolute.

Proceedings on Petition.

Time for proceeding.

69. If the petitioner does not proceed and obtain adjudication being a creditor within three days and being a debtor within twenty-four hours after filing his petition or such further time as the court allows any creditor having a sufficient debt may within four days after the expiration of the time limited for the proceedings of the petitioner apply to the court for an order to substitute the applicant as petitioner and the court may if it thinks fit so order and thereupon shall proceed to hear and determine the petition but if within the time allowed by this section adjudication is not made the petition shall stand dismissed.

Dismissal of petition against one or more.

70. Where a petition for adjudication is filed against two or more persons the court may dismiss the same as to one or more of them and such dismissal shall not prejudice the effect of the petition as against the other or others of them.

Substitution of other creditor.

71. If after adjudication on a creditor's petition the petitioner's debt is shown to the court to be insufficient to support the adjudication another creditor having a sufficient debt may apply to the court for an order that the petition be proceeded with and the court may if it thinks fit so order and thereupon the adjudication and all proceedings thereunder shall be as valid as if the applicant had been petitioner.

Malicious petition &c.

72. If the debt stated by the petitioning creditor in his affidavit or petition to be due to him is not really due or if after a petition for adjudication filed it is not proved that the person against whom it is filed had committed an act of bankruptcy at the time of the filing and it also appears that the petition was filed fraudulently or maliciously the court shall on the application of the person against whom it was filed examine into the same and order satisfaction to be made to him for the damages by him sustained.

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73. If the petitioning creditor after adjudication receives any money satisfaction or security for his debt or any part thereof whereby he may receive more than other creditors he shall be liable to forfeit his whole debt and also to repay or deliver up such money satisfaction or security or the full value thereof to the trustee for the benefit of the other creditors. Petitioning creditor
compounding.
74. The petitioning creditor shall file and prosecute his petition at his own expense until the choice of a trustee and subject to the directions of the court his costs in that behalf shall when taxed be paid by the trustee out of the first money received by him in respect of the bankrupt's estate. Petitioning creditor's
costs.
75. Adjudication of bankruptcy shall not be invalid by reason of an act of bankruptcy prior to the debt of the petitioning creditor provided there is a sufficient act of bankruptcy subsequent to that debt. Validity of adjudica-
tion.
76. If a bankrupt dies after adjudication the court may if it thinks fit order that the proceedings in the matter be continued as if he had not died. Death of bankrupt.
77. After adjudication on a petition against a member or members of a partnership any other petition for adjudication against a member or members of the same partnership shall be filed in the court in which adjudication on the first mentioned petition was made and unless the court otherwise directs immediately after adjudication on such other petition the estate of the bankrupt or bankrupts thereunder shall vest in the trustee in whom the estate of the bankrupt or bankrupts under the first-mentioned adjudication is then vested and the court may give such directions as it thinks fit respecting the proceedings on the petitions. Subsequent petition
against partners.
78. The court or the Court of Appeal may consolidate the proceedings or any part thereof on such terms as the court thinks fit. Consolidation.
79. A petition for adjudication shall not be dismissed nor shall an adjudication be annulled by reason only that the petition adjudication or act of bankruptcy was concerted or agreed on between the bankrupt or any person on his behalf and any other person. Concerted bank-
ruptcy.
80. If a person against whom a petition for adjudication is filed files in the court a declaration signed by him either before or after the filing of the petition (his signature being attested by a solicitor) to the effect that he submits to adjudication adjudication consequent thereon shall be absolute. Submission to adjudi-
cation.
81. A copy of the order of adjudication (where the same is not absolute) shall be served on the person adjudged bankrupt personally or by delivery thereof at his usual or last known place of abode or business or otherwise as the court directs and he shall be allowed seven days or such further time (not exceeding twenty-one days in the whole) as the court thinks fit from such service to show cause to the court against the validity of the adjudication and unless he appears within that time to show cause and then or afterwards within a time allowed by the court shows that the petitioning creditor's debt or act of bankruptcy is insufficient to support the adjudication and no other debt or act of bankruptcy (as the case requires) sufficient to support the adjudication is proved or shows the invalidity of the adjudication on any other ground the adjudication shall become absolute. Showing cause.
82. Notice of adjudication when the same is or has become absolute shall be gazetted. Gazette notice.
83. If a person adjudged bankrupt files in the court before the expiration of the time allowed for showing cause against adjudication a declaration signed by him (his signature being attested by a solicitor) to the effect that he consents to notice of the adjudication being gazetted notice thereof shall be forthwith gazetted accordingly. Consent.

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- Application to annul.** 84. After adjudication is or has become absolute the bankrupt may apply to the court to annul the same within the times following but not afterwards. If he was in New Zealand at the time of adjudication then within one month after notice of adjudication is gazetted if he was in Australia or Tasmania at the time of adjudication then within two months after notice of adjudication is gazetted if he was beyond New Zealand Australia and Tasmania at the time of adjudication then within eight months after notice of adjudication is gazetted.
- Adjudication conclusive.** 85. Subject to appeal and to the power of annulling under this Act the order of adjudication when the same is or has become absolute 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 of bankruptcy be disputed or required to be proved in any action suit or proceeding and accordingly on proof of the order of adjudication the bankrupt shall in all courts and to all intents whatsoever be conclusively deemed to have been duly adjudged bankrupt and shall be deemed to be bankrupt unless and until it is shown that the adjudication has been reversed on appeal or has been annulled.
- Surrender.** 86. Notice of adjudication shall prescribe a time within which the bankrupt is required to surrender which time the court may if it thinks fit from time to time enlarge.
- Protection.** 87. If a person adjudged bankrupt files in the court before the expiration of the time allowed for showing cause against adjudication a declaration signed by him (his signature being attested by a solicitor) to the effect that he surrenders the court may on his application if it thinks fit dispense with his personal attendance for surrender and he shall thereupon be deemed to have duly surrendered.
- Bringing up &c.** 88. If the bankrupt having been apprehended by warrant of the court within the time allowed for surrender submits to be examined and in all respects conforms he shall have the same benefit as if he had voluntarily surrendered.
- Freedom from arrest.** 89. If the bankrupt is not in prison or in custody at adjudication he shall be free from arrest in coming to surrender and after surrender during the time limited for surrender and until the time appointed for his last examination and for such time after passing his last examination until his order of discharge takes effect as the court from time to time by endorsement on his summons thinks fit to appoint.
- When bankrupt in custody.** 90. If the bankrupt is in prison or in custody under any process attachment execution commitment or sentence the court may by warrant directed to the person in whose custody he is cause him to be brought before it at any sitting either public or private and such person shall be indemnified by the warrant of the court for bringing him up and if he is desirous to surrender he shall be brought up and the expense thereof shall be paid out of his estate.
- Discharge of protected bankrupt.** 91. If the bankrupt in coming to surrender or after surrender and while protected is arrested for debt or on an escape warrant he shall on producing his protection to the officer arresting him and giving to such officer a copy thereof be immediately discharged and if any officer detains the bankrupt after he has produced his protection to the officer beyond the time necessary for obtaining a copy thereof the officer shall be liable to forfeit a sum not exceeding five pounds for every day during which he detains the bankrupt.
- Warrant of arrest.** 92. If after the filing of the petition for adjudication it is shown to the satisfaction of the court that there is probable cause for believing that the person against whom adjudication is sought is about to quit New Zealand or to remove or conceal any of his property with intent

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to defraud unless he is forthwith apprehended the court may if it thinks fit issue a warrant directed to an officer of the court and his assistants or to such persons as the court thinks fit whereby such officer assistants and persons shall have authority to arrest the person against whom adjudication is sought wherever found and to seize his books documents and personal property wherever found and him and them safely keep until adjudication or the expiration of the time allowed for adjudication on such petition but the person against whom such warrant is issued may at any time after arrest or seizure thereunder obtain from the court an order on the petitioning creditor to show cause why he should not be discharged out of custody or why the things seized should not be delivered up to him and the court may if it thinks fit on cause being shown make absolute or discharge such order.

PART VII.

CHOICE OF TRUSTEE AND SUPERVISORS.

93. The order of adjudication shall appoint a meeting of the creditors of the bankrupt in this Act referred to as the first meeting—

Meeting of creditors.

The order shall prescribe the day and hour and place for the first meeting

The day shall not be less than six or more than twelve days after the adjudication is or becomes absolute

The place shall be the court unless the order directs that it be some other place specified within the jurisdiction of the court not being any private residence chambers or office.

94. The day hour and place for the first meeting shall be gazetted.

Gazette notice.

95. The registrar or some fit person appointed by him for this purpose by writing signed by him shall attend the first meeting.

Registrar &c. to attend.

96. At the first meeting the creditors shall choose a fit person whether a creditor or not to be the trustee of the estate and effects of the bankrupt.

Choice of trustee.

97. The creditors from time to time may require the trustee to give such security (if any) as they think fit and may make such provision as they think fit for his remuneration subject to the approval of the court respecting the nature of the remuneration and to taxation respecting the amount thereof.

Remuneration &c.

98. When the trusteeship has been accepted by the person chosen trustee the court shall by order confirm the choice and any order of confirmation shall not be subject to review or appeal Notice of an order of confirmation shall be gazetted.

Confirmation &c.

99. At the first meeting the creditors shall choose two or more fit persons being creditors to superintend the administration of the bankrupt's estate by the trustee and to be called the supervisors of the bankrupt's estate.

Supervisors.

100. The trustee or supervisors or one half in value of the creditors who have proved their debts may at any time apply to the court for the acceptance of the resignation or for the removal of the trustee and the court may if it thinks fit make order accordingly.

Resignation &c, of trustee.

101. On the resignation removal or death of a trustee the court shall appoint another meeting of creditors for the choice of a trustee and like proceedings shall be had as on the original choice and a new trustee shall have like powers authorities and discretion as an original trustee and all property and rights vested in any trustee shall on his ceasing to be trustee and on a new trustee succeeding him be transferred to and vested in the new trustee and so *toties quoties*.

New trustee.

*Bankruptcy.***New supervisor.**

102. A supervisor may at any time resign his office by notice in writing signed by him delivered to the trustee and a supervisor may be removed by resolution of a meeting of the creditors (fourteen days notice in writing of such meeting having been given to him by any two creditors who have proved their debts) and on any such resignation or removal or on the death of a supervisor the court shall appoint another meeting of creditors for the choice of a supervisor and like proceeding shall be had as on the original choice and a new supervisor shall have like powers authorities and discretion as an original supervisor and so *toties quoties*.

Vacancies.

103. Any act or proceeding of the trustee or of the creditors shall not be effected by reason only of any vacancy in the office of supervisor or by reason only of any failure to elect or any defect or irregularity in or about the election of a supervisor.

Partnership.

104. Where a person adjudged bankrupt is a member of a partnership any person to whom he is indebted jointly with the other partners or any of them shall for the purposes of this Part of this Act be deemed a creditor of the bankrupt.

PART VIII.

SECURED CREDITORS—MEETINGS.

Secured creditors.

105. If a creditor holds a security for his debt or any part thereof on the bankrupt's estate he shall unless he gives up his security be reckoned a creditor for the purpose of petitioning for adjudication voting at meetings and receipt of dividends in respect of the balance only of his debt after selling or disposing of his security or giving credit for the value thereof estimated as the court directs or approves.

Meeting of creditors.

106. With respect to meetings of creditors the following provisions shall have effect

- (1.) Proof of debts may be received at any meeting.
- (2.) Creditors who prove before or at any meeting shall alone have votes at it.
- (3.) A creditor may be represented at a meeting by a proxy.
- (4.) A meeting shall not be competent to act for any purpose under this Act unless there are present or represented thereat at least three creditors or all the creditors if their number does not exceed three.
- (5.) Questions at a meeting shall be determined except where otherwise provided in this Act by the majority in value of the creditors present or represented thereat.
- (6.) Any meeting may be adjourned and any adjournment shall be equivalent to the original meeting.

Creditors to act at meetings.

107. Where by this Act anything is directed or authorized to be done by creditors collectively the same may be done at a meeting of creditors and not otherwise.

Holding of meetings.

108. The trustee shall from time to time convene a meeting of the creditors at such times as the creditors at the first meeting or afterwards from time to time direct and in the absence of any such direction then according to general rules.

Gazette notice.

109. Notices of meetings of creditors shall be gazetted and shall also be given in such manner if any as the creditors at the first meeting or afterwards from time to time direct or in the absence of such direction as the supervisors from time to time direct.

Special meetings.

110. For the purposes of this Act a meeting of creditors shall be deemed to be a special meeting when not less than ten days previous notice of the meeting has been gazetted and the business to be

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transacted at the meeting is specially stated in the *Gazette* notice convening the meeting. A special meeting shall not enter on any business other than that stated in the notice convening it.

PART IX.

LAST EXAMINATION AND ACCOUNTS.

111. The court shall forthwith after the first meeting appoint a public sitting on a day not later than sixty days from the date of that meeting notice whereof shall be given in the *Gazette* and in such newspapers as the court thinks fit for the bankrupt to pass his last examination and unless the court otherwise directs to make applications for his discharge but the court may in case of illness of the debtor or on application of the trustee or supervisors or any creditor enlarge the time appointed for such sitting or if it thinks necessary adjourn the same. Last examination.

112. The bankrupt shall prepare and sign a statement of his accounts and file it in the court before the day appointed for the last examination or the adjournment thereof and such statement may before the last examination be amended from time to time as occasion requires or the court directs and the bankrupt shall verify the same on oath when required by the court and the last examination shall in no case be passed unless such statement has been duly filed. Bankrupt's statement.

113. Where the bankrupt is in prison or in custody the court may appoint a person to attend him from time to time to produce to him his books and documents in order that he may prepare his statement of accounts. Where in custody.

114. The statement of accounts when filed shall be open to the inspection of all creditors and they may take copies of or extracts from the same subject to regulations by general rules and within seven days from the filing thereof an abstract thereof shall be made and printed and a printed copy of such abstract shall be sent by post by the trustee to each creditor who has proved. Statement open to creditors.

115. In the preparation of such statement the bankrupt shall be assisted by the trustee who shall prepare and file in court together with such statement a report on the state of the bankrupt's affairs setting forth such facts and particulars as are in the opinion of the trustee important for the court to be informed of but if in any case there appear to the court special reasons why the bankrupt should be assisted in the preparation of such statement by some persons other than the trustee the court may nominate some person in that behalf and may allow him out of the bankrupt's estate such remuneration as to the court on taxation seems just and in that case the statement shall have appended thereto a certificate by the person so appointed of his approval or disapproval thereof and in case of disapproval the particulars and reasons of such disapproval. Trustee's report.

116. The trustee shall examine all the statements of accounts aforesaid and compare the same with the books and documents of the bankrupt and shall from time to time make out a list of the creditors who have proved stating the amount and nature of the debts which list shall be open to inspection of any creditor who has proved. Trustee's list.

PART X.

ORDER OF DISCHARGE.

117. Subject to the provisions of this Act after the bankrupt passes his last examination the court shall on his application make in his Order of discharge.

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favor an order to be called an order of discharge discharging him from debts claims and demands provable under the bankruptcy.

Gazette notice.

118. Notice of the bankrupt's intention to apply for an order of discharge shall be gazetted and shall be given to the trustee and the trustee or any creditor including where the bankrupt is a member of a partnership any joint creditor who has proved may be heard in opposition to the application.

Objections &c.

119. Whether the order is opposed or not the court having regard to the bankrupt's conformity to the law of bankruptcy and to his conduct relative to his trade business property or affairs before and after adjudication shall judge of any objection to an immediate order of discharge.

Suspension of order.

120. Whether the order of discharge is opposed or not the court may if it thinks fit in and by the order suspend the order from taking effect as follows namely for any time not exceeding three years from the date of the order if it appears to the satisfaction of the court

- (1.) That the bankrupt has been guilty of any of the acts by this Act made misdemeanours but has not been convicted thereof
- (2.) That he has within two months next before adjudication fraudulently in contemplation of bankruptcy and not under pressure from any of his creditors with intent to diminish the sum to be divided among his creditors or to give an undue preference to any of his creditors paid or satisfied any of his creditors wholly or in part or made away with mortgaged or charged any part of his property
- (3.) That he has within six months next before adjudication put any creditor to unnecessary expense by vexatious or frivolous defence or delay to or in any proceeding for the recovery of any debt or demand provable under his bankruptcy or is indebted in costs incurred in any such proceeding vexatiously or frivolously defended or delayed by him
- (4.) That having been to his knowledge or belief unable to meet his engagements with his creditors he without reasonable excuse failed to file or delayed the filing of a declaration of insolvency
- (5.) That he being a trader has during his trading with intent to conceal the state of his affairs omitted to keep proper books of account or keep his books of account imperfectly
- (6.) That any debt or liability of the bankrupt subsisting at the time of adjudication or paid or discharged within three months next before adjudication was contracted or incurred by him without any reasonable expectation of his being able to pay or discharge it or by or through any fraud or false pretence or breach of trust committed by him or that forbearance of any such debt or liability had been obtained by the bankrupt by fraud or false pretence or that any such debt or liability had been contracted or incurred by him by reason of any prosecution or proceeding wherein he was found guilty of any offence or of a breach of the revenue laws or by reason of any action of proceeding for libel slander assault battery adultery seduction breach of promise of marriage malicious arrest malicious prosecution malicious trespass malicious injury or the malicious filing or prosecution of a petition for adjudication of bankruptcy

Or for any time not exceeding one year from the date of the order if it appears to the satisfaction of the court that any objection to an immediate order exists on any ground not hereinbefore specified.

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121. In all cases other than those in the last section mentioned the order of discharge shall take effect immediately from its date. Effect from date.
122. Where the bankrupt is convicted of any of the acts by this Act made misdemeanours any suspension of the order of discharge ordered by the court shall not continue in force after his conviction. Exception in case of misdemeanour.
123. If the bankrupt after the order of discharge takes effect is arrested or sued for any debt claim or demand provable under the bankruptcy he shall be discharged on entering an appearance and may plead in general that the cause of action accrued before he was adjudged bankrupt and may give this Act and the special matter in evidence and the order of discharge shall be sufficient evidence of the bankruptcy and of the proceedings precedent to the order of discharge. Plea of discharge.
124. If the bankrupt after the order of discharge takes effect is arrested or detained in custody for a debt claim or demand provable under the bankruptcy where judgment has been obtained before the order or discharge takes effect a Judge of the Supreme Court shall on proof of the order of discharge and unless there appears good reason to the contrary direct the officer who has the bankrupt in custody to discharge him which shall be done accordingly without fee. Discharge on subsequent arrest.
125. After the order of discharge takes effect the bankrupt shall not be liable to pay or satisfy any debt claim or demand provable under the bankruptcy or any part thereof or any contract or promise made after adjudication and if he is sued on any such contract or promise he may plead in general that the cause of action accrued pending proceedings in bankruptcy and may give this Act and the special matter in evidence. Contract after filing.
126. The order of discharge shall discharge the bankrupt from the effects of any process issuing out of any court for contempt of any court for non-payment of money or of costs or expenses in any court and from all costs fees or charges which he would be liable to pay in consequence of or on purging his contempt and a bankrupt in custody under any such process shall on obtaining an order of discharge be entitled to be discharged from such custody forthwith. Operation of discharge.
127. The order of discharge shall not discharge the bankrupt from any debt due to the Crown or any debt or penalty with which he stands charged at the suit of the Crown or 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 unless the Colonial Treasurer for the time being certify in writing his consent to the bankrupt being so discharged. Crown debts.
128. The order of discharge shall not release any person who at the time of adjudication was a partner with the bankrupt or was jointly bound or had made any joint contract with him. Joint debtors.
129. Any contract covenant or security made entered into or given by the bankrupt or by any other person with to or in trust for a creditor of the bankrupt for securing the payment of any money as a consideration or with intent to persuade the creditor to forbear opposing the order of discharge or to forbear to apply for a re-hearing of the order shall be deemed to have been given on an illegal consideration and the party sued thereon may plead in general that the cause of action accrued pending proceedings in bankruptcy and may give this Act and the special matter in evidence. Contract not to oppose.
130. The order of discharge shall not be drawn up until after the expiration of the time allowed for appeal or if an appeal is brought until after the decision of the court appealed to on the appeal and shall bear date either the day after the expiration of the time allowed for appeal or the day of the decision of the court of appeal as the case requires. Time for order.

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Review &c.

131. The order of discharge whether suspended or not shall not be reviewed by the court unless the court sees good cause to believe that the order or the suspension thereof was obtained on false evidence or by reason of the suppression of evidence or otherwise fraudulently in any of which cases the court may if it thinks fit on the application of the trustee or of a creditor who has proved or of the bankrupt and subject to such deposit for costs and to such notice by advertisement or otherwise as the court thinks fit grant a re-hearing of the matter and re-hear it accordingly and on re-hearing the court shall make such order as it thinks fit in like manner as it might on an original hearing.

Subsequent creditor.

132. If on re-hearing the court suspends the order of discharge all persons having become creditors of the bankrupt between the time of the order originally taking effect and the time of its suspension being ordered on re-hearing shall as against any property acquired by the bankrupt during the same period and in priority to the original creditors be admitted to prove and have dividends under the bankruptcy.

Forfeiture.

133. If any creditor of a bankrupt obtains any money security or property from any person as an inducement for forbearing to oppose the bankrupt's discharge or to forbear to appeal against the same he shall be liable to forfeit treble the amount or value of such money security or property.

PART XI.

CONSEQUENCES OF ADJUDICATION WITH RESPECT TO PROPERTY.

Vesting of person-
ality.

134. Where any person is adjudged bankrupt all his personal property present and future and all personal property which comes to him before he obtains his discharge and all debts due or to be due to him and all his interest therein shall by virtue of the order confirming the choice of the trustee become absolutely vested for such interest as the bankrupt has therein in the trustee for the time being for the benefit of the creditors of the bankrupt.

Recovery of person-
ality.

135. After adjudication neither the bankrupt nor any person claiming through or under him shall have power to recover any personal property or debt 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 trustee for the time being shall have like remedy to recover the same in his own name as the bankrupt himself might have had if he had not been adjudged bankrupt.

Excepted articles.

136. The bankrupt may retain for the use of himself and his family as excepted articles such articles of household furniture and tools implements of trade and other like necessaries as he specifies and selects not exceeding in the whole the value of twenty-five pounds and such excepted articles shall not be subject to be sold and disposed of in the bankruptcy or to be taken in execution by any creditor entitled to prove under the bankruptcy.

Vesting of reality.

137. When any person is adjudged bankrupt all real property to or in which he is at any time before he obtains his discharge seized possessed or entitled or has any beneficial interest of which he may by law dispose shall become absolutely vested for such estate or interest as the bankrupt has therein in the trustee for the time being for the benefit of the creditors of the bankrupt by virtue of the order confirming the choice of trustee and it shall be lawful for the court if it thinks fit to order the bankrupt to execute all necessary assurances for absolutely vesting any real property out of New Zealand to

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or in which the bankrupt at any time before he obtains his order of discharge is seized entitled or possessed or has any beneficial interest of which he may by law dispose and in case he shall refuse to execute such assurance he shall be deemed guilty of a misdemeanour and shall be liable to the penalties by this Act imposed for misdemeanours in bankruptcy.

138. Sections fifty-six to seventy-three (both inclusive) of the Act of the third and fourth years of the reign of King William the Fourth chapter seventy-four "For the Abolition of fines and recoveries and for the substitution of more simple modes of Assurance" shall extend and apply to proceedings in bankruptcy under a petition for adjudication as if those sections were here re-enacted and made applicable in terms to such proceedings and so far as such sections are applicable within the law of New Zealand. Fines and recoveries Act.

139. Where at adjudication the bankrupt holds a lease or agreement for a lease with or without an agreement or covenant to purchase or hold lands subject to a perpetual yearly rent reserved by the conveyance or agreement for conveyance thereof the following provisions shall have effect— Leases &c.

- (1.) The liability of the bankrupt in respect thereof shall cease on adjudication.
- (2.) On or before the first day after adjudication on which rent is payable in respect of such lease agreement or conveyance not being later than six months after adjudication the trustee by writing signed by him (his signature being attested by a solicitor and filed in the court) shall elect to take the lease agreement or conveyance and the bankrupt's estate shall continue liable until such election as if there had been no adjudication.
- (3.) If the trustee elects to take the lease agreement or conveyance the bankrupt's estate shall continue liable as if there had been no adjudication.
- (4.) If the trustee 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 who would then be entitled thereto if the particular lease agreement or conveyance had not been made.

140. Where before adjudication 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 trustee does not within one calendar month on being required elect to complete or to abandon the agreement may apply to the court and the court may thereupon order the trustee 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. Agreement to purchase.

141. Where 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 transfer such stock funds or annuities into the name of the trustee and pay all dividends then due or thereafter to accrue due thereon to the trustee. Transfer of stock.

142. Where the bankrupt has any personal property of any kind whatsoever or any right title or interest in any personal property whatsoever anywhere other than in New Zealand of which he may by law dispose he shall if ordered by the court so to do forthwith execute all necessary assurances for granting and assigning the same to the trustees for the time being for the benefit of the creditors of the Personalty out of New Zealand.

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bankrupt and in case he shall refuse to execute the same he shall be deemed guilty of a misdemeanour and shall be liable to the penalties by this Act imposed for misdemeanours in bankruptcy.

Transfer of moneys.

143. Any treasurer or other officer of any banker solicitor or other agent of the bankrupt shall pay and deliver over to the trustee all money and securities in his custody possession or power as such officer or agent which he is not by law entitled to retain as against the bankrupt or the trustee.

Balance of account.

144. If any person on examination before the court admits that he is indebted to the bankrupt on the balance of accounts the court may if it thinks fit order him at such time and in such manner as to the court seems expedient to pay to the trustee the amount admitted with if the court thinks fit the costs of the examination without prejudice to the recovery in like manner as if this enactment had not been made of any amount not admitted or not ordered by the court to be paid. Provided that such an order shall not be made unless there is present at the time of the admission being made a solicitor acting for the person examined either employed by himself or appointed by the court in case of his refusal to employ one.

Order and disposition

145. If the bankrupt at the time when he becomes bankrupt 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 but nothing herein shall 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.

Conveyances made when embarrassed.

146. If any person being insolvent conveys assigns transfers or pays to any of his children or to any other person (except on the marriage of any of his children or for some valuable consideration) any real or personal property bond negotiable instrument chose in action or money and is afterwards adjudged bankrupt the court may order the same to be sold disposed of or applied for the benefit of the creditors under the bankruptcy.

Fraudulent extent.

147. If any real or personal property of or debts due to the bankrupt is or are extended after he is adjudged bankrupt by any person alleging himself to be an accountant or debtor to the Crown the court may examine on oath whether the debt alleged to be due to such accountant or debtor was due to him on any contract originally made between him and the bankrupt and if it appears to the court to be due on any contract originally made with or in trust for any person other than such accountant or debtor the court may order such real or personal property or debts to be sold for the benefit of the creditors under bankruptcy and the sale shall be valid against the estate and all persons claiming under it and the purchaser may recover the property or debts purchased by him from any person detaining the same.

Power of appointment &c.

148. It shall not be lawful for any person adjudged bankrupt to execute either 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 was at or before his discharge beneficially entitled in default of appointment or otherwise in case of non-execution of the power.

Powers vested in bankrupt.

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

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PART XII.

POSSESSION COLLECTION AND MANAGEMENT OF ESTATE.

150. A certificate of the court to which a provisional trustee is attached to the effect that the provisional trustee therein named is the sole trustee of an estate shall be evidence thereof.

Certificate as to provisional trustee.

151. The provisional trustee shall immediately on adjudication take possession of the bankrupt's estate and shall retain possession thereof either personally or by a bailiff or assistant appointed by him until the choice of a trustee by the creditors and the confirmation of such choice but if the provisional trustee or if the court on the representation of any creditor is of opinion that the keeping possession of the bankrupt's estate is not requisite for the due protection of the creditors such possession shall not be continued.

Possession by provisional trustee.

152. Until the order confirming the choice of trustee is made the provisional trustee shall have and perform and may exercise all the rights duties and powers by this Act vested in and imposed on the trustee and all provisions of this Act relative to the vesting of the estate of the bankrupt and to the rights duties and powers of the trustee shall accordingly be read as extending and applying to the provisional trustee as from adjudication and by virtue thereof but the provisional trustee shall in all respects act subject and according to the directions of the court.

Provisional trustee subject to court.

153. Immediately on the making of an order confirming the choice of trustee the estate of the bankrupt vested in the provisional trustee shall by virtue of the order and without any conveyance or assignment be transferred to and become absolutely vested in the trustee in trust for the benefit of the creditors.

Effect of confirmation

154. The trustee shall get in recover and manage the bankrupt's estate and convert the same into money according to directions given by the creditors at the meeting for the choice of a trustee or afterwards from time to time or in the absence of such direction according to the directions of the supervisors.

Management of estate

155. Not later than twenty-four hours after notice of adjudication is gazetted the bankrupt shall if required deliver up to the trustee on oath all books and documents relative to his estate in his possession custody or power and discover such as are in the possession custody or power of any other person.

Books and documents

156. Where the bankrupt is in prison or in custody any person acting under warrant of the court may seize any property of the bankrupt (his necessary wearing apparel only excepted) in the bankrupt's custody or possession or in that of any other person in the prison or in the place where the bankrupt is in custody.

Property &c. in prison.

157. Any person acting under a search warrant of the court may 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 on his property there.

Search warrant.

158. Where the court is satisfied that there is reason to believe 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 provisional trustee 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.

Search warrant.

159. 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

Extension of warrant.

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there is reason to believe 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.

Concealing property. 160. If any person wilfully conceals property of the bankrupt and does not within forty-two days after the filing of the petition for adjudication discover the same to the court or to the trustee he shall be liable to forfeit double the value of the property concealed and a sum not exceeding one hundred pounds.

Discovery of property 161. If any person after the filing of the petition for adjudication voluntarily discovers to the trustee property of the bankrupt not known to the trustee he shall be entitled to receive thereout as reward one-twentieth part of the amount or value thereof and such further sum (if any) as the creditors think fit.

Forfeitures how recovered. 162. A forfeiture under this Act may be sued for in any court of competent jurisdiction by the trustee of the estate of the bankrupt in relation to whom or whose estate the forfeiture is incurred and the amount recovered after deduction of the costs charges and expenses of recovery shall be applied as part of the bankrupt's estate after exhaustion of the other assets and any surplus thereof after payment of the creditors in full shall be paid to the account of the accountant in bankruptcy.

Post letters. 163. The court may from time to time order that for a period not exceeding three months from the date of the order post letters addressed to the bankrupt shall be re-addressed sent or delivered to the trustee and the same shall be done accordingly.

Bankrupt may manage. 164. The trustee may with the approbation of the supervisors appoint the bankrupt himself to superintend the management of the estate or to carry on the trade for the benefit of the creditors and in any other respect to aid in administering the estate in such manner and on such terms as the creditors direct.

Time for payment. 165. The trustee with the consent of the supervisors may give time for payment of any debts due to the bankrupt and may accept payment of or for any such debt by instalments composition or otherwise and may compromise any action or suit and may submit any question to arbitration.

Conduct of actions. 166. The trustee with the consent of the supervisors may commence and prosecute or defend any action or suit which the bankrupt might have commenced and prosecuted or defended and the costs of the trustee in or about such action or suit when taxed shall be allowed out of the bankrupt's estate.

Actions by trustee and partner. 167. When a member of a partnership is adjudged bankrupt the court may authorize the trustee with consent of the supervisors to commence and prosecute any action or suit in the names of the trustee and of the bankrupt's partner and any release by such partner of the debt or demand to which the action or suit relates shall be void but notice of the application for authority to commence the action or suit shall be given to such partner and he may show cause against it and on his own application the court may if it thinks fit direct that he shall receive his proper share of the proceeds of the action or suit and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the court directs.

Action not to abate by death &c. 168. Where a trustee dies or is removed any action or suit shall not be thereby abated or made defective but the court in which the same is pending may on a suggestion or allegation thereof and of the appointment of a new trustee allow the name of the new trustee to be substituted for that of the former trustee and the action or suit may

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be continued as if the new trustee had originally been party thereto instead of the former trustee.

169. In any action or suit brought by the trustee for money due to the bankrupt's estate the defendant may after notice to the trustee pay the same or any part thereof into the court in which the action or suit is brought and shall be discharged thereby from the money paid in and if the time allowed to the bankrupt for applying to annul the adjudication has not then expired all proceedings in the action or suit with respect to that money shall thereupon be stayed until the expiration of that time and if the bankrupt duly applies to annul the adjudication and duly prosecutes his application the money shall as between the trustee and the person adjudged bankrupt abide the event of the application and be paid out of court accordingly but if the bankrupt does not duly make or duly prosecute such application the money shall be paid out of court to the trustee forthwith.

Payment into Court.

170. Where the trustee recovers by action or suit any real or personal property from any person and the adjudication is afterwards annulled every such person is hereby discharged from all demand in respect of such property or money by the person adjudged bankrupt or any person claiming under him.

Indemnity for payment in actions &c.

171. Where any person without action or suit in good faith delivers up any real and personal property to the trustee or pays any money claimed by him and the adjudication is afterwards annulled every such person is hereby discharged from all demand in respect of such property or money by the person adjudged bankrupt or any person claiming under him provided the person making such delivery or payment had not at the time of making the same notice of any proceeding taken for the purpose of annulling the adjudication.

Indemnity &c. without action.

172. Where a person adjudged bankrupt is entitled under a settlement or will to a life estate in remainder expectant on the death of a previous tenant for life with any remainder over to the bankrupt's issue or the heirs of his body or any of them as purchasers the bankrupt's life estate shall not be sold or disposed of before it falls into possession without an express direction of the court.

Estates in remainder.

173. The court on the application of the trustees or of a purchaser of part of the bankrupt's estate may if it thinks fit order the bankrupt to join in any conveyance and if the bankrupt fails to execute such conveyance within the time directed by the order he and all persons claiming under him shall be stopped from objecting to the validity of the conveyance and all right or title which the bankrupt had in or to the property comprised therein shall be as effectually barred by the order as if the conveyance had been executed by him.

Bankrupt to join in conveyance &c.

174. The title to any real or personal property shall not be impeached by the bankrupt or any person claiming under him by reason only of any defect in the petition for adjudication or in the adjudication or in any proceeding thereunder unless the bankrupt within the time allowed by this Act has commenced proceedings to annul the adjudication and has duly prosecuted the same.

Title not to be impeached.

175. If the creditors at a special meeting comprising three-fourths in value of the creditors who have proved resolve that the bankrupt's debts can be discharged by means of money raised by mortgage or pledge of his property or part thereof the trustee with the approval of the supervisors may execute such mortgage or pledge with or without powers of sale and other powers and in such manner as the court directs and the court may order the execution of such mortgage or pledge by any other necessary parties and give all necessary directions for the purpose of carrying into effect the resolution of the creditors.

Power to mortgage.

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Sale of book debts.

176. At any time after the expiration of twelve months from adjudication or sooner with the approval of the court the trustee may sell by auction or tender or with the approval of the supervisors by private contract all or any of the book debts due or growing due to the bankrupt and the books relating thereto and the good will of his trade or business and assign the same to the purchaser and such purchaser may by virtue of the assignment sue for and recover in his own name the debts assigned to him.

Emblements &c.

177. Where the bankrupt is engaged or employed in husbandry on land let to farm the trustee or any purchaser from him shall not take use or dispose of any hay straw grass turnips roots or other produce of the land or any manure compost ashes seaweed or other dressing intended for the land and being thereon in any other manner or for any other purpose than the bankrupt ought to have taken used or disposed of the same if he had not been adjudged bankrupt.

Protection of purchaser.

178. Any purchase from or other dealing with the bankrupt in good faith and for valuable consideration where the person purchasing from or dealing with the bankrupt had at the time of such purchase or dealing notice of an act of bankruptcy committed by the bankrupt shall not be impeached by reason thereof unless a petition for adjudication is filed within three months after such act of bankruptcy.

Protection of payments &c. without notice.

179. The following payments conveyances contracts dealings transactions executions and attachments shall be valid notwithstanding any prior act of bankruptcy committed by the bankrupt that is to say Every payment by or on behalf of the bankrupt to any of his creditors and every payment to him and every conveyance for valuable consideration by him and every contract dealing and transaction by and with him and every execution and attachment against his lands executed by seizure and every execution and attachment against his goods and chattels executed and levied by seizure and sale provided

- (1.) That the payment conveyance contract dealing transaction execution or attachment was *bona fide* made executed or entered into executed by seizure or executed and levied by seizure and sale (as the case may be) before the filing of the petition for adjudication and
- (2.) That the person to by or with whom every such payment conveyance contract dealing or transaction was made executed or entered into or at whose suit or on whose account every such execution or attachment was issued had not at the time of such payment conveyance contract dealing or transaction or at the time of the executing or levying of such execution or attachment or at the time of the making of any sale thereunder notice of any prior act of bankruptcy committed by the bankrupt and then available for adjudication against him

But nothing herein shall give validity to any payment delivery transfer conveyance or mortgage constituting a fraudulent preference or to any execution founded on a judgment on a warrant of attorney or *cognovit actionem* or judge's order obtained by consent constituting a fraudulent preference.

Protection of payment &c. by deposits.

180. Where any person corporation or company having in his or their possession or custody any money or personal property which at the time of the deposit thereof in his or their possession or custody belonged to the bankrupt pays or delivers the same to the bankrupt or to his order such payment or delivery even if made after adjudication shall not be impeached as against the person corporation or company making the same provided

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- (1.) That the payment or delivery is made before notice of adjudication is gazetted.
- (2.) That the person corporation or company making such payment or delivery had not at the time of making the same notice of an act of bankruptcy committed by the bankrupt and then available for adjudication against him.

181. The following instruments given or entered into by the bankrupt whether in contemplation of bankruptcy or not shall be void if at the time of the bankrupt giving or entering into the same he was unable to meet his engagements with his creditors namely

Warrants of attorney
&c. void.

- (1.) Every warrant of attorney to confess judgment in an action for money given within two months before the filing of the petition for adjudication and being wholly or in part for or in respect of an antecedent debt or money demand.
- (2.) Every *cognovit actionem* or consent to a judge's order for judgment given or agreement to allow judgment to pass by default on an undertaking by the plaintiff not to issue or to postpone issuing execution thereon entered into after the commencement of this Act within two months before the filing of the petition for adjudication in any action commenced by collusion with the bankrupt and not adversely or purporting to have been given or entered into in an action but having been in fact given or entered into before the commencement of any action.

PART XIII.

PROOF.

182. Every person with whom the bankrupt has before the filing of the petition for adjudication contracted a debt and every person to whom the bankrupt has before that time become liable in respect of a demand may notwithstanding any prior act of bankruptcy prove the amount of such debt or demand provided he had not at the time when the debt was contracted or the liability was incurred notice of any act of bankruptcy committed by the bankrupt and then available for adjudication of bankruptcy against him.

Proof notwithstanding
bankruptcy.

183. 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 notwithstanding any act of bankruptcy committed by the bankrupt before the credit given to or debt contracted or liability incurred by him and no more than what appears due on either side on the balance or account shall be claimed or paid on either side provided such person had not at the time of the credit given to or debt contracted or liability incurred by the bankrupt notice of any act of bankruptcy committed by him and then available for adjudication against him.

Set off.

184. Where a debt or sum certain on which interest is not reserved or agreed for is due at the filing of the petition for adjudication and is provable the creditor may prove also for interest at eight pounds per centum per annum to the filing of the petition 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 with a notice in writing that interest would be claimed from that demand until payment.

Interest.

Bankruptcy.

- Discount.** 185. Any creditor of the bankrupt in respect of a debt not payable at the time of adjudication whether on a negotiable instrument or not may prove the debt as if it was payable presently and receive dividends allowing out of the dividends discount at ten pounds per centum per annum from the declaration of each dividend until the time when the debt is payable.
- Instalments.** 186. Where the bankrupt has before the filing of the petition for adjudication contracted a debt payable by instalments the creditor may prove for the aggregate amount of the instalments unpaid.
- Double proof.** 187. Where the bankrupt is at adjudication 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.** 188. Where the bankrupt is at adjudication 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 adjudication the court may by consent of all necessary parties assess the damages or if all necessary parties do not consent may on application of the trustee or of the person to whom the bankrupt is liable direct the damages to be assessed by a jury and may give all necessary directions for that purpose and in any case the damages assessed may be proved under the bankruptcy.
- Proof for money &c.** 189. 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.
- Distress not for more than one year's rent.** 190. Distress for rent levied on the property of the bankrupt after the act of bankruptcy on which adjudication is made whether before or after the filing of the petition for adjudication shall not be available for more than one year's rent accrued due before the day of such filing but a person entitled to rent may prove for any rent due for which distress is not so available.
- Proof for rent &c.** 191. Where the bankrupt is liable to pay a rent or to make any other payment falling due at fixed periods and the adjudication happens 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 adjudication as if it grew due from day to day.
- Bottomry &c.** 192. The obligee in a bottomry or respondentia bond and the assured in a policy of insurance made on good or valuable consideration may claim under the bankruptcy 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 filing of the petition for adjudication.
- Proof by agents &c.** 193. 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 provided the person so interested is not within New Zealand.
- Premiums &c.** 194. If the bankrupt is at adjudication 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 payment the covenantee or other person entitled

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to the benefit of the covenant contract or promise may prove for the value of the bankrupt's liability thereunder such value to be ascertained as the court directs.

195. Where the bankrupt has before the filing of the petition for adjudication contracted a debt payable on a contingency which has not happened before the filing of the petition the creditor may before the contingency happens prove for the value of the debt estimated as the court directs and receive dividends or may after the contingency happens prove for the debt and receive dividends not disturbing former dividends provided he had not at the time when the debt was contracted notice of an act of bankruptcy committed by the bankrupt and then available for adjudication against him.

Debt payable on con-
tingency.

196. Where the bankrupt has before the filing of the petition for adjudication contracted a liability to pay money on a contingency which has not happened before the filing of the petition 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 as the court thinks fit and after the contingency has happened and the demand has been ascertained may prove in respect thereof and receive dividends as nearly as may be as if the contingency had happened and the demand had been ascertained before the filing of the petition not disturbing former dividends provided

Contingent liability.

- (1.) That the claimant had not at the time when the liability was contracted notice of any act of bankruptcy committed by the bankrupt and then available for adjudication against him.
- (2.) That in case the claim is not wholly or in part converted into a proof within six months from the filing of the petition it may at any time thereafter be expunged wholly or in part if the court thinks fit.

197. An annuity creditor of the bankrupt by whatever assurance the annuity is secured whether there were or not any arrears due at the filing of the petition for adjudication may prove for the value of the annuity estimated as the court directs regard being had to its original price and to the diminution in its value caused by the lapse of time to the filing of the petition.

Annuity creditor.

198. Where any person is at the time of the filing of the petition for adjudication 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 filing of the petition the following provisions shall have effect—

Sureties &c.

- (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

although such person became surety or liable after an act of bankruptcy committed by the bankrupt provided he had not at the time when he became surety or liable notice of any act of bankruptcy committed by the bankrupt and then available for adjudication against him.

199. It shall not be lawful for any person entitled to an annuity granted by the bankrupt to sue any person who is surety for payment thereof until the annuitant has proved under the bankruptcy for the value of the annuity and for the arrears thereof and 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 filing of the petition for adjudication becomes due pay the amount proved he may be sued for the accruing payments of the annuity until the annuitant

Sureties for annuities.

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either by dividends under the bankruptcy 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 and 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.

Bankrupt member of a company.

200. Where the bankrupt is at the time of adjudication a member of a company registered under "The Joint Stock Companies Act 1860" or any Act for the like purposes and not in the course of being wound up under that Act he shall be by virtue of the adjudication 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 adjudication and the company may prove under the bankruptcy for the amount of calls made before the adjudication 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 adjudication in respect of such shares.

Proof for costs.

201. 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 adjudication would have been entitled to recover costs from the bankrupt if he had not been adjudged bankrupt may prove for the amount of such costs when taxed although the taxation is not had before adjudication.

Relinquishing of action &c.

202. A creditor who has brought an action or instituted a suit against a bankrupt in respect of a debt or demand provable under the bankruptcy shall not prove or claim thereunder 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 petition is dismissed or the adjudication is annulled the creditor may proceed in the action or suit as if he had not proved or claimed.

Proof deemed election.

203. The proving or claiming of a debt or demand under the bankruptcy shall be deemed an election by the creditor to take the benefit of the adjudication with respect to that debt or demand and the court may if it thinks fit accordingly restrain any action suit or proceeding by that creditor in contravention of this section.

Procedure.

Mode of proof.

204. Every creditor of the bankrupt may after his adjudication prove his debt by delivering or sending through the general post to the trustee a statement of his debt and of the account if any between him and the bankrupt with a declaration signed by the creditor appended thereto that such statement is a true and complete statement of account 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.

Companies &c.

205. 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.

Bankruptcy.

206. If any person wilfully and corruptly makes any declaration for proof of debt under this Act knowing the same or the statement of account to which it is appended to be untrue in any material particular he shall be deemed guilty of perjury. False declaration perjury.

207. Every creditor of the bankrupt may also after adjudication prove his debt by deposition in court or in chambers or before a Registrar of the Supreme Court or Clerk of the District Court or at any meeting of creditors elsewhere than in court or by affidavit and such proof may be on his own oath or on that of any clerk or other person in his employment who shall in his deposition or affidavit set forth that he is authorized by his principal to make the deposition or affidavit and that it is within his own knowledge that the debt was incurred and for the consideration stated and that to the best of his knowledge and belief the debt still remains unpaid and unsatisfied. Proof in court or in chambers &c.

208. The trustee and supervisors of any bankrupt's estate shall have power to examine on oath or otherwise any person who has tendered or made a proof of a claim against the estate whether preferential or otherwise or who has made an affidavit or statement and may summon any such person or any person capable of giving evidence concerning such proof or the debt sought to be proved and in case any such person so summoned shall neglect or refuse to attend it shall be lawful for the trustee to obtain a judge's order to bring the person so neglecting or refusing before the court for examination and all costs incident to such order and examination shall be paid by the person so neglecting or refusing. Examination on oath &c.

209. The court may on the application of the trustee or of any creditor or of the bankrupt examine on oath or otherwise any person who has tendered or made a proof of a claim against the estate whether preferential or otherwise or who has made an affidavit or statement and may summon any such person or any person capable of giving evidence concerning such proof or the debt sought to be proved and may at any time expunge or reduce a proof on such application and such evidence as it thinks sufficient and for that purpose may summon and examine on oath or otherwise any person capable of giving evidence concerning the alleged debt and may make such order as to the costs of any application as seems just. Court may examine.

PART XIV.

DIVIDENDS PREFERENTIAL PAYMENTS ALLOWANCES SURPLUS.

210. The trustee shall from time to time declare and make dividends of the bankrupt's estate according to such directions as the creditors give at the first meeting or afterwards and in the absence of any such direction then according to general rules. Time for dividends.

211. In the calculation of a dividend it shall be obligatory on the trustee to make provision for debts appearing from the bankrupt's statement of accounts or otherwise to be due to persons resident in places so distant from the court that in the ordinary course of communication they have not had sufficient time to tender their proofs or to establish them if disputed and also for debts the subject of claims disputed and not yet determined by the court. Distant creditors.

212. Where joint and separate estates are being administered and the court does not otherwise direct dividends of the joint and separate estates shall be declared together and *Gazette* notices respecting such dividends shall be given in the same advertisement and the expenses of and incident to the meetings respecting such dividends shall be fairly apportioned by the trustee between the joint and separate estates. Joint and separate estates.

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regard being had to the work done for and the benefit received by each estate and one charge only shall be allowed to the solicitor to the trustee in respect of any such meeting.

Dividends of execution creditors.

213. A creditor having levied execution on or having by virtue of any custom or otherwise made an attachment of the personal property of the bankrupt or any part thereof shall not receive thereby more than a rateable part of the debt unless the property seized or attached is actually sold before the filing of the petition for adjudication.

Bankrupt partner.

214. Where the bankrupt is a member of a partnership a creditor to whom he is indebted jointly with the other partners or any of them shall not receive any dividend out of the separate estate of the bankrupt until the separate creditors of the bankrupt have been paid in full.

No action for dividend.

215. An action for a dividend shall not lie against the trustee but if the trustee refuses to pay any dividend the court may if it thinks fit order payment thereof with interest for the time that it is withheld and with the costs of the application.

Wages and salaries.

216. Where at the time of the filing of the petition for adjudication the bankrupt was indebted to any servant or clerk for wages or salary the trustee on proof thereof shall pay so much as is due not exceeding three months wages or salary and not exceeding fifty pounds to such servant or clerk out of the bankrupt's estate and such servant or clerk may prove for any sum exceeding that amount.

Labourer's wages.

217. When at the time of the filing of the petition for adjudication the bankrupt was indebted to any artisan labourer or workman whether skilled or unskilled of the bankrupt in respect of his wages or labour the trustee on proof thereof shall pay so much as is due not exceeding one month's wages at current rates to such artisan labourer or workman out of the bankrupt's estate and such artisan labourer or workman may prove for any sum exceeding that amount.

Apprentices.

218. Where at the time of the filing of the petition for adjudication any person is apprenticed to the bankrupt the adjudication shall be a complete discharge of the deed or articles of apprentice and 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 thinks 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 filing of the petition for adjudication.

Allowance to bankrupt.

219. The trustees and supervisors may if they think fit from time to time make such allowance to the bankrupt out of his estate until he has passed his last examination as they consider necessary for the support of the bankrupt and his family but such allowance shall not be made by them for any period after the adjournment of the last examination *sine die*.

Allowance in case of partnership.

220. In case of a joint petition for adjudication under which any partner has obtained his order of discharge if a sufficient dividend has been paid in the aggregate on the joint estate and on the separate estate of that partner he shall be entitled to his allowance although a sufficient dividend has not been paid in the case of any other partner.

Allowance in proportion.

221. Every bankrupt whose order of discharge has taken effect shall be allowed and paid the following allowance

If the net produce of his estate in hand will (with any prior dividend) pay the creditors who have proved ten shillings in the pound he shall be allowed and paid out of such produce five per centum not exceeding four hundred pounds

If such produce will (with any prior dividend) pay such creditors twelve shillings and sixpence in the pound he shall be allowed

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and paid as aforesaid seven and a half per centum not exceeding five hundred pounds

If such produce will (with any prior dividend) pay such creditors fifteen shillings in the pound or more he shall be allowed and paid ten per centum not exceeding six hundred pounds

And every such allowance shall be payable to the bankrupt forthwith after his order of discharge takes effect in case the dividends paid to the creditors who up to that time have proved are of the requisite amount in this section mentioned.

222. If the produce of the bankrupt's estate pays twenty shillings in the pound on the debts proved and the costs charges and expenses of the bankruptcy then the creditors who have proved shall receive interest on their debts at the rate and in the order following— Interest and surplus.

(1.) All creditors whose debts by law carry interest shall first receive interest on those debts as from the filing of the petition for adjudication at the rate reserved or by law payable or provable thereon

(2.) All other creditors who have proved shall then receive interest on their debts as from the filing of the petition at eight pounds per centum per annum

And if after such payment of interest any surplus of the bankrupt's estate remains the court shall order that the same revert in or be paid to the bankrupt his heirs executors administrators or assigns (according to the nature thereof or of the property from the disposition whereof it arises) and the same shall revert or be paid accordingly as if there had not been any adjudication.

PART XV.

ACCOUNTANT IN BANKRUPTCY CONTROL OF TRUSTEE AUDIT RELEASE.

223. It shall be lawful for the Governor from time to time to appoint and remove a person to be accountant in bankruptcy. Appointment of accountant.

224. The accountant shall hold no other office under this Act and shall not be directly engaged in any business or trade. To hold no other office.

225. The accountant shall keep a book entitled the "Register of Bankruptcy" as nearly as possible in the form of Schedule A. to this Act annexed but with such additional heads as he may find necessary which book shall be open to the inspection of all concerned and he shall enter regularly therein the court in which the adjudication takes place or deed of arrangement is filed and when necessary the court to which any adjudication has been remitted the date of the first adjudication the name and designation of the debtor the place of his residence dwelling-house or place of business and the names and designations of his petitioning creditors the date of adjudication the time and place appointed for the election of the trustee and supervisors the name and designation of the trustee and supervisors and the time for lodging claims in order to obtain payment of the first dividend the bankrupt's discharge on composition or otherwise and the trustee's discharge for which purpose a certified copy of every adjudication shall be transmitted to him by the registrar or clerk of the district every three months and such other information as will enable him to make the above entries and the trustee shall be bound to furnish these to the registrars and clerks to the District Courts as the case may be. Register of bankruptcy.

226. Each trustee shall within fourteen days of the thirty-first December in each year or on the first lawful day after the expiry of the said fourteen days deliver free of charge to the Registrar of the Supreme Court or Clerk of the District Court as the case may be a return in the Returns to be made.

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form of Schedule B. hereunto annexed of every estate in which he is trustee and the registrar or clerk shall within fourteen days thereafter transmit in the form of the said Schedule to the accountant a return of all estates brought under the operation of this Act in the district of which he is a registrar or clerk as the case may be and the accountant shall cause the returns so made to be regularly bound up and preserved according to alphabetical order of districts in a volume to be kept at all times in his office with an index thereto framed by him which volume shall be patent to all concerned and any trustee who shall fail to make such return shall be removable from his office at the instance of any one creditor or of the accountant or subject to such order as the court which awarded such adjudication or the Supreme Court may think suitable.

Accountant's power
over trustees &c.

227. The accountant shall take cognizance of the conduct of all trustees and supervisors appointed after the commencement of this Act and of trustees of estates not wound up at the commencement of this Act and in the event of their not faithfully performing their duties and duly observing all rules and regulations imposed on them by statute or general rules relative to the performance of those duties or in the event of any complaint being made to him by any creditor in regard thereto he shall inquire into the same and if not satisfied with the explanation given he shall report thereon to the court which after hearing such trustees or supervisors thereon and investigating the whole matter shall have power to censure such trustee or supervisors or remove them from office or otherwise to deal with them as the justice of the case may require.

Returns to be
gazetted.

228. The accountant shall examine all returns required by this Act from trustees and frame an annual report to the Supreme Court showing the condition of every estate brought during the past year under the operation of this Act which report shall be published in the *General Government Gazette* and the accountant shall have power on the application of one or more of the creditors or of his own accord to require exhibition of the minute book in any adjudication and of any vouchers or documents which he may think necessary and to direct that a meeting of the creditors shall be called to take any measures under consideration which he may judge requisite for the preservation or due management of the estate or more speedy realizing and division of the funds or winding up of the estate.

Accountant may
bring matters before
Court.

229. The accountant may at all times when requisite report to the court any disobedience by the trustee or supervisors of any requisition or order by him and generally any matter which he may deem it necessary for the due discharge of his office to bring before the court and it shall be competent for the Judge of the Supreme Court in the district to which the case belongs to deal summarily with the matter reported.

Cases of fraud &c.

230. If the accountant shall possess information that shall lead him on reasonable grounds to suspect fraudulent conduct by the bankrupt or malversation or misconduct on the part of the trustee or supervisors he shall be entitled to give information to the Crown Solicitor or person appointed to prosecute for the Crown in the Province who shall direct such inquiry and take such proceedings therein as he shall think proper.

Case of illness &c.

231. In case of illness or temporary absence of the accountant the Supreme Court or any one of the judges of that court may authorize any accountant clerks or other qualified person to discharge the duties of the office for the time.

Trustee subject to
Court.

232. The trustee shall be subject to the orders of the court in his conduct as trustee and the court may at all times summon the trustee and

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require him to produce or to pay and deliver over in accordance with the provisions of this Act all money books and documents in his possession custody or control as trustee.

233. Any act or proceeding of the trustee or of any supervisor or of the creditor shall be subject to be annulled or varied by the court on the application of any creditor or of the trustee or of any supervisor and on good cause shown. Court may vary proceedings.

234. The accounts of the trustee shall be audited by the supervisor four times at least in every twelve months at such times and in such manner as general orders direct and any remuneration awarded to the trustee shall not be allowed as against the bankrupt's estate unless and until the trustee's account in respect of such remuneration has been approved by the supervisors and no such account shall be allowed unless and until the trustee's accounts have been duly audited and passed. Audit of accounts.

235. The creditors may if and when they think fit by resolution at a special meeting give to the trustee chosen by the creditors a release in respect of the bankruptcy and the trustee may file the resolution in the court and the resolution when filed shall operate to discharge the trustee from all claims and demands of the creditors and of any person who might have proved under the bankruptcy subject to the conditions (if any) expressed in the resolution. Release of trustee.

236. The trustee shall before filing the resolution of release give to the provisional trustee a list signed by him of unclaimed dividends on the estate and of debts remaining due to the estate and shall lodge money and negotiable instruments then in his hands belonging to the bankrupt's estate in the bank to the account of the accountant in bankruptcy and the same shall be carried to the credit of the estate. Outstanding accounts.

237. The accountant in bankruptcy shall on the application of the trustee give to him a certificate stating the amount and description of any money or negotiable instrument which he is at any time desirous of lodging in the bank under this Act and the bank shall on production of such certificate receive such money or negotiable instrument and shall give a receipt for the same and shall place the same to the credit of the accountant in bankruptcy. Certificate of accountant.

238. After the filing of the resolution of release the provisional trustee shall with respect to any property of the bankrupt not realized at the time of the resolution and debts then remaining uncollected or unsold and any after acquired property of the bankrupt be the sole trustee of the bankrupt's estate. Provisional trustee sole trustee &c.

239. The provisional trustee shall not be personally liable for any act done by him or done in pursuance of any order or authority given by him in the execution of his duty as provisional trustee notwithstanding that the bankruptcy is annulled. Provisional trustee not liable for Act.

240. The provisional trustee shall not be personally liable by reason of his having received any money or negotiable instrument under a bankruptcy in his character of a provisional trustee provided he lodges the same during the prosecution of the bankruptcy in the bank to the credit of the accountant in bankruptcy for the particular estate for which he has received the same and gives notice of such lodgment to any person claiming the same and provided he has not after such lodgment dealt with the same otherwise than in the execution of his duty as provisional trustee and under order of the court and if any action is brought against him (solely or otherwise) in respect thereof the court in which the action is brought or if the court is the Supreme Court then any judge thereof on his application and on evidence of the fact may set aside the proceedings in the action as far as he is concerned with or without costs as the court or judge thinks fit. Provisional trustee not liable for money &c.

Bankruptcy.

PART XVI.

TRANSFER OUT OF BANKRUPTCY.

Resolution for taking estate out of bankruptcy.

241. At the first meeting or at a special meeting it may be resolved by the votes of a majority in number representing three-fourths in value of the creditors present or represented thereat that any proposal made by or on behalf of the bankrupt for taking the estate out of bankruptcy or any modification thereof be accepted or in the absence of any such proposal or in case of any such proposal being made and rejected it may be resolved by the votes of that majority that the estate of the bankrupt be taken out of bankruptcy and on any such resolution being passed the meeting shall be adjourned for fourteen days and no proceedings in bankruptcy shall be taken in the meantime.

Notice of resolution.
Proceedings at adjourned meeting.

242. Notice of the passing of the resolution shall be gazetted.

243. At the adjourned meeting it may be resolved by the votes of a majority in number representing three-fourths in value of the creditors present or represented thereat that the estate of the bankrupt shall be wound up out of bankruptcy or that any other arrangement for the payment of his debts or of a composition thereon be adopted (with or without a deed) and that the jurisdiction of the court over his estate shall as from the date of such resolution either wholly cease or continue only to the extent and for the purposes specified in the resolution.

Effect of resolution.

244. A copy of the resolution passed at the adjourned meeting shall be filed in the court and thereupon the jurisdiction of court over the estate of the bankrupt shall cease or shall continue in accordance with the terms of the resolution and the arrangement mentioned in the resolution shall be carried into effect but the bankrupt personally shall remain subject to the provisions of this Act relative to examination and discharge as if the resolution had not been passed.

Cases of partnership.

245. Where the adjudication is against members of a partnership the joint creditors and each class of separate creditors of the partners may make distinct arrangements under this Act and if distinct arrangements are so made the majorities of creditors required under this part of this Act shall be distinct majorities of each such class but otherwise the joint and separate creditors shall have votes as one body. Provided that the delay of any one of such classes in making or their failure to make an arrangement under this part of this Act shall not prevent any other of such classes from making such an arrangement.

PART XVII.

CHANGE FROM BANKRUPTCY TO ARRANGEMENT.

Resolution for assignment.

246. At the first meeting of creditors after adjudication or at a special meeting of creditors the bankrupt or any person on his behalf may make a proposal for the payment of his debts or of a composition thereon and at such meeting it may be resolved by the votes of a majority in number representing three-fourths in value of the creditors present or represented thereat that such proposal or any modification thereof be accepted.

Confirmation by Court.

247. The trustee shall report such resolution to the court within four days from the date of its passing and the court on the application of the bankrupt or the trustee or of any creditor who has concurred in the resolution shall if satisfied that the resolution was duly passed by order confirm the resolution and suspend the proceedings in bankruptcy for such period as the court thinks fit and may by the same or any subsequent order give such directions as it thinks fit for the protection and management of the bankrupt's estate during the period of suspension.

Bankruptcy.

248. At any time before the termination of the period of suspension the bankrupt or the trustee or any creditor may produce to the court a deed of arrangement for carrying into effect the proposal and the court if satisfied that the deed has been executed or in writing assented to by a majority in number representing three-fourths in value of the creditors and if satisfied (after hearing the bankrupt and any creditor desiring to be heard in support of or in opposition to the deed) that the deed is not inconsistent with the resolution shall make a declaration of the complete execution of the deed and shall direct the deed to be filed in the court and shall annul the bankruptcy and the deed shall thereupon be as binding in all respects on any creditor who has not executed or assented to it as if he had executed or assented to it.

Production of deed
&c.

249. For the purposes of the computation of the requisite value a person shall be deemed a creditor for the amount of his debt provable in bankruptcy after deduction of the value of all securities for the same held by him on the debtor's property but if the deed provides for the payment in full of all creditors whose respective debts do not exceed ten pounds that class of creditors shall be excluded in such computation.

Computation of
requisite value.

250. Between the filing of the deed and the expiration of the time allowed for complete execution and also after a declaration of complete execution the court shall have exclusive jurisdiction to enforce in any respect the execution of the trusts of the deed and to entertain any application of the arranging debtor or of any trustee or inspector acting under the deed or of any creditor or person claiming to be a creditor of the arranging debtor respecting the custody distribution inspection management or winding-up of the arranging debtor's property or affairs or respecting any act or thing relating thereto done or happening after the execution of the deed by the arranging debtor or respecting the claim of any person to be a creditor or respecting the execution or performance of any of the trusts powers covenants or provisions of the deed or respecting the audit or examination of the accounts of a trustee or inspector or the taxation or examination of the costs or charges of an attorney solicitor accountant auctioneer broker or other person acting or employed under the deed or respecting 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 arranging debtor 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.

Jurisdiction of court.

251. Except where the deed expressly provides otherwise the court shall determine all questions arising under the deed according to the law and practice in bankruptcy as far as the same are applicable.

Decisions as in bank-
ruptcy.

252. If a declaration of complete execution is not made within the period of suspension the proceedings in bankruptcy shall immediately on the expiration of that period go on as if there had been no suspension and that period shall not be reckoned in the calculation of time for any purposes under this Act.

Failure of complete
execution.

253. If the bankruptcy is annulled as in this part of this Act provided notice of the order annulling it shall be gazetted and the trustee chosen by the creditors shall be entitled to his release as if the bankruptcy had not been annulled.

Notice of annulling.

254. Where the adjudication is against members of a partnership the joint creditors and each class of separate creditors may make distinct arrangements under this part of this Act and if distinct arrangements are so made the majorities of creditors required under this part of this Act shall be distinct majorities of each such class but otherwise the joint and separate creditors shall have votes as one body provided that

Cases of partnership.

Bankruptcy.

the delay of any one of such classes in making or their failure to make an arrangement under this part of this Act shall not prevent any other of such classes from making such arrangement.

PART XVIII.

ARRANGEMENT BY DEED.

Deed of management
may be filed.

255. A debtor (not adjudged bankrupt) who after the commencement of this Act in order to an arrangement with his creditors executes a deed providing by way of trust inspectorship or otherwise for the distribution of all or part of his property among all his creditors (with or without other provisions having reference to the debtor's liabilities and his release therefrom) or for the payment of a composition to all his creditors out of his property or otherwise may file in court the deed when executed by himself. The deed may be filed in any court in which the debtor might file a petition for adjudication of bankruptcy against himself and the court in which it is filed is in this part of this Act referred to as the court. Where the deed is filed in any District Court information of the filing and contents of the deed shall be sent to the district of the Supreme Court in which such District Court is situate in such manner as general rules direct.

Attestation of solicitor.

256. The deed if executed in New Zealand shall not be filed unless its execution by the debtor is attested by a solicitor of the Supreme Court stating in his attestation the date of such execution and such a deed shall not be filed after the expiration of seven days from that date.

Attestation out of
New Zealand.

257. The deed if executed by the debtor in any place out of New Zealand shall be executed in manner required by the law of New Zealand in relation to other deeds and such a deed shall not be filed after the expiration of three months from the date of its execution by the debtor except with the leave of the Supreme Court.

Stay of actions &c.

258. After the filing of the deed the court may on the application of the debtor or of any creditor who has executed or assented in writing to the deed or of any trustee or inspector acting under the deed restrain any action suit or proceeding against the debtor on such terms as the court thinks fit.

Gazette notice.

259. Notice of the filing of the deed shall be gazetted.

Stay of execution &c.

260. After notice of the filing of the deed has been gazetted no execution attachment or other process against the arranging debtor's property in respect of any debt and no process against his person in respect of any debt other than such process by writ or warrant as may be had against a debtor about to depart out of New Zealand shall be available without leave of the court.

List of debts and
property to be filed.

261. Within four days after the filing of the deed the arranging debtor shall file in the court a list signed by him showing the names residences and occupation of his creditors and the respective amounts due to them and a statement showing his property and the estimated value thereof and he may from time to time add to or amend such list or statement and every such such list statement addition and amendment shall be verified by affidavit of the debtor.

Open to inspection.

262. Any person stating himself to be a creditor of the arranging debtor may (subject to the payment of the prescribed fees if any) inspect the deed and list of creditors and statement of property filed and have a copy thereof or extract therefrom.

Complete execution.

263. The deed shall be deemed completely executed when it is executed or assented to in writing (before or after the execution of the deed by the debtor) by a majority in number representing three-fourths in value of the creditors of the arranging debtor.

Bankruptcy.

264. A certificate of the complete execution of a deed signed by the trustee or inspector acting under the deed or if there is none by any two of the creditors who have executed or assented in writing to the deed shall be for all purposes *prima facie* evidence of its complete execution.

Certificate of complete execution.

265. Every person who would be entitled to prove a debt in bankruptcy shall for the purposes of the computation of the requisite value and for all other purposes be deemed a creditor for the amount and on the terms and condition for and on which his proof would be admitted in bankruptcy and accordingly the value of all securities for his debt held by him on the debtor's property shall be deducted from the amount of his debt but if the deed provides for the payment in full of all creditors whose respective debts do not exceed ten pounds that class of creditors shall be excluded in the computation of the requisite value.

Creditors determined as in bankruptcy.

266. If at any time within three months after the filing of the deed the arranging debtor or any trustee or inspector acting under the deed or any creditor who has executed or assented in writing to the deed considers the deed to be completely executed he may apply to the court for a declaration of its complete execution. Notice of any such application when intended shall be gazetted.

Application for certificate.

267. After hearing the applicant and the arranging debtor and any trustee or inspector acting under the deed and any creditor desiring to be heard in support of or in opposition to such application the court if satisfied that the deed is in conformity with this part of this Act and that it has been completely executed within three months after the filing of it shall make by order a declaration of the complete execution of the deed.

Declaration of completed execution.

268. Subject to appeal under this Act the declaration of complete execution shall be final and conclusive with respect to the validity and complete execution of the deed and from and after such declaration the deed shall be as binding in all respects on any creditor who has not executed or assented to it as if he had executed or assented to it and shall not be liable to be disturbed or impeached at law or in equity by reason of any prior or subsequent act of bankruptcy or on account of anything being contained therein or omitted therefrom or on any other account whatever.

Effect of complete execution.

269. Between the filing of the deed and the expiration of the time allowed for complete execution and also after a declaration of complete execution the court exclusively shall have jurisdiction to enforce in any respect the execution of the trusts of the deed and shall have jurisdiction to entertain any application of the arranging debtor or of any trustee or inspector acting under the deed or of any creditor or person claiming to be a creditor of the arranging debtor respecting the custody or management (whether *ad interim* or final) distribution inspection or winding-up of the arranging debtor's property or affairs or respecting any act or thing relating thereto done or happening after the execution of the deed by the arranging debtor or respecting the claim of any person to be a creditor or respecting the execution or performance of any of the trusts powers covenants or provisions of the deed or respecting the audit or examination of the accounts of a trustee or inspector or the taxation or examination of the costs or charges of an attorney solicitor auctioneer broker or other person acting or employed under the deed or respecting any matter for the submission whereof to the court provision is made by the deed.

Jurisdiction of court.

270. On any such application the court may proceed and direct and authorize proceedings with respect to the summoning and examination of the arranging debtor and witnesses and otherwise as in bankruptcy

Proceedings as in bankruptcy.

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.

Decision as in bankruptcy.

271. Except where the deed expressly provides the court shall determine all questions arising under the deed according to the law and practice in bankruptcy as far as the same are applicable.

On failure of complete execution deed to be out of bankruptcy.

272. If a declaration of complete execution is not made within four months after the filing of the deed the execution of the deed by the debtor shall be deemed an act of bankruptcy in case a petition for adjudication of bankruptcy against him is presented within two months after the expiration of that period of four months and in all other respects the deed as among the parties thereto and otherwise shall have such effect only as it would have had if this part of this Act had not been passed but in any case the court may if it thinks fit on good cause shown extend from time to time that period of four months and in that case the period of two months shall be reckoned from such extended time.

Proceedings before or after complete execution.

273. If at any time before a declaration of complete execution a petition for adjudication summons or other proceeding having for its object an adjudication of bankruptcy against the arranging debtor is pending the court shall deal with the petition debtor summons or other proceeding as the court thinks just and on a declaration of complete execution the court shall dismiss or absolutely stay such petition summons or other proceeding.

In case of fraud &c. court may adjudge debtor bankrupt.

274. If at any time before a declaration of complete execution it is shown to the court that the deed has been filed by the debtor vexatiously or frivolously or for the purposes of delay and not *bona fide* with a view to an arrangement beneficial to his creditors or that the debtor has been guilty of fraud or culpable negligence in relation to the list of creditors or statement of property filed by him or otherwise in relation to the proposed arrangement or that he has wilfully refused obedience to any summons or order of the court under this part of this Act the court may if it thinks fit either on or without any application but after hearing the debtor if appearing or in his absence if not appearing after notice by order declare the execution of the deed by the debtor to be an act of bankruptcy.

Power to declare release void in case of fraud.

275. If at any time within twelve months after a declaration of complete execution it is shown to the court that the debtor has been guilty of fraud or culpable negligence in relation to the list of creditors and statement of property filed by him or otherwise in relation to the arrangement with his creditors or that he has wilfully refused obedience to any summons or order of the court under this part of this Act the court may if it thinks fit either on or without any application but after hearing the debtor if appearing or in his absence if not appearing after notice by order declare that the deed as far as regards any release to the debtor therein contained or provided for shall be void and the same shall be void accordingly.

Stay of proceedings at law.

276. If at the time when an application is made for an order declaring any release to be void an action at law is pending in which the debtor has pleaded the release as a defence to the action the court in which the action is brought or if that court is the Supreme Court then any judge thereof may on the application of the plaintiff stay the proceedings in the action until the first-mentioned application is disposed of and if on such application the release is declared void such court or judge may on the application of the plaintiff make such an order for striking out the plea or otherwise as the court thinks fit.

Transfer by creditors.

277. At any time before or after a declaration of complete execution the creditors of the arranging debtor may by the votes of a majority in

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value of the creditors who have executed or assented in writing to the deed resolve that the deed shall be transferred from the court in which the deed is filed to such other court as they think fit and the court in which the deed is filed shall unless there appears good reason to the contrary make order accordingly.

278. At any time before or after a declaration of complete execution the court in which the deed is filed may on the application of a creditor who has executed or assented in writing to the deed or of any trustee or inspector acting under the deed and on being satisfied regard being had to the nature of the debtor's transactions the situation of his property the residence of his principal creditors or other circumstances that the proceedings under the deed could be more beneficially and conveniently prosecuted in another court transfer the deed to that other court. Transfer court.

279. On a deed being transferred to any court that court shall have jurisdiction in relation to the deed as if it had been originally filed therein and shall not have power to transfer the deed to any other court and an appeal shall not lie against an order for transferring a deed and all orders affidavits and proceedings made used or taken in relation to the deed before the transfer thereof 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. Procedure on transfer.

280. With reference to the claims of creditors and for all other purposes under this part of this Act the date of the execution of a deed by the arranging debtor shall be taken as corresponding with the date of an adjudication of bankruptcy. Date equivalent to date of adjudication.

281. This part of this Act shall apply to any case in which after commencement of this Act members of a partnership make an arrangement with their creditors and any such arrangement may be made with the joint creditors without any of the separate creditors being parties to or included in the arrangement. Arrangements by partners with joint creditors.

282. If where an arrangement is made by the members of a partnership the separate creditors are parties to or included in the arrangement the deed shall be deemed completely executed when it is executed or assented to in writing by a majority in number representing three-fourths in value of the joint creditors and also by a majority in number representing three-fourths in value of the separate creditors of each of the partners reckoned as a distinct class and not otherwise. Arrangements &c. with separate creditors.

283. Where the debtor makes such an arrangement as is by this part of this Act provided for but by reason of his being unable to ascertain the holders of bills of exchange or other negotiable instruments drawn accepted made or endorsed by him or by reason of the absence of any of his creditors in a foreign country or by reason of any of his creditors being from any other cause unknown to him the deed is not executed or assented to in writing by a majority in number representing three-fourths in value of his creditors the deed shall notwithstanding anything in this part of this Act be deemed completely executed when it is executed or assented to in writing by a majority in number representing three-fourths in value of his creditors other than such holders or absent or unknown creditors provided that the following conditions are complied with Where no assent by three-fourths.

- (1.) That the deed conveys and assigns all the estate and effects of the debtor to the trustees (if any) of the deed their heirs executors administrators or assigns absolutely or provides for the distribution of all the estate and effects of the debtor among all his creditors but so that the exception of the wearing apparel of the debtor and of his wife and of his children and of household furniture and other personal

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property not exceeding in value in the whole (inclusive of such wearing apparel) fifty pounds shall not prevent the deed from being deemed to comprise all the estate and effects of the debtor.

- (2.) That before the filing of the deed there has been inserted by or on behalf of the debtor in a newspaper or newspapers published or usually circulating at the place where the debtor last carried on business or resided for the longest time within the six months next before the filing of the deed an advertisement requiring his creditors to signify their assent to or dissent from the deed by notice in writing addressed to the trustees or inspectors (if any) acting thereunder within fourteen days from the date of the insertion of such advertisement.

Appeal.

284. All orders or decisions of the court under this part of this Act shall be subject to appeal as in bankruptcy.

Saving of right against third person.

285. A creditor of the arranging debtor executing or assenting to the deed shall not be prejudicially affected by this part of this Act with respect to any right or remedy against any person other than the arranging debtor. A creditor of the arranging debtor not executing or assenting to the deed shall not be prejudicially affected by the deed or by this part of this Act with respect to any right or remedy against any person other than the arranging debtor.

PART XIX.

AFTER-ACQUIRED PROPERTY IN BANKRUPTCY AND ARRANGEMENT.

Liability of after-acquired property.

286. Notwithstanding in the case of bankruptcy the order of discharge and in the case of arrangement under part sixteen the filing of the resolution and in the case of an arrangement under part seventeen or under part eighteen the declaration of complete execution of the deed after-acquired property of the bankrupt or arranging debtor shall remain liable in respect of debts claims and demands provable under the bankruptcy or payable under the arrangement to the extent in the manner provided in this part of this Act.

Summons to bankrupt.

287. In case of bankruptcy if at any time or from time to time after the order of discharge takes effect it appears to the satisfaction of the Supreme Court that there is good cause to believe that after a reasonable allowance for the maintenance of the debtor and his family and the payment of debts claims and demands not provable under the bankruptcy the debtor is able to pay any sum towards the discharge of debts claims or demands provable under the bankruptcy and not fully paid thereunder the Court may if it thinks fit issue a summons requiring him to appear and be examined respecting his ability to make such payment.

Summons to arranging debtor.

288. In case of arrangement if at any time or from time to time after the filing of the resolution or the declaration of complete execution it appears to the satisfaction of the Supreme Court that there is good cause to believe that after a reasonable allowance for the maintenance of the arranging debtor and his family and the payment of debts claims and demands not payable under the arrangement the debtor is able to pay any sum towards the discharge of debts claims or demands payable and not fully paid thereunder the Court may if it thinks fit issue a summons requiring him to appear and be examined respecting his liability to make such payment.

Summons in New Zealand.

289. Where the debtor is in New Zealand the summons shall be served personally unless in any case the Court thinks fit to direct that service in some other manner shall be good service.

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290. Where the debtor is not in New Zealand the court on evidence satisfying it what service will be effectual to give the debtor knowledge of the summons may order service to be made by such means and in such manner as it thinks fit.

Summons out of New Zealand.

291. If service of the summons is not effected and the court is satisfied that the debtor is keeping out of the way to avoid service thereof or of other process it may order that a notice or notices be inserted in the *Gazette* and in a newspaper or newspapers published or usually circulated at the place where is the debtor's usual or last known place of abode or business in New Zealand requiring him to appear on a day thereby appointed being not less than fourteen days after publication of the first of such *Gazette* notices.

If no service notice in *Gazette* and newspaper.

292. On the appearance of the debtor he may be examined on oath or otherwise by the court respecting his ability to make such payment and for the discovery of property applicable in that behalf and shall produce on oath or otherwise such books and documents in his possession or power relating to property so applicable or alleged to be so applicable as the court directs and shall sign his examination.

Procedure on appearance of debtor.

293. The court may if it thinks fit adjourn the hearing of the summons from time to time and require from the debtor such security for his appearance at the adjourned hearing as the court thinks fit.

Adjournment and security.

294. If the debtor does not on his examination make a full and true discovery of property applicable to such payment or does not produce all books and documents which he is required by the court to produce he shall be deemed guilty of misdemeanour and shall be liable at the discretion of the court before which he is convicted on indictment to be punished by a fine not exceeding fifty pounds or by imprisonment for any term not exceeding one year with or without hard labour and shall be liable on summary conviction to a penalty not exceeding twenty pounds or to imprisonment for any time not exceeding six months with or without hard labour. On every prosecution for such a misdemeanour a certificate of the court before which the debtor was examined certifying the proceedings and to the effect that the debtor has not made such discovery or production as aforesaid shall be evidence of everything therein stated and proof of the contrary shall lie on the accused.

Concealment misdemeanour.

295. If on the hearing of the summons the court is satisfied that the debtor is able to make such payment the court may make an order to the effect that within a time therein specified the debtor do pay into court such a sum as will produce for the benefit of the creditors under the bankruptcy or arrangement such a dividend as the court thinks fit but so that any debtor be not required under this part of this Act to pay more than ten shillings in the pound on the amount of the debts claims and demands probable under the bankruptcy or payable under the arrangement inclusive of any dividend paid thereunder and of the payments from time to time made under this part of this Act.

Power to order payment of money in a court.

296. On or after the making of any such order the court may if it thinks fit appoint the provisional trustee to be the receiver of the debtor's property who shall act and account as such subject and according to general rules and may if it thinks fit order that no execution attachment or other process against the debtor's property in respect of any debt shall be available without leave of the Supreme Court and may if it thinks fit restrain any action suit or proceeding against the debtor on such terms as the court thinks fit.

Power to appoint receiver.

297. If on or before the day specified in the order for payment the debtor pays into court the sum therein specified the court shall discharge the former order as far as the circumstances require.

On payment discharge of orders.

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Vesting of estate on failure of payment.

298. If on or before the day specified the debtor does not pay into court the sum specified then from and immediately after that day the debtor's estate shall by virtue of this Act vest in the provisional trustee and the court may if it thinks fit order the same to be sold or disposed of for the benefit of the creditors.

Money paid in or proceeds of sale.

299. All money paid into court by the debtor in pursuance of any such order and the net proceeds of any sale and disposition by order of the court shall be applied under the direction of the court in or towards the payment rateably of debts claims and demands provable under the bankruptcy or payable under the arrangement and not fully paid thereunder subject to a reasonable allowance for the maintenance of the debtor and his family and to the payment in full of debts claims and demands not so provable or payable.

Costs.

300. The court may make such order respecting the costs or the charges and expenses of any person in relation to a summons under this part of this Act and the mode of recovering them as seems just.

Saving for repealed Acts.

301. Where the bankrupt has before adjudication of bankruptcy taken the benefit of any of the said Acts hereby repealed nothing in this part of this Act shall interfere with the operation of the Act of which he so took the benefit in respect of the liability of property acquired after his discharge under that Act if and so far as any such liability would have existed if this Act had not been passed.

PART XX.

MISDEMEANOURS IN BANKRUPTCY AND ARRANGEMENT.

Misdemeanours in bankruptcy.

302. Any person adjudged bankrupt after the commencement of this Act shall in each of the cases following be deemed guilty of a misdemeanour and on conviction thereof shall be liable at the discretion of the court before which he is convicted to be imprisoned for any time not exceeding three years with or without hard labour that is to say—

- (1.) If he does not on the day limited for his surrender and before three of the clock on that day or on the day and at the hour allowed him for finishing his examination after written notice thereof served on him personally or left at his usual or last known place of abode or business and after the notice by this Act directed is gazetted surrender himself to the court (having no lawful impediment allowed by the court) and sign the surrender and submit to be examined before the court from time to time.
- (2.) If he does not on his examination fully and truly discover to the best of his knowledge and belief all his property real and personal inclusive of his rights and credits and how and to whom and for what consideration and when he disposed of assigned or transferred any part thereof except such part as has been sold and disposed in the way of his trade or business (if any) or laid out in the ordinary expense of his family and deliver up or dispose of as the court directs all such part thereof as is in his possession custody or power except the necessary wearing apparel of himself his wife and children and deliver up to the court all books and documents in his possession custody or power relating to his property or affairs.
- (3.) If after adjudication or within two months next before adjudication with intent to defraud he removes or conceals any part of his property to the value of ten pounds or upwards or conceals any debt due to or from him.

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- (4.) If with intent to defraud he omits any property or credit from his statement of affairs.
- (5.) If in case of any person having to his (the bankrupt's) knowledge or belief proved a false debt under his bankruptcy he fails to disclose the same to the trustee within one month after coming to the knowledge or belief thereof.
- (6.) If after the filing of the petition for adjudication with intent to conceal the state of his affairs or to defeat the object of the law of bankruptcy he prevents or withholds the production of any book or document relating to his property or affairs.
- (7.) If after adjudication or within three months next before adjudication with intent to conceal the state of his affairs or to defeat the object of the law of bankruptcy he parts with conceals destroys alters mutilates or falsifies or causes to be concealed destroyed altered mutilated or falsified any book or document affecting or relating to his property or affairs or makes or is privy to the making of any false or fraudulent entry or statement in or omission from any such book or document.
- (8.) If after adjudication or at any meeting of his creditors three months next before adjudication he attempts to account for any part of his property by fictitious losses or expenses.
- (9.) If within three months next before adjudication under the false pretence of carrying on business and dealing in the ordinary course of trade he with intent to defraud obtains any property on credit.
- (10.) If he with intent to defraud within three months next before the filing of the petition for adjudication pawns pledges or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for.

303. Any person who after the commencement of this Act makes an arrangement by deed with his creditors under part eighteen of this Act shall in each of the cases following be deemed guilty of a misdemeanour and on conviction thereof shall be liable at the discretion of the court before which he is convicted to be imprisoned for any time not exceeding three years with or without hard labour that is to say—

Misdemeanour in arrangement.

- (1.) If after the filing of the deed or within two months next before the filing thereof with intent to defraud he removes or conceals any part of his property to the value of ten pounds or upwards.
- (2.) If in case of any person having to his (the arranging debtor's) knowledge or belief executed or in writing assented to the deed as a creditor in respect of a debt wholly or partly false he fails to disclose the same to the court within one month after coming to the knowledge or belief thereof.
- (3.) If in case of any person in respect of a debt wholly or partly false having to his (the arranging debtor's) knowledge or belief executed or in writing assented to the deed as a creditor or procured himself to be admitted as a creditor under the deed he fails to disclose the same to the court within one month after coming to the knowledge or belief thereof.
- (4.) If within three months next before the filing of the deed under the false pretence of carrying on business and dealing in the ordinary course of trade he with intent to defraud obtains any property on credit.
- (5.) If he with intent to defraud within three months next before the filing of the deed pawns pledges or disposes of otherwise

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than in the ordinary way of his trade any property which he has obtained on credit and has not paid for.

Saving in respect of past Acts.

304. Nothing in this part of this Act shall make any person liable to punishment in respect of any act omission or thing done or happening before the commencement of this Act although such person is adjudged bankrupt or enters into an arrangement by deed after the commencement of this Act in any case where he would not have been liable to punishment in respect of the same act omission or thing if this Act had not been passed.

Power of commitment &c.

305. If at any time it appears to the court that any person has committed a misdemeanour under this part of this Act the Court shall have and may exercise such jurisdiction rights powers and privileges for summoning apprehending committing remanding and bailing him and otherwise proceeding in respect of him as are vested in and exercisable by Justices of the Peace in respect of persons charged before them with indictable misdemeanours committed within their jurisdiction and for the purposes of this section the provisions of "The Justice of the Peace Act 1866" so far as the same apply to indictable offences shall (with such variations as the nature of the case requires) extend and apply to the judges and persons acting under this Act and to their proceedings.

Power to appoint prosecutor.

306. The court may direct that in case of bankruptcy the trustee or a supervisor or any creditor of the bankrupt and in the case of arrangement by deed any trustee or inspector acting under the deed or any creditor of the arranging debtor shall act as the prosecutor in respect of any misdemeanour under this part of this Act.

Certificate of court to be evidence.

307. On the application in case of bankruptcy of the trustee or a supervisor or any creditor who has proved the court may if it thinks fit give a certificate to the effect following—

- (1.) That the bankrupt did not on the day limited for his surrender (specified in the certificate) and before three of the clock on that day or on the day and at the hour allowed him for finishing his examination (specified in the certificate) after written notice thereof served on him personally or left at his usual or last known place of abode or business (specified according to the fact) and after the notice by this Act directed is gazetted surrender himself to the court (having no lawful impediment allowed by the court) and sign the surrender and submit to be examined before the court from time to time or
- (2.) That the bankrupt did not on his examination fully and truly discover to the best of his knowledge and belief all his property real and personal inclusive of his rights and credits and how and to whom and for what consideration and when he disposed of assigned or transferred any part thereof except such part as has been sold and disposed in the way of his trade or business (if any) or laid out in the ordinary expense of his family and deliver up to the court or dispose of as the court directs all such part thereof as is in his possession custody or power except the necessary wearing apparel of himself his wife and children and deliver up all books and documents in his possession custody or power relating to his property or affairs (the particulars of such offence being specified in the certificate) or
- (3.) That a person (specified in the certificate) having to the bankrupt's knowledge or belief (the facts showing such knowledge or belief being specified in the certificate) proved a false debt (specified in the certificate) under his bankruptcy

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he fails to disclose the same to the trustee within one month after coming to the knowledge or belief thereof or

- (4.) That after the filing of the petition for adjudication with intent to conceal the state of his affairs or to defeat the object of the law of bankruptcy the bankrupt had prevented or withheld the production of a book or document relating to his property or affairs (specified in the certificate)

And on any trial of the bankrupt for any such thing being a misdemeanour under this Act the certificate shall be received in evidence against him and shall be sufficient evidence of the matters therein certified until the contrary is shown.

308. On the application in case of bankruptcy of the trustee or a supervisor or of any creditor and in case of an arrangement by deed of any trustee or inspector acting under the deed or of any creditor the court may if it thinks fit give a certificate to the effect that it approves of the prosecution of the bankrupt for a misdemeanour under this Act the same being specified in the certificate and on the production of such certificate the costs of the prosecution shall be allowed by the court before which the trial is had unless that court otherwise orders for special reasons stated in the order and such expenses shall be paid and borne as expenses of prosecutions for felony are paid and borne and when the court gives such a certificate expenses incurred on behalf of the prosecution not paid and borne as aforesaid shall when taxed be paid under an order of the Supreme Court out of money by law applicable to the purposes of this Act.

Expenses of prosecutions.

309. Where it appears to the satisfaction of the court that there are grounds for the institution of a prosecution against the bankrupt under this part of this Act the court may if it thinks fit either pending the proceedings under bankruptcy or afterwards order that the trustee do lay the papers before the Crown Solicitor or person appointed to prosecute for the Crown in the Province or district for which the court sits.

Conduct of prosecution.

310. In any indictment or information for any misdemeanour under this Act it shall be sufficient to set forth the substance of the offence charged without alleging or setting forth any debt act of bankruptcy petition or adjudication or any summons warrant order rule or proceeding of or in any court acting under this Act.

Form of indictment.

PART XXI.

MISCELLANEOUS PROVISIONS RESPECTING BANKRUPTCY AND ARRANGEMENT.

311. Every creditor or creditors detaining a debtor in custody shall pay towards his maintenance the sum of twelve shillings per week and failing such payment for two weeks upon affidavit made by the warden or other officer in charge of the gaol in which such debtor is so detained being filed in the Supreme Court in the judicial district in which such debtor is detained the debtor shall on application to the court be entitled to an order of discharge from custody. Provided that such order of discharge or such imprisonment shall not be deemed or taken to have extinguished the debt or debts of such creditor or creditors but solely to have extinguished the right of such creditor or creditors to take or detain in custody the body of such debtor in respect of such debt or debts.

Maintenance money.

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

Aliens.

313. If any person who has been adjudged or declared bankrupt or insolvent by any British court out of New Zealand and has not

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obtained his discharge or certificate is seized 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 Supreme Court and such adjudication shall have the like effect and consequences as if he had been originally adjudged bankrupt by that court.

Notice to agent of company.

314. 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 have thereby such notice.

Orders &c. by post.

315. 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.

General rules as to advertisements.

316. General rules respecting the form and contents of notices in the *Gazette* and elsewhere may provide for notices concerning more bankruptcies or more deeds or other matters than one being comprised in one advertisement and may fix the price to be paid to the printer of the *Gazette* for advertisements which price he shall receive as full payment.

Advertising without authority.

317. If any person inserts or causes to be inserted in the *Gazette* or in any newspaper any 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 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.

Bankrupt to attend trustee.

318. The bankrupt (if not in prison or in custody) shall after surrender attend the trustee on every reasonable notice in writing given to him or left at his usual or last known place of abode or business and shall assist the trustee in making out the accounts of his estate.

Bankrupt may inspect books.

319. The bankrupt after surrender or at all reasonable times before the expiration of the time allowed to him to finish his examination may inspect his books and documents in the presence of the trustee or any person appointed by the trustee and bring with him each time any person or two persons to assist him.

Duty of bankrupt after discharge.

320. The bankrupt after his order of discharge takes effect shall on demand in writing given to him or left at his usual or last known place of abode or business attend the trustee 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 trustees out of his estate such sum as the trustee and supervisors shall think fit.

Production of proceedings and copies.

321. The proper officer of the court and the trustee of any bankrupt's estate or any trustee or inspector acting under any arrangement on the reasonable application of the bankrupt or arranging debtor or of his solicitor or of any creditor who has proved or has executed or assented in writing to the deed or of his solicitor shall produce and show to the applicant all petitions orders proceedings books and documents relating to the bankruptcy or arrangement and the applicant may have copies or extracts thereof or therefrom as general rules direct.

Escape of persons committed.

322. If any gaoler or person to whose custody any bankrupt or other person is duly committed refuses to receive him or suffers him to escape such gaoler or person shall for every such offence be liable to forfeit a sum not exceeding five hundred pounds.

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323. The court or trustee and supervisors by leave of the court may summon before it and examine the bankrupt's wife or any person known or suspected to have in his possession any part of the bankrupt's estate or supposed to be indebted to the bankrupt or believed to be capable of giving information concerning the bankrupt his affairs or his estate and may require her or him to produce any documents in her or his possession custody or power relative thereto and if the person summoned does not obey the summons the court may by warrant authorize any person to apprehend and arrest her or him and bring her or him before the court for examination.

Examination of other persons.

324. If the court is satisfied that any person summoned to be examined is keeping out of the way and cannot be personally served with the summons and that due pains have been taken to effect such personal service the court may order that service to be effected in such manner as the court thinks shall be equivalent to personal service.

Service on persons keeping out of the way.

325. Every witness attending on any summons may have such expenses allowed to him as general rules direct and a person summoned to attend as a witness shall not 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.

Expenses of witnesses.

326. If the court is satisfied that the bankrupt is keeping out of the way and cannot be personally served with a summons and that due pains have been taken to effect such personal service or that there is reasonable cause for believing that he is about to quit New Zealand or to remove or conceal any of his property unless he is forthwith apprehended the court may by warrant authorize any person to apprehend him and bring him before the court for examination.

Apprehension of bankrupt keeping out of the way.

327. If the bankrupt or his wife or any other person refuses (when required by the court or trustee and supervisors) to be sworn or refuses to answer any question put by the court or trustee or supervisors or does not fully answer to the satisfaction of the court or trustee or supervisors any such question or refuses to sign his or her examination when required by the court or trustee and supervisors or does not produce all books and documents which he or she is required by the court or trustee or supervisors to produce 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.

Commitment on refusal to be sworn.

328. Any such warrant or 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.

Contents of warrant.

329. 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.

Question to be specified.

330. 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 any court or judge before whom such person is brought by *habeas corpus* with such costs (if any) as the court or judge thinks fit.

Delivery of copy of examination.

331. On *habeas corpus* sued out by the person committed for discharge on any ground such person shall not be discharged by reason only of any informality but if the court or judge before whom such person is brought on consideration of the whole examination is of

Discharge on *habeas corpus*.

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opinion that the answering therein is satisfactory the court or judge may order the discharge of the person committed.

Summoning &c. of witnesses.

332. The Supreme Court and any District 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.

Taking of affidavits.

333. An affidavit may be used in any matter under this Act if sworn—

- (1.) In any place in the British dominions before a court or judge or before a person authorized to administer oaths.
- (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.

Death of witnesses.

334. 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.

Advertisement when evidence.

335. The *Gazette* or a newspaper containing an advertisement by this Act directed or authorized to be made therein shall be admitted as evidence of any matter therein contained and by this Act directed or authorized to be advertised.

Records under seal evidence.

336. Any petition order certificate deposition or proceeding under this Act purporting to be sealed with the seal of the Supreme Court or of any District 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.

Judicial notice of seal.

337. Judicial and official notice shall be taken of the seal of any district court and 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.

Protection of persons in execution of Act.

Actions not to be brought without notice.

338. No action or proceeding shall lie against any trustee 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 proceedings 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.

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339. In any such action the defendant may plead generally that the act or thing complained of was done or omitted by him as trustee 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. Plea in action.

340. 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. Evidence in action.

341. 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 money as he thinks 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. Tender of amends.

342. If in any such action the plaintiff does not succeed in obtaining judgment the defendant shall receive such full and reasonable indemnity as to all costs charges and expenses incurred in and about the action as may be taxed and allowed by the proper officer subject to review and though a verdict is given for the plaintiff in the action he shall not have costs against the defendant unless the judge before whom the trial is had certified his approval of the action and verdict. Costs of defendant.

Protection of Officers.

343. No action shall be brought against any provisional trustee bailiff assistant or other person appointed by the court for anything done in obedience to any warrant of the court unless a demand for a perusal of such warrant and for a copy thereof has been left at the usual place of abode of such provisional trustee 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. No action against officers except on demand of copy &c.

344. If after such demand and compliance therewith any person brings an action against such provisional trustee 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. Petitioning creditor to be made defendant.

345. If such action was brought against the petitioning creditor and such provisional trustee bailiff assistant or person the jury shall on proof of the warrant give the verdict for such provisional trustee bailiff assistant or person notwithstanding any such defect of jurisdiction. Verdict for defendant.

346. 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 provisional trustee bailiff assistant or person. Plaintiff's costs.

347. In any action brought against the petitioning creditor either alone or jointly with such provisional trustee 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. Proof that defendant is petitioning creditor sufficient.

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PART XXII.

SURPLUS FUNDS IN BANKRUPTCY FEES STAMPS AND GENERAL RULES.

Money in bank to be general cash.

348. All money for the time being in the bank on account of the estate of bankrupts or in matters of bankruptcy shall be deemed one common and general cash and shall be promiscuously issued to answer the demands thereon.

Unclaimed dividends

349. 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 dividend or from the time at which the surplus or other money became undivided or unclaimed in the hands of the trustee be paid by the trustee into the bank to the credit of the accountant in bankruptcy and shall be carried to the unclaimed dividend account.

Order for dividend.

350. Money for the time being standing to the credit of the unclaimed dividend account shall be subject to the order of the Supreme 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.

Investment of surplus moneys.

351. The Judges of the Supreme Court shall have power by general rules to order the investment realization and disposition of all or any moneys standing to the credit of the accountant in bankruptcy and of any profits accruing therefrom subject to the provisions of this Act.

Fees.

Fees &c.

352. Such fees shall be paid in bankruptcy and in other matters under this Act as general rules of the Supreme Court from time to time direct.

Stamps.

Stamps &c.

353. Every deed conveyance assignment surrender or other assurance relating solely to freehold or leasehold property or to any mortgage charge or other incumbrance 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 trustee under the bankruptcy and every power of attorney proxy paper writ order certificate affidavit bond or other instrument or writing relating solely to the estate of any bankrupt or to any proceeding under any bankruptcy shall be exempt from stamp duty (except in respect of fees under this Act) and from every other duty.

General Rules.

General rules of procedure.

354. General rules shall be from time to time made under this Act by the Judges of the Supreme Court or any two or more of them respecting practice and procedure forms fees costs duties of officers and other matters requiring regulation under this Act and any such general rules may be made at any time after the passing of this Act General rules shall from time to time be made by the Judges of the Supreme Court or any two or more of them to regulate the practice and procedure in the District Courts and in appeals therefrom in the Supreme Court and by the Judges of the Court of Appeal in appeals from the Supreme Court.

SCHEDULES.

SCHEDULE A.—REGISTER OF BANKRUPTCY.

Name and designation of Bankrupt.	Date of adjudication and court of adjudication.	Name and designation of petitioning creditor.	Whether adjudicated in District or Supreme Court.	To what Court remitted and date of transmission.	Date of adjudication.	Date of recalling adjudication.	Time and place of meeting for electing trustee.	Trustee's name and designation.	Supervisor's names and designation.	Time for lodging claims.	Date of Bankrupt's discharge.	Whether on or without composition.	Date of Trustee's discharge.

Signed by Trustee and Registrar.

SCHEDULE B.—RETURN ANNUAL.

Name and designation of Bankrupt.	Date of adjudication and the Court awarding it.	Name and designation of Trustee.	Names and designations of supervisors.	Amount of funds as in the Bankrupt's statement.	Amount of Assets in the Trustees' Inventory and Valuation.	State of Debts secured and unsecured (1) on footing of Bankrupt's statement where one made up (2) on footing of the Trustee's ascertainment of the debts where that has taken place.	Amount of funds realized.	Amount of debts.	Allowance to Bankrupt (if any.)	Discharge on composition or without composition or arrangement and terms of either of these and date of discharge.	Amount of composition when payable, and names and designation of Trustees.	Dividend paid or unpaid.	Expenses.		
													Trustees commission.	Law expenses.	Miscellaneous.

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