



# WESTERN AUSTRALIA.

ANNO TRICESIMO QUARTO

# VICTORIÆ REGINÆ.

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No. XX.

AN ACT to amend the Law relating to Bankruptcy and  
Insolvency.

[ 13th January, 1871. ]

**W**HEREAS it is expedient to amend the Laws relating to  
Bankruptcy and Insolvency: Be it enacted by His Excel-  
lency the Governor of Western Australia and its Dependencies, by  
and with the advice and consent of the Legislative Council thereof,  
as follows:—

## PRELIMINARY.

**1** THIS Act may be cited as “The Bankruptcy Act, 1871.”

Short Title.

**2** THIS Act shall not come into operation until the first day  
of April, 1871, which date is hereinafter referred to as the com-  
mencement of this Act.

Commencement of Act.

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Interpretation of certain terms in the Act. **3** IN this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say—

- “Court.” “The Court” shall mean the Court having jurisdiction in bankruptcy, as by this Act provided.
- “Registrar.” “The Registrar” shall mean the Registrar of “the Court” as above defined.
- “Prescribed.” “Prescribed” shall mean prescribed by rules of Court to be made as in this Act provided.
- “Property.” “Property” shall mean and include money, goods, things in action, land, and every description of property, whether real or personal; also obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined.
- “Debt.” “Debt provable in bankruptcy” shall include any debt or liability by this Act made provable in bankruptcy.
- “Person.” “Person” shall include a body corporate.
- “Trader.” “Trader” shall, for the purposes of this Act, mean the several persons in that behalf mentioned in the first schedule to this Act annexed.

Exclusion of companies and large partnerships. **4** A PARTNERSHIP, association, or company corporate, or registered under “The Joint Stock Companies’ Ordinance, 1858,” shall not be adjudged bankrupt under this Act.

PART I.—ADJUDICATION AND VESTING OF PROPERTY.

ADJUDICATION.

Adjudication. **5** A SINGLE creditor, or two or more creditors if the debt due to such single creditor, or the aggregate amount of debts due to such several creditors, from any debtor, amount to a sum of not less than Fifty pounds, may present a petition to the Court, praying that the debtor be adjudged a bankrupt, and alleging as the ground for such adjudication any one or more of the following acts or defaults, hereinafter deemed to be and included under the expression “acts of bankruptcy:”—

- (1.) That the debtor has, in the Colony or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally.

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- (II.) That the debtor has, in the Colony or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof.
- (III.) That the debtor has, with intent to defeat or delay his creditors, done any of the following things: namely, departed out of the Colony, or being out of the Colony remained out of the same; or being a trader departed from his dwelling-house, or otherwise absented himself; or begun to keep house; or suffered himself to be outlawed.
- (IV.) That the debtor has filed in the prescribed manner in the Court a declaration admitting his inability to pay his debts.
- (V.) That execution issued against the debtor on any legal process, for the purpose of obtaining payment of not less than Fifty pounds, has, in the case of a trader, been levied by seizure and sale of his goods.
- (VI.) That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due, of an amount of not less than Fifty Pounds, and the debtor, being a trader, has for the space of seven days, or, not being a trader, has for the space of three weeks succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same.

But no person shall be adjudged a bankrupt on any of the above grounds, unless the act of bankruptcy on which the adjudication is grounded has occurred within six months before the presentation of the petition for adjudication; moreover the debt of the petitioning creditor must be a liquidated sum due at law or in equity, and must not be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of the debtor being adjudicated a bankrupt, or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on application being made by the trustee within the prescribed time after the date of the adjudication, give up his security to such trustee for the benefit of the creditors upon payment of such estimated value.

**6** A DEBTOR'S summons may be granted by the Court on a creditor proving to its satisfaction that a debt sufficient to support a

Proceedings in relation to a debtor's summons.

petition in bankruptcy is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt, after using reasonable efforts to do so. The summons shall be in the prescribed form, resembling, as nearly as circumstances admit, a writ issued by the Supreme Court. It shall state that in the event of the debtor failing to pay the sum specified in the summons, or to compound for the same to the satisfaction of the creditor, a petition may be presented against him praying that he may be adjudged a bankrupt. The summons shall have an endorsement thereon to the like effect, or such other prescribed endorsement as may be best calculated to indicate to the debtor the nature of the document served upon him, and the consequences of inattention to the requisitions therein made.

Any debtor served with a debtor's summons may apply to the Court, in the prescribed manner and within the prescribed time, to dismiss such summons, on the ground that he is not indebted to the creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting a bankruptcy petition against him; and the Court may dismiss the summons, with or without costs, if satisfied with the allegations made by the debtor, or it may, upon such security, (if any) being given as the Court may require for payment to the creditor of the debt alleged by him to be due, and the costs of establishing such debt, stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt: Provided that when the summons shall have issued from the Supreme Court, such trial shall be had either before such Court or before any other Court of competent jurisdiction, and when the summons shall have issued from a Local Court before such Court in all cases in which it has now jurisdiction, and in all other cases before some competent tribunal.

Absconding debtor may be arrested.

7 THE Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested and safely kept as prescribed until such time as the Court may order, if after a debtors' summons has been granted in the manner prescribed by this Act, and before a petition of bankruptcy can be presented against him, it appear to the Court that there is probable reason for believing that he is about to go abroad with a view of avoiding payment of the debt for which the summons has been granted, or of avoiding service of a petition of bankruptcy, or of avoiding appearing to such petition, or of avoiding examination in respect of his affairs, or otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy: Provided, always, that nothing herein contained shall be construed to alter or qualify the right of the

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debtor to apply to the Court in the prescribed manner to dismiss the said surrender as hereinbefore provided, or to pay, secure, or compound for the said debt within the time provided, without being deemed to have committed an act of bankruptcy; and provided, also, that upon any such payment or composition being made, or such security offered as the Court shall think reasonable, the said debtor shall be discharged out of custody, unless the Court shall otherwise order.

**8** NO arrest shall be valid or protected under this Act unless the debtor, before or at the time of his arrest, shall be served with the debtors' summons.

When arrest not valid.

**9** NO payment or composition of a debt made, or security for the same given after an arrest made under the provisions of this Act, shall be exempted from the provisions herein contained relating to fraudulent preferences.

Payment of or security for debts given after arrest.

**10** A PETITION praying that a debtor may be adjudged a bankrupt, in this Act referred to as a bankruptcy petition, shall be served in the prescribed manner. At the hearing the Court shall require proof of the debt of the petitioning creditor, and of the trading, if necessary, and of the act of bankruptcy, or, if more than one act of Bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with such proof, shall adjudge the debtor to be a bankrupt. The Court may adjourn the petition, either conditionally or unconditionally, for the procurement of further evidence, or for any other just cause, or may dismiss the petition, with or without costs, as the Court thinks just.

Proceedings on petition.

**11** WHERE the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such amount as would justify the petitioner in presenting a bankruptcy petition against him, the Court, upon such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing such debt, may stay all proceedings on the petition for such time as may be required for trial of the question relating to such debt, and such trial shall be had in manner hereinbefore provided with respect to disputed debts under debtors' summonses.

Proceedings if debt of petitioning creditor is contested.

Where proceedings are stayed the Court may, if by reason of the delay caused by such stay of proceedings or for any other cause it thinks just, adjudge the debtor a bankrupt on the petition of some other creditor, and shall thereupon dismiss, upon such terms as it

thinks just, the petition, proceedings in which have been stayed as aforesaid.

Advertisement of order of adjudication.

**12** A COPY of an order of the Court adjudging the debtor to be bankrupt shall be published in the *Government Gazette*, and be advertised locally in such manner (if any) as may be prescribed, and the date of such order shall be the date of the adjudication for the purposes of this Act; and the production of a copy of the *Gazette* containing such order as aforesaid shall be conclusive evidence in all legal proceedings of the debtor having been duly adjudged a bankrupt, and of the date of the adjudication.

Definition of commencement of bankruptcy.

**13** THE bankruptcy of a debtor shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being completed on which the order is made adjudging him to be a bankrupt; or if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and to commence at the time of the first of the acts of bankruptcy that may be proved to have been committed by the bankrupt within twelve months next preceding the order of adjudication; but the bankruptcy shall not relate to any prior act of bankruptcy, unless it be that at the time of committing such prior act the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in bankruptcy, and unless such debt or debts are still remaining due at the time of the adjudication.

Creditors bound by bankruptcy proceedings.

**14** WHERE a debtor shall be adjudicated a bankrupt, no creditor to whom the bankrupt is indebted in respect of any debt provable in the bankruptcy shall have any remedy against the property or person of the bankrupt in respect of such debt, except in manner directed by this Act. But this section shall not affect the power of any creditor holding a security upon the property of the bankrupt to realize or otherwise deal with such security in the same manner as he would have been entitled to realize or deal with the same if this section had not been passed.

Power of Court, after presentation of petition, to restrain suits, &c., and appoint receiver.

**15** THE Court may, at any time after the presentation of a bankruptcy petition against the debtor, restrain further proceedings in any action, suit, execution, or other legal process against the debtor in respect of any debt provable in bankruptcy, or it may allow such proceedings, whether in progress at the commencement of the bankruptcy or commenced during its continuance, to proceed upon such terms as the Court may think just. The Court may also, at any time after the presentation of such petition, appoint a receiver

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or manager of the property or business of the debtor against whom the petition is presented, or of any part thereof, and may direct immediate possession to be taken of such property or business, or any part thereof.

APPOINTMENT OF TRUSTEE.

**16** WHEN an order has been made adjudging a debtor bankrupt, herein referred to as an order of adjudication, the property of the bankrupt shall become divisible amongst his creditors in proportion to the debts proved by them in the bankruptcy; and for the purpose of effecting such division the Court shall, as soon as may be, summon a general meeting of his creditors, and the creditors assembled at such meeting shall and may do as follows:—

Meeting of creditors for appointment of persons to administer bankrupt's property.

- (I.) They shall, by resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt at such remuneration as they may from time to time determine, if any; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.
- (II.) They shall, when they appoint a trustee, by resolution declare if any, and what, security is to be given, and to whom, by the person so appointed, before he enters on the office of trustee.
- (III.) They shall, by resolution, appoint some other fit persons, not exceeding five in number, and being creditors qualified to vote at such first meeting of creditors as is in this Act mentioned, or authorized in the prescribed form by creditors so qualified to vote, to form a committee of inspection for the purpose of superintending the administration by the trustee of the bankrupt's property.
- (IV.) They may, by resolution, give directions as to the manner in which the property is to be administered by the trustee, and it shall be the duty of the trustee to conform to such directions, unless the Court for some just cause otherwise orders.

**17** THE property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:—

Descriptions of bankrupt's property divisible amongst creditors.

- (I.) Property held by the bankrupt on trust for any other person.

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- (II.) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding Fifty pounds in the whole.

But it shall comprise the following particulars:—

- (III.) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him during its continuance.
- (IV.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or during its continuance.
- (V.) All goods and chattels being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner: Provided that things in action, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause.

Regulations as to first meeting of creditors.

**18** THE general meeting of creditors to be summoned as aforesaid by the Court, and in this Act referred to as the first meeting of creditors, shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum, adjournment of meeting, and all other matters relating to the conduct of the meeting or the proceedings thereat: Provided that—

- (I.) The meeting shall be presided over by the registrar, or in the event of his being unable to attend through illness or any unavoidable cause, by such chairman as the meeting may elect.
- (II.) A person shall not be entitled to vote as a creditor unless at or previously to the meeting he has in the prescribed manner proved a debt provable under the bankruptcy to be due to him.
- (III.) A creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

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- (iv.) A secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security; and the amount of such balance shall, until the security be realized, be determined in the prescribed manner. He may, however, at or previously to the meeting of creditors, give up the security to the trustee, and thereupon he shall rank as a creditor in respect of the whole sum due to him.
- (v.) A "secured creditor" shall in this Act mean any creditor holding any mortgage, charge, or lien on the bankrupt's estate, or any part thereof, as security for a debt due to him.
- (vi.) Votes may be given either personally or by proxy.
- (vii.) An ordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting and voting on such resolution.
- (viii.) A special resolution shall be decided by a majority in number, and three-fourths in value, of the creditors present personally or by proxy at the meeting and voting on such resolution.

**19** UNTIL a trustee is appointed, the registrar shall be the trustee for the purposes of this Act, and immediately upon the order of adjudication being made the property of the bankrupt shall vest in the registrar. On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

Devolution of property on trustee.

The expression "trustee" when used in this Act shall include the person for the time being filling the office of trustee, whether he be the registrar or not; but when the registrar holds the office of trustee he shall, unless the Court otherwise orders, in the administration of the property of the bankrupt, apply to the Court for directions as to the mode of administering such property, and shall not take possession thereof unless directed by the Court.

**20** THE appointment of a trustee shall be reported to the Court, and the Court, upon being satisfied that such security (if any) as the creditors consider requisite has been entered into by him, shall give a certificate declaring him to be trustee of the bankruptcy named in the certificate, and such certificate shall be conclusive evidence of the appointment of the trustee, and such appointment shall date from the date of the certificate. When the registrar holds the office of trustee, or when the trustee is changed, a like certificate

Evidence of appointment of trustee.

of the Court may be made declaring the person therein named to be trustee, and such certificate shall be conclusive evidence of the person therein named being trustee.

## PART II.—ADMINISTRATION OF PROPERTY.

## GENERAL PROVISIONS AFFECTING ADMINISTRATION OF PROPERTY.

Conduct of bankrupt.

**21** THE bankrupt shall, to the utmost of his power, aid in the realization of his property and the distribution of the proceeds amongst his creditors. He shall produce a statement of his affairs to the first meeting of creditors, and shall be publicly examined thereon on a day to be named by the Court, and subject to such adjourned public examination as the Court may direct. He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference to any particular bankruptcy, or made on the occasion of any special application by the trustee or any creditor.

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

Conduct of trustee, and appeal to Court against trustee.

**22** THE trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall be deemed to override any directions given by the committee of inspection; the trustee shall call a meeting of the committee of inspection once at least every three months, when they shall audit his accounts, and determine whether any and what dividend is to be paid: he may also call special meetings of the said committee as he thinks necessary.

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Subject to the provisions of this Act, and to such directions as aforesaid, the trustee shall exercise his own discretion in the management of the estate and its distribution amongst the creditors. The trustee may, from time to time, summon general meetings of the creditors for the purpose of ascertaining their wishes; he may also apply to the Court, in manner prescribed, for directions in relation to any particular matter arising under the bankruptcy. The bankrupt, or any creditor, debtor, or other person aggrieved by any act of the trustee, may apply to the Court, and the Court may confirm, reverse, or modify the act complained of, and make such order in the premises as it thinks just. The Court may, from time to time, during the continuance of a bankruptcy, summon general meetings of the creditors for the purpose of ascertaining their wishes, and may, if the Court thinks fit, direct the registrar to preside at such meetings. The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position in all respects as if he were a receiver of such property appointed by the Supreme Court in its equity jurisdiction, and the Court may, on his application, enforce such acquisition or retention of property accordingly.

**23** THE provisions of this Act with respect to the first general meeting of creditors shall apply to any subsequent general meeting of creditors in a bankruptcy, with this exception, that subsequent meetings of creditors may be summoned by the trustee, or by a member of the committee of inspection, and that such meetings may, unless otherwise directed by the Court in the case of meetings summoned by the Court, be presided over by any person chosen by the creditors assembled at such meeting, and that any creditor whose debt has been proved, or the value of whose debt has been ascertained at or subsequently to such first meeting, shall be allowed to be present and to vote thereat.

Regulations as to general meetings of creditors subsequent to first meeting.

## DEALINGS WITH BANKRUPTS' PROPERTY.

**24** WHERE any portion of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the right to transfer such property shall be absolutely vested in the trustee to the same extent as the bankrupt might have exercised the same if he had not become bankrupt.

Possession of property by trustee.

Where any portion of the property of the bankrupt consists of things in action, any action, suit, or other proceeding for the recovery of such things instituted by the trustee shall be instituted in his

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official name, as in this Act provided; and such things shall, for the purpose of such action, suit, or other proceeding, be deemed to be assignable in law, and to have been duly assigned to the trustee in his official capacity. The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other property capable of manual delivery. The trustee shall keep, in such manner as rules of the Court shall direct, proper books, in which he shall from time to time make or cause to be made entries or minutes of proceedings at meetings, and of such other matters as rules of Court shall direct, and any creditor of the bankrupt who has proved his debt may, subject to the control of the Court, personally or by his agent inspect such books.

Disclaimer as to onerous property.

**25** WHEN any property of the bankrupt acquired by the trustee under this Act consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding he has endeavored to sell, or has taken possession of such property, or exercised any act of ownership in relation thereto, may, by writing under his hand, disclaim such property, and upon the execution of such disclaimer the property disclaimed shall, if the same is a contract, be deemed to be determined from the date of the order of adjudication, and if the same is a lease be deemed to have been surrendered on the same date, and if the same be shares in any company be deemed to be forfeited from that date, and if any other species of property it shall revert to the person entitled on the determination of the estate or interest of the bankrupt, but if there shall be no person in existence so entitled, then in no case shall any estate or interest therein remain in the bankrupt. Any person interested in any disclaimed property may apply to the Court, and the Court may, upon such application, order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just.

Any person injured by the operation of this section shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy.

Limitation of time for disclaimer.

**26** THE trustee shall not be entitled to disclaim any property in pursuance of this Act in cases where an application in writing has been made to him by any person interested in such property, requiring such trustee to decide whether he will disclaim or not, and the trustee has, for a period of not less than twenty-eight days after

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the receipt of such application, or such further time as may be allowed by the Court, declined or neglected to give notice whether he disclaims the same or not.

**27** SUBJECT to the provisions of this Act, the trustee shall have power to do the following things:— Power of trustee to deal with property.

- (i.) To receive and decide upon proof of debts in the prescribed manner, and for such purpose to administer oaths.
- (ii.) To carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same.
- (iii.) To bring or defend any action, suit, or other legal proceeding relating to the property of the bankrupt.
- (iv.) To deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same; and the Section 5 of the Ordinance passed in the second year of the reign of King William the Fourth (which Ordinance is No. 7, and intituled *An Act to facilitate and simplify the Transfer of Real Property*), shall extend and apply to proceedings in bankruptcy under this Act, as if the said section was here re-enacted and made applicable in terms to such proceedings.
- (v.) To exercise any powers the capacity to exercise which is vested in him under this Act, and to execute all powers of attorney, deeds, and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this Act.
- (vi.) To sell all the property of the bankrupt (including the good will of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or private contract, with power, if he thinks fit, to transfer the whole thereof to any person or company, or to sell the same in parcels.
- (vii.) To give receipts for any money received by him, which receipt shall effectually discharge the person paying such moneys from all responsibility in respect of the application thereof.
- (viii.) To prove, rank, claim, and draw a dividend in the matter of the bankruptcy of any debtor of the bankrupt.

**28** THE trustee may appoint the bankrupt himself to super- Power to allow bankrupt to manage property.

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intend the management of the property or of any part thereof, or to carry on the trade of the bankrupt (if any) for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct.

Power of trustee to compromise, &c.

**29** THE trustee may, with the sanction of the committee of inspection, do all or any of the following things:—

- (I.) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.
- (II.) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any debtor or person who may have incurred any liability to the bankrupt, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon.
- (III.) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.
- (IV.) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person, or by the trustee on any person.
- (V.) To divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot advantageously be realized by sale.

The sanction given for the purposes of this section may be a general permission to do all or any of the above-mentioned things, or a permission to do all or any of them in any specified case or cases.

Power of trustee to accept composition or general scheme of arrangement.

**30** THE trustee may with the sanction of a special resolution of the creditors assembled at any meeting of which notice has been given specifying the object of such meeting, accept any composition offered by the bankrupt, or assent to any general scheme of settlement of the affairs of the bankrupt upon such terms as may be thought expedient, and with or without a condition that the order of adjudication is to be annulled, subject nevertheless to the approval of the Court, to be testified by the Judge of the Court signing the

instrument containing the terms of such composition or scheme, or embodying such terms in an order of the Court.

Where the annulling the order of adjudication is made a condition of any composition with the bankrupt, or of any general scheme for the liquidation of his affairs, the Court, if it approves of such composition or general scheme, shall annul the adjudication on an application made by or on behalf of any person interested, and the adjudication shall be annulled from and after the date of the order annulling the same.

The provisions of any composition or general scheme made in pursuance of this Act may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed to be a contempt of Court. The approval of the Court shall be conclusive as to the validity of any such composition or scheme, and it shall be binding on all the creditors so far as relates to any debts due to them and provable under the bankruptcy.

**31** A TRUSTEE shall not, without the consent of the committee of inspection, employ a solicitor or other agent; but where the trustee is himself a solicitor he may contract to be paid a certain sum by way of per centage or otherwise as a remuneration for his services as trustee, including all professional services, and any such contract shall, notwithstanding any law to the contrary, be lawful.

Trustee, if a solicitor, may be paid for services.

**32** THE trustee shall pay all sums from time to time received by him into such bank as the majority of the creditors in number and value at any general meeting shall appoint, and failing such appointment, into such bank as he deems fit; and if he at any time keep in his hands any sum exceeding Twenty-five pounds for more than ten days, he shall be subject to the following liabilities; that is to say—

Trustee to pay moneys into bank.

- (I.) He shall pay interest at the rate of Twenty pounds per centum per annum on the excess of such sum above Twenty-five as he may retain in his hands.
- (II.) Unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient, he shall, on the application of any creditor, be dismissed from his office by the Court, and shall have no claim for remuneration, and be liable to any expenses to which the creditors may be put by or in consequence of his dismissal.

## PAYMENTS ON DEBTS AND DISTRIBUTION OF ASSETS.

Description of debts provable in bankruptcy.

**33** DEMANDS in the nature of unliquidated damages arising otherwise than by reason of a contract or promise shall not be provable in bankruptcy, and no person having notice of any act of bankruptcy available for adjudication against the bankrupt shall prove for any debt or liability contracted by the bankrupt subsequently to the date of his so having notice.

Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the order of adjudication, or to which he may become subject during the continuance of the bankruptcy by reason of any obligation incurred previously to the date of the order of adjudication, shall be deemed to be debts provable in bankruptcy, and may be proved in the prescribed manner before the trustee in the bankruptcy.

An estimate shall be made according to the rules of the Court for the time being in force, so far as the same may be applicable, and where they are not applicable at the discretion of the trustee, of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court, and the Court may, if it think the value of the debt or liability incapable of being fairly estimated, make an order to that effect; and upon such order being made, such debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy; but if the Court think that the value of the debt or liability is capable of being fairly estimated, it may direct such value to be assessed with the consent of all parties interested before the Court itself without the intervention of a jury, or, if such parties do not consent, by a jury, either before the Court itself or some other competent Court, and may give all necessary directions for such purpose, and the amount of such value when assessed shall be provable as a debt under the bankruptcy.

“Liability” shall for the purposes of this Act include any compensation for work or labor done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the close of the bankruptcy, and generally it shall include any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money or money’s worth, whether such payment be as respects

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amount fixed or unliquidated; as respects time present or future, certain, or dependent on any one contingency or on two or more contingencies; as to the mode of valuation capable of being ascertained by fixed rules, or assessable only by a jury, or as matter of opinion.

**34** ALL wages of any laborer or workman in the employment of the bankrupt at the date of the order of adjudication shall be paid in full. The Debts hereinafter mentioned shall be paid in priority to all other debts. Between themselves such debts shall rank equally, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves, that is to say—

Preferential debts.

- (I.) All district or other local rates and all public taxes due from him at the date of the order of adjudication, and having become due and payable within twelve months next before such time.
- (II.) All wages or salary of any clerk or servant in the employment of the bankrupt at the date of the order of adjudication, not exceeding four months' wages or salary, and not exceeding fifty pounds.

Save as aforesaid, all debts provable under the bankruptcy shall be paid *pari passu*.

**35** WHERE at the time of the presentation of the petition for adjudication any person is apprenticed or is an articed clerk to the bankrupt, the order of adjudication shall, if either the bankrupt or apprentice or clerk give notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of such apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as such trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy and to the other circumstances of the case.

Preferential claims in case of apprenticeship.

Where it appears expedient to a trustee, he may, on the application of any apprentice or articed clerk to the bankrupt, or any person acting on behalf of such apprentice or articed clerk, instead

of acting under the preceding provision of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Power for landlord to dis-  
train for rent.

**36** THE landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the overplus due for which the distress may not have been available.

Proof in case of rent and  
periodical payment.

**37** WHEN any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of such periods, the person entitled to such rent or payment may prove for a proportionate part thereof up to the day of the adjudication, as if such rent or payment grew due from day to day.

Interest on debts.

**38** INTEREST on any debt provable in bankruptcy may be allowed by the trustee under the same circumstances in which interest would have been allowable by a jury if an action had been brought for such debt.

Proof in respect of distinct  
contracts.

**39** IF any bankrupt is, at the date of the order of adjudication, liable in respect of distinct contracts as member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts, against the properties respectively liable upon such contracts.

Allowance to bankrupt for  
maintenance or service.

**40** THE trustee, with the consent of the creditors, testified by a resolution passed in general meeting, may from time to time, during the continuance of the bankruptcy, make such allowances as may be approved by the creditors to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate.

Set-off.

**41** WHERE there have been mutual credits, mutual debts, or other mutual dealings between the bankrupt and any other person proving or claiming to prove a debt under his bankruptcy, an

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account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of such account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a bankrupt in any case where he had, at the time of giving credit to the bankrupt, notice of an act of bankruptcy committed by such bankrupt and available against him for adjudication.

**42** A CREDITOR holding a specific security on the property of the bankrupt, or any part thereof, may, on giving up his security, prove for his whole debt. Provision as to secured creditor.

He shall also be entitled to a dividend in respect of the balance due to him after realizing or giving credit for the value of his security, in manner and at the time prescribed.

A creditor holding such security as aforesaid, and not complying with the foregoing conditions, shall be excluded from all share in any dividend.

DIVIDENDS.

**43** THE trustee shall from time to time, when the committee of inspection determines, declare a dividend amongst the creditors who have proved to his satisfaction debts provable in bankruptcy, and shall distribute the same accordingly; and in the event of his not declaring a dividend for the space of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not declaring the same. Distribution of dividends.

**44** IN the calculation and distribution of a dividend it shall be obligatory on the trustee to make provision for debts provable in bankruptcy appearing from the bankrupt's statement, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting, that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined. Provision for creditors residing at a distance, &c.

**45** ANY creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any moneys for the time being in the hand of the trustee, any dividend or dividends he may have failed to receive before such Right of creditor who has not proved debt before declaration of a dividend.

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moneys are made applicable to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final dividend.

**46** WHEN the trustee has converted into money all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the bankruptcy, he shall declare a final dividend, and give notice of the time at which it will be distributed.

Bankrupt entitled to surplus.

**47** THE bankrupt shall be entitled to any surplus remaining after payment of his creditors, and of the costs, charges, and expenses of the bankruptcy.

No action for dividend.

**48** NO action or suit for a dividend shall lie against the trustee; but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order the trustee to pay the same, and also pay out of his own moneys interest thereon for the time that it is withheld, and the costs of the application.

## CLOSE OF BANKRUPTCY.

Close of bankruptcy.

**49** WHEN the whole property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can, in the joint opinion of the trustee and committee of inspection, be realized without needlessly protracting the bankruptcy, or a composition or arrangement has been completed, the trustee shall make a report accordingly to the Court, and the Court, if satisfied that the whole of the property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can be realized without needlessly protracting the bankruptcy, or that a composition or arrangement has been completed, shall make an order that the bankruptcy has closed, and the bankruptcy shall be deemed to have closed at and after the date of such order.

A copy of the order closing the bankruptcy may be published in the *Government Gazette*, and the production of a copy of such *Gazette* containing a copy of the order shall be conclusive evidence of the order having been made, and of the date and contents thereof.

## DISCHARGE OF BANKRUPT.

Order of discharge.

**50** WHEN a bankruptcy is closed, or at any time during its continuance, with the assent of the creditors testified by a special

resolution, the bankrupt may apply to the Court for an order of discharge; but such discharge shall not be granted unless it is proved to the Court that one of the following conditions has been fulfilled: that is to say, either that a dividend of not less than ten shillings in the pound has been paid out of his property, or might have been paid except through the negligence or fraud of the trustee, or that a special resolution of his creditors has been passed to the effect that his bankruptcy or the failure to pay ten shillings in the pound has, in their opinion, arisen from circumstances for which the bankrupt cannot justly be held responsible, and that they desire that an order of discharge should be granted to him; and the Court may suspend for such time as it deems to be just, or withhold altogether, the order of discharge in the circumstances following: namely, if it appears to the Court on the representation of the creditors made by special resolution, of the truth of which representation the Court is satisfied, or by other sufficient evidence, that the bankrupt has made default in giving up to his creditors the property which he is required by this Act to give up; or that a prosecution has been commenced against him in pursuance of the provision relating to the punishment of fraudulent debtors, contained in the "Debtors' Act, 1871," in respect of any offence alleged to have been committed by him against the said Act.

**51** AN order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust, nor from any debt or liability whereof he has obtained forbearance by any fraud; but it shall release the bankrupt from all other debts provable under the bankruptcy, with the exception of—

Effect of order of discharge.

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

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

An order of discharge shall be sufficient evidence of the bankruptcy, and of the validity of the proceedings thereon, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he

is released by such order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

**52** THE order of discharge shall not release any person who, at the date of the order of adjudication, was a partner with the bankrupt, or was jointly bound or had made any joint contract with him.

Exception of joint debtors.

## RELEASE OF TRUSTEE.

**53** WHEN the bankruptcy is closed, the trustee shall call a meeting of the creditors to consider an application to be made to the Court for his release. At the meeting the trustee shall lay before the assembled creditors an account showing the manner in which the bankruptcy has been conducted, with a list of the unclaimed dividends (if any) and of the property (if any) outstanding, and shall inform the meeting that he purposes to apply to the Court for a release.

Release of trustee.

The creditors assembled at the meeting may express their opinion as to the conduct of the trustee, and they or any of them may appear before the Court and oppose the release of the trustee.

The Court, after hearing what (if any thing) can be urged against the release of the trustee, shall grant or withhold the release accordingly, and if it withhold the release shall make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty, and shall suspend his release until such charging order has been complied with, and the Court thinks just to grant the release of the trustee.

**54** UNCLAIMED dividends, and any other moneys arising from the property of the bankrupt, remaining under the control of the trustee at the close of the bankruptcy of any bankrupt, or accruing thereafter, shall be accounted and paid over to such account as may be directed by the rules of Court; and any parties entitled thereto may claim the same in manner directed by such rules. The trustee shall also deliver a list of any outstanding property of the bankrupt to the prescribed persons, and the same shall, when practicable, be got in and applied for the benefit of the creditors in manner prescribed.

Duty of trustee as to unclaimed dividends and outstanding property.

**55** THE order of the Court releasing the trustee of a bankruptcy shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of

Effect of release of trustee.

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the bankrupt, or otherwise in relation to his conduct as trustee of such bankrupt; but such order may be revoked by the Court on proof that it was obtained by fraud.

STATUS OF UNDISCHARGED BANKRUPT.

**56** WHERE a person who has been made bankrupt has not obtained his discharge, then, from and after the close of his bankruptcy, the following consequences shall ensue:—

Status of undischarged bankrupt.

- (I.) No portion of a debt provable under the bankruptcy shall be enforced against the property of the person so made bankrupt, until the expiration of three years from the close of the bankruptcy; and during that time, if he pay to his creditors such additional sum as will, with the dividend paid out of his property during the bankruptcy, make up ten shillings in the pound, he shall be entitled to an order of discharge in the same manner as if a dividend of ten shillings in the pound had originally been paid out of his property.
- (II.) At the expiration of a period of three years from the close of the bankruptcy, if the debtor made bankrupt has not obtained an order of discharge, any balance remaining unpaid in respect of any debt proved in such bankruptcy (but without interest in the mean time) shall be deemed to be a subsisting debt in the nature of a judgment debt, and, subject to the right of any persons who have become creditors of the debtor since the close of his bankruptcy, may be enforced against any property of the debtor, with the sanction of the Court which adjudicated such debtor a bankrupt, or of the Court having jurisdiction in bankruptcy in the place where the property is situated, but to the extent only, and at the time and in manner directed by such Court, and after giving such notice and doing such acts as may be prescribed in that behalf.

AUDIT.

**57** THE trustee having had his quarterly statement of accounts audited by the committee of inspection shall, within the prescribed time, forward the certified statement in the prescribed form to the Master of the Supreme Court; and if he fail to do so without reasonable excuse, he shall be deemed guilty of a contempt of Court, to be punishable accordingly.

Trustee to forward his quarterly accounts, when audited, to the Master of the Supreme Court.

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Returns of accounts to Master. **58** EVERY trustee of a bankrupt shall from time to time, as may be prescribed, and not less than once in every year during the bankruptcy, transmit to the Master a statement showing the proceedings in such bankruptcy up to the date of the statement containing the prescribed particulars, and made out in the prescribed form; and any trustee failing to transmit accounts in compliance with this section shall be deemed guilty of a contempt of Court, and be punishable accordingly.

Duty of Master. **59** THE Master shall examine the statements transmitted to him, and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on such statements, and may require the trustee to make good any loss the estate of the bankrupt may have sustained by such misfeasance, neglect or omission. If the trustee fail to comply with such requisition of the Master, the Master may report the same to the Court; and the Court, after hearing the explanation (if any) of the trustee, shall make such order in the premises as it thinks just.

Powers of Master. **60** THE Master may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which such trustee is engaged, and may, if he think fit, apply to the Court to examine on oath such trustee or any other person concerning such bankruptcy; he may also direct a local investigation to be made of the books and vouchers of the trustee.

## PART III.—CONSTITUTION AND POWERS OF COURT.

Court to consist of Supreme Court and Local Courts. **61** FROM and after the commencement of this Act, the following provisions shall take effect with respect to the Courts having jurisdiction in bankruptcy: that is to say—

If the person sought to be adjudged a bankrupt do not reside or carry on business at a place included and embraced within the district assigned to a Local Court as its district for bankruptcy purposes, or be not resident in the Colony, then "the Court" shall mean, for the purposes of this Act, the Supreme Court.

If the person sought to be adjudged bankrupt, being resident within the Colony, do reside or carry on business at a place included and embraced within the district assigned to a Local Court as its district for bankruptcy purposes, then "the Court" shall, subject to the provisions hereinafter contained for removing the proceedings, mean

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the Local Court of the district in which such person resides or carries on business, hereinafter referred to as the Local Bankruptcy Court.

**62** THE Chief Justice, in Bankruptcy, may sit in chambers, and when in chambers shall have the same jurisdiction and exercise the same powers of the Supreme Court as if sitting in open Court.

Chief Justice may exercise jurisdiction in Chambers.

**63** EVERY Judge of a Local Court of Bankruptcy shall, for the purposes of this Act, in addition to his ordinary powers as a Local Court Judge, have all the powers and jurisdiction of a Judge of the Supreme Court in its Equity jurisdiction, and the orders of such Judge may be enforced accordingly in manner prescribed.

Jurisdiction of Local Court Judges.

**64** THE Chief Justice in Bankruptcy and every Judge of a Local Court of Bankruptcy may, subject to, and in accordance with the rules of Court for the time being in force, delegate to the Registrar or to any other officer of his Court, such of the powers vested in him by this Act, as it may be expedient for the Judge to delegate to him.

Powers of Court to delegate authority.

**65** IF at any time after the passing of this Act it appears to The Governor in Council expedient that any Local Court should have bankruptcy jurisdiction, it shall be lawful for The Governor, by order in Council, to appoint that Court to have bankruptcy jurisdiction accordingly, and to assign to the Court as its district for bankruptcy purposes any part or parts of any one or more district or districts of Local Courts; and the district so constituted for that Court shall be deemed its district for bankruptcy purposes; and accordingly "*The Magistrate*," or Judge and all officers of the Court shall have jurisdiction and authority for those purposes throughout that district, as if the same was the district of the Court for all purposes; and from a time to be specified in each such Order, this Act shall have effect in and throughout the district so constituted; and any such Order may be from time to time varied as seems expedient, and a Local Court so appointed to have bankruptcy jurisdiction, and no other Local Court shall, for the purposes of this Act, be deemed a Local Court having bankruptcy jurisdiction: Provided that no Judge of a Local Court shall have jurisdiction in the City of Perth.

Appointment of local Courts for bankruptcy purposes.

**66** THE Chief Justice shall, with the sanction of The Governor, from time to time, prescribe a scale of fees to be charged for any business done by any Court or officer thereof under this Act; and

Scale of fees.

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The Governor shall direct whether the same shall be imposed by stamps or otherwise, and by whom and in what manner the same shall be collected, accounted for, and appropriated, and whether any and what remuneration shall be allowed to any person performing any duties under this Act. Any scale of fees made in pursuance of this section shall be laid before the Legislative Council within three weeks if the Legislative Council be then sitting, and if the Legislative Council be not then sitting, within three weeks after the beginning of the next session of the Legislative Council.

Appeal from Courts.

**67** EVERY Court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it in pursuance of this Act. Any person aggrieved by any Order of a Local Bankruptcy Court in respect of a matter of fact or of law made in pursuance of this Act, may appeal to the Chief Justice, and it shall be lawful for the Chief Justice to alter, reverse, or confirm such order as he thinks just. Any order made by the Chief Justice in Bankruptcy, whether in respect of a matter brought before him on appeal or not, shall be subject to an appeal to Her Majesty's Privy Council, but no appeal shall be entertained under this Act except in conformity to such rules as may for the time being be in force in relation to such appeal.

General power of Bankruptcy Courts.

**68** SUBJECT to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising in any case of bankruptcy coming within the cognizance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case; and no such Court as aforesaid shall be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in manner directed by this Act; and if in any proceedings in bankruptcy there arises any question of fact which the parties desire to be tried before a Jury instead of by the Court itself, or which the Court thinks ought to be tried by a Jury, the Court may direct such trial to be had, and such trial may be had accordingly in the Supreme Court, in the same manner as if it were the trial of an issue at Common Law, and in the Local Court in the manner in which jury trials (if any) in ordinary cases are by law held in such Court.

ORDERS AND WARRANTS OF COURT.

Enforcement of warrant and order of Courts.

**69** ANY order made by a Court having jurisdiction in bankruptcy under this Act shall be enforced throughout the Colony, and

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

**70** WHERE any Court having jurisdiction in bankruptcy under this Act commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed he shall be liable for every such refusal to a penalty not exceeding One hundred pounds.

Commitment to prison.

## GENERAL RULES.

**71** THE Chief Justice may from time to time make, and may from time to time revoke and alter, general rules, in this Act described as rules of Court, for the effectual execution of this Act, and of the objects thereof, and the regulation of the practice and procedure of bankruptcy petitions and the proceedings thereon.

General rules to be made by Chief Justice.

Any general rules made as aforesaid may prescribe regulations as to the service of bankruptcy petitions, including provisions for substituted service; as to the valuing of any debts provable in bankruptcy; as to the valuation of securities held by creditors; as to the giving or withholding interest or discount on or in respect of debts or dividends; as to the funds out of which costs are to be paid, the order of payment, and the amount and taxation thereof; and as to any other matter or thing, whether similar or not to those above enumerated, in respect to which it may be expedient to make rules for carrying into effect the objects of this Act; and any rules so made shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act.

Any rules made in pursuance of this section shall be laid before the Legislative Council within three weeks after they are made, if the Legislative Council be then sitting; and if the Legislative Council be not then sitting within three weeks after the beginning of the then next session of the Legislative Council, and any rules so made shall be judicially noticed.

Until rules have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on

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which Courts in England have jurisdiction in bankruptcy act in dealing with bankruptcy proceedings shall be observed by any Court having jurisdiction in bankruptcy cases under this Act.

Change of jurisdiction by Governor.

**72** NOTWITHSTANDING anything in this Act contained, the Governor may from time to time, by order under his hand, exclude any Local Court from exercising any longer jurisdiction in bankruptcy, and for the purposes of bankruptcy jurisdiction may attach its district or any part thereof to any other Local Court or Courts, and may from time to time revoke or alter any order so made.

PART IV.—SUPPLEMENTAL PROVISIONS.

AS TO PROCEEDINGS.

Supplemental regulations as to proceedings in bankruptcy.

**73** THE following regulations shall be made with respect to proceedings in bankruptcy; namely—

- (I.) Every bankruptcy petition shall be accompanied by an affidavit of the petitioner in the prescribed form, verifying the statements contained in such petition:
- (II.) Where two or more bankruptcy petitions are presented against the same debtor or against debtors being members of the same partnership, the Court may consolidate the proceedings, or any of them, upon such terms as the Court thinks fit:
- (III.) Where proceedings against the debtor are instituted in more Courts than one, the Supreme Court may, on application of any creditor, direct the transfer of such proceedings to the Supreme Court, or to any Local Bankruptcy Court:
- (IV.) Where the petitioner does not proceed with due diligence on his petition the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.
- (V.) Where the creditors resolve by a special resolution that it will be more convenient that the proceedings in any Local Bankruptcy Court should be transferred to the Supreme Court or to some other Local Court, or where the Judge of a Local Court certifies that in his opinion the bankruptcy would be more advantageously con-

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ducted in the Supreme Court or in some other Local Court, and the creditors do not by resolution object to the transfer, the petition shall be transferred to, and all subsequent proceedings thereon had in the Supreme Court or such other court:

- (VI.) Subject to the provisions of this Act, every Court having original jurisdiction in bankruptcy shall be deemed to be the same Court, and to have jurisdiction throughout the Colony; and cases may be transferred from one Court to another in such manner as may be prescribed:
- (VII.) A corporation may prove a debt, vote, and otherwise act in bankruptcy, by an agent duly authorized under the seal of the corporation:
- (VIII.) A creditor may in the prescribed manner, by instrument in writing, appoint a person to represent him in all matters relating to any debtor or his affairs in which a creditor is concerned in pursuance of this Act, and such representative shall thereupon, for all the purposes of this Act, stand in the same position as the creditor who appointed him:
- (IX.) When a debtor who has been adjudicated a bankrupt dies, the Court may order that the proceedings in the matter be continued as if he were alive:
- (X.) The Court may, at any time, on proof to its satisfaction that proceedings in bankruptcy ought to be stayed, by reason that negotiations are pending for the liquidation of the affairs of the bankrupt by arrangement or for the acceptance of a composition by the creditors in pursuance of the provisions hereinafter contained, or on proof to its satisfaction of any other sufficient reason for staying the same, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

**74** WHENEVER any adjudication in bankruptcy is annulled all sales and dispositions of property and payments duly made, and all acts theretofore done, by the trustee or any person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged a bankrupt shall in such case vest in such person as the Court may appoint, or in default of any such appointment revert to the bankrupt for all his estate or interest therein upon such terms and subject to such conditions, if any, as the Court may

Consequences of annulling of adjudication.

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declare by order. A copy of the order of the Court annulling the adjudication of a debtor as a bankrupt shall be forthwith published in the *Government Gazette* and advertised locally in the prescribed manner, and the production of a copy of the *Government Gazette* containing such order shall be conclusive evidence of the fact of the adjudication having being annulled, and of the terms of the order annulling the same.

Formal defects not to invalidate proceedings.

**75** NO proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity, and that such injustice cannot be remedied by any order of such Court.

## AS TO TRUSTEES AND COMMITTEE OF INSPECTION.

Regulations as to trustees, &c.

**76** THE following regulations shall be made with respect to the trustee and committee of inspection:—

- (I.) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and where more than one are appointed they shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the bankrupt. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee:
- (II.) If any vacancy occur in the office of trustee by death, resignation, or otherwise, the creditors in general meeting shall fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing trustee, if there be more than one, or by the registrar on the requisition of any creditor:
- (III.) If through any cause whatever, there is no trustee acting during the continuance of a bankruptcy, the registrar of the Court for the time being having jurisdiction in the bankruptcy shall act as such trustee:
- (IV.) The Court may, upon cause shown, remove any trustee. The creditors may, by special resolution at a meeting specially called for that purpose, of which seven days

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notice has been given, remove the trustee and appoint another person to fill his office, and the Court shall give a certificate declaring him to be the trustee:

- (v.) If a trustee be adjudged bankrupt, he shall cease to be trustee, and the registrar shall, if there be no other trustee, call a meeting of creditors for the appointment of another trustee in his place:
- (vi.) The property of the bankrupt shall pass from trustee to trustee, including under that term the registrar when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer, whatever:
- (vii.) The trustee of a bankrupt may sue and be sued by the official name of "the trustee of the property of a bankrupt," (inserting the name of the bankrupt,) and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding upon himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office:
- (viii.) The certificate of appointment of a trustee shall for all purposes of any law in force requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance, or assignment of property, and may be registered, enrolled, and recorded accordingly:
- (ix.) All acts and things by this Act authorized or required to be done by or to the registrar may be done within the district of each Court having jurisdiction in bankruptcy by or to the registrar, and in the case of a Local Court where there exists no such officer, the clerk of that Court:
- (x.) Any member of the committee of inspection may resign his office, by notice in writing signed by him and delivered to the trustee:
- (xi.) The creditors may by resolution fix the quorum required to be present at a meeting of the committee of inspection.
- (xii.) Any member of the committee of inspection may also be removed by a special resolution at any meeting of creditors of which the prescribed notice has been given, stating the object of the meeting.

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- (XIII.) On any vacancy occurring in the office of a member of the committee of inspection by removal, death, resignation, or otherwise, the trustee shall convene a meeting of creditors for the purpose of filling up such vacancy :
- (XIV.) The continuing members of the committee of inspection may act, notwithstanding any vacancy in their body ; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five :
- (XV.) No defect or irregularity in the election of a trustee or of a member of the committee of inspection shall vitiate any act *bonâ fide* done by him ; and no act or proceeding of the trustee or of the creditors shall be invalid by reason of any failure of the creditors to elect all or any members of the committee of inspection :
- (XVI.) If a member of the committee of inspection become a bankrupt his office shall thereupon become vacant ;
- (XVII.) Where there is no committee of inspection, any act or thing or direction or consent by this Act authorized or required to be done or given by such committee may be done or given by the Court on the application of the trustee.

Power of Court, on failure of creditors, to appoint trustees.

**77** THE registrar may adjourn the first meeting of creditors from time to time and from place to place, subject to the directions of the Court ; but if, at such first meeting of creditors or at some adjournment thereof, no trustee is appointed by reason of the prescribed quorum not being present, or for any other reason whatever, the Court may annul the adjudication, unless it deems it expedient to carry on the bankruptcy with the aid of the registrar as trustee. Moreover, if at any time during the bankruptcy no new trustee is appointed to fill a vacancy in that office, the Court may either carry on the bankruptcy with the aid of the registrar as trustee, or annul the order of adjudication, as it thinks just.

AS TO POWER OVER BANKRUPT.

Post letters addressed to bankrupt.

**78** THE Court, upon the application of the trustee, may from time to time order that, for such time as the Court thinks fit, not exceeding three months from the date of the order of adjudication, post letters addressed to the bankrupt at any place or any of the

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places mentioned in the order, shall be redirected, sent, or delivered by the Postmaster General, or the officers acting under him, to the trustee or otherwise as the Court directs, and the same shall be done accordingly.

**79** THE Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, moneys, goods, and chattels in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order, under the following circumstances:—

Arrest of bankrupt under certain circumstances.

- (I.) If, after a petition of bankruptcy is presented against such debtor, it appear to the Court that there is probable reason for believing that he is about to go abroad or to quit his place of residence with a view of avoiding service of the petition, or of avoiding appearing to the petition, or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in bankruptcy.
- (II.) If, after a petition in bankruptcy has been presented against such debtor, it appear to the Court that there is probable cause for believing that he is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels, or any books, documents, or writings which might be of use to his creditors in the course of his bankruptcy.
- (III.) If, after the service of the petition on such debtor, or after an adjudication in bankruptcy against him, he remove any goods or chattels in his possession above the value of five pounds without the leave of the trustee, or if, without good cause shown, he fails to attend any examination ordered by the Court.

## AS TO PROPERTY DEVOLVING ON TRUSTEE.

**80** WHERE the goods of any trader have been taken in execution in respect of a judgment for a sum exceeding Fifty pounds and sold, the Sheriff, or in the case of a sale under the direction of the Local Court, the Bailiff or other officer of the Local Court, shall retain the proceeds of such sale in his hands for a period of fourteen days, and

Proceeds of sale and seizure of goods.

upon notice being served on him within that period of a bankruptcy petition having been presented against such trader, shall hold the proceeds of such sale, after deducting costs of suit and expenses, on trust to pay the same to the trustee; but if no notice of such petition having been presented be served on him within such period of fourteen days, or if, such notice having been served, the trader against whom the petition has been presented is not adjudged a bankrupt on such petition, or on any other petition of which the Sheriff, Bailiff, or other officer has notice, he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of a bankruptcy petition been served on him.

Appropriation of portion of pay of officers to creditors.

**81** WHERE a bankrupt is or has been an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, or is in the enjoyment of any pension or compensation granted by the Treasury, imperial or colonial, the trustee during the bankruptcy, and the registrar after the close of the bankruptcy, shall receive for distribution amongst the creditors so much of the bankrupt's pay, half pay, salary, emolument, or pension as the Court, upon the application of the trustee, thinks just and reasonable, to be paid in such manner and at such times as the Court, with the consent in writing of the chief officer of the department under which the pay, half pay, salary, emolument, pension, or compensation is enjoyed, directs.

Appropriation of portion of salary to creditors.

**82** WHERE a bankrupt is in the receipt of a salary or income other than as aforesaid, the Court, upon the application of the trustee, shall from time to time make such order as it thinks just for the payment of such salary or income, or of any part thereof, to the trustee during the bankruptcy, and to the registrar if necessary after the close of the bankruptcy, to be applied by him in such manner as the Court may direct.

Avoidance of voluntary settlements.

**83** ANY settlement of property made by a trader not being a settlement made before and in consideration of marriage, or made in favor of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall if the settlor becomes bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt appointed under this Act, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of such settlement, unless the parties claiming

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under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee. Any covenant or contract made by a trader, in consideration of marriage, for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money, or property of or in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under this Act.

“Settlement” shall for the purposes of this section include any conveyance or transfer of property.

**84** EVERY conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys in favor of any creditor or any person in trust for any creditor with a view of giving such creditor a preference over the other creditors, shall if the person making, taking, paying, or suffering the same become bankrupt within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee of the bankrupt appointed under this Act; but this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration.

Avoidance of fraudulent preferences

**85** ANY treasurer or other officer, or any banker, attorney or agent of a bankrupt, shall pay and deliver to the trustee all moneys and securities in his possession, or power, as such officer or agent, if he be not by law entitled to retain as against the bankrupt or the trustee; if he do not he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee.

Payment of money by agents to trustee.

**86** NOTHING in this Act contained shall render invalid—

- (I.) Any payment made in good faith and for value received to any bankrupt before the date of the order of adjudication by a person not having at the time of such payment notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication:
- (II.) Any payment or delivery of money or goods belonging to a bankrupt made to such bankrupt by a depository of such money or goods before the date of the order of

Protection of certain transactions with bankrupt.

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adjudication, who had not at the time of such payment or delivery notice of any act of bankruptcy committed by the bankrupt and available against him for adjudication:

- (III.) Any contract or dealing with any bankrupt made in good faith and for valuable consideration, before the date of the order of adjudication, by a person not having, at the time of making such contract or dealing, notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication:

Protection of certain transactions entered into by or in relation to the property of the bankrupt.

**87** SUBJECT and without prejudice to the provisions of this Act relating to the proceeds of the sale and seizure of goods of a trader, and to the provisions of this Act avoiding certain settlements, and avoiding, on the grounds of their constituting fraudulent preferences, certain conveyances, charges, payments, and judicial proceedings, the following transactions by and in relation to the property of a bankrupt shall be valid, notwithstanding any prior act of bankruptcy—

- (I.) Any disposition or contract with respect to the disposition of property by conveyance, transfer, charge, delivery of goods, payment of money, or otherwise howsoever made by any bankrupt in good faith and for valuable consideration, before the date of the order of adjudication, with any person not having at the time of the making of such disposition of property notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication:
- (II.) Any execution or attachment against the land of the bankrupt, executed in good faith by seizure before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being so executed by seizure notice of any act of bankruptcy committed by the bankrupt and available against him for adjudication:
- (III.) Any execution or attachment against the goods of any bankrupt, executed in good faith by seizure and sale before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being executed by seizure and sale notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication.

AS TO DISCOVERY OF BANKRUPT'S PROPERTY.

**88** THE Court may on the application of the trustee, at any time after an order of adjudication has been made against a bankrupt, summon before it the bankrupt or his wife, or any person whatever known or suspected to have in his possession any of the estate or effects belonging to the bankrupt, or supposed to be indebted to the bankrupt, or any person whom the Court may deem capable of giving information respecting the bankrupt, his trade, dealings, or property, and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property; and if any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant addressed as aforesaid, cause such person to be apprehended and brought up for examination.

Power of Court to summon persons before it suspected of having property of bankrupt.

**89** THE Court may examine upon oath, either by word of mouth or by written interrogatories, any person so brought before it in manner aforesaid concerning the bankrupt, his dealings or property.

Examination of parties by Court.

**90** IF any person on examination before the Court admit he is indebted to the bankrupt, the Court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

Order of Court for payment of amount admitted on examination.

**91** ANY person acting under warrant of the Court may seize any property of the bankrupt divisible amongst his creditors under this Act, and in the bankrupt's custody, or possession, or in that of any other person, and with a view to such seizure 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 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 any constable or prescribed officer of the Court, who may execute the same according to the tenor thereof.

Seizure of property of bankrupt.

JOINT AND SEPARATE ESTATES.

- Power to present petition against one partner. **92** ANY creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present such petition against any one or more partners of such firm without including the others.
- Power to dismiss petition against some respondents only. **93** WHERE there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.
- Property of partners to be vested in same trustee. **94** WHERE one member of a partnership has been adjudicated a bankrupt, any other petition for adjudication against a member of the same partnership shall be filed in, or transferred to the Court in which the first mentioned petition is in course of prosecution, and unless the Court otherwise directs, the property of such last mentioned member shall vest in the trustee appointed in respect of the property of the first mentioned member of the partnership and the Court may give such directions for amalgamating the proceedings in respect of the properties of the members of the same partnership as it thinks just.
- Joint creditor may prove for purpose of voting. **95** IF one partner of a firm is adjudged bankrupt, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat, but shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.
- Joint and separate dividends. **96** WHERE joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.
- Suits by trustee and bankrupt's partners. **97** WHERE a member of a partnership is adjudged bankrupt, the Court may authorize the trustee, with consent of the creditors, certified by a special resolution, to commence and prosecute any action or suit in the names of the trustee and of the bankrupt's

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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 application the Court may, if it think 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.

EVIDENCE.

**98** THE registrar, or any other person presiding at a meeting of creditors under this Act, shall cause minutes to be kept and duly entered in a book of all resolutions and proceedings of such meeting, and any such minute as aforesaid, if purporting to be signed by the Chairman of the meeting at which such resolutions were passed or proceedings had, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the creditors in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had.

Evidence of proceedings at meeting of creditors.

**99** ANY petition or copy of a petition in bankruptcy, any order or copy of an order made by any Court having jurisdiction in bankruptcy, any certificate or copy of a certificate made by any Court having jurisdiction in bankruptcy, any deed or copy of a deed of arrangement in bankruptcy, and any other instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceeding or other proceeding had under this Act, may, if any such instrument appears to be sealed with the seal of any Court having jurisdiction, or purports to be signed by any Judge having jurisdiction in bankruptcy under this Act, be receivable in evidence in all legal proceedings whatever.

Evidence of proceedings in bankruptcy.

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

Death of witness.

MISCELLANEOUS.

**101** WHERE a registrar under the authority of this Act attends

Expenses of registrar attending meetings, &c.

at any place for the purpose of presiding at a meeting of creditors, or of receiving proofs, or of otherwise acting under this Act, his travelling and incidental expenses incurred in so doing, and those of any clerk or officer attending him, shall, after being settled by the Court, be paid out of the bankrupt's property, if sufficient, and otherwise shall be deemed part of the expenses of the Court.

**102** ANY person to whom any thing in action belonging to the bankrupt is assigned in pursuance of this Act may bring or defend any action or suit relating to such thing in action in his own name.

**103** WHEN a bankrupt is a contractor in respect of any contract jointly with any other person or persons such person or persons may sue or be sued in respect of such contract, without the joinder of the bankrupt.

**104** 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 latest on the last day of such limited time according to such computation, unless such last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, or a day on which in pursuance of a notification by the Chief Justice under this Act the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, 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.

**105** THE registrars and other officers of the Courts acting in bankruptcy shall make to the Master of the Supreme Court such returns of the business of their respective Courts and offices, at such times and in such manner and form as may be prescribed by the rules of Court, and from such returns the Master shall, in manner prescribed by the rules of Court, frame books, which shall be, under

Returns by bankruptcy officer.

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the regulations of the rules of Court, open for public information and searches.

**106** WHERE any dividends remain unclaimed for five years then and in every such case the same shall be deemed vested in the Crown; provided, that at any time after such vesting the Chief Justice may, by reason of the disability or absence beyond seas of the person entitled to the sum so vested, or for any other reason appearing to him sufficient, direct that the said sum shall be repaid out of money provided by the Legislative Council.

Forfeiture of dividends after five years nonclaim.

**107** WHERE a bankrupt is a trustee within number ten of the Ordinance passed in the seventeenth year of the reign of Her present Majesty, section twenty of that Ordinance shall have effect so as to authorize the Court to appoint a new trustee in substitution for the bankrupt (whether voluntarily resigned or not), if it appears to the Court expedient to do so, and all provisions of that Ordinance, and of any other Ordinance relative thereto, shall have effect accordingly.

Removal of bankrupt from trusteeship.

PART V.—LIQUIDATION BY ARRANGEMENT.

REGULATIONS.

**108** THE following regulations shall be made with respect to the liquidation by arrangement of the affairs of the debtor:

Regulations as to liquidation by arrangement.

- (i.) A debtor unable to pay his debts may summon a general meeting of his creditors, and such meeting may, by a special resolution as defined by this Act, declare that the affairs of the debtor are to be liquidated by arrangement and not in bankruptcy, and may at that or some subsequent meeting held at an interval of not more than a week, appoint a trustee, with or without a committee of inspection.
- (ii.) All the provisions of this Act relating to the first meeting of creditors, and to subsequent meetings of creditors in the case of a bankruptcy, including the description of creditors entitled to vote at such meetings, and the debts in respect of which they are entitled to vote, shall apply respectively to the first meeting of creditors, and to subsequent meetings of creditors, for the purposes of this section, subject to the following modifications:

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- (a.) That every such meeting shall be presided over by such chairman as the meeting may elect; and
  - (b.) That no creditor shall be entitled to vote until he has proved by a statutory declaration a debt provable in bankruptcy to be due to him, and the amount of such debt, with any prescribed particulars; and any person wilfully making a false declaration in relation to such debt shall be guilty of a misdemeanor.
- (III.) The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the meeting at which the special resolution is passed, and shall answer any inquiries made of him, and he, or if he is so prevented from being at such meeting, some one on his behalf shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due.
- (IV.) The special resolution, together with the statement of the assets and debts of the debtor, and the name of the trustee appointed, and of the members, if any, of the committee of inspection, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section, but if satisfied that it was so passed, and that a trustee has been appointed with or without a committee of inspection, he shall forthwith register the resolution and the statement of the assets and debts of the debtor, and such resolution and statement shall be open for inspection on the prescribed conditions, and the liquidation by arrangement shall be deemed to have commenced as from the date of the appointment of the trustee.
- (V.) All such property of the debtor as would, if he were made bankrupt, be divisible amongst his creditors shall, from and after the date of the appointment of a trustee, vest in such trustee under a liquidation arrangement, and be divisible amongst the creditors, and all such settlements, conveyances, transfers, charges, payments, obligations, and proceedings as would be void against the trustee in the case of a bankruptcy shall be void against the trustee in the case of liquidation by arrangement.

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- (VI.) The certificate of the registrar in respect of the appointment of any trustee in the case of a liquidation by arrangement shall be of the same effect as a certificate of the Court to the like effect in the case of a bankruptcy.
- (VII.) The trustee under a liquidation shall have the same powers, and perform the same duties, as a trustee under a bankruptcy, and the property of the debtor shall be distributed in the same manner as in a bankruptcy; and with the modification hereinafter mentioned all the provisions of this Act shall, so far as the same are applicable, apply to the case of a liquidation by arrangement in the same manner as if the word "bankrupt" included a debtor whose affairs are under liquidation, and the word "bankruptcy" included liquidation by arrangement; and in construing such provisions the appointment of a trustee under a liquidation shall, according to circumstances, be deemed to be equivalent to and a substitute for the presentation of a petition in bankruptcy, or the service of such petition or an order of adjudication in bankruptcy.
- (VIII.) The creditors at their first or any general meeting may prescribe the bank into which the trustee is to pay any moneys received by him, and the sum which he may retain in his hands.
- (IX.) The provisions of this Act with respect to the close of the bankruptcy, discharge of a bankrupt, to the release of the trustee, and to the audit of accounts by the Master of the Supreme Court, shall not apply in the case of a debtor whose affairs are under liquidation by arrangement; but the close of the liquidation may be fixed, and the discharge of the debtor and the release of the trustee may be granted by a special resolution of the creditors in general meeting, and the accounts may be audited in pursuance of such resolution, at such time and in such manner and upon such terms and conditions as the creditors think fit.
- (X.) The trustee shall report to the registrar the discharge of the debtor, and a certificate of such discharge given by the registrar shall have the same effect as an order of discharge given to a bankrupt under this Act.
- (XI.) Rules of Court may be made in relation to proceedings on the occasion of liquidation by arrangement in the

same manner and to the same extent and of the same authority as in respect of proceedings in bankruptcy.

- (xii.) If it appear to the Court on satisfactory evidence that the liquidation by arrangement cannot, in consequence of legal difficulties, or of there being no trustee for the time being, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor a bankrupt and proceedings may be had accordingly.
- (xiii.) Where no committee of inspection is appointed the trustee may act on his own discretion in cases where he would otherwise have been bound to refer to such committee.
- (xiv.) In calculating a majority on a special resolution for the purposes of this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number.

#### PART VI.—COMPOSITION WITH CREDITORS.

##### REGULATIONS.

Regulations as to composition by creditors.

**109** THE creditors of a debtor unable to pay his debts may, without any proceedings in bankruptcy, by an extraordinary resolution, resolve that a composition shall be accepted in satisfaction of the debts due to them from the debtor.

An extraordinary resolution of creditors shall be a resolution which has been passed by a majority in number and three fourths in value of the creditors of the debtor, assembled at a general meeting to be held in the manner prescribed of which notice has been given in the prescribed manner, and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting of which notice has been given in the prescribed manner, and held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed.

In calculating a majority for the purposes of a composition under this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number, and the value of the debts of secured creditors shall as nearly as circumstances admit, be estimated in the same way,

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and the same description of creditors shall be entitled to vote at such general meeting as in bankruptcy.

The debtor, unless prevented by sickness or other cause satisfactory to such meetings, shall be present at both the meetings at which the extraordinary resolution is passed, and shall answer any inquiries made of him, and he, or if he is so prevented from being at such meetings, some one on his behalf, shall produce to the meetings a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

The extraordinary resolution, together with the statement of the debtor as to his assets and debts, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section, and if satisfied that it has been so passed he shall forthwith register the resolution and statement of assets and debts, but until such registration has taken place such resolution shall be of no validity; and any creditor of the debtor may inspect such statement at prescribed times, and on payment of such fee, if any, as may be prescribed.

The creditors may by an extraordinary resolution, add to or vary the provisions of any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation; and any such extraordinary resolution shall be presented to the registrar in the same manner and with the same consequences as the extraordinary resolution by which the composition was accepted in the first instance.

The provisions of a composition accepted by an extraordinary resolution in pursuance of this section shall be binding on all the creditors whose names and addresses, and the amount of the debts due to whom, are shown in the statement of the debtor, produced to the meetings at which the resolution has passed, but shall not affect or prejudice the rights of any other creditors.

Where a debt arises on a bill of exchange or promissory note, if the debtor is ignorant of the holder of any such bill of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor or person to whom it is payable, and any other particulars within his knowledge respecting the same, and the insertion of such particulars shall be deemed a sufficient description of the creditor of the debtor in respect of such debt, and any mistake made inadvertently by a debtor in the statement of his debts may be corrected after the

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prescribed notice has been given, with the consent of a general meeting of his creditors.

The provisions of any composition made in pursuance of this section may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed to be a contempt of Court.

Rules of Court may be made in relation to proceedings on the occasion of the acceptance of a composition by an extraordinary resolution of creditors in the same manner and to the same extent and of the same authority as in respect of proceedings in bankruptcy.

If it appear to the Court on satisfactory evidence that a composition under this section cannot in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor a bankrupt, and proceedings may be had accordingly.

Registration of resolution of creditors conclusive in certain cases.

**110** THE registration by the registrar of a special resolution of the creditors on the occasion of a liquidation by arrangement under Part V. of this Act, or of an extraordinary resolution of the creditors on the occasion of a composition under the sixth part of this Act, shall, in the absence of fraud, be conclusive evidence that such resolutions respectively were duly passed, and all the requisitions of this Act in respect of such resolutions complied with.

## PART VII.—REPEAL.

Ordinances described in Schedule repealed.

**111** THE Ordinances described in the second Schedule to this Act annexed are hereby repealed; but this repeal shall not affect the past operation of any such enactment, or revive any Court, office, jurisdiction, authority, or thing abolished by any such enactment, or affect the validity or invalidity of any thing done or suffered before the commencement of this Act, or any right, title, obligation, or liability accrued, or restriction imposed before the commencement of this Act, by or under any such enactment; nor shall this repeal interfere with the prosecution or affect the course of any legal proceeding pending in Insolvency or otherwise under any such enactment before the commencement of this Act, but subject to the provisions of this Act and the Debtor's Act, 1871, such proceedings

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shall be prosecuted as if this repeal had not been enacted ; nor shall this repeal interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty or forfeiture incurred under, any enactment hereby repealed.

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### SCHEDULES.

#### SCHEDULE 1.

##### DESCRIPTION OF TRADERS.

Alum makers; apothecaries; auctioneers; bankers; bleachers; brokers; brickmakers; builders; calenderers; carpenters; carriers; cattle or sheep salesmen; coach proprietors; cowkeepers; dyers; fullers; keepers of inns, taverns, hotels, or coffee houses; limeburners; livery stable keepers; market gardeners; millers; packers; printers; sharebrokers; shipowners; shipwrights; stockbrokers; stockjobbers; victuallers; warehousemen; wharfingers; persons using the trade or profession of a scrivener, receiving other men's moneys or estates into their trust or custody; persons insuring ships, or their freight or other matters, against perils of the sea; persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail; and persons who, either for themselves or as agents or factors for others, seek their living by buying and selling or buying and letting for hire goods or commodities, or by the workmanship or the conversion of goods or commodities: but a farmer, grazier, common laborer, or workman for hire shall not, nor shall a member of any partnership, association, or company which cannot be adjudged bankrupt under this Act, be deemed, as such, a trader for the purposes of this Act.

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#### SCHEDULE 2.

##### ORDINANCES REPEALED.

- 20 Vict., No. 10. An Ordinance for giving relief to Insolvent persons, and providing for the due collection, administration, and distribution of Insolvent Estates in Western Australia, and for the prevention of frauds affecting the same.
- 27 Vict., No. 20. An Ordinance to amend "The Insolvent Ordinance of 1856."
- 28 Vict., No. 5. An Ordinance to amend "The Insolvent Ordinance of 1863."

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P E R T H :

By Authority: RICHARD PETHER, Government Printer.