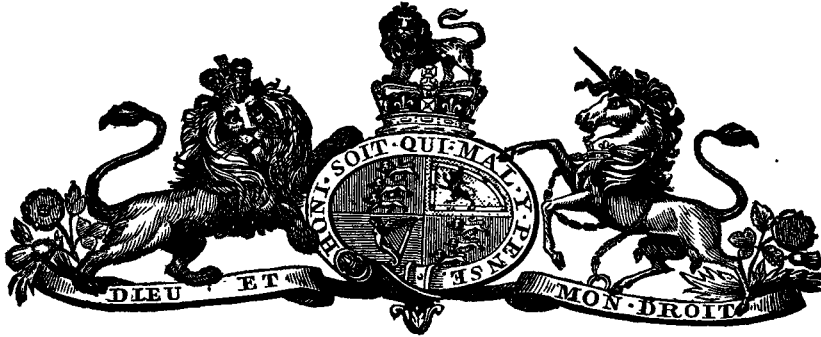


NEW ZEALAND.



QUADRAGESIMO

VICTORIÆ REGINÆ.

No. LXV.

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AN ACT for the Relief of Debtors and for the better
Security of Creditors. [31st October, 1876.] Title.

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

1. The Short Title of this Act shall be "The Debtors and Creditors Act, 1876." Short Title.

2. Except as in this Act expressly provided, and except with respect to the defining of districts and making rules, in which respects this Act shall take effect from its passing, this Act shall take effect from and immediately after the first day of November, one thousand eight hundred and seventy-six, which time is hereinafter referred to as the commencement of this Act. Commencement of Act.

3. "The Debtors and Creditors Act, 1875," is hereby repealed, but this repeal shall not affect the past operation of any of the Acts described in the Schedule to the said repealed Act, or the past operation of the said repealed Act itself, or the validity or invalidity of anything done or suffered, or any right title or obligation or liability accrued, before the commencement of this Act, by or under any such Act; nor shall this Act interfere with the promotion of, or affect the course of proceeding under or in relation to, any petition or deed of arrangement executed or filed, or order made, or thing done, under any such Act before the commencement of this Act, or affect any of the incidents or consequences of any such petition deed order or thing; nor shall this Act interfere with the institution or prosecution of any proceeding in respect of any offence committed or any penalty or forfeiture incurred against or under any such repealed Act; and all estates and persons brought under the operation of the said Acts or any of them before the commencement of this Act shall be subject to the provisions of the said Acts, as if the same had not been repealed, or may, if so ordered by the Court, be dealt with under the provisions of this Act; and every appointment heretofore made of a Trustee under the provisions of "The Debtors and Creditors Act, 1875," shall be valid notwithstanding any irregularity or informality in any of the proceedings connected with such appointment. Repeal.

4. In this Act, if not inconsistent with the context, the terms and expressions following shall have the meanings hereinafter respectively assigned to them, that is to say,— Interpretation.

"The Court" shall mean the Court having jurisdiction as by this Act provided.

"The Registrar" shall mean and include the Registrar of the Supreme Court or the Clerk of the District Court having

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jurisdiction as hereinafter provided, or the deputy for the time being of any such Registrar or Clerk.

“District” shall mean a district for the purposes of this Act.

“Rules” shall mean the rules to be made under this Act, and “prescribed” shall mean prescribed by the rules.

“Bankruptcy” shall mean the filing of the declaration of insolvency or the making of the order of adjudication, as the case may be.

“Property” shall mean and include every description of property whether real or personal, and every estate interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined, and shall also include things in action as well as in possession.

“Debtor” shall mean a debtor who shall come under the operation of this Act.

“District Court” shall mean a Court holden by virtue of any Acts for the time being in force relating to District Courts.

“Gazette” shall mean any newspaper published and generally circulated within the district in which the proceeding or matter is taken or pending; and “gazetted” shall mean published in two or more such newspapers for the district in which the proceeding or matter is taken or pending.

“Trustee,” where used alone, shall mean the Registrar or the creditors’ trustee, whether elected or appointed as hereinafter provided, as the case may be.

Corporations not subject to Act.

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

Governor may proclaim districts.

6. The Governor may from time to time, by Proclamation in the *New Zealand Gazette*, constitute any part of New Zealand into a district under this Act, by such local name as he shall think fit, and may abolish or alter the boundaries of any such district.

But until any such Proclamation, the several districts created under the provisions of “The Debtors and Creditors Act, 1875,” shall be deemed to be districts duly created for the purposes of this Act.

AS TO JURISDICTION OF COURTS AND APPEALS.

Supreme Court and District Courts to have jurisdiction.

7. The Supreme Court shall have throughout New Zealand, and District Courts shall have within their respective districts, jurisdiction for the purposes of this Act.

Extent of jurisdiction.

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

Mode of enforcing order of District Courts.

9. Orders of District Courts under this Act shall be enforceable in like manner as orders of District Courts under their ordinary jurisdiction are enforceable.

Costs may be awarded, taxed, and recovered.

10. The Court may award such costs as it thinks fit, and costs so awarded may be taxed, and shall be recoverable as any other costs awarded under the authority of the Court.

Powers of Judge.

11. The Judge of the Court shall have and may exercise at chambers all or any of such powers of the Court as he shall think fit.

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12. The Registrar may, during the vacation or during the illness or absence from any other cause of a Judge of the Court, act for such Judge, with all the jurisdiction power and authority of such Judge, except as to hearing appeals under this Act.

Registrar may act in absence of Judge.

13. A Registrar of the Supreme Court shall sit at chambers for despatch of such part of the business of the Court as he is authorized to carry out either by the provisions of this Act or by any general rules, and subject thereto as a Judge of the Supreme Court from time to time directs, and while so sitting shall have the same power and jurisdiction as a Judge of the Supreme Court at chambers would have, and an order made by him shall be an order of the Court; but a Registrar at chambers shall not commit any person to prison.

Registrar may sit in chambers.

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

Registrar's order may be discharged or varied.

14A. Each Judge of the Court may within his judicial district appoint one or more fit and proper persons to be certificated Accountants in Bankruptcy, and may from time to time revoke any such appointment; and every such appointment shall be in writing under the hand of the Judge, and notice thereof, and of every revocation of any such appointment, shall be published in the *New Zealand Gazette*.

Judge of Court may appoint certificated accountants.

15. The Registrar shall, until the election or appointment of a creditors' trustee as hereinafter provided, act as trustee of every estate brought under this Act at the office of the Court.

Registrar to be trustee in first instance.

16. Where a case has been commenced in a District Court there shall be a right of appeal to the Supreme Court and no further, unless with the permission of the Judge who shall hear such appeal; and where a case has been commenced in the Supreme Court there shall be a right of appeal to the Court of Appeal and no further; subject to such provisions respecting notice of appeal, deposit or other security, procedure, evidence, and other matters, as general rules direct.

Appeals.

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

Time for appeals.

18. The proceedings under this Act shall not be stayed by appeal unless the Court from which the appeal is brought think fit to order proceedings to be stayed. The Court appealed to may in any case, either on motion before the hearing of an appeal or when deciding thereon, order any such proceedings to be taken as in the circumstances appear to it proper for the due and convenient prosecution of the proceedings under the bankruptcy, although the time fixed for such proceedings has expired.

Effect of appeals.

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

Rules may be made

- (a.) The practice of the Court, whether as to any original or appellate jurisdiction under this Act, and the fees to be paid therein, and the several forms of proceedings to be used in the Court in all matters under this Act.
- (b.) The proceedings at meetings of creditors, the notice to be given thereof, and the places where the same shall be held, the mode of voting thereat, and the manner in which proxies may be appointed and vote at such meetings.
- (c.) The forms of petitions summonses and notices to be filed issued or given under this Act, the mode in which the same shall be served, and what shall be deemed sufficient service thereof.
- (d.) The costs and charges of solicitors in any proceedings

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under this Act, and for the taxation and allowance of such costs.

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

Rules may be repealed, varied, or altered.

20. Any of such rules may in like manner be repealed varied or altered as occasion may require, and all rules made under the powers hereby given shall be promulgated by and take effect from a day to be fixed in and by such rules; and all such rules, and any repeal variation or alteration thereof, shall respectively be published in the *New Zealand Gazette*.

Former rules to be acted on in meantime.

21. Until rules have been made in pursuance of this Act, and so far as any such rules when made do not extend, the principles practice and rules on which the Supreme Court has hitherto acted in dealing with bankruptcy proceedings shall be observed.

PROCEEDINGS BY DEBTOR.

Insolvent may file declaration.

22. Any person unable to pay his debts may file in the Court a declaration in writing, signed by him in the presence of and attested by the Registrar, or by a Justice of the Peace, or by a solicitor, that he is unable to meet his engagements with his creditors.

Court in which same to be filed.

23. Such declaration shall be filed in a Court for the district in which the debtor has carried on business or resided for the longest period during the preceding six months; and if the place of business or residence of the debtor as last aforesaid shall not be within any proclaimed district, then such declaration shall be filed in the office of the Court for the district nearest to such place of business or residence, and immediately on the filing of such declaration the person filing the same shall be deemed to be a bankrupt under the provisions of this Act.

First meeting of creditors.

24. On the filing of such declaration, the Registrar shall appoint some convenient time and place for holding a meeting of the creditors of the debtor, to be called the first meeting, such meeting to be fixed for a day not less than four days after the filing of such declaration. Notice of the filing of such declaration, and of the time and place appointed for holding such meeting of creditors, shall be forthwith gazetted by the debtor.

Court may restrain action.

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

After gazetting, execution &c. not available.

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

Debtor to file list and statement.

27. Within four days after the day of the filing of the declaration the debtor shall file in the Court a list signed by him showing the names residences and occupations of his creditors, and the respective amounts due to them, and a statement showing his property and the estimated value thereof; and he may from time to time add to or

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amend such list or statement, and every such list statement addition and amendment shall be verified by his affidavit.

28. Any person may, on payment of the prescribed fees (if any), inspect the list of creditors and statement of property filed, and have a copy thereof and extracts therefrom. List and statement may be inspected.

PROCEEDINGS BY CREDITORS.

29. The following shall be deemed acts of bankruptcy within the meaning of this Act, if committed within three calendar months before the filing of a petition as hereinafter mentioned:— Acts of bankruptcy.

- (1.) That the debtor has in New Zealand or elsewhere made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally; but this provision shall not apply in cases where a debtor has executed any deed of arrangement under the Acts hereby repealed or under this Act, except as hereinafter mentioned.
- (2.) That the debtor has in New Zealand or elsewhere made a conveyance gift transfer or delivery of his property, or any part thereof, with intent to defeat or delay his creditors, or any fraudulent conveyance gift or transfer or delivery of his property, or any part thereof.
- (3.) That the debtor, with intent to defeat or delay his creditors, has departed out of New Zealand, or being out of New Zealand has remained out of New Zealand, or has departed from his dwelling-house, or absented himself from his usual place of residence or business, or begun to keep house.
- (4.) That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than fifty pounds has been executed by seizure and sale, or that any execution or process for not less than fifty pounds, issued on a judgment decree or order obtained in any Court in favour of any creditor, has been returned unsatisfied in whole or in part: Provided that the debtor has been called upon to satisfy such judgment decree or order by the officer or other person charged with the execution thereof, and has failed to do so: Provided, further, that two or more executions for sums amounting in the aggregate to not less than fifty pounds not being satisfied as aforesaid shall be reckoned as one execution for the purposes of this section.

30. 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 fifty pounds or upwards, may within three calendar months after any such act of bankruptcy present a petition to the Court for the district within which the debtor shall then reside or shall last have resided or carried on business, or, if he shall then reside or shall have last resided or carried on business in a place not within a district, then for the district nearest to such then or last place of residence or business, showing the nature of the debt or debts owing to the petitioner or petitioners, and that the debtor has committed or suffered an act of bankruptcy within the meaning of this Act, and praying that he may be adjudged bankrupt; a summons shall thereupon be issued out of such Court calling upon the debtor to appear before such Court, on some convenient day appointed by the Registrar, and show cause why he should not be adjudged bankrupt. Creditor may petition and summons be issued.

Debtors and Creditors.

Action against debtor may be restrained.

31. After the filing of a petition as last aforesaid, the Court may, on the application of the petitioner or petitioners, restrain any action suit or proceeding against the debtor or his property, on such terms as the Court thinks fit.

Service of summons.

32. A copy of such summons and of such petition shall be forthwith served upon the debtor either personally or in such other mode as may be prescribed, or may in any particular case be directed by the Court.

Court may take evidence.

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

Proceeding on summons.

34. The proceedings on such summons shall be the same in all other respects as on any summons to show cause issued by such Court.

Court may adjudge debtor bankrupt.

35. If the Court shall, after hearing the evidence adduced by and on behalf of all parties, be satisfied that the debtor has committed an act of bankruptcy, and that whether the act of bankruptcy proved shall or shall not be the same as the act of bankruptcy stated in the petition, and that the debtor is indebted to the petitioner or the petitioners in the sum of fifty pounds or upwards, then the Court may adjudge the debtor bankrupt, and shall fix a day and time for the bankrupt to appear before the Court and submit to be examined from time to time as provided by this Act.

Time and place for meeting of creditors.

36. The Registrar shall thereupon, at the request of the petitioning creditor or creditors, appoint some convenient time and place for holding a meeting of the creditors of the debtor.

Notice to be gazetted and served.

37. Notice of the adjudication, and of the time and place appointed for holding such meeting of creditors, and for the attendance of the bankrupt before the meeting, shall be forthwith gazetted by the petitioning creditor or creditors, and a copy of such notice shall either be served personally upon the bankrupt, or left at his usual or last known place of abode.

After gazetting, no execution &c. available.

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

Effect of order of adjudication.

39. Subject to appeal, the order of adjudication shall be final and conclusive with respect to the validity of the adjudication and to the existence of all requisites thereto, and the order shall not be liable to be disturbed or impeached at law or in equity, or otherwise, on any ground whatever, nor shall any of the requisites to adjudication be disputed or required to be proved in any action suit or proceeding; and accordingly, on proof of the adjudication, the debtor shall in all Courts, and to all intents whatsoever, be conclusively deemed to have been duly adjudged bankrupt, and shall be deemed to be a bankrupt unless and until it is shown that the adjudication has been reversed on appeal.

Debtor to file list and statement.

40. The debtor shall, within four days after the service in manner aforesaid upon him of the notice of adjudication, file in the Court the like lists as are required to be filed by a debtor who has filed a declaration of insolvency, and verified in like manner, and may from time to time amend the same; and any person may, on payment of the

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prescribed fees (if any), inspect and have copies of or extracts from the same.

41. In all cases where the debtor shall be in custody, the declaration of insolvency or petition for adjudication, as the case may be, shall be filed in a Court having jurisdiction for the district comprising the place in which he is in custody, and, if such place shall not be within any district, then in the Court for the district nearest to such place; and in all cases where a debtor is absent from New Zealand, the petition for adjudication shall be filed in a Court having jurisdiction for the district comprising the place in which the debtor last resided for three months, or for the longest time under three months, and, if such place shall not be within any district, then in the Court for the district nearest to such place.

Court for proceedings where debtor in custody.

42. The creditors of any person who shall have filed a declaration of insolvency, or against whom an order for adjudication has been made, may resolve that the proceedings under the petition shall be transferred from the Court in which the proceedings were taken to such other Court either within or without the district as they think fit, and the Court in which the proceedings were taken shall, unless there appears good reason to the contrary, make order accordingly.

Proceedings may be transferred.

43. On proceedings being transferred to any Court, that Court shall thenceforth have jurisdiction in the matter of such proceedings, but shall not have power to transfer the same to any other Court; and all orders affidavits and proceedings made used or taken thereunder before the transfer shall have the same effect as if they had originally been orders affidavits and proceedings of and in the Court to which the transfer is made.

Jurisdiction of Court to which same transferred.

CREDITORS' TRUSTEE.

44. The creditors may, at the first meeting to be convened after the filing of a declaration of insolvency, or after adjudication as aforesaid, or at any adjournment thereof, by resolution elect some person other than the Registrar to be from thenceforth the creditors' trustee of the property of the debtor, and may determine what remuneration (not exceeding five per centum on the gross receipts from such property) may be retained by the trustee so elected for his services in connection with the bankruptcy, and may require him to give security by bond to the Registrar in such amount, and with or without sureties, as they think fit, and the person so elected shall forthwith signify to the Registrar in writing his acceptance of the trusteeship, and shall give the security (if any) required by the creditors; and after such security has been given, the Registrar shall certify the same, and notice of such election shall be thereupon forthwith gazetted, and such election shall not be subject to be set aside on appeal or otherwise.

Creditors to elect trustee, and proceedings thereon.

45. In case the person elected shall neglect or refuse to signify to the Registrar in writing his acceptance of the trusteeship or to give the security (if any) within three days after notice thereof to him, the election shall be deemed to have lapsed, and the Registrar shall forthwith direct that another meeting of creditors shall take place, at a time and place to be appointed by him in that behalf, and notice of such new meeting, and of the purpose of the same, shall be gazetted, and at such meeting some other person may be elected trustee of the property of the debtor in place of the Registrar, and the like proceedings may be had in reference to such meeting and election as are hereinbefore mentioned in relation to the first meeting for the like purpose.

Proceedings if such election lapse.

Debtors and Creditors.

If no election, Registrar may appoint trustee.

46. In case a sufficient number of creditors shall not attend either at the first meeting or at any second meeting, or at any adjournment of the same, respectively held as aforesaid, or in case no person shall be found willing to become trustee, then the Registrar shall appoint one of the certificated Accountants in Bankruptcy, whether he be a creditor of the estate or not, to be creditors' trustee, and the like proceedings shall be had and taken upon, and the like results shall follow from, such appointment as if such person had been duly elected trustee at a duly-held meeting of creditors, and the person so appointed shall be entitled to retain a sum equal to five pounds per centum on the gross receipts from the property of the debtor under the bankruptcy, by way of remuneration for his services in connection with the bankruptcy, and shall to all intents and purposes have the same powers privileges and authorities, and be liable to the same consequences and conditions, as an elected trustee under this Act.

Gazette notice of Trustee's appointment to be *prima facie* evidence thereof.

47. The *Gazette* notice of the election or appointment, as the case may be, of a creditors' trustee shall be *prima facie* evidence of such appointment.

If no person become creditors' trustee, Registrar to realize estate.

But in case no person shall be willing to act as creditors' trustee, the Registrar shall forthwith cause the property of the bankrupt, of which he may at the time be in possession, to be converted into money by such means and in such manner as he shall in his absolute discretion think fit, and that without being responsible for any loss or damage occasioned thereby, and shall pay the proceeds arising therefrom, after deducting all costs charges and expenses of and incident to the conversion of the same into money, into the bank to the credit of the Colonial Treasurer, and the moneys so paid in shall be carried to the Unclaimed Dividend Account, and shall, unless otherwise ordered by the Court at the instance of a creditor or creditors of the bankrupt, be paid to the bankrupt at the expiration of twelve calendar months from the date of the bankruptcy.

AS TO GENERAL MEETINGS OF CREDITORS.

General meetings of creditors.

48. General meetings of creditors shall be held and may be adjourned in the prescribed manner, and subject to the prescribed regulations: Provided that—

- (1.) The meeting shall be presided over by such chairman as the creditors present and qualified to vote at the meeting may elect.
- (2.) A person shall not be entitled to vote as a creditor unless at or previously to the meeting he has, in the prescribed manner, proved a debt provable under the bankruptcy to be due or owing to him.
- (3.) 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.
- (4.) A secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect to the balance (if any) due or owing to him after deducting the value of his security, ascertained in the prescribed manner. He may, however, previously to or at 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: Provided that the creditors' trustee may, if he shall think fit, purchase the security at the price fixed by the secured creditor, who shall thereupon sell and transfer the security to the trustee for the benefit of the creditors upon payment of the sum fixed as aforesaid, and no more.

Debtors and Creditors.

- (5.) A secured creditor shall in this Act mean any creditor holding any mortgage charge or lien on the property of the debtor, or any part thereof, as security for a debt due to him.
- (6.) Votes may be given either personally or by proxy, and every proxy shall have the same power of taking part in the proceedings as the creditor whom such proxy represents would have had had he been present.
- (7.) Except where otherwise specially provided by this Act, or prescribed by general rules, every resolution shall be decided by a majority in number and value of the creditors present personally or by proxy at the meeting and voting on such resolution.
- (8.) The trustee may at any time call a general meeting of the creditors, and shall call such meeting when required by one-fourth in value of the creditors who have proved their debts. The minutes of any general meeting of creditors, upon proof of signature of the person presiding at such meeting, shall be *prima facie* evidence in all Courts of justice of what passed at such meeting.

49. It shall be the duty of the debtor, without any notice in that behalf, in all cases in which the bankruptcy shall result from the filing by him of a declaration of insolvency, and upon notice in writing given to him or left for him at his last known place of abode or business, in case of adjudication at the instance of a creditor, unless in each case he shall be unable to do so for reasons which the meeting shall think reasonable, to attend the first meeting of creditors and every adjournment of the same or any subsequent meeting of creditors which he shall be required by notice served as prescribed to attend, and then and there submit himself for examination by the chairman for the time being of such meeting.

Debtor to attend meetings and be examined.

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

The trustee shall in all cases attend the first meeting of creditors, and every adjournment thereof until the election or appointment of a creditors' trustee, and shall produce to the meeting and to any adjournment thereof all books of account deeds and papers then in his possession relating to the property of the bankrupt.

Trustee to attend first meeting.

AS TO CREDITORS' TRUSTEES.

50. It shall be the duty of the creditors' trustee to conform to any directions which the creditors may give by resolution passed in accordance with this Act, in the absence of any directions that may by general rules be prescribed as to the manner in which the property is to be administered.

Trustee to conform to directions of creditors.

51. The Court may, on the requisition of a majority in number representing three-fourths in value of the creditors who have proved, and notice thereof to the creditors' trustee, make an order removing him and appointing a new creditors' trustee in his place, upon such terms in all respects as the Court may think proper, and the proceedings to obtain such order shall be the same as in the case of any summons to show cause issued by the Court.

Trustee may be removed.

52. In the event of the creditors' trustee dying, or resigning, or becoming bankrupt, or becoming incapable of acting, or departing from the colony, the Registrar shall, at the request of any creditor

Death, resignation, &c., of trustee.

Debtors and Creditors.

who has proved, appoint some convenient time and place for holding a meeting of the creditors of the debtor, and the like proceedings may be had in reference to such meeting, and to the election or appointment of a new trustee, as are hereinbefore provided for the election or appointment of a trustee in the first place.

Property to vest in new trustee.

53. Upon the election or appointment of any new trustee, all property vested in the former creditors' trustee shall be deemed to have been transferred to and absolutely vested in such new trustee.

Trustee may sue in official name.

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

AS TO CONSEQUENCES OF BANKRUPTCY.

Vesting of property on bankruptcy.

55. Immediately on the filing of a declaration of insolvency by any debtor under the provisions of this Act, and immediately upon any adjudication on a petition presented under the provisions of this Act, as the case may be, all the property of the debtor shall vest absolutely in the Registrar, and shall continue to be vested in him until the election or appointment of a creditors' trustee as hereinbefore provided; and the Registrar shall forthwith take possession of the same, or of such parts thereof of which possession can be taken, and of all books of account deeds and papers relating to the property of the bankrupt and then in his possession or custody, and for that purpose may enter or cause entry to be made by force if necessary into any lands or tenements in the possession or occupation of the bankrupt, and for any of the purposes aforesaid may employ any bailiff or bailiffs for such time and at such rate of remuneration as shall for the time being appear to the Registrar to be reasonable; and all costs and expenses attending such taking possession and keeping possession for the purposes of the bankruptcy shall be borne and paid out of the property of the bankrupt.

Vesting of property in creditors' trustee.

56. Immediately after notice of the election or appointment of a creditors' trustee has been gazetted as hereinbefore provided, all the property of the debtor theretofore vested in the Registrar shall be deemed to be vested in the creditors' trustee; but the Registrar shall have a lien upon the estate for all costs and expenses incurred by him in relation thereto.

Trustee may seize property of debtor.

57. The trustee or any person acting under him may, with the leave of the Court, seize any property of the debtor available for the benefit of his creditors under this Act in the possession of any person holding the same on behalf of the bankrupt.

Property coming to debtor before discharge to vest in trustee.

58. All property which shall come to the debtor between the date of the bankruptcy and his discharge, save as is hereinafter excepted, shall become absolutely vested in the trustee for the time being for the benefit of the creditors of the debtor.

After bankruptcy, debtor not to recover or release property.

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

Debtors and Creditors.

60. The property of the debtor divisible amongst his creditors, and in this Act referred to as the property of the debtor, shall not comprise the following particulars:—

What property divisible amongst creditors.

- (1.) Property held by the debtor in trust for any other person.
- (2.) The tools (if any) of his trade, and the necessary wearing apparel of himself, his wife and children, and his furniture, to the value, inclusive of tools apparel and furniture, of twenty-five pounds, or to such further value as the creditors in general meeting may determine.

61. It shall not be lawful for any debtor after the bankruptcy to execute, whether before or after he obtains his discharge, any power of appointment, or any other power vested in him, so as to defeat or destroy any contingent or other estate or interest in any property to which he may be beneficially entitled, in default of appointment or otherwise in case of non-execution of the power.

Power of appointment in debtor.

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

Powers vested in debtor.

63. Any settlement of property made by a debtor, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor become a bankrupt under this Act within three years after the date of such settlement, be void as against the trustee, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement. Any contract made by a debtor in consideration of marriage for the future payment to or for the settlement upon or for his wife or children of any money or property wherein he had not, at the date of his marriage, any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall upon his bankruptcy, before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against the trustee; and for the purposes of the foregoing sections the term "settlement" shall include any conveyance or transfer of property.

Settlements by debtor.

64. 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 favour 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 under this Act within three months after the date of making taking paying or suffering the same, be deemed fraudulent and void as against the trustee.

Fraudulent preferences.

65. If the debtor at the time of the bankruptcy has in his possession order or disposition, by the consent and permission of the true owner thereof, any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale alteration or disposition as owner, the Court may order the same to be sold disposed of or applied for the benefit of the creditors under the bankruptcy: Provided that nothing herein shall affect any transfer or assignment of any ship or any share thereof made as a security for any debt by way of mortgage duly registered according to the enactments relative to the registration of ships for the time being in force: Provided also

Property in order and disposition of debtor.

Debtors and Creditors.

that nothing herein contained shall be construed to prejudice or affect any *bond fide* security lease or bailment of chattels held over or in respect of any such goods or chattels which has been duly registered under any Act or Acts providing for the registration thereof: Provided also that nothing herein contained shall be held to apply to consignments of goods held by the debtor in the ordinary course of his business for sale on account of any other person, the identity and ownership of which can be proved to the satisfaction of the trustee of the debtor's estate, or of the Court, and in respect of which the owner shall tender payment to the trustee of all advances made thereon by the debtor, and of all charges due thereon to the debtor's estate, and shall surrender to the trustee any acceptances granted by the debtor in his favour by way of advance thereon.

Transactions not
invalidated.

66. Nothing in this Act contained shall render invalid—

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

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

67. Subject and without prejudice to the provisions of this Act, avoiding certain settlements, and avoiding, on the ground of their constituting fraudulent preferences, certain conveyances charges payments and judicial proceedings, the following transactions by and in relation to the property of a debtor shall be valid, notwithstanding any prior act of bankruptcy :—

- (1.) 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 debtor in good faith and for valuable consideration before the bankruptcy with any person not having, at the time of making of such disposition of property, notice of any act of bankruptcy committed by the debtor, and available against him for adjudication.
- (2.) Any execution or attachment against the goods of any debtor executed in good faith by seizure and sale before the bankruptcy, 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 debtor, and available against him for adjudication.

Rights of creditor of
joint debtor.

68. If one partner of a firm become bankrupt under this Act, any creditor to whom the debtor 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 debtor until all the separate creditors have received the full amount of their respective debts.

Leases, &c.

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

- (1.) The liability of the debtor in respect thereof shall absolutely cease.

Debtors and Creditors.

- (2.) Within one month after the bankruptcy, the trustee, by writing signed by him and filed in the Court, shall elect whether or not to take the lease agreement or conveyance, and the debtor's estate shall continue liable until such election as if there had been no bankruptcy.
- (3.) If the trustee elects to take the lease agreement or conveyance, the debtor's estate shall continue liable as if there had been no bankruptcy.
- (4.) If the trustee does not elect to take the lease agreement or conveyance within the time limited in that behalf, the land comprised therein shall go and remain to and with the person then entitled to the immediate reversion therein, but subject nevertheless to any incumbrances then affecting the same.

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

Agreements for purchase.

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

Stock funds, &c.

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

Property out of New Zealand.

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

Money or securities in hands of third persons.

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

Court may order payment of debts due to debtor.

AS TO PROOFS, PREFERENTIAL PAYMENTS, DISTRIBUTION OF THE ESTATE, ETC.

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

Creditors may prove

Debtors and Creditors.

Mutual debts may
be set off.

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

Interest.

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

Proof of debts not
payable at time of
bankruptcy.

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

Proof for debt pay-
able by instalments.

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

Proof where debtor
member of partner-
ship.

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

Unliquidated
damages.

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

Proof for moneys
ordered to be paid.

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

Distress for rent.

83. Distress for rent levied on the property of the debtor after the bankruptcy, whether for rent due before or after the bankruptcy, shall not be available for more than twelve months' rent accrued due before the date of such bankruptcy, but a person entitled to rent may prove for any rent due for which distress is not so available.

Proof for money
falling due at fixed
periods.

84. Where the debtor is liable to pay a rent or to make any other payments falling due at fixed periods, and the bankruptcy happen at a time other than one of those periods, the person entitled

Debtors and Creditors.

to the rent or payment may prove for a proportionate part thereof up to the day of bankruptcy, as if it grew due from day to day.

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

Proof on bottomry or respondentia bond.

86. Where a policy of insurance on a ship or on goods has been effected with the debtor as a subscriber or underwriter, the person effecting the policy may prove in respect thereof, although he was not beneficially interested in the ship or goods, provided the person so interested is not within New Zealand.

On policy of insurance.

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

Proof under covenant, contract, &c.

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

Debt payable on contingency.

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

Liability to pay money on contingency.

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

Annuity creditor.

91. It shall not be lawful for any person entitled to an annuity granted by the debtor to sue any person who is surety for payment thereof until the annuitant has proved for the value of the annuity and for the arrears thereof, and, if the surety after such proof pays the amount proved, he shall be thereby discharged from all claims in respect of the annuity, and if the surety does not, before any payment of the annuity subsequent to the bankruptcy becomes due, pay the amount proved, he may be sued for the accruing payments of the annuity, until the annuitant, either by dividends from the estate of the debtor or by payments from the surety, has received the amount proved, with interest at eight per centum per annum from the time of notice to the surety of the proof and of the amount thereof; and after such receipt by the annuitant the surety shall stand in his place in respect of such proof for the amount received by the annuitant from the surety, and the debtor's order of discharge shall discharge him from all claims of the annuitant or of the surety in respect of the annuity.

Payment of annuity by surety.

92. Where any person is, at the time of the bankruptcy, surety or liable for any debt or liability of the debtor, and pays or satisfies the

Payment of debt by surety.

Debtors and Creditors.

debt or liability, or any part of it in discharge of the whole, although he does so after the bankruptcy, the following provisions shall have effect:—

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

Proof for calls.

93. Where the debtor is, at the time of the bankruptcy, a member of a company registered under "The Joint Stock Companies Act, 1860," or any Act for the like purposes, and not in the course of being wound up under that Act, he shall be by virtue of the bankruptcy absolutely discharged from all liability in respect of such membership, and shall be deemed to have ceased to be a member as from the date of the bankruptcy; and the company may prove for the amount of calls made before the bankruptcy in respect of the shares held by the debtor and not paid, and may claim for the value, estimated as the Court directs, of the liability to calls to be made within one year after the bankruptcy in respect of such shares.

Proof for costs.

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

Proof after action brought.

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

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

Proof deemed election.

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

Mode of proof.

97. Every creditor of the debtor may prove his debt by delivering or sending through the general post to the trustee a statement of his debt, and of the account, if any, between him and the debtor, with a declaration made as prescribed, that such statement is a true and complete statement of accounts between him and the debtor, and that the debt thereby appearing to be due from the debtor's estate to the creditor is justly due.

By companies.

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

False declaration perjury.

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

Debtors and Creditors.

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

Trustee may summon and examine certain persons.

The trustee may, subject to appeal to the Court, in such manner as general rules prescribe, disallow any proof; and unless such disallowance shall be appealed against within fourteen days thereafter and reversed on appeal, the same shall be final and conclusive as to the right of the creditor to prove for the debt or claim in respect of which the proof has been disallowed.

May disallow proof.

101. The trustee shall, with all convenient speed after his election or appointment, as the case may be, proceed by the best means in his power, subject nevertheless to the provisions of this Act, to convert the property of the debtor into money.

Trustee to realize property.

102. The trustee of the estate of any debtor shall, subject to the provisions of this Act, pay and apply the proceeds arising from the debtor's property in manner following, that is to say,—

Application of proceeds.

- (1.) In payment of all taxes costs charges allowances and expenses properly incurred by or payable by him or by the Registrar respectively in the execution of their respective offices under this Act.
- (2.) In payment of the remuneration allowed to him under this Act.
- (3.) In payment of all preferential debts and sums of money directed or authorized by this Act to be paid to creditors or others in priority to the general creditors; and if the estate be insufficient to meet such preferential debts and sums of money, they shall abate in equal proportions between themselves.
- (4.) In payment to and amongst all other creditors who have proved their debts rateably in proportion to the amounts of their respective proofs: Provided that the trustee shall not declare any dividend until after the expiration of the prescribed time.

103. In the calculation and distribution of a dividend, it shall be obligatory on the trustee to make provision for debts provable, appearing from the debtor's statements or otherwise to be due or owing 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 respect of claims not yet determined.

Calculation and distribution of dividend.

104. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid a dividend or dividends out of any moneys for the time being remaining in the hands of the trustee available for distribution amongst the creditors.

Creditors proving after dividend declared.

105. Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on application

Joint and separate properties.

Debtors and Creditors.

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

Preferential claims,

106. The following preferential claims shall be allowed before any dividend is declared:—

- (1.) When, at the time of the bankruptcy, the debtor was indebted to a servant or clerk for wages or salary, the trustee, on proof thereof, shall pay so much as is due, not exceeding six months' wages or salary and not exceeding one hundred pounds, to such servant or clerk, out of the debtor's estate, and such servant or clerk may prove for any sum exceeding that amount.
- (2.) When, at the time of the bankruptcy, the debtor was indebted to any artizan labourer or workman, whether skilled or unskilled, of the debtor, in respect of his wages or labour, the trustee, on proof thereof, shall pay so much as is due, not exceeding one month's wages, at current rates, to such artizan labourer or workman out of the debtor's estate, and such artizan labourer or workman may prove for any sum exceeding that amount.
- (3.) When, at the time of the bankruptcy, any person is apprenticed to the debtor, the bankruptcy shall, as between the bankrupt and the apprentice, be a complete discharge of the liability of the bankrupt and apprentice respectively under the deed or articles; and if any money has been paid by or on behalf of such apprentice to the debtor as an apprentice fee, the Court, on proof thereof, may, if it think fit, order such sum as the Court thinks reasonable to be paid out of the debtor's estate to or for the use of the apprentice, regard being had to the amount paid by him or on his behalf, and to the time during which he resided or served with the debtor under the deed or articles before the bankruptcy; but it shall be the duty of the bankrupt, at the request and cost of the apprentice, to assign the apprentice to any person to be named by him in that behalf, and the service of the apprentice with the bankrupt shall, to the extent of the time of such service, be deemed to have been good service under the deed or articles between him and the bankrupt.

Allowance to debtor.

107. The trustee shall from time to time pay to the debtor such allowance (if any) out of his estate, until he has obtained his discharge, as the creditors in general meeting shall by resolution consider necessary for the support of the debtor and his family, or as the Court may in the absence of such resolution direct.

Trustee not declaring dividend to summon meeting of creditors.

108. In the event of the trustee 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. Notice of the time and place where the dividend will be paid shall be inserted in the *Gazette*, as prescribed.

Notice of dividend to be gazetted.

Surplus after payment of creditors, &c.

109. The debtor shall be entitled to any surplus remaining after payment of all claims proved by his creditors, and of the costs charges

Debtors and Creditors.

and expenses of the proceedings under this Act, and the trustee shall on demand pay over the same to him.

110. No action or suit for a dividend shall be brought against the trustee, but, if the trustee refuses to pay any dividend, the Court may, upon the application of any creditor whose dividend remains unpaid, order the trustee to pay the same, and also to pay out of his own moneys interest thereon for the time that it is withheld and the costs of the application.

No action for dividend.

111. The trustee may apply to the Court, upon a statement in writing, verified by affidavit, for the opinion advice or direction of the Court on any question respecting the management of the estate, and notice of such application shall be served upon and the hearing thereof may be attended by all persons interested, or such of them as the Court shall think expedient, and the trustee, acting upon the opinion advice or direction of the Court, shall be deemed to have discharged his duty in the subject-matter of the application: Provided that such trustee shall not have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion advice or direction, and the costs of such application shall be in the discretion of the Court.

Trustee may take opinion of Court.

112. When the whole of the property has been realized, or so much thereof as can, in the opinion of the trustee, be realized without needlessly protracting the proceedings, and the proceeds applied as directed by this Act, the trustee shall prepare a report and balance sheet, and a statement in detail, showing what moneys have been received on behalf of the estate, and the mode in which the same have been applied.

When property realized, trustee to prepare report, &c.

113. Such report, balance sheet, and statement shall be filed in the Court by the trustee, and shall be open to inspection by or on behalf of the debtor and of any creditor of the debtor without the payment of any fee.

Report, &c., to be filed and open to inspection.

114. Notice of the filing of such report, balance sheet, and statement shall be gazetted.

Notice to be gazetted.

115. If the debtor or any creditor whose claim amounts to fifty pounds or upwards, or creditors whose claims in the aggregate amount to fifty pounds or upwards, shall be dissatisfied with such report, balance sheet, or statement, he may give notice thereof in writing to the trustee, specifying the grounds of his dissatisfaction; the trustee shall thereupon convene a general meeting of the creditors to examine into the matter complained of, and shall produce at the meeting and at every adjournment thereof such vouchers and other evidence as may be required by the creditors.

Proceedings by person dissatisfied with report.

116. If no objection be made to such report, balance sheet, and statement within three calendar months from the date of the *Gazette* notice of the same having been filed, or if, after such objection, the creditors in general meeting shall not declare themselves dissatisfied with such report, balance sheet, and statement, then the same shall be and become final and conclusive as to all matters entered and stated therein, and the trustee shall be deemed to have been absolutely released from all liability to any action suit or proceeding which might otherwise have been brought or taken against him by the debtor or any creditor.

If no objection, report conclusive and trustee released.

117. If the creditors shall declare themselves dissatisfied with such report, balance sheet, and statement, then it shall be lawful for the debtor or for any creditor to apply to the Court for a summons calling upon the trustee to appear and verify such report, balance sheet, and statement, and on the hearing of such summons the Court may make such order as the case may require.

If creditors dissatisfied, may apply to Court.

Debtors and Creditors.

Trustee to pay balance to Colonial Treasurer.

118. If at the expiration of the said period of three calendar months any money belonging to the estate shall remain in the hands of the trustee, he shall forthwith pay the same into the hands of the Colonial Treasurer, who shall hold the same subject to the claims of any person, who may afterwards appear to be entitled thereto.

CHANGE FROM BANKRUPTCY TO ARRANGEMENT.

Proposal for payment of debts or composition.

119. At the first meeting of creditors after the filing of a declaration of insolvency or after adjudication, as the case may be, or at a special meeting of the creditors convened for the purpose pursuant to general rules, the debtor or any person on his behalf may make a proposal for the payment of his debts or of a composition thereon; and at such meeting it may be resolved, by the votes of a majority in number representing three-fourths in value of the creditors present or represented at such meeting, that such proposal or any modification thereof be accepted.

Resolution to be reported and confirmed.

120. The trustee shall report such resolution to the Court within four days from the date of its passing, and the Court, on the application of the bankrupt or of the trustee reporting the resolution, or of any creditor who has concurred in the resolution, shall, if satisfied that the resolution was duly passed, by order confirm the resolution.

Debtor to execute deed, and proceedings thereon.

121. The debtor shall thereupon forthwith execute a deed of arrangement for carrying into effect the proposal; such deed shall be produced to the Court by the bankrupt, or by the trustee, or by some creditor; and the Court, if satisfied that the deed is in conformity with the resolution, shall make a declaration of the complete execution of the deed, and shall direct the deed to be filed in the Court, and shall annul the bankruptcy, and the deed shall thereupon be binding in all respects upon all the creditors of the debtor as if they had severally executed the same; and the property of the debtor shall vest and be dealt with thereafter as provided in the deed.

Computation of requisite value.

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

Jurisdiction of Court after passing of resolution.

123. Between the passing of the resolution and the declaration of complete execution, and also after a declaration of complete execution, the Court shall have exclusive jurisdiction in the following matters, namely,—

- (1.) To enforce in any respect the execution of the trusts powers covenants or other provisions of the deed.
- (2.) To entertain any application of the arranging debtor, or of any trustee or inspector acting under the deed, or of any creditor or person claiming to be a creditor of the arranging debtor, respecting the custody distribution inspection management or winding up of the arranging debtor's property or affairs, or any act or thing relating thereto done or happening after the execution of the deed by the arranging debtor.
- (3.) The claim of any person to be a creditor.
- (4.) The audit or examination of the accounts of a trustee or inspector.
- (5.) The taxation or examination of the costs or charges of an attorney solicitor accountant auctioneer broker or other person acting or employed under the deed.

Debtors and Creditors.

(6.) Any matter, for the submission whereof to the Court provision is made by the deed.

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

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

Questions to be determined as in bankruptcy.

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

Proceedings resumed if no declaration of complete execution.

126. If the bankruptcy is annulled pursuant to any such resolution as aforesaid, notice of the order annulling it shall be gazetted, and the creditors' trustee shall thereupon be deemed to be released.

Proceedings if bankruptcy annulled.

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

Distinct arrangements in cases of partnership.

ARRANGEMENT BY DEED.

128. A debtor who has not filed a declaration of insolvency, or who has not been adjudged bankrupt on petition, who after the commencement of this Act, in order to an arrangement with his creditors, executes a deed providing by way of trust inspectorship or otherwise for the distribution or otherwise of all or part of his property among all his creditors (with or without other provisions having reference to the debtor's liabilities and his release therefrom), or for the payment of a composition to all his creditors out of his property, or otherwise, may file in Court the deed when executed by himself.

Deed of arrangement.

129. The deed may be filed in any Court in which the debtor might file a declaration of insolvency, and the Court in which it is filed is in this Part of this Act referred to as "the Court."

To be filed in Court.

130. Where the deed is filed in any District Court, information of the filing and contents of the deed shall be sent to the Supreme Court of the district in which such District Court is situate, in such manner as general rules direct.

If filed in District Court, Supreme Court to be informed.

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

Attestation of deed.

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

Requisites of deed.

Debtors and Creditors.

Court may restrain
action against debtor.

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

Gazette notice.

134. Notice of the filing of the deed shall be gazetted immediately after the filing thereof, and in and by such *Gazette* notice a meeting of creditors shall be convened for the purpose of assenting to the deed, such meeting to be held not sooner than fifteen days nor later than twenty-eight days after the publishing of such notice, and a copy of the *Gazette* notice convening such meeting shall, within twenty-four hours after the publication thereof, be sent by the debtor through the post office, addressed to each creditor.

After gazetting, no
execution &c.
available.

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

Debtor to file list, &c.

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

Deed, list, and
statement may be
inspected.

137. Any person may (subject to the payment of the prescribed fees if any) inspect the deed and list of creditors, and statement of property filed, and have a copy thereof and extract therefrom.

When deed
completely executed.

138. The deed shall be deemed to be completely executed when it has been assented to by a resolution in writing passed by a majority in number representing three-fourths in value of the creditors of the arranging debtor, present or represented at a meeting of creditors convened for that purpose or at any adjournment thereof.

Certificate to be
evidence of complete
execution.

139. A certificate of the complete execution of a deed, signed by the chairman of the meeting at which the resolution assenting thereto has been passed, and accompanied by a copy of such resolution, shall be for all purposes *prima facie* evidence of the complete execution of the deed, and it shall be the duty of the chairman to sign a certificate to that effect in case a resolution assenting to a deed has been passed as aforesaid, and to file the same with the copy of such resolution in the Court in which the deed was filed.

Computation of
requisite value.

140. The requisite value for the purposes of any resolution under section number one hundred and thirty-eight of this Act shall be computed in like manner as in the case of a resolution passed under section number one hundred and twenty-two of this Act.

Application for
declaration of com-
plete execution.

141. At any time after the deed has been assented to in manner provided by section number one hundred and thirty-eight of this Act, the arranging debtor, or any trustee or inspector acting under the deed, or any creditor who has assented to the deed, may apply to the Court for a declaration of its complete execution.

Proceedings thereon.

142. Notice of any such application, when intended, shall be gazetted. After hearing the applicant, and any creditor desiring to be heard in support of or in opposition to such application, the Court, if satisfied that the deed is in conformity with this Part of this Act, and that it has been duly assented to in manner hereinbefore provided, shall make, by order, a declaration of the complete execution of the deed, and notice of the making of such order shall thereupon be gazetted.

Debtors and Creditors.

143. Subject to appeal under this Act, the declaration of complete execution shall be final and conclusive with respect to the validity and complete execution of the deed, and from and after such declaration the deed shall be binding in all respects on all creditors of the arranging debtor, and shall not be liable to be disturbed or impeached at law or in equity by reason of any prior or subsequent act of bankruptcy, or on account of anything being contained therein or omitted therefrom, or on any other account whatever.

Declaration conclusive, subject to appeal.

144. Between the filing of the deed and the expiration of the time allowed for complete execution, and also after a declaration of complete execution, the Court exclusively shall have jurisdiction to enforce in any respect the execution of the trusts of the deed, and shall have jurisdiction to entertain any application of the arranging debtor, or of any trustee or inspector acting under the deed, or of any creditor or person claiming to be a creditor of the arranging debtor respecting—

Jurisdiction of Court after filing of deed.

- (1.) The custody or management (whether *ad interim* or final), distribution inspection or winding up of the arranging debtor's property or affairs.
- (2.) Any act or thing relating thereto done or happening after the execution of the deed by the arranging debtor.
- (3.) The claim of any person to be a creditor.
- (4.) The execution or performance of any of the trusts powers covenants or provisions of the deed.
- (5.) The taxation or examination of the costs or charges of an attorney solicitor auctioneer broker or other person acting or employed under the deed.
- (6.) Any matter for the submission whereof to the Court provision is made by the deed.

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

Examination of witnesses, &c.

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

Questions to be determined as in bankruptcy.

147. If a declaration of complete execution is not applied for within two calendar months after the filing of the deed, and is not made within three calendar months after such filing or within such extended time as the Court may direct, the execution of the deed by the debtor shall be deemed an act of bankruptcy, in case a petition for adjudication against him is presented within two months after the expiration of any of the said periods as the case may be, and in all other respects the deed, as among the parties thereto and otherwise, shall have such effect only as it would have had if this Part of this Act had not been passed.

If no declaration of complete execution, deed deemed act of bankruptcy.

148. If, at any time before a declaration of complete execution, a petition for adjudication of bankruptcy against the arranging debtor is pending, the Court shall deal with the petition or other proceeding as the Court thinks just, and on a declaration of complete execution the Court shall dismiss or absolutely stay such petition.

Petition may be stayed or dismissed.

149. If, at any time before a declaration of complete execution, it is shown to the Court that the deed has been filed by the debtor vexatiously or frivolously, or for the purposes of delay, and not *bona fide* with a view to an arrangement beneficial to his creditors, or that the debtor has been guilty of fraud or culpable negligence in relation

In certain cases, Court may declare deed act of bankruptcy.

Debtors and Creditors.

to the list of creditors or statement of property filed by him, or otherwise in relation to the proposed arrangement, or that he has wilfully refused obedience to any summons or order of the Court under this Part of this Act, the Court may, if it think fit, either on or without any application, but after hearing the debtor if appearing, or in his absence if not appearing after notice, by order, declare the execution of the deed by the debtor to be an act of bankruptcy.

In case of fraud, &c.,
Court may declare
release void.

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

Action against
debtor pending
application.

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

Deed may be trans-
ferred.

152. At any time after a declaration of complete execution the creditors of the arranging debtor may, by the votes of a majority in value of the creditors present at a meeting convened for that purpose, resolve that the deed shall be transferred from the Court in which the deed is filed to such other Court as they think fit, and the Court in which the deed is filed shall, unless there appears good reason to the contrary, make order accordingly.

Jurisdiction of Court
to which same trans-
ferred.

153. On a deed being transferred to any Court, that Court shall have jurisdiction in relation to the deed as if it had been originally filed therein, and shall not have power to transfer the deed to any other Court, and an appeal shall not lie against an order for transferring a deed; and all orders affidavits and proceedings made used or taken in relation to the deed before the transfer thereof shall have the same effect as if they had originally been orders affidavits and proceedings of and in the Court to which the transfer is made.

Date of deed
equivalent to date
of bankruptcy.

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

Partners may make
arrangement by
deed.

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

When deed by
partners deemed
completely executed.

156. If, where an arrangement is made by the members of a partnership, the separate creditors are parties to or included in the arrangement, the deed shall be deemed completely executed when a resolution assenting thereto shall have been passed in manner aforesaid

Debtors and Creditors.

by a majority in number representing three-fourths in value of the joint creditors, and also by a majority in number representing three-fourths in value of the separate creditors of each of the parties reckoned as a distinct class, and not otherwise, at a meeting of each class of creditors convened for that purpose.

157. Where the debtor makes such arrangement as is by this Part of this Act provided for, but one-fourth in value of the creditors are absent from the colony and are not represented at the meeting convened for the purpose of assenting to the said deed, the deed shall not be declared to have been completely executed, notwithstanding the passing of a resolution as prescribed by section number one hundred and thirty-six of this Act, unless the following conditions are complied with:—

Requisites of deed :
creditors absent
from colony.

That the deed conveys and assigns all the estate and effects of the debtor to the trustees (if any) of the deed, their heirs executors administrators or assigns, absolutely, or provides for the distribution of all the estate and effects of the debtor among all his creditors, but so that the exception of the tools of the trade of the debtor, and of the wearing apparel of the debtor and of his wife and of his children, and of household furniture and other personal property, not exceeding in value in the whole (inclusive of such wearing apparel) one hundred pounds, shall not prevent the deed from being deemed to comprise all the estate and effects of the debtor.

158. All orders or decisions of the Court under this Part of this Act shall be subject to appeal as in bankruptcy.

Orders, &c., subject
to appeal.

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

Remedies against
third persons not
affected.

AS TO POWERS OVER DEBTOR AND WITNESSES, AND AS TO EVIDENCE.

160. The Court may, at the instance of the trustee, at any time after the filing of the declaration of insolvency or the filing of a petition for adjudication, by warrant addressed to any constable, cause a debtor to be arrested, and any books papers money goods and chattels in his possession to be seized, and him and them to be safely kept until such time as the Court may order, under the following circumstances:—

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

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

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

Trustee may break
open house of
debtor and seize
property.

Debtors and Creditors.

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

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

Magistrate may
back warrant.

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

Debtor refusing to
quit may be brought
before Court.

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

Court may order
letters of debtor to
be sent to trustee.

165. 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 such order, post letters addressed to the debtor shall be re-directed sent or delivered by the Postmaster-General or the officers acting under him to such trustee or otherwise as the Court directs, and the same shall be done accordingly.

Debtor to attend
trustee when
required.

166. The debtor shall attend the trustee on every reasonable notice given to him in writing or left at his usual or last-known place of abode, and shall furnish the trustee with all required information respecting his property, and for the making out of the accounts of the estate.

Trustee may
examine certain
persons.

167. The trustee may summon before him and examine on oath the debtor or his wife, or any other person whomsoever known or suspected to have in his possession any of the property of the debtor, or supposed to be indebted to the debtor, or whom he may deem capable of giving any information respecting the debtor, his trade dealings or property, and may require such person to produce any documents in his custody or power relating to the dealings or property of the debtor; and the examination of every such person shall be committed to writing, and such person, on being required to do so, shall sign the same; and if any person so summoned refuses or neglects to come before such trustee at the time appointed, having no lawful impediment, then the Court may, on the application of the trustee, by warrant, cause such person to be apprehended and brought up for examination before the Court, and all expenses occasioned by such apprehension and examination before the Court shall be paid by the person apprehended and examined, if it shall appear to the Court that the evidence given by him was necessary for the purposes of the estate.

Witnesses' expenses.

168. The debtor and his wife, and every other person attending on any such summons, may have such expenses allowed to him or them as general rules direct; and any person other than the debtor or his wife so summoned to attend shall not be liable to any penalty or punishment for failing to obey the summons unless the reasonable expenses of his attendance have been first paid or tendered to him.

Debtors and Creditors.

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

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

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

Requisites of warrant

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

Copy of examination to be given to person committed.

172. On *habeas corpus* sued out by the person committed for discharge on any ground, such person shall not be discharged by reason only of any informality; but if the Court or Judge before whom such person is brought, on consideration of the whole examination, is of opinion that the answering therein is satisfactory, the Court or Judge may order the discharge of the person committed.

Person not to be discharged for informality.

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

Court may take evidence in any matter.

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

Affidavit &c. made out of colony.

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

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

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

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

Deposition of deceased witness admitted.

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

Gazette evidence of matters contained therein.

Debtors and Creditors.

Petitions &c. to be admitted as evidence.

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

Judicial notice of signature of judge, &c.

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

AS TO ORDER OF DISCHARGE.

Proceedings by debtor to obtain discharge.

179. When a debtor shall desire to apply to the Court for an order of discharge, the trustee shall at his request, and within fourteen days after such request, summon a general meeting of creditors, and shall fix such meeting for a day not later than ten days after the notice convening the same, and at such meeting a resolution may be passed by a majority of the creditors present or represented thereat, either that the debtor be forthwith discharged, in which case the chairman shall sign a certificate in writing that the debtor has complied with the provisions of this Act, or that such discharge be suspended for any period not exceeding three years from the date of the meeting, in which case the chairman shall sign a certificate in writing recommending the debtor's discharge at the expiration of the period of suspension mentioned in the resolution of the meeting.

Certificate to be filed.

180. Any certificate signed as aforesaid shall forthwith be filed in the Court by the trustee.

Notice of application for discharge to be gazetted.

181. At any time after the filing of the certificate aforesaid the debtor may apply to the Court for his discharge, and shall give not less than ten clear days' notice in the *Gazette* of his intention to apply for the same, and shall set down such application not less than three clear days before the day of hearing.

Court may make immediate or future discharge.

182. The Court, at the hearing, may either make an order of immediate discharge or an order of discharge to take effect at some future date to be specified therein, as it shall think fit, and that notwithstanding the certificate filed as aforesaid shall either recommend an immediate discharge or shall recommend that the discharge be suspended for any period as aforesaid.

Creditor may oppose.

183. Any creditor who has proved his claim may, notwithstanding any resolution recommending the discharge of the debtor, oppose the debtor's application for an order of discharge, and may examine him as to any matter or thing relating to his estate and as to his transactions and conduct, and as to the alleged causes of his inability to pay his debts.

If debtor unable to obtain certificate, may apply to Court.

184. If no meeting of creditors as provided in section one hundred and seventy-nine shall take place, or if at such meeting the debtor shall be unable to obtain a certificate from his creditors, he may apply to the Court for an order of discharge, and the Court, if satisfied that he has complied with the provisions of this Act, and has given up to the trustee all the property which he is required by this Act to give up, and that there does not appear to be any objection to an immediate discharge being made, may make an order of discharge to take effect immediately, or may, after hearing any creditor or creditors in relation thereto, make such other order as it shall think fit. Notice of any

Debtors and Creditors.

application by a debtor under this section shall be gazetted by the debtor.

185. If no order of discharge shall be made within a period of three years from the date of the bankruptcy, a debtor shall nevertheless be deemed to be absolutely discharged at the expiration of that period. Debtor deemed discharged on expiration of three years.

186. The discharge of the debtor shall not release him 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 him from all other debts provable under the bankruptcy with the exception of— Effect of discharge.

(1.) Debts due to the Crown;

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

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

187. 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 debtor who has been discharged under this Act in respect of any debt provable under the bankruptcy, the debtor may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence. Order of discharge evidence of bankruptcy, &c.

188. The discharge of the debtor shall not release any person who at the date of the order was a partner with the debtor, or was jointly bound, or had made any joint contract. Not to release joint debtor.

MISCELLANEOUS PROVISIONS RESPECTING BANKRUPTCY AND ARRANGEMENT.

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

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

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

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

193. General rules respecting the form and contents of notices in the *Gazette* and elsewhere may provide for notices concerning more bankruptcies or more deeds or other matters than one being comprised in one advertisement, and may fix the price to be paid to the printer of Notices of various matters may be comprised in single advertisement.

Debtors and Creditors.

the *Gazette* for advertisements, which price he shall receive as full payment.

Unauthorized or
false advertisement.

194. If any person inserts or causes to be inserted in the *Gazette* or in any newspaper any advertisement under or purporting to be under this Act without authority, or knowing the same to be false in any material particular, he shall be guilty of an offence against this Act, and shall for every such offence be liable on summary conviction to a penalty not exceeding twenty pounds, or to imprisonment for any term not exceeding three months with or without hard labour.

Debtor may inspect
books, &c.

195. The debtor may at all reasonable times before discharge inspect his books and documents, in the presence of the trustee or any person appointed by the trustee, and may bring with him each time any person to assist him.

Debtor to attend
trustee notwithstanding
discharge.

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

Debtor may examine
petitions, orders, &c.

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

Penalty for refusal
to receive debtor or
permitting escape.

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

Protection of Persons in execution of Act.

Action against trustee
or other person.

199. No action or proceeding shall lie against any trustee or other person acting under the authority or in the execution or intended execution or in pursuance of this Act for any alleged irregularity or trespass, or any act or thing done or omitted by him under this Act, unless notice in writing (specifying the cause of the action or proceeding, and the name and residence of the intending plaintiff or prosecutor, and of his solicitor or agent in the matter) is given by the intending plaintiff or prosecutor to the intended defendant one month at least before the commencement of the action or proceeding, nor unless the action or proceeding is commenced within three months next after the act or thing complained of is done or omitted, or, in case of a continuation of damage, within three months next after the doing of such damage has ceased; and any such action shall be laid and tried in the place where the cause of action arose, and not elsewhere.

Defendant may plead
generally.

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

Plaintiff confined to
notice.

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

Debtors and Creditors.

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

Defendant may tender amends.

Protection of Officers.

203. No action shall be brought against any trustee, bailiff, assistant, or other person for anything done in obedience to any warrant of the Court, unless a demand for a perusal of such warrant and for a copy thereof has been left at the usual place of abode of such trustee, bailiff, assistant, or person by the party intending to bring such action, or by his solicitor or agent, in writing signed by the party demanding the same, nor unless compliance with the demand has been refused or neglected for six days after such demand.

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

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

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

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

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

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

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

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

Petitioning creditor personally liable.

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

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

SURPLUS FUNDS IN BANKRUPTCY, FEES, AND STAMPS.

209. All unclaimed dividends, and any other undivided surplus or other money unclaimed, the produce of any bankrupt's estate, shall after the expiration of twelve months from the declaration of the dividend or from the time at which the surplus or other money became undivided or unclaimed in the hands of the trustee, be paid by the trustee into the bank to the credit of the Colonial Treasurer, and shall be carried to the Unclaimed Dividend Account, and shall be deemed one common and general cash, and may be promiscuously issued to answer the demands thereon.

Unclaimed dividends, &c., to be paid to Colonial Treasurer.

210. Money for the time being standing to the credit of the Unclaimed Dividend Account shall be subject to the order of the Supreme Court for the payment thereof of any dividend or for the distribution of any money in the matter to which any part thereof originally belonged.

Subject to order of Court.

Debtors and Creditors.

Governor may direct investment of unclaimed dividends, &c.

211. The Governor in Council shall have power by general rules to order the investment realization and disposition of all or any moneys standing to the credit of the Unclaimed Dividend Account, and of any profits accruing therefrom, subject to the provisions of this Act.

Fees.

Fees payable.

212. Such fees shall be paid in bankruptcy and in other matters under this Act as general rules from time to time direct.

Stamps.

Certain documents exempt from stamp duty.

213. Every deed of arrangement under this Act, and every deed conveyance assignment surrender or other assurance relating solely to freehold or leasehold property, or to any mortgage charge or other encumbrance on, or any estate right or interest in, any real or personal property, which is part of the estate of any bankrupt or of any arranging debtor, and which, after the execution of such deed conveyance assignment surrender or assurance either in law or in equity is or remains the estate of the bankrupt or under any deed of arrangement or of the trustee under the bankruptcy, and every power of attorney proxy paper writ order certificate affidavit declaration bond or other instrument or writing relating solely to the estate of any bankrupt or to any proceeding under any bankruptcy or arrangement under this Act, shall be exempt from stamp duty (except in respect of fees under this Act) and from every other duty.

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