



ANNO QUADRAGESIMO TERTIO ET QUADRAGESIMO
QUARTO

VICTORIÆ REGINÆ.

A.D. 1880.

No. 185.

Insolvency Act.

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An Act to amend the Law of Insolvency, and for other purposes.

[*Assented to, October 28th, 1880.*]

WHEREAS it is expedient to amend the Law relating to Preamble.
 Insolvency and to abolish imprisonment for debt, and to make better provision for the punishment of fraudulent debtors—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

PRELIMINARY.

PRELIMINARY.

1. This Act may be cited for all purposes as the "Insolvency Act, Short title.
 1880."
2. This Act shall come into operation on a day to be fixed by the Commencement.
 Governor by Proclamation to be published in the *Government Gazette*.
3. In this Act, if not inconsistent with the context, the following Interpretation.
 terms have the meanings hereinafter respectively assigned to them, that is to say—
- "The Court" and "Court of Insolvency" means Her Majesty's "Court."
 Court of Insolvency in the said province:
- "The Registrar" means the Registrar of the "Court" as above "Registrar."
 defined:
- "Prescribed" means prescribed by rules of Court to be made as in "Prescribed."
 this Act provided: "Property"

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<u>PRELIMINARY.</u>	
"Property."	"Property" means and includes money, goods, things in action, land, and every description of real and personal property wheresoever situate; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined:
"Secured creditor."	"Secured creditor" means any person holding a mortgage charge or lien upon the property of the debtor as security for a debt due to him from such debtor:
"Gazetted."	"Gazetted" means advertised in the <i>Government Gazette</i> :
"Ordinary resolution."	"Ordinary resolution" or "resolution" means a resolution passed by the votes of a majority in value of the creditors present personally or by proxy at a meeting:
"Special resolution."	"Special resolution" means a resolution passed by the votes of a majority in number representing three-fourths in value of all the creditors who have proved their debts at the date of the meeting at which such resolution is passed, whether such resolution has been signed by such majority at the meeting personally or by proxy, or has, within seven days after the meeting, or, in case of absence of creditors from the province, within such further time as the Court shall allow, been signed personally or by proxy by such of the creditors as, together with those who signed the same at the meeting, make up such majority:
"Special resolution passed without proxies."	"Special resolution passed without proxies" means a resolution which, or a copy of which, having been at or after a meeting of creditors signed by a majority in number representing three-fourths in value of the creditors who have proved their debts at the date of such meeting, has been filed in Court within seven days after such meeting, or, in case of absence of creditors from the province, within such further time as the Court shall allow:
"Creditor."	"Creditor" includes any two or more persons to whom a debt is owing jointly, and also incorporated and joint stock companies:
"Insolvency petition."	"Insolvency petition" means a petition to the Court praying that the affairs of the debtor may be wound up, and his property administered under the provisions of the Law of Insolvency:
"Receiver."	"Receiver" includes a manager.
Repeal.	4. The Insolvent Act, 1860, and an Act, being No. 11 of 1855-6, and intituled "An Act to enable any Commissioner of the Court of Insolvency, although not named in a fiat, to prosecute the same, and to exercise and carry into effect the powers and authorities thereof," and the Insolvent Amendment Act, 1867, and the Insolvent Further Amendment Act, 1870, and an Act, No. 54 of 1876, intituled "An Act to amend the Insolvent Further Amendment Act,

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Act, 1870," are hereby repealed; but this repeal shall not affect the validity or invalidity of anything done or suffered before the coming into operation of this Act, or any right, title, obligation, or liability accrued, or restriction imposed, before the coming into operation of this Act, by or under any such repealed Acts; nor shall such repeal interfere with the prosecution, or affect the course of any legal proceedings pending in insolvency, or otherwise under any such repealed Act, before the commencement of this Act, but such proceedings shall be prosecuted, heard, adjudicated, determined, and carried out under the said Acts as if this Act had not been passed; nor shall this repeal interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty or forfeiture incurred under, any of the said Acts hereby repealed.

PRELIMINARY.

5. From and after the coming into operation of this Act, all proceedings to be instituted and commenced in insolvency shall be by virtue of this Act; and every act of insolvency or other matter or thing committed or incurred before the coming into operation of this Act, and which would have authorised proceedings in insolvency under the Acts hereby repealed, or any of them, shall, after the coming into operation of this Act, be sufficient to authorise any proceedings in insolvency under this Act, which proceedings may be instituted, conducted, and brought to a conclusion under the provisions of this Act.

Application of Act to prior acts of insolvency.

6. Where in any Act or Ordinance, or in any Imperial Statute having the force of law, or in any instrument passed or made before the commencement of this Act, mention is or may be made of any fiat or adjudication of or in insolvency, the words in reference to "fiat" or "adjudication" shall be construed to extend to, and include, an adjudication of insolvency under this Act.

Mention of "fiat" or "adjudication."

7. A provisional order or deed of assignment under this Act shall not be made against or by a partnership, association, or company incorporated or registered under the Companies Act, 1864, or the Miners Act, 1865.

Exclusion of certain companies.

8. This Act shall be divided into eleven divisions, as follows—

Division of Act.

DIVISION I.—Relating to the jurisdiction of the Court of Insolvency, ss. 9-26:

DIVISION II.—Abolition of imprisonment for debt, ss. 27-31:

DIVISION III.—Proceedings under an insolvency petition, ss. 32-48:

DIVISION IV.—Discharge of insolvent, ss. 49-51:

DIVISION V.—Distribution of property, ss. 52-70:

DIVISION VI.—Powers and duties of committee of inspection, trustee, and receiver, ss. 71-84:

DIVISION VII.—Supplemental provisions, ss. 85-110:

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DIVISION VIII.—Arrangements by deed between debtors and creditors without insolvency, ss. 111-137:

DIVISION IX.—Composition after insolvency, ss. 138-141:

DIVISION X.—Punishment of fraudulent debtors and creditors, ss. 142-149:

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DIVISION I.

Relating to the jurisdiction of the Court of Insolvency.

Court of Insolvency and Commissioner.

Commissioner may appoint a deputy.

Commissioner or officer not to practice.

Court of Insolvency to be a Court of Record.

DIVISION I.

RELATING TO THE JURISDICTION OF THE COURT OF INSOLVENCY.

9. The Court of Insolvency, as established under the provisions of the Insolvent Act, 1857-8, and continued under the Insolvent Act, 1860, shall continue to be the Court of Insolvency under this Act. The Court shall be presided over by a Commissioner, who shall hold his office during good behaviour: Provided that it shall be lawful for the Governor, upon the address of both Houses of Parliament, to remove such Commissioner. Henry Edward Downer, Esquire, is the present Commissioner, and every vacancy in the office of Commissioner shall be supplied by the Governor by Proclamation to be published in the *Government Gazette*.

10. During the temporary absence of the Commissioner, from illness, leave of absence, or other reasonable cause, the Commissioner shall, by writing under his hand and seal, nominate some person to act as his deputy; and the person so nominated shall, if his nomination shall have been confirmed by the Governor, have and exercise all the powers of the Court and Commissioner; and if the said Commissioner shall neglect, or refuse, or be unable to appoint such deputy, or if the said Commissioner shall die, then in each such case it shall be lawful for the Governor to appoint some person to act temporarily as Commissioner during such time as the Governor may appoint, and such person so nominated shall have and exercise all the powers of the Court and Commissioner.

11. No Commissioner or other ministerial officer to be appointed by virtue of this Act shall, during his continuance in such office, practice as a barrister, attorney, solicitor, or proctor.

12. The Court of Insolvency shall continue to be a Court of law and equity for the purposes of this Act, and shall have a seal where-with are to be sealed all records, documents, and proceedings, and all copies thereof which may require sealing; and the said Court shall have and use all the powers, rights, incidents, and privileges of a Court of Record, and other rights, incidents, and privileges, as fully, to all intents and purposes, as the same are used and enjoyed by the Supreme Court; and the said Court shall have the power of fining

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fining in a summary way, or of suspending or removing, any trustee or any of the officers of the said Court who shall be guilty of any negligence, wilful or unnecessary delay, or other misconduct whatsoever.

DIVISION I.

Relating to the jurisdiction of the Court of Insolvency.

13. The Commissioner and any two Judges of the Supreme Court may make general rules for the effectual execution of this Act and of the objects thereof, and the regulation of the practice and procedure of insolvency petitions, provisional orders, adjudications, proofs, deeds, declarations, notices, orders, and the proceedings thereon. Any general rules made as aforesaid may prescribe regulations as to the service of insolvency petitions and provisional orders, including provisions for substituted service, as to the valuing of any debts provable in insolvency, as to the valuation of securities held by creditors, as to the giving or withholding interest or discount on or in respect of debts or dividends, as to the funds out of which the costs are to be paid, the order of payment, and the amount and taxation thereof; and as to any other matter or thing, whether similar or not to those above enumerated, in respect of which it may be expedient to make rules for carrying into effect the objects of this Act; and any rules so made shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act: Provided that any rules made in pursuance of this section shall not come into force until the same shall have been laid before both Houses of Parliament for forty-two days or such further period as either House of Parliament shall direct, and shall not have been disallowed by either House of Parliament during that period, and any rules so made shall be judicially noticed. Until rules have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which Courts having jurisdiction under the Imperial Acts following, that is to say—The Debtors Act, 1869, and the Bankruptcy Act, 1869, shall, as far as the same can be made applicable, be observed by the Court, and the Court may also make special rules to meet particular cases, as the same from time to time arise.

General rules to be made.

14. All proceedings and matters to be heard by the said Court of Insolvency shall be heard and determined by the said Court at the Local Court House, in Victoria-square, in Adelaide, or at such other place as the Governor shall appoint; and the Commissioner may hear and determine all such proceedings and matters, either in or out of Court, upon summons or notice to the proper parties.

Place of sitting of Court, and power of Commissioner.

15. The offices of the Court shall be open for the dispatch of business daily throughout the year, Sundays, Christmas Day, Good Friday, Monday and Tuesday in Easter week, or days which may be duly gazetted as public holidays excepted; and the Court shall sit for the dispatch of business at such convenient times as shall be fixed by the rules of the Court for the time being.

Sitting of Court.

16. The

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DIVISION I.

Relating to the jurisdiction of the Court of Insolvency.

Jurisdiction of Court.

16. The Court of Insolvency shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising under any insolvency petition or under any deed of assignment under Division VIII. of this Act, or any conveyance, assignment, or other instrument whereby the property of the debtor is made available for the creditors generally, or any other matter coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such matter, and may enforce the provisions of any such deed of assignment; and the Court shall not be subject to be restrained in the execution of its powers by the order of the Supreme Court, nor shall any appeal lie from its decision except in manner directed by this Act.

Appeal to Supreme Court.

17. If any insolvent, trustee, creditor, debtor, or any person claiming to be a creditor, or any person who shall have appeared and submitted to the jurisdiction of the Court of Insolvency, or who shall be affected by any order, determination, or direction of the said Court or the Commissioner, shall be dissatisfied with any order, determination, or direction of the Court or the Commissioner, in respect of a matter of fact, or of law, or of the admission or rejection of any evidence, the person so dissatisfied may appeal from the same to the said Supreme Court: Provided that if no such appeal shall be entered within twenty-one days from the date of any order, determination, or direction of the Court or the Commissioner, and be thereafter duly prosecuted, every such order, determination, or direction shall be final; and every appeal shall be subject to the prescribed regulation in regard to security for costs, and, until such regulation shall be prescribed, subject to the direction of the said Supreme Court in each particular case.

Appeals to be in prescribed manner.

18. All appeals from any order, determination, or direction of the Court or Commissioner shall be brought on and conducted in the prescribed manner; and until the manner shall be prescribed such appeals shall be brought on and conducted in conformity with the direction of the Supreme Court in each particular case.

Power of Supreme Court on hearing appeal.

19. The said Supreme Court on the hearing of any such appeal shall have power to rescind, vary, reverse, or confirm any order, determination, or direction made by the Court of Insolvency or by the Commissioner, as the said Supreme Court shall think just, and shall have power to give such decision in the matter appealed from as ought in the opinion of the Supreme Court to have been given by the Court of Insolvency or the Commissioner (as the case may be), and the said Supreme Court may adjourn any appeal for further consideration, and in the meantime may refer any matter to the Commissioner for amendment, or require the Commissioner to report on any matter in respect of which the said Supreme Court may require further information, or where the said Supreme Court shall be opinion that it cannot do complete justice, it may require the Court

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Court of Insolvency to rehear the whole matter; and the said Supreme Court shall have power to order the costs of any appeal to be paid by either party, or part thereof by one party and part by another party, or of directing that the whole or some part thereof shall be paid out of the estate of the insolvent in the matter of whose insolvency the appeal has been brought.

DIVISION I.

Relating to the jurisdiction of the Court of Insolvency.

20. The decision of the Supreme Court on the hearing of any appeal shall be final and conclusive, and no appeal shall be allowed therefrom to the Court of Appeals.

No appeal allowed to Court of Appeals.

21. The Court of Insolvency may remit any question of law, by way of special case, to the Supreme Court, which Court shall have the same powers as if the question had been brought before it by way of appeal; and the decision of the Supreme Court, as certified by the Master thereof, shall be filed in the Court of Insolvency, and have the operation and effect of a decision or determination of such Court.

Court may send special case to Supreme Court.

22. The Court of Insolvency may, if it shall think fit, refer any question of fact in insolvency for trial in the Supreme Court, and shall thereupon direct a writ of summons to be issued out of the Supreme Court by such person or persons as it shall name to be plaintiff or plaintiffs against such person or persons as it shall name to be defendant or defendants therein, and shall cause such question or questions to be stated for trial, and be tried in the manner provided by the Supreme Court Act, 1878, with reference to trials of questions of fact without formal pleadings: Provided that, in case the person or persons so named plaintiffs and defendants respectively shall not be agreed upon the question or questions of fact, the same shall be settled by the Commissioner of the Court of Insolvency.

Court may refer any question of fact to be tried in Supreme Court.

23. The finding of the jury upon any such issue shall be certified by the Associate of the Supreme Court to the Court of Insolvency, and thereupon the Court of Insolvency shall make such order in the matter as it shall think fit.

Finding of jury to be certified to the Court of Insolvency.

24. Every warrant issued by the Court shall be under the seal of the Court, and the hand of Commissioner; and every summons shall be under the hand of the Commissioner, or in his absence, under the seal of the Court, and under the hand of the Registrar.

Sealing and signature of warrants.

25. The floating balance and all other moneys standing to the credit of the Official Assignee under any of the said repealed Acts, and all securities and loans upon which any part of the said floating balance may be invested, as the same are received, shall be paid into the Court to the credit of an account to be called the "Old Insolvency Account" for the benefit of the persons entitled thereto, who shall be entitled to receive the same in the prescribed manner, and the unclaimed or unpaid dividends and balances and money forming

Official Assignee's floating balance.

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Relating to the jurisdiction of the Court of Insolvency.

forming part of the said old insolvency account shall from time to time be transferred to an account called the "Unclaimed Dividend Fund" hereinafter mentioned, at the respective periods directed in the said Insolvent Act, 1860, with respect to the unclaimed dividend fund therein mentioned.

Appointment of Officers.

26. The Governor may appoint a Registrar and Accountant and such officers of the Court as may be necessary for the purpose of carrying out the provisions of this Act, and such other officers and persons as may be deemed necessary for the purpose of winding up the estates of persons who shall have been adjudicated insolvent prior to the coming into operation of this Act, and may fix the salaries or other remuneration to which they shall respectively be entitled; and all estates or property which at the coming into operation of this Act shall be vested in the Official Assignee solely or jointly with any creditors' assignees shall vest in the person who may be appointed to perform the duties heretofore performed by the Official Assignee, either solely or jointly with such creditors' assignees, as the case may be: And any action or suit which at the coming into operation of this Act is pending, in which the Official Assignee is plaintiff, either solely or jointly with any other person, shall be continued in the prescribed manner in the name of the person so to be appointed as aforesaid either solely or joined with such other person.

DIVISION II.

Abolition of imprisonment for debt.

Abolition of imprisonment for debt.

DIVISION II.

ABOLITION OF IMPRISONMENT FOR DEBT.

27. From and after the coming into operation of this Act no person shall be arrested or imprisoned for making default in payment of a sum of money, except in the following cases—

- i. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract:
- ii. Default in payment of any sum recoverable summarily before a Justice or Justices of the Peace or Special Magistrate of the said province:
- iii. Default by a trustee, or person acting in a fiduciary capacity and ordered by the Supreme Court to pay any sum in his possession or under his control:
- iv. Default by a practitioner of the Supreme Court in payment of costs, when ordered to pay costs for misconduct as such practitioner, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order:
- v. Default in payment of any sum, or money in respect of the payment of which orders are in this Act authorised to be made:

Provided that no person shall be imprisoned, in any case, excepted from

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from the operation of this section, for a longer period than six months; and also, that nothing in this section shall alter the effect of any judgment or order of any Court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money: Provided also that nothing in this section contained shall alter or repeal the powers given to any Local Court under the provisions of the Local Court Act, 1861, Part ix., to commit a debtor to gaol, as therein authorised, or to alter or repeal Part xiv. of the last-mentioned Act, or to alter or repeal, except as hereinafter provided, an Ordinance of the Governor and Legislative Council, No. 9 of 1845, intituled "An Ordinance for adopting in South Australia certain parts of an Act made and passed in the Imperial Parliament which was held in the first and second years of the reign of Her present Majesty, intituled 'An Act for abolishing arrest on *mesne process* in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.'"

DIVISION II.

Abolition of imprisonment for debt.

28. Where any person is, at the coming into operation of this Act, in custody, in pursuance of a writ, attachment, or other process, in any case in which he would not be liable to be arrested or imprisoned after the coming into operation of this Act, such person shall, on the coming into operation of this Act, be discharged from such custody, without payment of any fees; but his arrest, imprisonment, or discharge, or the issue of an unexecuted writ of *capias ad satisfaciendum* against a debtor, shall not affect the creditor's rights or remedies for enforcing the payment of any money due to him, or deprive the creditor of the benefit of any charge or security on any property of the debtor, or the right of the creditor to his remedies under this Act.

Discharge of persons in custody.

29. Whenever, at or after the coming into operation of this Act, bail has been or has to be given in any action, the defendant in which, after the coming into operation of this Act, cannot be imprisoned on making default in satisfying the judgment recovered against him in such action, the condition of such bail (instead of being that the judgment shall be satisfied, or the defendant rendered to prison) shall be deemed to be, or shall be, as the case may be, that the defendant shall not go out of the said province without the leave of the Court.

Bail, alteration in condition of.

30. Nothing in this part of this Act shall in any way affect any right or power under the other parts of this Act to arrest or imprison any person, or to entitle any person imprisoned under Division iv. of the Insolvent Act, 1860, to be discharged from custody, except as in such Act provided.

Saving powers.

31. Persons committed to prison, or ordered to be arrested and imprisoned under the provisions of this Act, shall be lodged in the Adelaide Gaol, or in such prison as may be most expedient under the circumstances of the commitment or arrest, or in such prison as

Persons to be lodged in gaol.

the

Insolvency Act.—1880.

DIVISION II.

Abolition of imprisonment for debt.

the Court which shall commit such person, or as the Commissioner or Magistrate who shall order his arrest, shall think fit; and the gaoler of any such prison shall receive the person so committed or ordered to be imprisoned.

DIVISION III.

Proceedings under an insolvency petition.

Petition and acts of insolvency.

DIVISION III.

PROCEEDINGS UNDER AN INSOLVENCY PETITION.

32. A single creditor, or two or more creditors, if the debt owing to such single creditor, or the aggregate amount of debts owing to such several creditors, from any debtor, amounts to a sum of not less than Twenty Pounds, may present an insolvency petition to the Court, alleging as the ground of such petition any one or more of the following acts or defaults, in this Act deemed to be and included under the expression "acts of insolvency"—

- i. That the debtor has, in the said province or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally, or has executed any other instrument whereby his property is made available for general distribution amongst his creditors: Provided that a deed for the benefit of creditors, containing the particulars and executed and attested as hereinafter provided in Division VIII. of this Act, shall not be deemed an act of insolvency unless the Court shall make an order declaring such deed to be fraudulent and void against creditors. In the event of such order being made the debtor executing the same shall be deemed to have committed an act of insolvency at the time of his executing such deed: Provided that an insolvency petition be presented against or by the debtor within seven days from the date of such order:
- ii. That the debtor has, in the said province or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property or any part thereof:
- iii. That the debtor has, with intent to defeat or delay his creditors, or whereby his creditors or any of them have been defeated or delayed, done any of the following things, namely, departed out of the said province, or being out of the said province remained out of the said province; or departed from his dwelling-house, or otherwise absented himself; or begun to keep house; or suffered himself to be outlawed; or absconded; or kept out of the way to avoid being served with process for debt:
- iv. That the debtor has filed in the prescribed manner in the Court a declaration admitting his inability to pay his debts, or has presented an insolvency petition against himself:
- v. That execution issued against the debtor on any legal process for the purpose of obtaining judgment of not less than
Twenty

Insolvency Act.—1880.

Twenty Pounds, has been levied by seizure and sale of his goods, or enforced by delivery of his goods, or if such execution be returned unsatisfied to the extent of Twenty Pounds or upwards: Provided that an insolvency petition be presented against or by the debtor within four weeks after the date of such sale or delivery, and a provisional order be made thereon:

DIVISION III.
*Proceedings under
an insolvency
petition.*

- vi. That the creditor presenting the petition has served on the debtor a writ specially endorsed with the particulars of demand sought to be recovered, in an action in the Supreme Court wherein the creditor claims payment of a sum amounting to not less than Twenty Pounds, or a special summons issued out of any Local Court in the said province wherein the creditor claims not less than Twenty Pounds, and has also served on the debtor in the said province, in the prescribed manner, at or at any time after the date of the service of the writ, a notice in writing in the prescribed form, requiring him to pay the amount endorsed upon such writ, and the debtor has not within seven days after the service of such notice paid the amount due to the creditor, or compounded for the same to the satisfaction of the creditor: Provided that no insolvency petition shall be presented on the ground of such last-mentioned act of insolvency until two days after the creditor shall have obtained final judgment in the action for a sum of not less than Twenty Pounds, and provided also that such judgment shall have been obtained within six months from the service of the specially endorsed writ or special summons:
- vii. That the creditor presenting the petition has obtained final judgment against the debtor in an action in the Supreme Court or in a Local Court for a sum of not less than Twenty Pounds, and has served on the debtor in the said province or (by leave of the Court) elsewhere than in the said province a notice in the prescribed manner and form, requiring him to pay the amount for which such judgment has been obtained, and the debtor has not, if such notice has been served in the said province, and within seven days after the service of such notice, and if such notice has been served elsewhere than in the said province within such time as may be limited for the purpose in the particular case by the Court, paid such amount, or secured or compounded for the same to the satisfaction of the creditor:
- viii. That the debtor, at a meeting of his creditors, orally or otherwise, consented to file, in the prescribed manner, in the Court a declaration admitting his inability to pay his debts, or to present an insolvency petition against himself, and did not, within forty-eight hours after so consenting, file such declaration or present such petition:

ix. That

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DIVISION III.

*Proceedings under
an insolvency
petition.*

- ix. That the debtor, at a meeting of his creditors, having admitted by oral statement, by production of balance-sheet, or by offer of a composition, or otherwise, that he is in insolvent circumstances, and having been requested by a majority of the creditors present at such meeting to file a declaration of insolvency or present an insolvency petition against himself, refused or neglected to do so :

Provided—

- (a.) That where no shorter time is by this Act fixed in that behalf the alleged act of insolvency must have occurred within six months before the presentation of the insolvency petition :
- (b.) That the debt of the petitioning creditor must be a liquidated sum due at law or in equity, and must not in either case be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of a provisional order being made, or unless the petitioner give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on an application being made in the course of the proceedings within the prescribed time by any person interested, give up his security to be dealt with as part of the property of the debtor for the benefit of the creditors upon payment of such estimated value.

Provisional Order.

Provisional order
against debtor.

33. As soon as may be after the presentation of an insolvency petition against a debtor, the Court, if satisfied by *ex parte* evidence or otherwise of the petitioning creditor's debt and of the act of insolvency (or if more than one act of insolvency is alleged of some one of the alleged acts of insolvency), shall make on the petition an order that the affairs of the debtor shall be wound up and his property administered under the laws of insolvency, in this Act referred to as a "provisional order."

A copy of a provisional order shall be served on the debtor in the prescribed manner, together with a notice that within seven days if the debtor be in the said province, or within such number of days as shall be specified in the order if the debtor be absent from the said province, the debtor may show cause why the provisional order should be revoked ; and if the debtor within the time appointed show to the satisfaction of the Court that either the proof of the petitioning creditor's debt or of the act of insolvency is insufficient, and if upon such showing no other sufficient petitioning creditor's debt or act of insolvency is proved, or if any ground is shown to exist which would render the making of a provisional order inequitable, the Court shall revoke the provisional order, and, unless it see good cause

Insolvency Act.—1880.

cause to the contrary, order costs to be paid to the debtor; but if such order is not revoked within the time appointed, the Court shall at the expiration of such time proceed as hereinafter in this Act provided in that behalf.

DIVISION III.

Proceedings under an insolvency petition.

34. A debtor may present an insolvency petition against himself, and the Court shall thereupon make a provisional order against him.

Petition by debtor.

35. At any time after the presentation of an insolvency petition the Court may appoint a manager or receiver of the property or business of the debtor. In cases where the estimated value of the property is less than Two Thousand Pounds such receiver or manager shall be the Registrar, unless sufficient cause be shown to the Court for making another appointment, in which case, and in all cases where the estimated value of the property amounts to or exceeds Two Thousand Pounds, the Court may appoint as such receiver or manager either its own officer or any person who may be proved to its satisfaction to be competent for the office. Every such appointment of a receiver or manager shall, where a provisional order has been made, be revoked if and when the provisional order is revoked; and such receiver or manager shall not (unless the Court shall otherwise order) before the first general meeting incur any expense beyond what is necessary for the protection of the property of the debtor.

Appointment of receiver.

36. Where a provisional order is made against a debtor upon the petition of a creditor, and is not revoked within the time appointed, notice thereof shall be served on the debtor in the prescribed manner, together with an order requiring him to file in Court, within the specified number of days after the date of the service of the order, a list of his creditors, verified by affidavit of himself or some person able to depose thereto, showing which of such creditors are unsecured and which secured, and the value at which he estimates their securities, and the dates when such securities were respectively given, and the amount provable after deducting such value. Such order shall state that if the debtor does not, within the time limited by such order, duly file such list, he may, on the application of a creditor, be adjudged insolvent, and that the insolvency will be gazetted. If a debtor present an insolvency petition against himself, he shall within three days thereafter file in Court such list of his creditors as aforesaid.

Debtor to file list of creditors.

37. The list of creditors to be filed by the debtor as hereinbefore provided shall be signed by the debtor himself.

List to be prepared by debtor.

38. If the debtor fail to file such list of his creditors within the time appointed, or to show sufficient excuse for not having done so, the Court may, on the application of any creditor, make an adjudication of insolvency against the debtor, and direct such insolvency to be gazetted.

Adjudication on failure to file list.

39. When

Insolvency Act.—1880.

DIVISION III.

*Proceedings under
an insolvency
petition.*Creditors bound by
proceedings in
insolvency.

39. When a provisional order has been made against a debtor, he shall cease to have power to alienate or in any way deal with his property, and no creditor to whom the debtor is indebted in respect of any debt provable in insolvency shall have any remedy against the property or person of the debtor in respect of such debt, except in manner directed by this Act. All proceedings to recover any such debt shall be stayed upon notice of such order, or (as the case may be) of the appointment of a receiver or manager before such order, being given in manner prescribed, but the Court may, on application by any creditor or person interested, allow any proceedings commenced to be continued upon such terms and conditions as the Court may think fit. But this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with the same if this section had not been passed; and where a provisional order made against a debtor is revoked the remedy of any creditor against the property or person of the debtor shall revive.

The Court may also, at any time after the presentation of an insolvency petition against or by a debtor, and before a provisional order has been made, restrain further proceedings in any action, execution, or other legal process against the debtor in respect of any debt provable in insolvency, or may allow such proceedings, whether in progress at the date of the presentation of the petition, or commenced afterwards, to proceed upon such terms as it thinks just.

Commencement of
insolvency.

40. The insolvency of a debtor or (if he be not adjudged insolvent) the effect of the provisional order shall be deemed to have relation back to and to commence at the time of the act of insolvency being completed on which the provisional order is made, hereinafter referred to as "the commencement of the insolvency"; or, if the debtor is proved to have committed more acts of insolvency than one, to have relation back to and to commence at the time of the first of the acts of insolvency that may be proved to have been committed by the debtor within six months next preceding the date of the presentation of the insolvency petition; but the insolvency or the effect of the provisional order (as the case may be) shall not relate to any act of insolvency prior to the one on which such order is made, unless at the time of committing such prior act the debtor was indebted to some creditor or creditors in a sum or sums sufficient to support an insolvency petition, and unless such debt or debts are still remaining due at the date of the provisional order.

Meetings of creditors
to be summoned.

41. When a provisional order has been made against a debtor, and is not revoked within the time appointed, his property shall, unless the creditors otherwise determine, become divisible amongst his creditors as in this Act provided; and for the purpose of effecting such division the Court shall, as soon as may be, summon meetings of the creditors as provided by this Act.

Meetings

*Insolvency Act.—1880.**Meetings of and Investigation by Creditors.*

DIVISION III.

*Proceedings under
an insolvency
petition.*Regulations as to first
general meeting.

42. The Court shall, within eight days after the provisional order, or if an application shall have been made to revoke it, within eight days after the dismissal of such application, summon a general meeting of the creditors of the debtor (in this Act referred to as the first general meeting) by giving seven days' notice thereof in one local newspaper and once in the *Government Gazette* in the prescribed form, and also (if a list of creditors has been filed) by giving the prescribed notice to the creditors in the list. Such meeting shall be held in manner prescribed, and shall be presided over by the Registrar, or by such person as the Court may appoint, and such meeting shall also be held in the prescribed manner and subject to the prescribed regulations as to the quorum of creditors, previous proof of debts by creditors, adjournment of meeting, and all other matters relating to the conduct of the meeting or the proceedings thereat: Provided that—

- I. A person shall not be entitled to vote as a creditor unless he shall have, in the prescribed manner and at the prescribed time, proved a debt that is due to him:
- II. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained:
- III. A secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security; and the amount of such balance shall, until the security be realised, be determined or assessed in the prescribed manner. He may, however, give up or abandon the security, and thereupon he shall rank as a creditor in respect of the whole sum due to him:
- IV. A creditor shall not vote in respect of any current bill of exchange or promissory note held by him under discount, unless he is willing to treat the liability of every person who is liable thereon antecedently to the debtor, and whose estate is not in course of administration under this Act, as security in his hands, and to estimate the value thereof and deduct the same from his proof, in which case he shall, on application being made within the prescribed time by any person interested, give up such security for the benefit of the creditors of the debtor upon payment of such estimated value: Provided always that such estimate (except so far as the creditor may receive any payment as aforesaid in respect thereof) shall not prejudice the right of such creditor to receive from the estate of the debtor a dividend upon the whole amount of such bill or note:
- V. Votes may be given either personally or by proxies. If by proxies, the proxies shall be in such form and given or signed in such manner and at such time as may be prescribed:

43. For

Insolvency Act.—1880.

DIVISION III.

Proceedings under an insolvency petition.

Appointment of committee of inspection, and trustee or receiver.

43. For the purpose of conducting the proceedings under an insolvency petition the creditors at the first general meeting shall by resolution appoint some fit persons (not exceeding five in number) who are qualified to prove debts on their own behalf or otherwise to be a committee of inspection, for the purpose of superintending the realisation and distribution of the property of the debtor, and may at the same or any other meeting fix the quorum required to be present at a meeting of the committee of inspection: Provided that, if through any difficulty or delay in adjudicating upon any proof of debt or otherwise, any delay shall occur in the appointment of the committee of inspection, and the Court shall be of opinion that such delay will prejudice the interests of the creditors, then the Court shall appoint the committee of inspection from persons qualified as aforesaid, and shall also fix the quorum of such committee as aforesaid. The committee of inspection shall at such meeting, or as soon as may be after their appointment, appoint a trustee, or a receiver to act until a trustee is appointed, and if the Court shall have previously appointed a receiver, they may either confirm such appointment or revoke the same and appoint a new receiver. The trustee or receiver shall give security in such amount and form as the Court or the committee of inspection shall determine, unless the creditors shall have by resolution determined that no security shall be given, or shall have fixed the amount and form thereof. On the appointment of a trustee the property of the debtor shall forthwith pass to and vest in the trustee appointed. If no trustee has been appointed, the property of the debtor shall, until a trustee shall have been appointed, or the debtor shall have executed a deed of assignment under Division VIII. of this Act, remain in him in trust for his creditors (without power to dispose thereof, except with the sanction of the committee or under order of the Court), and shall be divisible amongst his creditors, and be administered under the provisions of this Act: Provided that, if in any case by reason of the small amount of the property of the debtor or of other special circumstances, the creditors at the first general meeting shall desire not to appoint a committee of inspection, they may appoint a trustee to act without a committee of inspection, provided that such appointment be confirmed by the Court, and the trustee so appointed shall, in addition to the powers given to a trustee by this Act, have, as nearly as the nature of the case will admit, all the powers by this Act given to a committee of inspection.

Resolutions of creditors at first meeting.

44. The creditors at the first general meeting may by ordinary resolution do any of the following things, viz.—

1. Resolve that a further investigation of the affairs of the debtor be made, and give such directions as they think fit concerning the same, and direct when and in what manner the result of such investigation shall be reported to the creditors; and such report, if not previously made, shall be made by printed statement at an adjourned meeting, or at the second general meeting to be called as in this Act provided, or (if the debtor be adjudged insolvent) to the Court:

11. Resolve

Insolvency Act.—1880.

II. Resolve that the proceedings under the insolvency petition be stayed, and the affairs of the debtor be wound up under a deed of assignment under Division VIII. of this Act, which shall have been or may be executed by him:

DIVISION III.
Proceedings under an insolvency petition.

III. Resolve (if the debtor has not been adjudged insolvent) that adjudication of insolvency be made:

Or they may, by special resolution passed without proxies, resolve that the proceedings under the insolvency petition be stayed, and that any composition or general scheme of settlement of the debtor's affairs under Division IX. of this Act be accepted or assented to.

45. Effect shall be given to the resolutions of the creditors at first general meeting in the following manner, viz.—

Effect of resolutions at first meeting.

- I. If the resolution be that a further investigation be made of the affairs of the debtor, such investigation shall be made by or under the direction of the committee of inspection, and (if necessary or desirable) the committee of inspection or the trustee or any creditor may apply to the Court for an order that the debtor do file further accounts; and the Court shall, if it thinks the application reasonable, make an order for such accounts and upon such terms as to payment of the expenses thereof as the Court may think fit:
- II. If the resolution be that the proceedings under the insolvency petition be stayed, the Court shall make an order that the proceedings be stayed accordingly for such time as may be necessary to have a deed of assignment prepared and assented to by the creditors, as provided by Division VIII. of this Act, or until the time limited for the payment of such composition or completion of the scheme of settlement of the debtor's affairs, and such order may be made on such terms and subject to such conditions as the Court may think just:
- III. If the resolution be that adjudication of insolvency be made, or if the creditors pass no resolution, or if (whether the proceedings are or are not stayed) it be shown to the satisfaction of the Court that there is no reasonable probability of such deed of assignment being assented to by the requisite majority of creditors, and that it will not be for the benefit of the creditors that a second general meeting shall be held, the Court shall make an adjudication of insolvency against the debtor.

46. If the debtor has not been adjudged insolvent, and the proceedings under the insolvency petition are not stayed, the Court shall summon a second general meeting of creditors, at which the committee of inspection, or the trustee or receiver by their direction, shall make to the creditors a report upon the affairs of the debtor; and the creditors at such meeting may, on the consideration of such report, or if no such report is made, in the absence thereof, do any

Second general meeting.

Insolvency Act.—1880.

DIVISION III.

*Proceedings under
an insolvency
petition.*

any act or pass any resolution that they might have done or passed at the first meeting, and effect shall be given to such resolution in like manner as to a resolution passed at the first meeting. The creditors at the second meeting may also, by special resolution passed without proxies, determine and declare that the affairs of the debtor have been sufficiently investigated, and that he be discharged: Provided always, that no such special resolution shall be passed until after the expiration of two months from the date of the provisional order; and upon an application to the Court by any creditor of the debtor within one month after the filing of such special resolution, the Court may (notwithstanding the special resolution) refuse to grant to the debtor an order of discharge, or suspend the same from taking effect for such time as it thinks fit, or grant the same subject to any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings, or income which may afterwards become due to the debtor, and touching after acquired property of the debtor, upon proof being furnished to the Court by any creditor of the debtor of any facts the proof of which would have entitled the Court under this Act to refuse or suspend the order of discharge, or grant a conditional order of discharge if the debtor had been adjudged insolvent. If no such application be made or proof furnished by any creditor within the above period of one month, the Court shall at the expiration of such period grant to the debtor an absolute order of discharge. Every order of discharge granted under this section shall have the same effect as if it had been granted to a debtor adjudged insolvent. Upon the passing of such special resolution the administration of the property of the debtor shall be proceeded with under the provisional order. If no resolution be passed at such meeting, or if (the debtor not having been discharged) it be shown to the satisfaction of the Court that there is no reasonable probability of such deed of assignment being consented to by the requisite majority of creditors, the Court shall make an adjudication of insolvency against the debtor.

*Gazetting insolvency
and sitting for public
examination.*

47. Where an adjudication of insolvency is made against a debtor, the Court shall direct the adjudication to be gazetted, and if requested by the debtor or any creditor, or the trustee, receiver, or committee of inspection, shall direct a public sitting of the Court to be held on a day to be named for that purpose within the prescribed time after the adjudication has been gazetted, and the insolvent shall attend thereat, and submit himself to be then and there examined as to his conduct, dealings, and property, until the Court shall by order declare that his affairs have been sufficiently investigated, and that his examination is finished.

Conduct of debtor.

48. The debtor shall, to the utmost of his power, aid in the realisation of his property, and the distribution of the proceeds amongst his creditors. He shall, unless prevented by sickness or other cause satisfactory to the meeting, attend the first general meeting of his creditors, and the second general meeting (if any),
and

Insolvency Act.—1880.

and any adjourned meetings, and shall produce to his creditors at each of such meetings a statement of his affairs in the prescribed form, and shall submit to such examination, and give such information as the meetings may respectively require. He shall also give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, such account of his receipts and payments, and such other accounts, and attend such other meetings of his creditors, submit to such examination in respect of his property or his creditors, wait at such times on the committee of inspection, trustee, or receiver, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the committee of inspection, trustee, or receiver, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made on application by the committee of inspection, trustee, or receiver, or any creditor or person interested. If the debtor wilfully fail to perform any of the duties imposed on him by this Act, or if he fail to deliver up possession of any part of his property which is divisible amongst his creditors under this Act, and which may for the time being be in the possession or under the control of such debtor, to the trustee or receiver, or any person authorised by the Court to take possession thereof, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

DIVISION III.
*Proceedings under
an insolvency
petition.*

DIVISION IV.

DISCHARGE OF INSOLVENT.

49. Where the debtor has been adjudged insolvent, the Court may, at any time after the expiration of three months from the date of such adjudication, fix a time and place at which to hear his application for discharge, and the Court may grant him his discharge under the following circumstances, viz.—

- i. If the application for the discharge is made before the expiration of twelve months from the date of such adjudication, and the application is concurred in by a majority in number and three-fourths in value of the creditors who have proved; or,
- ii. If the application is made after the expiration of twelve months, and before the expiration of two years from the date of such adjudication, and the application is concurred in by a majority in value of the creditors who have proved; or,
- iii. If the application is made after the expiration of two years from the date of such adjudication, though no creditor concurs in the application:

Provided always that on any such application as aforesaid the Court may, instead of granting an absolute order of discharge, refuse the same

DIVISION IV.
*Discharge of in-
solvent.*
Order of discharge.

Insolvency Act.—1880.

DIVISION IV.
*Discharge of
insolvent.*

same, or may suspend the same from taking effect for such time as the Court may think fit, or may grant an order of discharge, subject to any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings, or income which may afterwards become due to the insolvent, and touching after acquired property of the insolvent, on proof being furnished to the Court by any creditor of the insolvent of any of the following facts, viz.—

- (a.) That the creditors of the insolvent under the insolvency have not received, and on a proper estimate of the assets are not likely to receive, a dividend or dividends amounting in the whole to Five Shillings in the Pound, and that the insufficiency of his estate to pay such dividend has not been caused through any negligence or fraud of the trustee, receiver, or committee of inspection:
- (b.) That the insolvent, being engaged in business or trade, other than that of a farmer or grazier, has not, during the three years preceding the date of the filing of the petition in his insolvency, kept such books or accounts as are usually kept by persons in the like business or trade, or as contain a reasonably sufficient record of his transactions during such three years, or has greatly increased his liabilities by purchasing property, or carrying on trade while unable to pay his debts, or has contracted any debts provable under the insolvency petition without having at the time of contracting the same any reasonable or probable ground of expectation of being able to pay the same:
- (c.) That the insolvent has brought on his insolvency by rash and hazardous speculations or unjustifiable extravagance in living, or has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action to recover any debt or money due from him, or has committed any act by this Act made a misdemeanor in case of insolvency, and has not been prosecuted for the same.

Notice of the appointment by the Court of the day fixed for hearing the application for discharge shall be gazetted and sent to each creditor who has proved, twenty-one days at least before the day so appointed, and the Court may hear any creditor who has given to the Court, in manner prescribed, seven days' notice of his desire to oppose the application.

**Effect of order of
discharge.**

50. An order of discharge shall not release the insolvent 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 until the expiration of three years from the date of such order of discharge, but after the lapse of such period it shall discharge him from every such debt or liability, and such order of discharge shall immediately release the insolvent from all other debts provable under the insolvency petition, with the exception of—

1. Debts due to the Crown; and,

11. Debts

Insolvency Act.—1880.

- II. Debts with which the insolvent 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 such offence :

DIVISIONS IV.

Discharge of insolvent.

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

An order of discharge shall be sufficient evidence of the insolvency petition, and of the validity of all proceedings thereunder precedent to the order of discharge.

51. The order of discharge shall not release any person who, at the date of the insolvency petition, was a partner with the debtor, or was jointly bound, or had made any joint contract with him.

Exception of joint debtors.

DIVISION V.

DISTRIBUTION OF PROPERTY.

General Provisions.

DIVISION V.

Distribution of property.

52. The property of the debtor divisible amongst his creditors under an insolvency petition, and in this Act referred to as the property of the debtor, shall not comprise the following particulars—

Description of debtor's property divisible among creditors.

- i. Property held by the debtor on trust for any other person than his creditors under this Act; or,

- ii. The tools (if any) of his trade and the necessary wearing apparel of himself, his wife, and children, and his household furniture, to a value (inclusive of tools, and apparel, and furniture) not exceeding Thirty Pounds in the whole:

But it shall comprise the following particulars—

- iii. All such property as may belong to or be vested in the debtor at the commencement of the insolvency, or may be acquired by or devolve on him at any time previously to his discharge; and,
- iv. All goods and chattels being, at the commencement of the insolvency, in the possession, order, or disposition of the debtor, by the consent and permission of the true owner, and of which goods and chattels the debtor is reputed owner, or of which he has taken upon himself the sale or disposition as owner: Provided that chattels comprised in any duly registered bill of sale, the consideration for which shall have been an advance or loan made at the time of the execution thereof, and in any bill of sale registered not less than ninety days before the date of the filing of the petition, or before the date of the provisional order

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property.

order being granted, shall not be deemed goods and chattels within the meaning of this clause.

Dealings with Debtor's Property.

Possession of property
by trustee or receiver.

53. Where any portion of the property of the debtor consists of stock, shares in ships, companies, or any other property transferable in the books of any company, office, or person, the right to transfer such property shall be absolutely vested in the trustee (if any) to the same extent as the debtor might have exercised the same if an insolvency petition had not been filed against or by him.

If no trustee shall have been appointed under any insolvency petition, the Court may order that the right to transfer any property mentioned in this section shall vest in the receiver appointed under the petition, or in any member of the committee of inspection, and such right shall thereupon vest accordingly in the person named in such order in that behalf. The trustee, and where no trustee has been appointed under an insolvency petition, the receiver (if any) appointed thereunder, shall, as soon as may be, but subject to the directions of the Court, take possession of the deeds, books, and documents of the debtor, and all other parts of his property capable of manual delivery.

Disclaimer of onerous
property by trustee.

54. Where any part of the property of the debtor consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily salable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavored to sell, or has taken possession of such property, or exercised any act of ownership in relation thereto, may, by writing under his hand, or, if no trustee has been appointed, the debtor, with the leave of the committee of inspection or of the Court, may, by writing under his hand, disclaim such property, and upon the execution of such disclaimer the property of disclaimed shall, if the same be a contract, be deemed to have determined at the date of the filing of the insolvency petition so far as regards the interest of the debtor therein, and the liability of himself and his property and of the trustee thereunder; and if the same be a lease, to have determined at the same date, so far as regards the interest of the debtor therein, and the liability of himself and his property, and the trustee to the performance of the covenants and conditions thereof; and if the same be shares or stock in any company, to have been forfeited at the same date; and whatever the nature of the property, it shall (unless the Court otherwise order) pass to the person (if any) entitled thereto on the determination of the estate or interest of the debtor therein; and in no case shall any estate or interest or liability therein or thereunder remain in the debtor; but the Court may, on application made by any person claiming any interest in disclaimed leasehold property, make order for payment of such sum as it shall think fit, either by the trustee (if any) personally

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personally or out of the property of the debtor, in respect of the breach of any covenant relating to such leasehold property and running with the land, provided that such breach has occurred between the date of the first meeting of creditors and the date of the disclaimer, and (if there be a trustee) with his knowledge; and the Court may, on application made by any person claiming any interest in the disclaimed property, and upon hearing such persons as it thinks fit, make an order for the vesting of the same property in or delivery thereof (together with any deeds or documents relating thereto), to any person or persons entitled thereto, or a trustee for him or them, and upon such terms as the Court, may think just, and upon any such vesting order being made, the property comprised therein shall vest according to the tenor thereof in the person or persons therein named in that behalf, without any conveyance or assignment for the purpose. Any person injured by the operation of any such disclaimer as aforesaid shall be deemed to be a creditor of the debtor to the extent of such injury, and may accordingly prove the same as a debt under the insolvency petition so far as he may not have received payment thereof under any such order for payment as aforesaid.

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55. The trustee or the debtor shall not be entitled to disclaim any property in pursuance of this Act in any case where an application in writing has been made to the trustee or debtor, by any person interested in such property, requiring him to decide whether he will disclaim or not, and the trustee or debtor has for a period of not less than twenty-eight days after the receipt of such application, or such further time as may be allowed by the Court, refused or neglected to give notice whether he disclaims the same or not; and the Court may at any time, upon the application of any person interested in such property, and upon such person waiving any other remedy to which he may be entitled in respect thereof, make an order for payment out of the property of the debtor of such sum as it thinks fit in respect of any breach of contract relating to such property which may have occurred since the date of the first meeting of creditors.

Restriction on right to disclaim.

Debts Provable.

56. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise shall not be provable under an insolvency petition, and no person who shall have been served with notice in the prescribed form of any act of insolvency available for adjudication against the debtor shall prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice, unless the Court is of opinion that the property of the debtor has been benefited or increased, or that his debts or liabilities have been diminished, by the payment of the money or execution of the contract upon which the debt or liability sought to be proved has arisen.

Description of debts provable in insolvency.

Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date
of

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 property.*

of the provisional order, or to which he may become subject by reason of any obligation incurred previously to the date of the order, shall be deemed to be debts provable under an insolvency petition in pursuance of his Act.

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

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

“Liability” shall for the purpose of this Act include any compensation for work or labor done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking to pay or capable of resulting in the payment of money or money’s worth, whether such payment be as respects amount fixed or unliquidated, and payable in one sum or by instalments or periodical payments; as respects time present or future certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or assessable only by a jury, or as matter of opinion.

Interest on debts.

57. Interest on any debt provable under this Act may be allowed under the same circumstances in which interest would have been allowable by a jury if an action had been brought for such debt.

Provisions as to
 secured creditor.

58. A secured creditor may, on giving up his security, prove for his whole debt, or he may prove for any balance due to him after realising or giving credit for the value of his security, in manner and at the time prescribed.

A secured creditor not complying with the foregoing conditions shall be excluded from proof. **59.** If

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

DIVISION ▼

Distribution of property.

Proof in respect of distinct contracts.

60. Where there have been mutual credits, mutual debts, or other mutual dealings between the debtor and any person having a debt provable under the insolvency petition, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against the sum due from the other party, and the balance of such account, and no more, shall be proved or paid on either side respectively.

Set-off.

61. No distress for rent made and levied upon the goods and effects of the insolvent shall be available, where the tenement is let by the week, for more than four weeks' rent, or for more than the rent accruing due in two terms of payment where the tenement is let for any other term less than a year, nor for more than a year's rent where the tenement is let by the year, or for a longer term than a year, unless the said goods and effects shall have been *bonâ fide* sold under such distress previous to the date of the adjudication; but the landlord, or person to whom the rent shall be due, shall be allowed to come in as a creditor for the overplus of the rent due, for which the distress shall not be available.

Power to landlord to distrain for rent.

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

Proof in case of rent and periodical payment.

Distribution of Assets and Dividend.

63. In the distribution of the property of the debtor there shall be paid, in priority to all other debts, all district, municipal, and other local rates due from him at the date of the provisional order, and having become due and payable within twelve months next before such date, and not exceeding in the whole one year's assessment; and also all wages or salary of any clerk or servant in respect of services rendered to the debtor during four months preceding the date of the provisional order, not exceeding Fifty Pounds; and also all wages of any laborer or workman in respect of services rendered to the debtor during two months preceding the date of the provisional order. Between themselves such debts shall rank equally, and shall be paid in full, unless the property of the debtor is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

Payment of preferential and other debts.

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In the case of partners the joint estate shall be applicable in the first place in payment of the joint debts, and the separate estates of the partners shall be applicable in the first place in payment of their respective separate debts; and any surplus of the separate estates shall be dealt with as part of the joint estate, and any surplus of the joint estate shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

Subject to the foregoing provisions of this section debts of the following character, respectively, shall be paid in the following order—

- I. All debts proved under the insolvency petition, including and without priority to debts directly or indirectly due to the Crown, but excepting debts due on voluntary bonds or other voluntary obligations:
- II. Interest from the date of the provisional order upon such of the aforesaid debts as carry interest at the rate reserved or by law payable thereon:
- III. Debts due from the debtor on voluntary bonds or other voluntary obligations:
- IV. Interest from the date of the provisional order upon all such voluntary bonds or obligations as aforesaid, and upon all such debts as do not carry interest at the rate in each case of Eight Pounds per centum per annum.

*Declaration of
dividends.*

64. The trustee shall with all convenient speed declare a dividend amongst the creditors who have proved their debts, and shall distribute the same accordingly. Before declaring a dividend the trustee shall cause a notice to be gazetted, stating the day on which the dividend is intended to be declared, and, except as hereinafter provided, those debts only in respect of which proof has been made or tendered before that date shall be allowed to participate in the dividend.

*Provision for creditors
residing at a distance.*

65. In the calculation and distribution of a dividend it shall be obligatory on the trustee to make provision for debts provable under this Act appearing from the debtor's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, and also for debts provable under the insolvency petition which have been notified to him in manner prescribed, and are the subject of claims not yet determined, and on any such debt being established, the creditor shall be entitled to receive the dividend reserved thereon.

*Right of creditor who
has not proved debt
before declaration of
a dividend.*

66. Creditors may prove their debts in manner prescribed, and creditors who have not proved their debts before the declaration of

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of any dividend or dividends shall, on the occasion of the next dividend being declared, be entitled to be paid any dividend or dividends they may have failed to receive before any moneys are made applicable to the payment of any other dividend or dividends; but they shall not be entitled to disturb the distribution of any dividend declared before their debts were proved by reason that they have not participated therein.

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67. When all the property of the debtor from which any moneys available for division amongst the creditors can, in the opinion of the committee of inspection, be reasonably expected to arise has been realised, the trustee shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors of the debtor have been notified to him and not established to his satisfaction, that if they do not establish such claims to the satisfaction of the Court, within a time to be limited for that purpose by the notice, he will proceed to make a final division of the property without regard to such claims. After the expiration of such time, or if the Court shall, on application by any such claimant, grant further time to him for establishing his claim, then on the expiration of such further time, the property of the debtor divisible amongst the creditors shall be divided amongst the creditors who have proved their debts, without regard to the claims of any other persons.

Final dividend.

68. No action shall lie for a dividend, but if the trustee or other person having control of any dividend refuses to pay the same, the Court may, if it thinks fit, order him 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.

69. The committee of inspection may from time to time make such allowance as they may think just to the debtor out of his property for the support of the debtor and his family, or in consideration of his services if he is engaged in winding-up his estate, but such allowance may be revised by the Court, and where no allowance has been made, the Court may on cause shown make an allowance.

Allowance to debtor for maintenance or service.

70. The debtor shall be entitled to any surplus remaining after payment of his creditors, and of the costs, charges, and expenses of the proceedings under the insolvency petition.

Debtor entitled to surplus.

DIVISION VI.

POWERS AND DUTIES OF COMMITTEE OF INSPECTION, TRUSTEE,
AND RECEIVER.

DIVISION VI.
Powers and duties of committee of inspection, trustee, and receiver.

71. The trustee shall, in the administration of the property of the debtor, and in the distribution thereof amongst his creditors, act under the directions of the committee of inspection; but the creditors

Conduct and powers of trustee or receiver.

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creditors at any general meeting may give directions as to the mode in which such property is to be administered, and the directions so given shall override any directions given by the committee of inspection.

The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time make, or cause to be made, entries or minutes of proceedings at meeting, and of such other matters as may be prescribed; and any creditor of the debtor may, subject to the control of the Court, personally, or by his agent, inspect such books.

Power of committee
of inspection to deal
with property of
debtor.

72. Subject to the provisions of this Act, the committee of inspection shall have power to do or to direct the trustee to do the following things, or any of them—

- i. To sell all or any part of the property of the debtor (including the goodwill of the business, if any, and the debts due or growing due to the debtor), by public auction or tender, or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels, and with power to accept as the consideration for such transfer and sale a sum which shall suffice to pay a specified dividend on all the debts proved or which may be proved under the insolvency petition, such sum to be paid or secured to be paid at such time and in such manner as the committee shall think fit:
- ii. To mortgage or pledge any part of the property of the debtor for the purpose of raising money for the payment of his debts:
- iii. To give receipts for money received, which receipts shall effectually discharge the person paying such money from all responsibility in respect of the application thereof:
- iv. To carry on the trade of the debtor, so far as may be necessary or expedient for the beneficial winding-up or sale of the same, and for that purpose, or for the general management and realisation of his property, to employ the debtor himself or any other person or persons:
- v. To bring, institute, or defend any action or other legal proceedings relating to the property of the debtor:
- vi. To prove, rank, claim, and draw a dividend in respect of any debt due to the debtor:
- vii. To refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the debtor and any person who may have incurred any liability to the debtor, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon:

VIII. To

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VIII. To make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the insolvency petition :

IX. To make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the debtor, made or capable of being made on the trustee by any person, or by the trustee on any person :

X. To exercise any powers and discretions, the capacity to exercise which is vested in the trustee under this Act, and to execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act :

XI. To deal with any property to which the debtor is beneficially entitled as tenant-in-tail in the same manner as if the debtor might have dealt with the same :

XII. To divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot be readily sold to advantage :

The directions given by the committee of inspection to the trustee for the purposes of this section may be a general permission to do all or any of the above-mentioned things, or a permission to do all or any of them in any specified case or cases, and if there be no trustee, then the committee of inspection may direct the debtor to do all or any of such things; and wherever it is by this Act provided that the trustee may do any act or thing, the same may (if there be no trustee) be done by the committee of inspection.

The appointment of a trustee of the property of a debtor after action brought by or against a committee of inspection of such property shall not cause an abatement of such action, but the trustee shall be made a party thereto in place of the committee or the debtor, and the proceedings therein shall be carried on between the trustee and the continuing parties to the action.

73. Until a trustee has been appointed, the receiver (if any) may, if directed by the Court or by the committee of inspection, and so far as the nature of the case will admit, do anything which might be done by the trustee under this Act. The trustee and the receiver shall, in relation to and for the purpose of acquiring or retaining possession of the property of the debtor, and in addition to any powers given to him by this Act, have all the powers, rights, and remedies usually possessed or exerciseable by a receiver appointed by the Supreme Court; and the Court may on his application enforce such acquisition and retention accordingly.

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Powers and duties of committee of inspection, trustee, and receiver.

Receiver to have powers of receiver appointed by Supreme Court.

74. Where

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DIVISION VI.

Powers and duties of committee of inspection, trustee, and receiver.

Power of Court in case of refusal of debtor to act.

74. Where the debtor refuses or neglects to do any act in reference to the recovery, sale, or transfer of, or otherwise dealing with, any property remaining in him under this Act in trust for his creditors for forty-eight hours after he shall have been required by the committee of inspection or receiver to do the same, the Court may by order authorise such act to be done in the name of the debtor or otherwise by any person named in the order for that purpose, and every act done by such person shall be as effectual for all purposes as if the debtor had done the same, and shall not be revocable or impeachable by the debtor; and the Court may for the purpose of the recovery, sale, or transfer of, or otherwise dealing with, any such property, exercise every power which by the Trustee Act, 1855, is given to the Supreme Court in reference to the disposition of property held by trustees.

Meetings of creditors to be summoned.

75. The committee of inspection may from time to time summon, or direct the trustee to summon, general meetings of the creditors for the purpose of ascertaining their wishes; the committee may also apply to the Court, in manner prescribed, for directions in relation to any particular matter. The Court may also from time to time summon general meetings of the creditors, and may, if it thinks fit, direct the Registrar to preside at such meetings, and in default of such direction, or if the Registrar fail to preside, the meeting shall elect a chairman to preside. All the provisions of this Act in reference to the votes of creditors at the first meeting shall apply to any subsequent meeting, and any creditor whose debt has been proved, or the value of whose debt has been ascertained after such first meeting, shall be allowed to vote at any subsequent meeting.

Court may confirm or reverse acts of trustee or committee.

76. The debtor, or any of the creditors, or any other person, if aggrieved by any act of the trustee or of the committee of inspection, may apply to the Court, and the Court may confirm, reverse, or vary the act complained of, and may make such order in the matter as it thinks just.

Remuneration and Accounts.

Remuneration of trustee or receiver.

77. The trustee or receiver shall receive such remuneration for his services as shall be fixed by the creditors at any meeting, but any remuneration so fixed may be increased by special resolution passed at any subsequent meeting of creditors.

Trustee or receiver, if a solicitor.

78. The committee of inspection may appoint a solicitor, but where the trustee or receiver is himself a solicitor he may contract to be paid a certain sum by way of percentage or otherwise as a remuneration for his services as trustee or receiver, including all professional services.

Trustee or receiver to pay moneys into bank.

79. The trustee or receiver shall pay all sums from time to time received by him into such bank as the committee of inspection may appoint, and where there shall be a committee of inspection such
payment

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payment shall be made in the joint names of the trustee and of such one of the committee of inspection as the committee shall direct; and if the trustee or receiver at any time keep in his hands any sum exceeding Fifty Pounds for more than ten days he shall be liable to the following consequences, that is to say—

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

At the expiration of six months from the declaration of the final dividend, the trustee or receiver shall pay all moneys then in hand, and all moneys thenceforth received by him, into Court in manner prescribed; and if he fail to make such payment, he shall pay interest at the rate of Twenty Pounds per centum upon all sums which he shall so fail to pay in.

80. The trustee or receiver shall, at least once in every four months until the estate is wound up, deliver to the accountant, and post or deliver to every creditor of the estate who shall have proved a debt amounting to Five Pounds or upwards, a printed statement showing what has been done under the insolvency petition under which he is a trustee or receiver up to the date of the statement, which statement shall be in the prescribed form as to details and otherwise; and any trustee or receiver failing to comply with this section shall be deemed guilty of a contempt of Court, and be punishable accordingly.

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Powers and duties of committee of inspection, trustee and receiver.

Return of accounts to accountant.

81. The accountant shall examine the statements transmitted to him, and shall cause the trustee or receiver to account for any misfeasance, neglect, or omission, whether appearing on such statements or not, and may require the trustee or receiver to make good any loss which the estate of the debtor may have sustained by such misfeasance, neglect, or omission. If the trustee or receiver fail to comply with such requisition of the accountant, the accountant may report the matter to the Court; and the Court, upon reading the report, and after hearing the trustee or receiver, or in his absence if not appearing after notice, shall make such order as it thinks just in reference thereto.

Duty of accountant.

82. The accountant may at any time require any trustee or receiver to answer any inquiry made by him in relation to any matter in which such trustee or receiver is engaged, and may, if he think fit, apply to the Court, in writing or otherwise, to examine on oath

Powers of accountant.

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DIVISION VI.

Powers and duties of committee of inspection, trustee, and receiver.

oath such trustee or receiver or any other person concerning such matter; he may also direct a local investigation to be made of the books and vouchers of the trustee or receiver.

Removal and Succession of Committee of Inspection, Trustee, and Receiver.

Regulations as to committee of inspection, trustee, and receiver.

83. The following provisions shall have effect with respect to the committee of inspection, trustee, and receiver—

- I. Any member of the committee of inspection may resign his office by notice in writing signed by him, and delivered to the Registrar, and the trustee may resign his office with the consent of the committee of inspection, or with the sanction of an ordinary resolution :
- II. Any member of the committee of inspection, or any trustee, may also be removed by a special resolution at any meeting of creditors of which the prescribed notice has been given, stating the object of the meeting :
- III. If a provisional order is made against, or a deed of assignment under Division VIII. of this Act is executed by, a member of the committee of inspection or trustee, his office shall thereupon become vacant :
- IV. On any vacancy occurring in the office of a member of the committee of inspection by removal, death, resignation, or otherwise, the continuing members, if less than three, shall convene a meeting of creditors for the purpose of filling up such vacancy :
- V. The continuing members of the committee of inspection may act, notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five :
- VI. The committee of inspection may at its pleasure remove the trustee or receiver :
- VII. If any vacancy occur in the office of trustee or receiver by death, resignation, or otherwise, the committee or the creditors by resolution may fill up such vacancy, and in the meantime and until the vacancy shall be so filled up, the prescribed officer of the Court may, by direction of the Court, act as, and, if necessary, be appointed by the Court to be, such trustee or receiver :
- VIII. The committee of inspection may by a majority of its members appoint one or more persons to the office of trustee, and where more than one are appointed the committee may declare that any act required or authorised to be done by the trustee may be done by any one or more of

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of such persons, but all such persons are in this Act included under the term “trustee” and shall be joint tenants of the property of the debtor :

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Powers and duties of committee of inspection, trustee, and receiver.

- ix. The property of the debtor shall, subject to the provisions of the Real Property Act of 1861, and Acts amending the same, pass and be transmitted from trustee to trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever :
- x. Any defect or irregularity in the appointment of a trustee or receiver, or of a member of the committee of inspection, shall not vitiate any act *bonâ fide* done by him :
- xi. The Court may at any time for good cause shown remove a trustee or any member of the committee of inspection.

84. The first meeting of creditors may be adjourned from time to time and from place to place ; but if, at such first meeting of creditors or at some adjournment thereof, by reason of the prescribed quorum not being present, or for any other reason whatever, neither a committee of inspection nor a trustee is appointed, the Court may revoke the provisional order or annul the adjudication unless it deems it expedient to carry on the proceedings with the aid of the prescribed officer.

Power of Court to annul.

PART VII.

SUPPLEMENTAL PROVISIONS.

DIVISION VII.

Supplemental provisions.

85. The following regulations shall be made with respect to proceedings under an insolvency petition, namely—

Supplemental regulations.

- i. Every insolvency petition shall be accompanied by an affidavit of the petitioner in the prescribed form, verifying the statements contained in such petition, and shall thereupon be filed :
- ii. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, upon such terms as the Court thinks fit :
- iii. Where the petitioner does not proceed with due diligence on his petition the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor :
- iv. A company or other body incorporated or authorised to sue may present an insolvency petition, and may prove, vote, and otherwise act in any proceedings under a bankruptcy petition

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DIVISION VII.

Supplemental provisions.

petition or deed of arrangement by its secretary or agent duly authorised on its behalf :

- v. When a debtor by whom an insolvency petition has been presented, or against whom a provisional order has been made, dies, the proceedings shall be continued as if he were alive :
- vi. The Court may at any time for sufficient reason make an order annulling or staying the proceedings under a provisional order, or staying the proceedings under an insolvency petition, either altogether or for a limited time on such terms and subject to such conditions as the Court may think just :
- vii. The Court may adjourn any petition, either conditionally or unconditionally, for the procurement of further evidence, or for any other just cause, or may dismiss the petition, with or without costs, as the Court thinks just :
- viii. Any two or more persons being partners may take proceedings or be proceeded against under this Act in the name of their firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm to be disclosed in such manner and verified on oath or otherwise as the Court may direct.

Joint Debtors.

Petition against partners or joint debtors.

86. Any creditor whose debt is sufficient to entitle him to present a petition against all the members of a partnership, or against all of several joint debtors, may present such petition against any one or more of such persons without including the others.

Power to dismiss petition against some respondents only.

87. Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Property of partners to be vested in same trustee.

88. Where a provisional order has been made on an insolvency petition by or against one member of a partnership, and a provisional order shall be made under any other insolvency petition by or against another member of the same partnership, the same trustee or receiver shall, unless the Court otherwise directs, be appointed under both petitions, and the Court may give such directions for consolidating the proceedings under such petitions as it thinks just.

Provisional order against partners.

89. Where a provisional order has been made against all the members of a partnership, or against several joint debtors, the operation of such order shall in the first instance be limited to the debts jointly due from such partners or debtors, and the joint property of such partners or debtors, but the Court may on sufficient cause being shown by any joint or separate creditor before or at the first

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first general meeting or within the prescribed time thereafter, direct such provisional order to apply to the separate debts and properties of such partners or debtors or of some or one of them, and such order shall apply and have effect accordingly; and in any such case, if the separate creditors think fit, there may be a separate committee of inspection or trustee of the separate property of any of the partners or joint debtors, and in that event such separate property shall be dealt with under the provisions of this Act according to the circumstances of the case: Provided always, that nothing in this section shall prejudice or affect any disposition made by the debtor in good faith and for valuable consideration of or in reference to the separate property to which such provisional order shall be so directed to apply, in the interval between the date of the provisional order and the date when such direction shall have been given.

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90. If a provisional order is made against one member of a partnership, any creditor to whom that partner 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 at such meeting, but shall not receive any dividend out of the separate property of the first-mentioned partner until all the separate creditors have received the full amount of their respective debts.

Joint creditor may prove for purpose of voting.

91. Where a provisional order is made against a member of a partnership, the Court may authorise the trustee or committee of inspection to commence and prosecute any action in the names of the trustee or committee and of the debtor's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to such partner, who may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and shall, if no benefit be claimed by him therefrom, be indemnified against costs in respect thereof as the Court shall direct.

Actions by trustee and committee and debtor's partner.

92. Where the debtor is a contractor in respect of any contract jointly with any other person or persons, such person or persons may be sued, and if no action be pending at the suit of the committee of inspection or trustee in respect thereof, may sue in respect of such contract without the joinder of the debtor.

Saving as to contracts.

93. When a provisional order has been made against a member or members of a firm, and any one or more other persons being a member or members of the same firm is or are absent beyond the seas, or of unsound mind (whether so found by inquisition or not), and whether such other person or persons has or have not committed an act or acts of insolvency, the Court shall have jurisdiction, after giving the prescribed notices, to make a provisional order for the administration of the joint property of the members of the firm on its being proved to the satisfaction of the Court that the firm are
unable

Provisional order in case of absence of or lunatic member of a firm.

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unable to pay their debts as they become due; but it shall not be lawful to adjudge any member insolvent under this section. Upon such order being made, the property of the firm shall vest in the trustee appointed under the insolvency petition, and shall be administered in all respects as if an insolvency petition had been presented and a provisional order had been made in the first instance against all the members of the firm.

As to Discovery of Debtor's Property.

Power of Court to summon persons in reference to property of debtor.

94. The Court may, at any time after an insolvency petition has been filed against or by a debtor, summon before it the debtor or his wife, or any person whatever known or suspected to have in his possession any of the property of the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, or his property, his trade, or dealings, or affairs, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, or his property, trade, or dealings, or affairs; and if any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant addressed as provided by this Act, cause any person to be apprehended and brought before it for examination.

Examination by Court.

95. The Court may examine upon oath, either by word of mouth or by written interrogatories, any person so summoned or brought before it or any person being present before the Court concerning the debtor, or his property, trade, dealing, or affairs.

Order for payment.

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

Power of Court to order examination out of province.

97. The Court may order the examination elsewhere than in the said province of the debtor or his wife or any other person respecting the debtor, or his property, his trade, or dealings, or affairs, which order shall be enforced as in this Act provided.

Seizure of property of debtor.

98. Any person acting under warrant of the Court may seize any property of the debtor divisible among his creditors under this Act and in the debtor's custody or possession or in that of any other person, and with a view to such seizure may break open any house, building, or room of the debtor where the debtor is supposed to be, or any building or receptacle of the debtor where any of his property

is

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is supposed to be ; and 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 any constable or prescribed officer of the Court, who may execute the same according to the tenor thereof.

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

Arrest of debtor under certain circumstances.

- i. If, after an insolvency petition has been presented against or by such debtor, it appear to the Court that there is probable reason for believing that he is about to go abroad or to quit his place of residence with a view of avoiding service of the petition, or of avoiding appearing to the petition, or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings under the petition ; or
- ii. If, after an insolvency petition has been presented against or by such debtor, it appear to the Court that there is probable cause for believing that he is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustee or receiver, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels, or any books, documents, or writings which might be of use to his creditors in the course of the proceedings ; or
- iii. If, after an insolvency petition has been filed by or served on such debtor, he remove any goods or chattels in his possession above the value of Five Pounds, without the leave of the trustee or receiver, or if, without good cause shown, he fails to attend any meeting or examination which he is required to attend under the provisions of this Act ; or
- iv. If the Court shall at any time be of opinion that in the interests of the creditors it is undesirable that such debtor should remain at large.

100. The Court, upon the application of the trustee or receiver, 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 at any place or places mentioned in the order shall be re-directed, sent or delivered by the Postmaster-General, or the officers acting under him, to the trustee or receiver, or otherwise as the Court directs, and the same shall be done accordingly.

Post letters addressed to debtor.

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*As to Dealings with certain Property.**Supplemental provisions.*

Proceeds of sale of goods seized.

101. When the goods of any debtor have been taken in execution in respect of a judgment and sold, the officer of the Court from which the process issued shall, if he have no notice of an insolvency petition having been presented against or by such debtor, pay the balance of the proceeds of sale (after deducting expenses) into the same Court; but if he have notice of such petition he shall hold the said balance upon trust to pay the same to the trustee or receiver or other person entitled thereto under the petition.

As to delivery of goods seized.

102. When the goods of any debtor have been taken in execution in respect of a judgment, and not sold before the officer of the Court from which the process issued shall have received notice of the appointment of a receiver under an insolvency petition presented against or by the debtor, such officer shall forthwith after receipt of the notice deliver up such goods to the receiver, and the costs incurred by such officer in respect of such execution shall be paid out of the property of the debtor.

Creditor issuing execution or attachment.

103. A creditor who has levied execution on the property of the debtor, or has made an attachment thereof under any statute, shall not be entitled to retain the benefit of such execution or attachment except so far as he has, before the filing of an insolvency petition against or by such debtor, enforced such execution by sale of the property seized, or enforced such attachment by actual possession of the moneys attached, or (as the case may be) by sale of the property attached.

Goods taken in execution to be sold by auction.

104. Where the goods and chattels of a debtor are sold under an execution upon any judgment recovered against him, such goods and chattels shall in all cases be sold by public auction and not by bill of sale or private contract, and such sale shall be publicly advertised as a sale under an execution on and during three days next preceding the day of sale.

Avoidance of voluntary settlements.

105. Any settlement of property made by a debtor not being a settlement made before and in consideration of marriage, or made in favor of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if a provisional order take effect against the settlor within two years after the date of such settlement, be void as against the trustee or receiver under this Act, and shall, if a provisional order take effect against the settlor at any subsequent time within ten years after the date of such settlement, 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, be void against such trustee or receiver. Any covenant or contract made by a debtor, in consideration of marriage, for the future payment of money to his

. wife

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wife or children, or to a trustee for them, or for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, if a provisional order take effect against him before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against the trustee or receiver under this Act.

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

106. Every conveyance or transfer of property, or charge thereon, every power of attorney, every payment, every obligation, and every judicial proceeding made, incurred, taken, or suffered by any person unable to pay his debts as they become due from his own moneys, in favor of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if a provisional order take effect against the person making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee or receiver under this Act.

Avoidance of fraudulent preferences.

107. A payment or delivery of money or property by a debtor to a creditor who has filed an insolvency petition against him shall, if a provisional order be made against the debtor within three months after such payment or delivery, be void against the trustee or receiver under this Act.

Avoidance of payments to petitioning creditor.

108. Subject and without prejudice to the provisions of this Act relating to the proceeds of the sale of goods of a debtor which have been seized, and to the provisions of this Act and every other Act avoiding, on the ground of their being fraudulent, certain settlements, conveyances, transfers, charges, powers of attorney, payments, obligations, and judicial proceedings, the following dealings and transactions relating to the property of the debtor, if they take place before the filing of the insolvency petition, shall be valid, notwithstanding any prior act of insolvency committed by the debtor, that is to say—

Protection of certain transactions.

Every payment by the debtor to any of his creditors, and every payment or delivery to him, and every conveyance or assignment for valuable consideration by him, and every contract, dealing, and transaction for valuable consideration by and with him, and every execution and attachment against his lands executed by seizure, and every execution and attachment against his goods and chattels executed and levied by seizure and sale: Provided that the person to, by, or with whom such payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, or at whose suit or on whose account every such execution or attachment was issued, had not at the time of such payment, delivery, conveyance, assignment, contract, dealing, or transaction, or at the

time

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time of the executing or levying of such execution or attachment, or at the time of the making of any sale thereunder, notice of any act of insolvency committed by the debtor and available for adjudication against him at the time of the filing of the petition.

Appropriation of portion of salary to creditors.

109. Where a debtor is in the receipt of a salary or income, the Court, upon the application of the trustee, shall make such order as it thinks just for the payment of such salary or income, or any part thereof, to the trustee, to be applied by him in such manner as the Court may direct.

Payment of money by agents to trustee or receiver.

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

DIVISION VIII.

Arrangements by deed between debtors and creditors without insolvency.

Debtor may assign his estate for the benefit of his creditors.

DIVISION VIII.

ARRANGEMENTS BY DEED BETWEEN DEBTORS AND CREDITORS WITHOUT INSOLVENCY.

111. Any debtor may convey and assign his real and personal estate and effects to a trustee or trustees for the benefit of his creditors, and if such deed shall be executed, attested, and assented to in manner hereinafter provided, and otherwise comply with the requirements of this Act, this same shall not be liable to be avoided or set aside.

The word “trustee,” when used in this part of this Act, shall mean the trustee or trustees of any such deed unless the contrary appears from the context.

Requisites of deed.

112. Every such deed shall contain the following particulars, and be executed, attested, and verified in the following manner, that is to say—

- i. It shall purport to be made “in pursuance of Division VIII. of the Insolvency Act, 1880”:
- ii. It shall contain, in a First Schedule annexed thereto, a true and particular account of all the real and personal property of which the debtor, or any person in trust for him, is possessed, or to which he, or any such person, is entitled legally or equitably in possession, reversion, remainder or expectancy, so far as the debtor can set forth the same, except the property to be comprised in the Second Schedule:

. iii. It

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- iii. It shall contain, in a Second Schedule, a true and particular account of such articles of household furniture, wearing apparel of the debtor and his family, and other like necessaries, not exceeding in the whole the value of Thirty Pounds, as the debtor desires to retain, which articles and necessaries the debtor shall be entitled to retain for his own use :
- iv. It shall contain, in a Third Schedule, the names of the several creditors of the debtor, and the several amounts due, or supposed to be due, to them respectively: Provided that, with respect to any debts due on any outstanding bill of exchange or promissory note, the actual holder of which shall then be unknown, it shall be sufficient if that fact be stated in such schedule with the amount of such bill or note, and the date when the same will fall due, and give the name of the last known holder thereof, and the names of the immediate parties thereto :
- v. A declaration of the debtor, in the prescribed form, verifying the contents of such schedules, shall be attached to such deed :
- vi. The debtor and the trustees shall execute such deed in the presence of the Registrar or a practitioner of the Supreme Court, or a Justice of the Peace for the said province, or a clerk of a Local Court ; and each witness shall attest such deed, and shall specify in the attestation clause the date on which the execution so attested was made :
- vii. The trustee shall execute such deed within seven days of the execution of the same by the debtor :
- viii. Every creditor of the debtor who shall be desirous of assenting to such deed shall either execute the deed or assent thereto by writing under his hand, and shall verify his debt by a declaration in the prescribed form stating the amount of his debt, the nature of any security or lien held by him for the same, the estimated value of any such security or lien, and the amount of any cross account or set-off due from the creditor to the debtor, and the amount of such creditor's debt shall be such sum only as upon an account fairly stated after allowing the value of such securities or liens, and the amount of any such cross account or set-off shall appear to be the balance due to him, and no creditor shall be deemed to have assented to such deed until he shall have delivered such assent and declaration to the trustee, or to some person authorised by the trustee to receive the same on his behalf :
- ix. Any partner of a firm of creditors may execute or assent to such deed, and make such declaration on behalf of his firm, and any agent duly authorised in that behalf may

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execute

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execute or assent to such deed and make such declaration on behalf of a creditor: Provided that such partner or agent shall in such declaration state that he is that partner or agent duly authorised, as the case may be :

- x. Every such declaration, and also the declaration to be made by a debtor required to be attached to such deed, shall be made before the Registrar, a practitioner of the Supreme Court, Justice of the Peace, or clerk of Local Court, each of whom is hereby authorised and required to take any such declaration, and attest the same when made, and in and by such attestation it shall be stated whether the person taking the same is the Registrar, a practitioner of the Supreme Court, Justice of the Peace, or clerk of a Local Court, as the case may be :
- xi. As soon as possible after the execution of such deed by the debtor a notice thereof shall be given to the Registrar containing the name, residence, and condition of the debtor, and the name of the trustee thereof, and specifying where the same is lying for inspection and execution ; and the Registrar, on receiving such notice, is hereby required forthwith to cause a copy of the same to be inserted in the *Government Gazette* published next after the receipt of such notice. On delivery of every such notice there shall be paid to the Registrar the cost of such advertisement.

Duties of Trustee under deed.

113. The trustee of every such deed shall comply with the following provisions—

- i. He shall forthwith cause notice of such deed, and of the place where the same is lying for inspection and execution to be given, or sent by letter through the post office, to the several creditors of the debtor. Such notices if sent by post shall be directed to the addresses given in the schedule of creditors, as to the last-named places of business or residence of such creditors, or of their respective agents :
- ii. He shall, within fourteen days from the execution of such deed by the debtor, file with the Registrar a true copy of such deed, with the schedules and declarations thereto, and all assents and declarations relating thereto, which shall be open to public inspection.

Proceedings to set aside deed.

114. If any such deed shall not, within ten days from the execution thereof by the debtor, be assented to by at least three-fourths in value and one-half in number of the creditors of such debtor, who shall be resident or have duly authorised agents known to the debtor within the said province, or if such deed shall not within four months from the date of the execution thereof by the debtor be assented to by at least three-fourths in value and one-half in number of all the creditors of such debtor whether resident in the said province or not,

or

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or if default shall be made in compliance with all or any of the provisions of the one hundred and twelfth section of this Act, then, in any such case, and at any time within nine months from the execution of such deed by the debtor, the Court may, on the application of any creditor, whether having assented to such deed or not, make an order declaring such deed to be fraudulent and void, as against the creditors of such debtor, and thereupon such debtor shall be deemed to have committed an act of insolvency at the time of executing such deed, and a provisional order may be made against him accordingly: Provided that in computing the number and value of such creditors, no creditor whose debt shall not amount to Five Pounds shall be reckoned in number, but such debt shall be computed in value only.

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115. The trustee of any such deed may at any time apply to the Court to appoint a meeting, of which meeting the trustee shall give at least nine days' notice to the creditors of the debtor whose names appeared in the schedule to the deed, and by the like means and in like manner as is required to be given to the creditors of the debtor immediately after the execution of the deed; and at such meeting the Court shall inquire whether such deed has been duly assented to within ten days from the execution thereof by the debtor by the required majority of such creditors, and whether the provisions of this Act affecting the validity of such deed have been complied with, and if at such meeting the Court finds such deed duly executed and assented to, the Court shall thereupon grant a certificate of such finding in the following form—

Trustee may obtain certificate of validity of deed.

Court of Insolvency.

In the matter of the Deed of Assignment of _____ of
in the said Province.

At the Court of Insolvency, Victoria-square, Adelaide, the
day of _____ 18____

WHEREAS, by deed dated the _____ day of _____ 18____
the above-named debtor, _____ conveyed and assigned all
his estate and effects to trustees for the benefit of his creditors: And
whereas this Court sat this day to inquire whether such deed was
duly made and executed under the provisions of Division VIII. of the
Insolvency Act, 1880, and whether the provisions of the said Act
affecting the validity of the said deed have been complied with:
This Court doth find that the said deed was duly made, executed,
and assented to in accordance with the provisions of the said Act,
and that all the provisions of the said Act affecting the validity of
the said deed have been duly complied with.

By the Court,
(L.S.) _____ C. D.,
Commissioner

Such certificate shall thereafter in all Courts be conclusive evidence of the due execution and validity of the said deed.

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Court not to be bound by technical objections.

116. In considering any application for an order declaring any such deed fraudulent and void, and in considering any application for a certificate under the last preceding section, the Court shall not make any such order or abstain from granting any such certificate, merely because all or any of the declarations required to be made by the debtor or the creditors of the debtor under this Act are not in the prescribed form or do not contain the particulars required by this Act, if the Court shall be of opinion that any omission or irregularity in any such declaration was not wilful or material.

Indemnity to trustee under deed avoided.

117. When any deed shall be declared fraudulent and void, all acts *bonâ fide* done under it by the trustee thereof, before the service upon him or his attorney of a copy of the order declaring it void, shall be valid and effectual; and the said Court shall make all just allowances to the trustee, and further, may make order that such trustee shall be indemnified, in such manner as the Court shall provide, from and against all actions and other proceedings to be brought against him for or in relation to any act or omission in relation to his trusteeship: Provided that it shall not be lawful for the trustee of such deed to realise, make sale, or otherwise dispose of any portion of the debtor's property, except property of a perishable nature, assigned by such deed, within the period of ten days from the execution thereof by the debtor; but such deed shall, within such period, be deemed to have the effect only of protecting the estate so assigned for the said period of ten days for the benefit of the creditors of such debtor.

Deed *primâ facie* evidence of signature and attestation.

118. Every such deed, which shall purport to be executed by the debtor and trustee respectively, and to be attested as hereinbefore provided, shall be *primâ facie* evidence of such execution and attestation respectively; and every declaration attached to, or relating to such deed, shall be *primâ facie* evidence of the making thereof and of the truth of the matters therein declared to; and no such deed shall, except in manner hereinbefore provided, be liable to be impeached or disturbed either at law or in equity.

Deed to operate as release and to bind non-assenting creditors.

119. Every such deed, until the same shall be set aside, as herein provided, shall have the effect of releasing the debtor from all his debts and liabilities up to the date of the execution thereof by him, and shall be binding and effectual in all respects upon the creditors of such debtor who shall not have signed the deed, or assented thereto in writing, as if they had duly signed the same, and shall vest in the trustee therein named all the property of the debtor having executed such deed (except such necessaries as aforesaid), upon the trusts and for the purposes in and by such deed declared; and such trustee may recover the property and debts in his own name, as trustee for the estate of the debtor, in like manner as a trustee under a provisional order with respect to property or debts of a debtor.

120. From

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120. From and after the execution of every such deed by the debtor and the trustee thereof, as hereinbefore provided, all parties to such deed, and all persons bound thereby, shall, in all matters relating to the property, estate, and effects conveyed and assigned by such deed, or belonging to or vested in the debtor prior to the execution of such deed, be subject to the jurisdiction of the Court of Insolvency, and shall, except where the contrary shall be declared or provided for by this Act or the deed respectively, have the benefit and be liable to all the provisions of this Act, in the same or like manner as if the debtor had been adjudged insolvent and the creditors had proved, and the trustee had been appointed trustee under such insolvency; and the existing or future trustee of any such deed, and the creditors under the same shall, as between themselves respectively, and as between themselves and the debtor, and against third persons, have the same powers, rights, and remedies, with respect to the debtor and the estate and effects aforesaid, as are possessed or may be used or exercised by a trustee in insolvency, or creditors with respect to an insolvent, or his acts and property in insolvency.

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Application of law of insolvency.

121. The creditors of every such debtor shall have the same rights respectively as to set-off, mutual credit, lien, and priority, and joint and separate assets shall be distributed, as in insolvency, and no creditor shall be prejudiced or affected by being a party to any such deed as aforesaid, or by the same being obligatory upon him as to his right or remedy against any person other than such debtor; and every person who would be entitled to prove in insolvency shall be deemed a creditor within the meaning of this Act; and in case there shall be any dispute as to the right of any person to rank as a creditor, or as to the amount of his debt, the Court shall have jurisdiction to settle such dispute.

Creditors to have same right of proof as in insolvency.

122. Any trustee or creditor of a debtor may, upon making affidavit that he suspects that such debtor has not fully disclosed to his trustees his estate and effects, cause the debtor to appear and be examined in the Court in the same manner as a debtor against whom a provisional order has been made may be compelled to appear and be examined.

Court may order debtor to be examined.

123. The trustee shall once in every four months, until the estate be finally wound up, file in the Court, and deliver or post to every creditor of the debtor, who shall have proved a debt amounting to Five Pounds or upwards, a printed statement of the whole estate of the debtor as then ascertained, of the property recovered, and of the property outstanding, specifying the cause of its being so outstanding, and of all receipts, and all payments made or to be made, and of the amount in the pound, if any, proposed to be divided amongst the creditors of the debtor, and the amount, if any, proposed to be retained for further contingencies, and the trustee shall forthwith cause notice of the filing of such account,

Returns to be made by trustee every four months.

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To whom dividend to be paid.

account, and of the amount in the pound (if any) proposed to be paid, to be given by advertisement in the *Government Gazette*.

124. When the trustee shall declare any dividend, the sum proposed to be divided shall, except in the case of a final dividend, be apportioned rateably amongst all the persons appearing to be creditors of the debtor who shall have assented to the deed and verified their debts in manner aforesaid, and no dividend shall be declared until fourteen days after the publication of the last advertisement as hereinbefore required.

Final notice to be given to creditors.

125. The trustee shall, one month before the final winding up of the estate of such debtor, and which shall not be earlier than nine months from the date of the deed, cause notice to be given by letter through the post office to each person appearing to be a creditor who shall not have assented to the deed or verified his debt, stating the amount of the dividend appearing due to him, and that unless he shall assent to the deed and verify his debt, and claim the said dividend within one month from the posting of such notice, he will be excluded from all benefit of the said dividend, and the trustee shall afterwards cause the money which shall be then in his hands to be divided amongst the remaining creditors: Provided that, if there shall be any creditor residing beyond the jurisdiction of the Court, such notice shall be given five months before the final winding up of the estate.

Final return on winding up the estate.

126. The trustee shall, when the estate is finally wound up, file in Court, and deliver or post to every creditor of the debtor who shall have proved a debt of Five Pounds or upwards a printed statement, containing a full and true account of the gross amount of all moneys of such debtor which shall have come to his hands, and how disposed of, and the amount in the pound paid to the creditors, and the copy of such account filed in Court shall be verified upon oath by one of the trustees of such deed. If upon such winding up any balance shall remain under the control of the trustee, such balance and all dividends remaining under the control of the trustee for one year after such winding up shall be paid by him into Court, and the same shall then be dealt with in manner herein provided.

Trustees' accounts.

127. The trustee of every such deed shall open a banking account in the name of the trust estate with some incorporated bank, and shall pay into such account all moneys received by him on account of the trust estate, and shall pay all moneys payable by such trustee on account of the trust estate by cheques drawn on such account; and no trustee shall at any time keep in his hands any sum exceeding Fifty Pounds for more than five days. Any trustee who shall contravene the provisions of this section or any of them shall on conviction forfeit and pay a penalty not exceeding One Hundred Pounds for each offence, and shall also pay to the trust estate interest computed at the rate of Twenty Pounds

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Pounds per centum per annum on all moneys of such estate which shall remain in the hands of such trustee, or at his banking account, or at the banking account of his firm, or in any way mixed with the moneys of such trustee or the moneys of his firm during the period of such misapplication.

DIVISION VIII

Arrangements by deed between debtors and creditors without insolvency.

128. No action for any dividend shall be brought against any trustee by any creditor; but if such trustee shall refuse to pay such dividend, the Court may order payment thereof with interest for the time the same shall have been withheld, and may also order the costs of the application.

Court to order payments of dividends withheld.

129. If the requisite majority of creditors as hereinbefore provided shall have executed or assented to such deed within the period aforesaid, the same, or a like majority in number and value of the creditors of such debtor, shall have power at any time thereafter to substitute and appoint any other trustee or trustees in the place of the trustee or trustees appointed by such deed in the first instance, which substitution and appointment shall be in the following form, or as near thereto as circumstances will permit—

Appointment of new trustee.

This indenture, made the day of , 18 , Between the several persons and bodies corporate whose names and seals are subscribed and set at the foot hereof, being severally creditors in their own right, or in copartnership, or being agents or attorneys of creditors of the within named (hereinafter called the said parties hereto of the first part), of the one part, and of , of the other part: Whereas the said parties hereto of the first part are desirous of appointing to be trustee (or trustees) in the place of under indenture of assignment, bearing date the day of : Now this indenture witnesseth, that in exercise of the power for this purpose by the Insolvency Act, 1880, given to the said parties hereto of the first part, and of every other power in anywise enabling them in that behalf, they, the said parties hereto of the first part, do hereby substitute and appoint the said to be a trustee (or trustees, as the case may be) in the place of the said , for the purposes of the said recited indenture. In witness, &c.

Signed, sealed, &c.

130. Such substitution and appointment shall, subject to the provisions of the Real Property Act of 1861, and Acts amending the same, without any other conveyance or assignment, vest in the trustee or trustees therein named all and singular the property, of whatever kind or wheresoever situate, of the debtor having executed such deed in like manner as is provided by this Act, and the trustee or trustees so substituted and appointed as aforesaid shall be liable, in all respects, to the provisions of this Act, in the same manner as if such last-mentioned trustee or trustees had been appointed by the original deed.

Vesting of property.

Insolvency Act.—1880.

DIVISION VIII.

Arrangements by deed between debtors and creditors without insolvency.

Sheriff or bailiff receiving notice of deed.

131. If, during the period of ten days after the debtor's execution of such deed as before-mentioned, and before such deed shall have been assented to by the requisite majority of creditors, the goods and chattels of such debtor shall be seized or sold by virtue of any execution or other process at the suit of any creditor, the sheriff or bailiff charged with the execution of such process shall, after notice of such deed, pay the same into the Court out of which such process shall have issued, and the creditor at whose suit such process shall have issued shall not be entitled to the proceeds thereof, or any part thereof, until the expiration of the said period of ten days, when, if such deed has then been assented to by the requisite majority of such creditors, the proceeds shall be paid to the trustee of such deed as part of the general estate of the debtor, or may be recovered by such trustee on summary application to the Court in which the same has been paid, and on proof of the requisites in that behalf.

Creditors entitled to inspect deed at all times.

132. Any person stating himself in writing to be a creditor of the debtor executing such deed as before mentioned, shall be entitled personally, or by his attorney or agent, at all reasonable times, on application to the trustee of such deed, or one of them, their attorney, or agent, or at the place where such deed may be lying for inspection and execution, to inspect such deed and the schedules thereof, and the assents of creditors, and all declarations by, and accounts furnished by creditors, and any books, accounts, papers, or documents relating to the estate and effects of the debtor which may be in the custody, control, possession, or power of the trustee, and may make copies of or take extracts therefrom respectively.

Debtor may be brought before Commissioner.

133. Any creditor, whether he shall have assented to such deed as aforesaid or not, may, upon making affidavit that he suspects a debtor having executed such deed as before mentioned has not fully disclosed his estate and effects, or had within two calendar months prior to the execution of such deed, made a fraudulent preference to any creditor, or that such debtor or any trustee of such deed has concealed, or is making away with, or improperly, or fraudulently dealing with the estate or effects of the debtor, or any part thereof, cause the debtor or trustee, at any time after the execution of the deed by such debtor or trustee, as the case may be, to appear and be examined in the Court: Provided that nothing in this section contained shall take away or abridge any jurisdiction or authority belonging to the Court independently hereof.

Commission payable to trustees, how fixed.

134. The trustee of any such deed may take and retain for his own use, out of the moneys which may come to his hands, as a remuneration for his care and trouble in and about the execution of the trusts thereof, such a sum of money or percentage as may be fixed by such deed in that behalf, or, if not fixed, as may be allowed by the Court: Provided that where the amount is fixed by the deed such amount shall be subject to the approval of the Court.

135. Any

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135. Any person who shall in any declaration authorised, directed, or required by this Act, wilfully and corruptly state and declare any thing which shall be false, shall be guilty of a misdemeanor, and being convicted thereof shall be liable in all respects to the penalties and punishments by law provided for wilful and corrupt perjury.

136. If any trustee, under any such deed as before mentioned, having executed such deed, shall remove, conceal, or embezzle any part of the estate of the debtor coming to his hands, possession, or control as such trustee, or by virtue of such deed, or any books of account, papers, or writings relating thereto, with intent to defraud the creditors of such debtor, every such trustee shall be deemed guilty of a misdemeanor, and be liable to imprisonment, with or without hard labor, for any term not exceeding three years.

137. In any criminal proceeding instituted by or under this Act, the production or proof of a deed purporting or expressed to be made in pursuance of Division VIII. of the Insolvency Act 1880, and proof that the same was executed by the debtor, shall be *prima facie* evidence of such deed and the contents thereof for all purposes of such criminal proceeding, notwithstanding any alleged defect in such deed or non-compliance with the provisions of this Act; and any information, summons, indictment, conviction, warrant, or other process shall be deemed to contain a sufficient description of the alleged offence, if such offence be therein described in the words of this Act, with such additions or variations as the circumstances of the case may require.

DIVISION IX.

COMPOSITION AFTER PROVISIONAL ORDER.

138. At any meeting of the creditors held after a provisional order shall have been made against the debtor, and of which meeting notice shall have been given, specifying the object of such meeting, the creditors by special resolution passed without proxies may accept any composition offered by the debtor, or assent to any general scheme of settlement of the affairs of the debtor upon such terms as may be thought expedient, and with or without a condition that the provisional order or adjudication is or both of them are to be annulled, subject, nevertheless, to the approval of the Court, to be testified by the signature of the Commissioner to the instrument containing the terms of such composition or scheme, or by embodying such terms in an order of the Court, and thereupon the following provisions shall take effect—

1. Where annulling the provisional order or adjudication or both of them is made a condition of any composition with the debtor or of any general scheme for the liquidation of his affairs, the Court, if it approves of such composition or general scheme, shall annul the provisional order or adjudication or both of them, on an application made by or on behalf of

DIVISION VIII.

Arrangements by deed between debtors and creditors without insolvency.

False declaration.

Trustee concealing or embezzling estate, &c.

Evidence in criminal proceedings.

DIVISION IX.

Composition after provisional order.

Composition after provisional order.

Adjudication may be annulled.

Insolvency Act.—1880.

DIVISION IX.

Composition after provisional order.

Composition may be enforced.

Approval of Court to be conclusive as to validity.

Mode of deciding upon such composition.

Undue influence.

Consequence of adjudication being annulled.

of any person interested, and the provisional order or adjudication or both of them, shall be annulled from and after the date of the order annulling the same.

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

III. The approval of the Court shall be conclusive as to the validity of any such composition or scheme, and it shall be binding on all the creditors so far as relates to any debts due to them and provable under the insolvency.

139. In deciding upon the offer of composition or scheme of settlement, no creditor whose debt is below Five Pounds shall be reckoned in number, but the debt due to such creditor shall be computed in value.

140. If any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition, and the debtor shall (if thereto required) make oath before some person competent to administer such oath, that there has been no such transaction between him, or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent.

141. Whenever any provisional order or adjudication shall be annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done by the trustee, or any person acting under his authority, or by the Court, shall be valid, but the property of the debtor shall in such case vest in such person as the Court may appoint, or in default of any such appointment, revert to the debtor for all his estate or interest therein, upon such terms, and subject to such conditions, if any, as the Court may declare by order, and the trustee shall do all such acts as may be necessary for carrying into effect the provisions of this enactment. Notice of the order of the Court shall be forthwith published in the *Government Gazette*, and the production of a copy of the *Government Gazette* containing such notice shall be conclusive evidence of the fact of the provisional order or adjudication having been annulled.

DIVISION X.

Punishment of fraudulent debtors and creditors.

Punishment of fraudulent insolvents.

DIVISION X.

PUNISHMENT OF FRAUDULENT DEBTORS AND CREDITORS.

142. Any person against whom a provisional order has been made, or who shall have executed a deed of assignment under Division VIII. of this Act, shall in each of the cases following be deemed guilty

Insolvency Act.—1880.

guilty of a misdemeanor, and, on conviction thereof, shall be liable to be imprisoned for any time not exceeding two years, with or without hard labor, that is to say—

DIVISION X.

*Punishment of
fraudulent debtors
and creditors.*

- I. If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, and how and to whom and for what consideration, and when he disposed of any part thereof except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary way of his trade (if any), or laid out in the ordinary expenses of his family, unless the jury is satisfied that he had no intent to defraud :
- II. If he does not deliver up to such trustee or as he directs all such part of his property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud :
- III. If he does not deliver up to such trustee or as he directs all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud :
- IV. If after or within four months next before the making of such provisional order or deed, he conceals any part of his property to the value of Ten Pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud :
- V. If after or within four months next before the making of such provisional order or deed, he fraudulently removes any part of his property to the value of Ten Pounds or upwards :
- VI. If he makes any material omission in any statement relating to his affairs or in his account or balance-sheets, unless the jury is satisfied that he had no intent to defraud :
- VII. If, knowing or believing that a false debt has been proved by any person on his estate, he fail, for the period of a month, to inform such trustee as aforesaid thereof :
- VIII. If after making of such provisional order or deed he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :
- IX. If after the making of such provisional order or deed, or within four months next before such adjudication, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :

x. If

Insolvency Act.—1880.

DIVISION X.

*Punishment of
fraudulent debtors
and creditors.*

- x. If after or within four months next before the making of such provisional order or deed, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :
- xi. If after or within four months next before the making of provisional order or deed, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulent parting with, altering, or making any omission in any document affecting or relating to his property or affairs :
- xii. If after or at any meeting of his creditors within four months next before the making of such provisional order or deed he attempts to account for any part of his property by fictitious losses or expenses :
- xiii. If within four months next before the making of such provisional order or deed he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same :
- xiv. If within four months next before the making of such provisional order or deed, he obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had not intended to defraud :
- xv. If within four months next before the making of such provisional order or deed, he pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit, and has not paid for, unless the jury is satisfied that he had no intent to defraud :
- xvi. If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or to any proceedings under this Act.

Penalty for absconding with property.

143. If any insolvent, with intent to defraud, shall, after or within four months before the making of such provisional order or deed, quit the said province, and take with him, or attempt or make preparation for quitting the said province, and for taking with him any part of his property to the amount of Ten Pounds or upwards, which ought by law to be divided amongst his creditors, he shall be guilty of felony, punishable with imprisonment for a term not exceeding two years, with or without hard labour.

Penalty on fraudulently obtaining credit.

144. Any person shall, in each of the cases following, be deemed guilty of a misdemeanor, and, on conviction thereof, shall be liable to

Insolvency Act.—1880.

to be imprisoned for any time not exceeding one year, with or without hard labor, that is to say—

- I. If in incurring any debt or liability, he has obtained credit under false pretences, or by means of any other fraud:
- II. If he has, with intent to defraud his creditors, or any of them, made, or caused to be made, any gift, delivery, or transfer of, or any charge on his property:
- III. If he has, with intent to defraud his creditors, concealed or removed any part of his property, since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him:
- IV. If he has, within four months before the making of the provisional order, with intent to defraud his creditors, made, incurred, taken, or suffered any act, deed, payment, charge, or obligation, or judicial proceeding, which would, under the 106th section of this Act, be deemed fraudulent and void against the trustees or receiver of his estate.

DIVISION X.

Punishment of fraudulent debtors and creditors.

145. If any person being, or claiming to be, a creditor under any insolvency petition or any such deed, shall wilfully, and with intent to defraud, make any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanor, punishable with imprisonment not exceeding one year, with or without hard labor.

False claim a misdemeanor.

146. The trustee of an insolvent's estate, or any creditor, may prosecute any insolvent or other person for any offence under this division of this Act.

Prosecution of insolvent.

147. The costs of the prosecution shall be borne as the costs of prosecutions for felony are borne, and any additional expenses, not so provided for, shall, if authorised by the Court or by a meeting of creditors, be paid out of the estate, and the Court may, in special cases, direct such expenses to be paid out of the Unclaimed Dividend Fund.

Expenses of prosecution.

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

Form of information.

149. Where any person is liable under any other Act in force in the said province, or at common law, to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act, or at common law, or under this Act, so that he be not punished twice for the same offence.

Punishment under this Act cumulative.

DIVISION

Insolvency Act.—1880.

DIVISION XI.

Unclaimed dividends.

Unclaimed dividend fund.

Duty of trustee as to unclaimed dividends.

Disposal of unclaimed dividends.

Disposal of undivided balances.

Power to invest.

DIVISION XI.

UNCLAIMED DIVIDENDS.

150. The Unclaimed Dividend Fund provided for by any repealed Act shall be paid into Court to the credit of an account to be also called the Unclaimed Dividend Fund, and all securities or loans upon which any part of the same may be invested shall be transferred to some officer of the Court, and be paid into the Court to the credit of the same account, as the same are from time to time received.

151. Unclaimed dividends, and any other moneys arising from the property of the debtor and paid into Court under the 79th or 126th sections of this Act remaining in Court one year after the declaration of a final dividend, or accruing thereafter, shall be transferred to the credit of the Unclaimed Dividend Fund, and any person entitled thereto, or to any participation therein, may apply to the Court for an order for payment to him out of the said moneys of the sum claimed, and the Court may order payment thereof.

152. All dividends not claimed within six years from the declaring thereof, and also any undivided surplus of the property of any debtor, over and above the amount finally directed to be divided amongst the creditors of the debtor, subject to any deduction and payment of any fees and expenses authorised by this Act, shall be paid to the Treasurer for the public use of the said province.

153. Whenever the balance to the credit of any estate, six years after the date of the adjudication, whether a dividend has been declared or not, is less than Ten Pounds, or being more than Ten Pounds, is, nevertheless, insufficient to pay the creditors a dividend of One Penny in the Pound, such balance shall be paid to the Treasurer as aforesaid.

154. The Court may, from time to time, direct any part of the Unclaimed Dividend Fund, and of the old insolvency account, to be invested on mortgage of real estate, or in the purchase of Government securities, or lent to the trustees of the Savings Bank of South Australia, and may, in like manner, direct the sale or exchange of such Government securities, or the withdrawal of such money, or any part thereof, from the said Savings Bank, and the interest arising from such investment shall be paid to the Treasurer for the public use of the said province.

DIVISION XII.

Miscellaneous provisions.

Concealing insolvent's effects.

DIVISION XII.

MISCELLANEOUS PROVISIONS.

155. Any person who shall wilfully conceal any real or personal estate of a debtor against whom a provisional order shall have been made, or who shall have executed a deed of assignment under
Division

Insolvency Act.—1880.

Division VIII. of this Act, and who shall not, within forty-two days after the date of the provisional order or deed, discover such estate to the trustee, shall forfeit the sum of One Hundred Pounds, and double the value of the estate so concealed, to be recovered in an action at law at the suit of the trustee; and any person who shall, after such time, voluntarily discover to the trustee any part of such debtor's estate, not before come to the knowledge of the trustee, shall be allowed Five Pounds per centum thereupon, and such further reward as the trustees, with the consent of the creditors at any meeting, shall think fit to be paid out of the estate recovered on such discovery.

156. Any person who shall insert, or cause to be inserted, in the *Government Gazette*, or in any newspaper, any advertisement under this Act without authority, and knowing the same to be false in any material particular, shall be guilty of a misdemeanor.

157. If any person shall forge the signature of the Commissioner, Special Magistrate, Registrar, accountant, or trustee, or other officer of the Court, or shall forge or counterfeit the seal of the Court, or knowingly concur in using any such forged or counterfeit signature or seal for the purpose of authenticating any such proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such Commissioner, Special Magistrate, Registrar, accountant, or trustee, or other officer, or a false or counterfeit seal of the Court subscribed or attached thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Judge by whom he shall be tried, to be imprisoned for life, or for any less term, with or without hard labor, and with or without solitary confinement.

158. No proceedings under this Act shall be invalidated by any formal defect, or by any irregularity, unless the Court, or a Judge thereof, before which or whom any objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity, and that such injustice cannot be remedied by any order of such Court or Judge.

159. No title to any real or personal estate, sold by a trustee under this Act, shall be impeached by the debtor or any person claiming under him, in respect of any defect in the proceedings or otherwise in respect thereof, unless the debtor shall, within the time allowed by this Act, have commenced proceedings to dispute the validity of the provisional order, and shall have duly prosecuted the same.

160. Notice of the provisional order, and of the adjudication, shall be gazetted in the prescribed form, and the production of a copy of the *Government Gazette* containing such notice shall be conclusive

DIVISION XII.

Miscellaneous provisions.

Allowance to persons making discovery.

Inserting advertisements without authority.

Forging signature a felony.

Formal defects not to invalidate proceedings.

Titles not to be impeached.

Government Gazette to be evidence.

Insolvency Act.—1880.

DIVISION XII.

Miscellaneous provisions.

clusive evidence as against all persons and in all legal proceedings that the provisional order was duly made, or (as the case may be) that the debtor against whom the adjudication has been made has been duly adjudged insolvent, and of the date of such provisional order and of the date of such adjudication, and also conclusive evidence as against the debtor and as against all persons who were heard upon the application for the provisional order or adjudication, but not as against other persons of the facts upon which the same were respectively founded.

Certificate of appointment of trustee and receiver.

161. The Court shall from time to time, on being satisfied of the due appointment of a trustee or receiver, grant a certificate declaring the person so appointed to be trustee or receiver of the property named in the certificate, and such certificate shall be conclusive evidence of the due appointment of such trustee or receiver; and the certificate of appointment of a trustee granted by the Court shall, for all purposes of any law in force requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Preferential claim in case of apprenticeship.

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

Practitioners of Supreme Court may practice in Court of Insolvency.

163. Every practitioner of the Supreme Court shall be and may practice in the Court of Insolvency, and as to all matters in Court or in Chambers, may appear and be heard; and if any person not being such practitioner practices in the Court of Insolvency, he shall be deemed guilty of a contempt of the Court.

Solicitation for proxies and appointments.

164. When it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

165. If

Insolvency Act.—1880.

165. If a creditor accepts the office of trustee he shall not be allowed to vote on any question affecting his remuneration or conduct or security as such trustee. The vote of the trustee or receiver, or of his partner or clerk, either as a creditor or as a proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the conduct or remuneration of or security to be given by such trustee or receiver.

DIVISION XII.

Miscellaneous provisions.

Restriction on voting power.

166. Where it is in this Act provided that anything may be done by or with the sanction of creditors, at a meeting, such thing may be done by or with the sanction of an ordinary resolution of creditors.

Acts of creditors at meeting.

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

Evidence of proceedings at meeting of creditors.

168. Any insolvency petition or copy thereof, and any order or copy of an order made by the Court, any certificate or copy of a certificate made by the said Court, and any instrument or copy of an instrument, affidavit, deposition, or document made or used in the course of any proceedings had under this Act may, if any such instrument as aforesaid, or copy of an instrument, appears to be sealed with the seal of the Court, or shall purport to be signed by the Commissioner, be receivable in evidence in all legal proceedings whatever.

Evidence of proceedings under this Act.

169. Any debtor within the provisions of this Act who, in any criminal or other proceeding, is charged with the commission of any misdemeanor described in Division x. of this Act, shall be competent and compellable to give evidence for or against himself, and shall be compellable to answer any question, although such question may or shall tend to criminate him.

Debtors charged with criminal offence competent and compellable to give evidence.

170. All affidavits, affirmations, and declarations to be made or used in any matter or proceeding whatever under this Act, shall and may be sworn before any Commissioner for taking Affidavits in the Supreme Court, or before any Justice of the Peace of the said province; or, in any place in the United Kingdom, or in any place in the British Dominions out of the said province, before any Court, Judge, Justice of the Peace, or any person authorised by law to administer oaths in any Court in such place, or elsewhere, before a Magistrate, and attested by a notary, or before a British Minister,
Consul,

Before whom affidavits, affirmations, and declarations are to be sworn and made.

Insolvency Act.—1880.

DIVISION XII.

Miscellaneous provisions.

Consul, or Vice-Consul. And judicial notice shall be taken of the seal or signature of any such Court, Judge, Justice, person, Magistrate, notary, Minister, Consul, or Vice-Consul, affixed, appended, or subscribed to any writing purporting to attest the swearing or making of any such affidavit, affirmation, or declaration.

Costs may be taxed.

171. The Court may cause the bills of costs of all practitioners of the Supreme Court for any business conducted by them in any matter under the provisions of this Act, whether as between solicitor and client, or between party and party, to be taxed by the Registrar or Master of the Supreme Court, and may exercise the like jurisdiction in relation thereto in all respects as the said Supreme Court may now lawfully exercise with regard to the bills of cost of such practitioners for business conducted by them in such Court.

Creditor to proceed at his own cost until appointment of trustee.

172. Every creditor filing an insolvency petition shall, at his own cost, take and prosecute all such proceedings as shall be necessary for such purpose, until a provisional order shall be made; and the Court, on the application of such creditor, shall make order for the payment thereof out of the proceeds of the estate of the debtor, which shall first come to the hands of the trustee.

Court may in all cases award costs.

173. The Court may in all matters before it award such costs as to such Court shall seem fit and just, and in all cases in which costs shall be so awarded against any person, it shall and may be lawful for such Court to cause such costs to be recovered from such person, and in such manner as costs awarded by a rule of the Supreme Court may be recovered.

Expenses of trustee attending meeting.

174. When any Registrar or trustee, under the authority of this Act, shall attend at any place for the purpose of presiding at a meeting of creditors, or of receiving proofs, or of otherwise acting under this Act, his travelling and incidental expenses incurred in so doing, and those of any clerk or other person attending him, shall be paid out of the insolvent's estate, and the trustee or Registrar may deduct and retain to himself all such expenses out of any moneys which may come to his hands.

Protection of officers.

175. No action shall be brought against any person appointed by the Court, or his assistants, for anything done in obedience to any warrant of the said Court, unless demand of the perusal and copy of such warrant shall have been made or left at the usual place of abode of such person or his assistants, by the party intending to bring such action, or by his attorney or agent, in writing, signed by the party demanding the same, and unless the same hath been refused or neglected for six days after such demand, and if after such demand and compliance therewith, any action be brought against such person so appointed, or his assistants, without making the trustee for the time being of the insolvent's estate, if living, defendant, and if the jury, at the trial of such action on the production and proof of

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of such warrant, shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the Court by which such warrant shall have been granted, and if such action be brought against the trustee of the insolvent's estate, and the person so appointed, or his assistants, the jury shall, on proof of such warrant, give their verdict for such person so appointed, or his assistants, notwithstanding any such defect of jurisdiction; and if the verdict shall be given against the said trustee for an amount carrying costs, the plaintiff shall recover his costs against him, to be taxed so as to include such costs as the plaintiff is liable to pay the person or his assistants as aforesaid.

DIVISION XII.

Miscellaneous provisions.

176. In any such action brought against the trustee of any insolvent's estate, either alone or jointly with any person so appointed by the Court, or his assistants, for anything done in obedience to the warrant of the Court, proof by the plaintiff in such action that the defendant or defendants, or any of them, is or are the trustee or trustees of the insolvent's estate under the provisions of this Act, shall be sufficient for the purpose of making such defendant or defendants liable in the same manner and to the same extent as if the Act complained of in such action had been done or committed by such defendant or defendants.

Evidence in action against trustee.

177. Every action brought against any person for anything done in pursuance of this Act, shall be commenced within three months next after the fact committed, and the defendant in any such action may plead the general issue, and give this Act and the special matter in evidence at the trial, and that the same was done by authority of this Act; and if it shall appear so to have been done, or that such action was commenced after the time limited as aforesaid for bringing the same, the jury shall find for the defendant, and if there be a verdict for defendant, or if the plaintiff shall be nonsuited, or discontinue his action or suit, after appearance thereto, or if upon demurrer, judgment shall be given against the plaintiff, the defendant shall receive full and reasonable indemnity as to all costs, charges, and expenses incurred in and about any such action as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of cost by such officer.

Limitation of action.

General issue.

178. A corporation may prove a debt, vote, and otherwise act in respect of any insolvent's estate by an agent duly authorised under the seal of the corporation.

Corporation may act as agent.

179. A creditor may, by instrument in writing, appoint a person to represent him in all matters relating to any insolvent or his affairs in which a creditor is concerned, in pursuance of this Act, and any such representative, or any person duly authorised by power of attorney or other instrument in writing to act as the general agent or attorney of such creditor, shall, for all the purposes of this Act, stand in the same position as the creditor who appointed him.

Creditors may appoint persons to represent them.

180. If

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DIVISION XII.

Miscellaneous provisions.

Persons disobeying any rule or order.

Aliens and denizens.

180. If any person shall disobey any rule or order of the Court, the Court may commit the person so offending to gaol, there to remain without bail, or until such Court shall make order to the contrary.

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

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.