

*Amended §  
No 35 of 1945*

## CHAPTER 6. No. 6.

## BANKRUPTCY.

Ordinances  
Cap. 52—1925.  
No. 19—1931.  
„ 25—1936,  
s. 10.  
Commencement.

## AN ORDINANCE RELATING TO BANKRUPTCY.

[1st January, 1918.]

Short title.

1. This Ordinance may be cited as the Bankruptcy Ordinance.

Interpretation.

2. In this Ordinance—

“available act of bankruptcy” means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made;

“Court” means the Supreme Court exercising jurisdiction in bankruptcy under this Ordinance;

“debt provable in bankruptcy” or “provable debt” includes any debt or liability by this Ordinance made provable in bankruptcy;

“goods” includes all chattels personal;

“Marshal” includes any officer charged with the execution of a writ or other process;

“ordinary resolution” means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of the creditors and voting on the resolution;

“property” includes money, goods, things in action, land, and every description of property, whether real or personal; also obligations, easements and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined;

“ Receiver ” means the Official Receiver appointed under this Ordinance;

“ Registrar ” means Registrar of the Supreme Court;

“ rules ” includes forms;

“ resolution ” means ordinary resolution;

“ secured creditor ” means a person holding a mortgage, charge, or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor;

“ special resolution ” means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

“ trustee ” means the trustee in bankruptcy of a debtor’s estate.

## PART I.

### PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

#### *Acts of bankruptcy.*

3. (1) A debtor commits an act of bankruptcy in each of the following cases,—
- |  |  |
|--|--|
| (a) if in the Colony or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;   | Acts of bankruptcy.                            |
| (b) if in the Colony or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof;   | Assignment for benefit of creditors generally. |
| (c) if in the Colony or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other enactment be void as a fraudulent preference if he were adjudged bankrupt; | Fraudulent assignment.                         |
| (d) if with intent to defeat or delay his creditors he departs out of the Colony, or being out of the Colony remains out of the Colony, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house;                       | Fraudulent preference.                         |
| (e) if execution against him has been levied by seizure of his goods under process in any civil proceeding in the  | Absconding, etc.                               |
|  | Executions.                                    |

Supreme Court, and the goods have either been sold or held by the Marshal for twenty-one days:

Provided that when an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days;

Declaration of  
inability to  
pay.

(f) if he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;

Non-  
compliance  
with  
bankruptcy  
notice.

(g) if a creditor has obtained a final judgment or final order against him for any amount, and, execution thereof not having been stayed, has served on him in the Colony, or, by leave of the Court, elsewhere, a bankruptcy notice under this Ordinance, and he does not, within seven days after service of the notice, in case the service is effected in the Colony, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counterclaim, set off, or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained:

For the purposes of this paragraph and of section 4, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed a creditor who has obtained a final judgment or final order;

Suspension  
of payment.

(h) if the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

(2) In this Ordinance, the expression "a debtor" includes any person, whether a British subject or not, who at the time when any act of bankruptcy was done or suffered by him—

(a) was personally present in the Colony; or

(b) ordinarily resided or had a place of residence in the Colony; or

(c) was carrying on business in the Colony, personally, or by means of an agent or manager; or

(d) was a member of a firm or partnership which carried on business in the Colony.

4. A bankruptcy notice under this Ordinance shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the Court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner: Provided that a bankruptcy notice—

Bankruptcy notices.

(a) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;

(b) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but, if the debtor does not give such notice, he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

#### *Receiving order.*

5. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Ordinance called a receiving order, for the protection of the estate.

Jurisdiction to make receiving order.

6. (1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

Conditions on which creditor may petition.

(a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of the debts owing to the several petition-

ing creditors, amounts to two hundred and forty dollars ; and

(b) the debt is a liquidated sum, payable either immediately or at some certain future time; and

(c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition; and

(d) the debtor is domiciled in the Colony, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, in the Colony, or has carried on business in the Colony, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in the Colony by means of a partner or partners, or an agent or manager;

nor, where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he is prohibited from so doing by the law for the time being in force relating to deeds of arrangement.

Petition by  
secured  
creditor.

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

Proceedings  
and order on  
creditor's  
petition.

7. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

Proof of  
facts.

(2) At the hearing the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with the proof, may make a receiving order in pursuance of the petition.

(3) If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.

Court may dismiss.

(4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, or sum ordered to be paid, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order.

If act of bankruptcy is non-compliance with bankruptcy notice.

(5) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

Where debtor denies debt, proceedings may be stayed.

(6) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

If proceedings stayed.

(7) A creditor's petition shall not, after presentment, be withdrawn without the leave of the Court.

No withdrawal without leave.

8. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order.

Debtor's petition and order thereon.

(2) A debtor's petition shall not, after presentment, be withdrawn without the leave of the Court.

9. (1) On the making of a receiving order, the Receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Ordinance, no creditor

Effect of receiving order.

to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the Court and on such terms as the Court may impose.

Secured  
creditor.

(2) 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 it if this section had not been passed.

Discretionary  
powers as to  
appointment  
of interim  
receiver.

10. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition and before a receiving order is made, appoint the Receiver to be interim receiver of the property of the debtor or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

Power to stay  
proceedings.

11. (1) The Court may, at any time after the presentation of a bankruptcy petition, stay any action, execution, or other legal process against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

Service of  
order.

(2) Where the Court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the Court, by prepaid post letter to, or delivering the same at, the address for service of the plaintiff or other party prosecuting such proceeding.

Power to  
appoint  
special  
manager.

12. (1) The Receiver may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the Receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including the powers of the Receiver) as may be entrusted to him by the Receiver.

(2) The special manager shall give security and account in such manner as the Court may from time to time direct;

and shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or, in default of such resolution, as the Court shall order.

13. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and advertised in a local newspaper in the prescribed manner. Advertisement of receiving order.

*Proceedings consequent on order.*

14. (1) As soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Ordinance referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property. First and other meetings of creditors.

(2) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the First Schedule hereto shall be observed. 1st Schedule.

15. (1) Where a receiving order is made against a debtor, he shall make out and submit to the Receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Receiver may require. Debtor's statement of affairs.

(2) The statement shall be so submitted within the following times, namely:—

(a) If the order is made on the petition of the debtor, within three days from the date of the order;

(b) If the order is made on the petition of a creditor, within seven days from the date of the order;

but the Court may, in either case for special reasons, extend the time.

(3) If the debtor fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the Receiver or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or Receiver.

*Public examination of debtor.*

Public  
examination  
of debtor.

16. (1) Where the Court makes a receiving order, it shall, save as in this Ordinance provided, hold a public sitting, on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

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

(4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The Receiver shall take part in the examination of the debtor, and for the purpose thereof, if specially authorised by the Court, may employ a solicitor with or without counsel.

(6) If a trustee is appointed before the conclusion of the examination, he may take part therein.

(7) The Court may put such questions to the debtor as it may think expedient.

(8) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him,

and may thereafter, save as in this Ordinance provided, be used in evidence against him. They shall also be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

(10) Where the debtor suffers from any such mental or physical affliction or disability as, in the opinion of the Court, makes him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner, and at such place as to the Court seems expedient.

*Composition or scheme of arrangement.*

17. (1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the Receiver may fix, lodge with the Receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.

Compositions and schemes of arrangement.

(2) In such case the Receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors.

Meeting of creditors to approve.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Receiver, calculated to benefit the general body of creditors.

Amendment of terms.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed

Assent or dissent.

form, addressed to the Receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

Application  
for approval  
of Court.

(5) The debtor or the Receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

Hearing of  
application.

(6) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the Court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

Public  
examination  
of joint  
debtors.

(7) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the Receiver that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence from the Colony.

Report of  
Receiver.

(8) The Court shall, before approving the proposal, hear a report of the Receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

When Court  
must refuse  
to approve.

(9) If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required, where the debtor is adjudged bankrupt, to refuse his discharge, the Court shall refuse to approve the proposal.

*Idem.*

(10) If any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the Court shall refuse to approve the proposal, unless it provides reasonable security for payment of not less than \$1.80 in respect of every \$4.80 on all unsecured debts provable against the debtor's estate.

(11) In any other case the Court may either approve or refuse to approve the proposal.

Testifying  
approval.

(12) If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to

the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court.

(13) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

Effect of composition.

(14) A certificate of the Receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

Certificate of Receiver.

(15) The provisions of a composition or scheme under this section may be enforced by the Court on the application of any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of court.

Enforcement of provisions.

(16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the Receiver or the trustee or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. When a debtor is adjudged a bankrupt under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

Default in instalment.

(17) If, under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 26 and Part V. of this Ordinance shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or

Application of Ordinance, and meaning of terms.

arranging debtor, and an order approving the composition or scheme.

(18) Part III. of this Ordinance shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication," as in the last preceding subsection.

Payment in  
priority of  
preferred  
creditors.

(19) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

Release of  
debt by  
acceptance.

(20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Ordinance would not be released by an order of discharge if the debtor had been adjudged bankrupt.

Effect of  
composition  
or scheme.

18. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Ordinance, the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

*Adjudication of bankruptcy and appointment of trustee.*

Adjudication  
where com-  
position not  
accepted or  
approved.

19. (1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Ordinance within fourteen days after the conclusion of the examination of the debtor or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, and the date of the adjudication, shall be gazetted and advertised in a local newspaper in the prescribed manner, and the date of

the order shall, for the purposes of this Ordinance, be the date of the adjudication.

20. (1) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned. Appointment of trustee.

(2) A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty. Where person not fit to act.

(3) The person so appointed shall give security in such manner and to such amount as the creditors, by resolution, shall determine. The appointment of the trustee shall be reported to the Court, and the Court, if satisfied with the security, shall certify that his appointment has been duly made, unless the appointment is objected to on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally. Security.

(4) Notice of any such objection shall be given to the Registrar, the Receiver, and the person whose appointment is objected to, together with a statement of the nature of such objection, and the Court shall decide on its validity. Notice of objection to appointment.

(5) A certificate of the Court shall be conclusive evidence that the person therein named is duly appointed trustee, and such appointment shall take effect as from the date of the certificate. Evidence of appointment.

(6) The Receiver shall not, save as by this Ordinance provided, be trustee of the bankrupt's property. Receiver not to be trustee.

(7) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of there being negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, If trustee not appointed.

the Receiver shall report the matter to the Court, and thereupon the Court shall appoint some fit person to be trustee of the bankrupt's property.

(8) Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and, on the appointment being made and approved by the Court, the person appointed shall become trustee in the place of the person appointed by the Court.

Meeting to  
appoint  
trustee.

(9) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the Receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

Committee of  
inspection.

**21.** (1) The creditors qualified to vote may, at their first or any subsequent meeting, by resolution, appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

Qualifications  
of com-  
mittee.

(2) The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications—

(a) that of being a creditor or the holder of a general proxy or general power of attorney from a creditor: Provided that no creditor and no holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been admitted; or

(b) that of being a person to whom a creditor intends to give a general proxy or general power of attorney: Provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been admitted.

Meetings of  
committee.

(3) The committee of inspection shall meet at such times as they shall from time to time appoint, and, failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting. Quorum.

(5) Any member of the committee may resign his office by notice in writing signed by him and delivered to the trustee. Resignation.

(6) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant. Vacation of office.

(7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting. Removal.

(8) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy. Filling a vacancy.

(9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee is for the time being less than five, the creditors may increase that number so that it do not exceed five. Continuing members may act.

(10) If there be no committee of inspection, any act or thing or any direction or permission by this Ordinance authorised or required to be done or given by the committee may be done or given by the Court on the application of the trustee. If no committee, Court to act.

22. (1) Where a debtor is adjudged bankrupt, the creditors may, if they think fit, at any time after the adjudication, by a majority in number and three-fourths in value of all the creditors who have proved, resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication. Power to accept composition or scheme after adjudication.

Approval of  
Court.

(2) If the Court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.

Defaults, etc.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

*Control over person and property of debtor.*

Duties of the  
debtor as to  
discovery and  
realisation of  
property.

**23.** (1) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

To discover  
property.

(2) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the Receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the Receiver, special manager, or trustee, or as may be prescribed, or be directed by the Court by any special order or orders made in reference to any particular case or made on the occasion of any special application by the Receiver, special manager, trustee, or any creditor or person interested.

(3) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors. To aid in realisation.

(4) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Ordinance, and which is for the time being in his possession or under his control, to the Receiver or to the trustee, or to any person authorised by the Court to take possession of it, 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. Failure to perform duties.

24. (1) 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, money, and goods 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.

(a) If, after a bankruptcy notice has been issued under this Ordinance, or after the presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him; After issue of bankruptcy notice.

(b) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the Receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents, or writings which might be of use to his creditors in the course of his bankruptcy; After presentation of petition.

(c) If, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes After service of petition.

any goods in his possession above the value of twenty-four dollars, without leave of the Receiver or trustee;

Failure to attend examination.

(d) If, without good cause shown, he fails to attend any examination ordered by the Court:

Provided that no arrest upon a bankruptcy notice shall be valid and protected, unless the debtor before or at the time of his arrest shall be served with such bankruptcy notice.

Payment after arrest may be fraudulent preference.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Ordinance relating to fraudulent preferences.

Re-direction of debtor's letters.

25. Where a receiving order is made against a debtor, the Court, on the application of the Receiver or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters, telegrams, and other postal packets, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, sent, or delivered by the Postmaster General, or the officers acting under him, to the Receiver, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

Enquiry as to debtor's conduct, dealings, and property.

26. (1) The Court may, on the application of the Receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to 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, his dealings or property, and the Court may require any such person to produce any documents in his custody or power, relating to the debtor, his dealings or property.

In case of refusal.

(2) 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 any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

Examination.

(3) The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property.

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

Order to pay.

(5) If any person on examination before the Court admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the Receiver or trustee, order him to deliver to the Receiver or trustee such property, or any part thereof, at such time, and in such manner, and on such terms, as to the Court may seem just.

Order to deliver property.

(6) The Court may, if it thinks fit, order that any person who, if in the Colony, would be liable to be brought before it under this section, shall be examined in any place out of the Colony.

Examination out of the Colony.

*Discharge of bankrupt.*

27. (1) A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall, except when the Court in accordance with rules under this Ordinance otherwise directs, be heard in open Court.

Discharge of bankrupt.

(2) On the hearing of the application the Court shall take into consideration a report of the Receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property:

Powers of Court.

Provided that where the bankrupt has committed any misdemeanor under this Ordinance, or any enactment repealed by this Ordinance, or any other misdemeanor connected with his bankruptcy, or any felony connected with his bankruptcy,

When Court must refuse discharge.  
Ord. 19-1931, s. 2.

or where in any case any of the facts hereinafter mentioned are proved, the Court shall either—

- (a) refuse the discharge; or
- (b) suspend the discharge for such period as the Court thinks proper; or
- (c) suspend the discharge until a dividend of not less than fifty cents in the dollar has been paid to the creditors; or
- (d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the Receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available toward payment of his debts:

Provided that if at any time after the expiration of two years from the date of an order made under this section the bankrupt satisfies the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

Facts to be proved.

(3) The facts hereinbefore referred to are:—

(a) That the bankrupt's assets are not of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(b) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;

(c) That the bankrupt has continued to trade after knowing himself to be insolvent;

(d) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;

(e) That the bankrupt has failed satisfactorily to account for any loss of assets or for any deficiency of assets to meet his liabilities;

(f) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;

(g) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;

(h) That the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action; Ord. 19-1931,  
s. 2.

(i) That the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given an undue preference to any of his creditors;

(j) That the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to fifty cents in the dollar on the amount of his unsecured liabilities;

(k) That the bankrupt has, on any previous occasion, been adjudged bankrupt or made a composition or arrangement with his creditors;

(l) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4) With a view to removing any statutory disqualification on account of bankruptcy which is removed if the bankrupt obtains from the Court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the Court may, if it thinks fit, grant such a certificate, but a refusal to grant such a certificate shall be subject to appeal.

Certificate that bankruptcy was caused by misfortune.

(5) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to fifty cents in the dollar on When assets are 50%.

the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in the realisation might have realised, an amount equal to fifty cents in the dollar on his unsecured liabilities, and a report by the Receiver or the trustee shall be *primâ facie* evidence of the amount of such liabilities.

Report of Receiver.

(6) For the purposes of this section, the report of the Receiver shall be *primâ facie* evidence of the statements therein contained.

Notice of application for discharge.

(7) Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent, fourteen days at least before the day so appointed, to each creditor who has proved, and the Court may hear the Receiver and the trustee and may also hear any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit.

(8) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

Duties of discharged bankrupt.

(9) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Fraudulent settlements.

28. In either of the following cases, that is to say—

(a) in the case of a settlement made before and in consideration of marriage where the settlor is not, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, or

(b) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate

or interest (not being money or property of or in right of his wife),

if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

29. (1) An order of discharge shall not release the bankrupt— Effect of order of discharge.

(a) from any debt on a recognizance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against an enactment relating to any branch of the public revenue, or at the suit of any public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Governor certifies in writing his consent to his being discharged therefrom; or

(b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or

(c) from any liability under a judgment against him in an action for seduction, or under an affiliation order, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

(2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3) An order of discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein; and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge. Order is conclusive evidence.

(4) An order of discharge shall not release any person who, at the date of the receiving order, was a partner or No release of other persons.

co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Annuling  
adjudication  
and the effect  
thereof.

30. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested, by order annul the adjudication.

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Receiver, trustee, or other person acting under their authority, or by the Court, shall be valid, but the property of the debtor who was adjudged bankrupt shall 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 on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local newspaper.

Meaning of  
payment of  
debt in full.

(4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

## PART II.

### DISQUALIFICATIONS OF BANKRUPT.

Disqualifica-  
tions of  
bankrupt.

31. (1) When a debtor is adjudged a bankrupt he shall, subject to the provisions of this Ordinance, be disqualified for—

(a) being nominated to, or sitting or voting in, the Executive or Legislative Council, or on any committee thereof;

(b) being appointed or acting as a Justice of the Peace;

(c) being nominated or elected to or holding or exercising the office of Mayor, Alderman, Councillor, or Auditor of a borough, or town assessor, or member of the Board of Education, or member of any Sanitary Authority, or member of any Water Authority or Sewerage Board, or member of the Central Road Board or of a Local Road Board, or of any office, board, or public body which may hereafter be established in lieu of any of the said offices, boards, or public bodies.

(2) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when—

(a) the adjudication of bankruptcy against him is annulled; or

(b) he obtains from the Court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

(3) No disqualification arising under this section shall exceed a period of five years from the date of any discharge which may hereafter be granted under and by virtue of this Ordinance.

32. If a person is adjudged bankrupt whilst holding any of the offices enumerated in the last preceding section his office shall thereupon become vacant. Vacating of office.

### PART III.

#### ADMINISTRATION OF PROPERTY.

##### *Proof of debts.*

33. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy. Description of debts provable in bankruptcy.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice. Creditor with notice of act of bankruptcy.

What may be proved.

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

Estimate of uncertain debts.

(4) An estimate shall be made by 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.

Appeal from estimate.

(5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

If not capable of being fairly estimated.

(6) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Ordinance, be deemed to be a debt not provable in bankruptcy.

Estimation before Court.

(7) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may assess or direct the value to be assessed in such manner as it shall think fit, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

Meaning of "liability."

(8) "Liability" shall, for the purposes of this Ordinance, include—

(a) any compensation for work or labour done;

(b) 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 the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor;

(c) generally, any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of, money or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

34. Proof of a debt, if otherwise provable, shall not be rejected because it is founded in felony, unless it is shown that the creditor seeking to prove has omitted to perform some duty in connection with the prosecution of the felon.

Debts  
founded  
in felony.

35. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Ordinance and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by such debtor and available against him.

Mutual credit  
and set-off.

36. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule to this Ordinance, the rules in that Schedule shall be observed.

Rules as to  
proof of  
debts.  
2nd Schedule.

37. (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts,—

Priority of  
debts.

(a) all local rates due from the bankrupt at the date of the receiving order, and all assessed taxes, land tax, house tax, and all other taxes and sums whatsoever assessed on the bankrupt;

Rates and  
taxes.

(b) all wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding two hundred and forty dollars; such wages or salary shall retain their priority whether or not earned wholly or in part by way of commission; and

Wages or  
salary.  
Ord. 19-1931,  
s. 3.

(c) all wages of any labourer or workman not exceeding one hundred and twenty dollars, whether payable for time or piece work, in respect of services rendered to

Labourers'  
wages.

the bankrupt during two months before the date of the receiving order: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order.

Foregoing debts to rank equally *inter se*.

(2) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves, save and except the debts payable under subsection (1) (a) of this section, which shall in all cases be paid in full.

To be paid forthwith.

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith, so far as the property of the debtor is sufficient to meet them.

First charge on distress.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof: Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

Application to insolvent estates.

(5) This section shall apply in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

Application of joint and separate estate in partnership bankruptcies.

(6) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it 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.

(7) Subject to the provisions of this Ordinance, all debts proved in bankruptcy shall be paid *pari passu*.

All other debts *pari passu*.

(8) If there is any surplus after payment of the foregoing debts which shall have been proved, it shall be applied in payment of interest from the date of the receiving order at the rate of four per centum per annum on all debts proved in the bankruptcy.

Surplus.

(9) Nothing in this Ordinance shall alter the effect of section 5 of the Partnership Ordinance, or shall prejudice the provisions of the Friendly Societies Ordinance, or the provisions of any enactment relating to deeds of arrangement respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor.

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

Preferential claim in case of apprenticeship.

(2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articulated clerk to the bankrupt, or any person acting on behalf of such apprentice or articulated clerk, instead of acting under the preceding provisions of this section, transfer the contract of apprenticeship or articles of agreement to some other person.

Alternative power of trustee.

39. (1) The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods

Power for landlord to distrain for rent.

or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that, if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for six months' rent accrued due prior to the date of the order of adjudication, and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

Limit on amount of rent execution creditor must pay landlord.

(2) Where any goods of a debtor have been taken in execution, the limit on the amount of rent which the party at whose suit the execution is sued out is liable to pay to the landlord under section 14 of the Landlord and Tenant Ordinance shall, unless notice of claim for rent due has been served on the Marshal by or on behalf of the landlord before the commencement of the debtor's bankruptcy, be six months' rent, instead of one year's rent, and the rights of the landlord under the said section shall not extend to any claim for rent payable in respect of any period subsequent to the date of such notice, unless such notice was served as aforesaid before the commencement of the debtor's bankruptcy.

Liability of Marshal.

(3) Nothing in the last preceding subsection shall be construed as imposing any liability on the Marshal, or on the person at whose suit the execution was sued out, to account for any sum actually paid to the landlord by him before notice was served on him that a receiving order had been made against the debtor, but the landlord shall be liable to pay to the trustee in the bankruptcy any sum he may have received from such Marshal as aforesaid in excess of the amount which he was entitled to be paid, without prejudice, however, to the right of the landlord to prove for the amount of such excess.

"Order of adjudication."

(4) For the purposes of this section, the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a debtor whose debts do not exceed two hundred and forty dollars, or of a deceased person who dies insolvent.

Postponement of husband's and wife's claims.

40. (1) Where a married woman has been adjudged bankrupt, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted

by him to his wife for the purposes of her trade or business until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

(2) Where the husband of a married woman has been adjudged bankrupt, any money or other estate of such woman lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other estate until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied.

*Property available for payment of debts.*

41. (1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

Relation back of trustee's title.

(2) Where a receiving order is made against a judgment debtor in pursuance of section 98, the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order.

Where receiving order made in lieu of committal.

42. The property of the bankrupt divisible amongst his creditors, and in this Ordinance referred to as the property of the bankrupt, shall not comprise the following particulars:—

Description of bankrupt's property divisible amongst creditors.

(i) property held by the bankrupt on trust for any other person;

Trust property.

Tools of  
trade, etc.

(ii) the tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding ninety-six dollars in the whole;

but it shall comprise the following particulars:—

Property  
vested or  
acquired.

(a) all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and

Powers.

(b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

Reputed  
ownership.

(c) all goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: Provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

Provisions as  
to second  
bankruptcy.  
Ord. 19-1931,  
s. 4.

**43.** (1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon any such order, the trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy.

(2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the Receiver or trustee in that bankruptcy, without knowledge of the presentation of the

subsequent petition, and subject to the provisions of section 51) vest in the trustee in the subsequent bankruptcy or administration in bankruptcy as the case may be.

(3) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his decease of a petition for the administration of his estate in bankruptcy, the trustee shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication or an order for the administration of the estate in bankruptcy is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be.

*Effect of bankruptcy on antecedent and other transactions.*

44. (1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor unless he has completed the execution or attachment before the date of the receiving order and before notice of the presentation of any bankruptcy petition by or against the debtor or of the commission of any available act of bankruptcy by the debtor.

Restriction of creditor's rights under execution or attachment.

(2) For the purposes of this Ordinance, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed from the date of the order for sale, or, in the case of an equitable interest, by the appointment of a receiver.

What is meant by completion.

(3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the Marshal shall, in all cases, acquire a good title to them against the trustee in bankruptcy.

Execution not invalid because it is an act of bankruptcy.

45. (1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice

Duties of Marshal as to goods taken in execution.

is served on the Marshal that a receiving order has been made against the debtor, the Marshal shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the Receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the Receiver or trustee may sell the goods, or an adequate part thereof for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment for a sum exceeding ninety-six dollars, the goods of a debtor are sold or money is paid in order to avoid sale, the Marshal shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the Marshal has notice, the Marshal shall pay the balance to the Receiver, or, as the case may be, to the trustee, who shall be entitled to retain it as against the execution creditor.

Avoidance  
of certain  
settlements.

46. (1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of such settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the 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 the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

Covenants in  
marriage  
settlements to  
settle after-  
acquired  
property.

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband or children, or for the future settlement on or for the settlor's wife or husband or children of property wherein the settlor had not at the date

of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid shall be void against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove either—

Transfers and payments under such covenants.

(a) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy; or

(b) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or

(c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor;

but, in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.

(4) "Settlement" shall, for the purposes of this section, include any conveyance or transfer of property.

"Settlement."  
Avoidance of general assignments of book debts unless registered.

47. (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or

future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the Bills of Sale Ordinance with respect to the registration of bills of sale shall apply accordingly, subject to such necessary modifications as may be made by rules under that Ordinance:

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made *bonâ fide* and for value, or in any assignment of assets for the benefit of creditors generally.

"Assignments."

(2) For the purposes of this section, "assignment" includes assignment by way of security and other charges on book debts.

Avoidance of fraudulent preferences.

48. (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

Transferees from a creditor.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Receiving order in lieu of committal.

(3) Where a receiving order is made against a judgment debtor in pursuance of section 98, this section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

49. (1) Subject to the foregoing provisions of this Ordinance with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments, and preferences, nothing in this Ordinance shall invalidate in the case of a bankruptcy—

Protection of  
*bona fide*  
transactions  
without  
notice.

(a) any payment by the bankrupt to any of his creditors;

(b) any payment or delivery to the bankrupt;

(c) any conveyance or assignment by the bankrupt for valuable consideration;

(d) any contract, dealing, or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied with, namely—

(i) that the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

(ii) that the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not, at the time of payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

(2) Where any money or property of a bankrupt has, on or after the date of the receiving order but before notice thereof has been gazetted in the prescribed manner, been paid or transferred by a person having possession of it to some other person, and the payment or transfer is under the provisions of this Ordinance void as against the trustee in the bankruptcy, then, if the person by whom the payment or transfer was made proves that when it was made he had not had notice of the receiving order, any right of recovery which the trustee may have against him in respect of the money or property shall not be enforced by any legal proceedings except where and in so far as the Court is satisfied that it is not reasonably practicable for the trustee to recover in respect of the money or property or of some part thereof from the person to whom it was paid or transferred.

Recovery  
of property  
transferred  
without  
knowledge of  
receiving  
order.

Ord. 19-1931,  
s. 5.

Validity of certain payments to bankrupt and assignee.

50. A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Ordinance, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made and without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise *bonâ fide*.

Dealings with undischarged bankrupt.

51. (1) All transactions by a bankrupt with any person dealing with him *bonâ fide* and for value, in respect of property, whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Ordinance is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

Real property.

This subsection shall apply to transactions with respect to real property completed before the commencement of this Ordinance in any case where there has not been any intervention by the trustee before that date.

For the protection of bankers.

For the purposes of this subsection, the receipt of any money, security, or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

Duties of bankers.

(2) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in the bankruptcy of the existence of the account, and thereafter he shall not make any payments out of the account except under an order of the Court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee.

*Realisation of property,*

52. (1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery. Possession of property by trustee.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were the Receiver, and the Court may, on his application, enforce such acquisition or retention accordingly. Position of trustee.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt. Shares.

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee. Things in action.

(5) Subject to the provisions of this Ordinance with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee. Property acquired after adjudication.

(6) Notwithstanding anything contained in the Post Office Savings Bank Ordinance, the Postmaster General shall, on application of the trustee or Receiver, disclose what deposits of money, if any, of the debtor are remaining to his credit in the Savings Bank, and shall pay the same to the Receiver or trustee.

53. Any person acting under warrant of the Court may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor or of any other person, Seizure of property of bankrupt.

and with a view to such seizure may break open any house, building, or room of the bankrupt or the debtor, where the bankrupt or the debtor is supposed to be, or any building or receptacle of the bankrupt or the debtor where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of a bankrupt, or of a debtor against whom a receiving order has been made, 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 officer of the Court, who may execute it according to its tenor.

Appropriation of portion of pay or salary to creditors.

54. (1) Where a bankrupt is an officer of the Army or Navy or Air Force, or an officer or clerk or otherwise employed or engaged in the public service of the Colony, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the Governor, may direct. Before making any order under this subsection, the Court shall communicate with the Governor as to the amount, time, and manner of payment to the trustee, and shall obtain the written consent of the Governor to the terms of such payment.

(2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the Government, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the Court may direct.

(3) Nothing in this section shall take away or abridge any power of the Governor to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited.

Appropriation of income of property restrained from anticipation.  
Ord. 25-1936,  
s. 10.

55. Where a married woman who has been adjudged bankrupt has property the income of which is subject to a restraint on anticipation, the Court shall have power, on the application of the trustee, to order that, during such time as the Court may order, the whole or some part of such income be paid to the trustee for distribution amongst the creditors, and

in the exercise of such power the Court shall have regard to the means of subsistence available for such woman and her children.

56. (1) Until a trustee is appointed, the Receiver shall be the trustee for the purposes of this Ordinance, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

Vesting and transfer of property.

(2) On the appointment of a trustee, the property shall forthwith pass to and vest in the trustee appointed.

Vesting in trustee.

(3) The property of the bankrupt shall pass from trustee to trustee, including under that term the Receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office without any conveyance, assignment, or transfer whatever.

Passing from trustee to trustee.

(4) The certificate of appointment of a trustee shall take effect as a conveyance or assignment of the property of the bankrupt; and where any part of the property of a bankrupt consists of land, or any interest in land, the trustee may register a duplicate copy of the certificate of appointment, certified by the Registrar, and, in the case of land registered under the Real Property Ordinance, cause a note thereof to be endorsed on the Crown grant or certificate of title and the duplicate thereof.

Certificate of appointment.

57. (1) Where any part of the property of the bankrupt 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 saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee, or such extended period as may be allowed by the Court, disclaim the property: Provided that where any such property has not come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he first became aware thereof, or such extended period as may be allowed by the Court.

Disclaimer of onerous property.

Effect of disclaimer.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

Disclaimer of leases.

(3) A trustee shall not be entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed, and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the Court thinks just.

Abandonment of right of disclaimer.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has, for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

Rescission of contract.

(5) The Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

Vesting orders.

(6) The Court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it thinks

fit, make an order for the vesting of the property in, or delivery thereof to, any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person—

(a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances, and interests created therein by the bankrupt.

(7) Where, on the release, removal, resignation, or death of a trustee in bankruptcy, the Receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercisable only within twelve months after the Receiver has become trustee in the circumstances aforesaid, or has become aware of the existence of such property, whichever period may last expire.

Disclaimer by  
Receiver as  
interim  
trustee.

Proof of  
damages.

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

Powers of  
trustee to  
deal with  
property.

58. Subject to the provisions of this Ordinance, the trustee may do all or any of the following things,—

(a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;

(c) prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt;

(d) exercise any powers, the capacity to exercise which is vested in the trustee under this Ordinance, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Ordinance;

(e) deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

Powers  
exercisable  
by trustee  
with permis-  
sion of  
committee of  
inspection.

59. The trustee may, with the permission of the committee of inspection, do all or any of the following things:—

(a) carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same;

(b) bring, institute, or defend any action, suit, or other legal proceeding relating to the property of the bankrupt;

(c) employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;

(d) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a

future time subject to such stipulations as to security and otherwise as the committee think fit;

(e) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;

(f) refer any dispute to arbitration, compromise any debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms, as may be agreed on;

(g) make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;

(h) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;

(i) 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 or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

60. The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

Power to allow bankrupt to manage property.

61. The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may

Allowance to bankrupt for maintenance or services.

think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court.

Right of trustee to inspect goods pawned or held as security.

**62.** Where any goods of a debtor against whom a receiving order has been made are held by any person by way of pledge, pawn, or other security, it shall be lawful for the Receiver or trustee, after giving notice in writing of his intention to do so, to inspect the goods, and, where such notice has been given, such person as aforesaid shall not be entitled to realise his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

Limitation of trustee's powers in relation to copyright.

**63.** Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the Court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

Protection of Receiver and trustee from personal liability in certain cases.

**64.** Where the Receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the said goods, chattels, property, or other effects were not, at the date of the receiving order, the property of the debtor, the Receiver or trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the

Court is of opinion that the Receiver or trustee has been guilty of negligence in respect of the same.

*Distribution of property.*

65. (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. Declaration and distribution of dividends.

(2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date. First dividend.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months. Subsequent dividends.

(4) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt. Notice of intention to declare.

(5) When the trustee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate. Notice of dividend.

66. (1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts. Joint and separate dividends.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between

the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Provision  
for distant  
creditors,  
disputed or  
undetermined  
claims.

67. (1) In the calculation and distribution of a dividend, the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt'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, or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.

(2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Rights of  
creditor  
who has not  
proved before  
declaration  
of dividend.

68. Any creditor who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of the trustee, any dividend or dividends he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved, by reason that he has not participated therein.

Interest on  
debts.

69. (1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

(2) In dealing with the proof of the debt, the following rules shall be observed:—

(a) any account settled between the debtor and the creditor within three years preceding the date of the

receiving order may be examined, and, if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be re-opened and the whole transaction treated as one;

(b) any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate;

(c) where the debt due is secured and the security is realised after the receiving order, or the value thereof is assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

70. (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and the committee of inspection, be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice, in the prescribed manner, to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. Final dividend.

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

71. No action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend, the Court may, if it thinks fit, order him to pay it, and also to pay out of his No action for dividend.

own money interest thereon for the time that it is withheld, and the costs of the application.

Bankrupt's  
right to  
surplus.

72. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Ordinance provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

#### PART IV.

##### RECEIVER IN BANKRUPTCY.

Official  
Receiver.

73. (1) The Governor may appoint such person as he shall think fit to be Official Receiver of debtors' estates, and may remove any person so appointed from such office. Such Receiver shall be an officer of the Court in its jurisdiction in bankruptcy, and judicial notice shall be taken of any appointment by the Governor of a Receiver under this section.

(2) The Governor may appoint a fit and proper person to discharge the duties of the Receiver in case of his death, removal, or absence.

(3) Such acting Receiver shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities, of the Receiver, and all the estates, rights, and powers vested in the Receiver shall, during his tenure of office and without any conveyance or transfer, vest in such acting Receiver.

Status of  
Receiver.

74. (1) The duties of the Receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

(2) The Receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Ordinance, administer oaths.

(3) All provisions in this or any other Ordinance referring to the trustee in a bankruptcy shall, unless the context otherwise requires, or the Ordinance otherwise provides, include the Receiver when acting as trustee.

(4) The trustee shall supply the Receiver with such information, and give him such access to and facilities for

inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the Receiver to perform his duties under this Ordinance.

75. As regards the debtor, it shall be the duty of the Receiver—

Duties of Receiver as to the debtor's conduct.

(a) to investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a felony or misdemeanor under this Ordinance or any enactment repealed by this Ordinance, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge;

(b) to make such other reports concerning the conduct of the debtor as the Court may direct;

(c) to take such part as may be directed by the Court in the public examination of the debtor;

(d) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Court may direct or as may be required by the Attorney General.

76. (1) As regards the estate of the debtor, it shall be the duty of the Receiver—

Duties of Receiver as to debtor's estate.

(a) pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;

(b) to authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;

(c) to summon and preside at the first meeting of creditors;

(d) to issue forms of proxy for use at the meetings of creditors;

(e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;

(f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;

(g) to act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as an interim receiver or manager, the Receiver shall have the same powers as if he were a receiver and manager appointed by the Court, but he shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Court otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods: Provided that when the debtor cannot himself prepare a proper statement of affairs, the Receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) The Receiver shall account to the Court and pay over all moneys and deal with all securities in such manner as the Court may from time to time direct.

## PART V.

### TRUSTEES IN BANKRUPTCY.

#### *Official name.*

Official name  
of trustee.

77. The official name of a trustee in bankruptcy shall be "the trustee of the property of C. D., a bankrupt," (inserting the name of the bankrupt), and by that name the trustee may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

#### *Appointment.*

Power to  
appoint joint  
or successive  
trustees.

78. (1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons

are in this Ordinance included under the term "trustee," and shall be joint tenants of the property of the bankrupt.

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being approved of by the Court.

79. (1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment. Proceedings on vacancy in office of trustee.

(2) The Receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the Receiver shall report the matter to the Court, and the Court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee in the place of the person so appointed by the Court as in the case of a first appointment.

(4) During any vacancy in the office of trustee the Receiver shall act as trustee.

#### *Control over trustee.*

80. (1) Subject to the provisions of this Ordinance, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection. Discretionary powers of trustee and control thereof.

(2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise, may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in Summoning general meetings.

value of the creditors (including himself), at any time to request the trustee or Receiver to call a meeting of the creditors, and the trustee or Receiver shall call such meeting accordingly within fourteen days: Provided that the person at whose instance the meeting is summoned shall deposit with the trustee or Receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the Court so direct.

Application  
for directions.

(3) The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to the provisions of this Ordinance, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to  
Court  
against  
trustee.

81. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of  
Court over  
trustees.

82. (1) The Court shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties and duly observing all the requirements imposed on him by Ordinance, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and make such order as it shall think fit.

(2) The Court may at any time require any trustee to answer any enquiry made by the Court in relation to any bankruptcy in which the trustee is engaged, and may, if the Court thinks fit, require the trustee or any other person to appear before the Court and be examined on oath concerning the bankruptcy.

(3) The Court may also direct investigation to be made of the books and vouchers of the trustee.

*Remuneration and costs.*

83. (1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

Remuneration of trustee.

(2) If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Court that the remuneration is unnecessarily large, the Court shall fix the amount of the remuneration.

(3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4) Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as may be allowed on taxation.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever, beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt or any solicitor or other person that may be employed about a bankruptcy.

84. (1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by Ordinance or rules to be performed by himself.

Allowance and taxation of costs.

(2) Where the trustee is a solicitor, he may contract that the remuneration for his services as trustee shall include all professional services.

(3) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The prescribed officer shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

(4) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the prescribed officer for taxation, and if he fails to do so within ten days after the receipt of the request, or such further time as the Court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

*Receipts, payments, accounts, audit.*

Trustee to  
furnish list  
of creditors.

85. (1) The trustee or Receiver shall, whenever required by any creditor so to do, and on payment of the prescribed fee, furnish and transmit to such creditor, personally or by post, a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

Trustee to  
furnish  
statement of  
accounts.

(2) It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or Receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts:

Provided that the person at whose instance the accounts are furnished shall deposit with the trustee or Receiver, as the case may be, a sum sufficient to pay the costs of furnishing and

transmitting the accounts, which sum shall be repaid to him out of the estate if the creditors or the Court so direct.

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

Books to be kept by trustee.

87. (1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Registrar a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

Annual statement of proceedings.

(2) The Court shall cause the statements so transmitted to be examined and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

88. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee to his private banking account.

Trustee not to pay into private account.

89. (1) The trustee shall open an account with such bank as the creditors shall direct at their first meeting in his official name (as follows:—"A. B. trustee of the property of C. D. a bankrupt,") and all moneys received by him under the bankruptcy shall be paid to that account.

Payment of money into bank.

(2) Any interest recoverable in respect of the account shall be part of the assets of the estate.

(3) If a trustee at any time retains for more than ten days a sum exceeding one hundred and twenty dollars, or such other amount as the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount

so retained in excess at the rate of twenty per centum per annum, and shall have no claim for remuneration, and may be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

Audit of  
trustee's  
accounts.

90. (1) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his term of office, send to the Registrar, or as he directs, an account of his receipts and payments as such trustee.

(2) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Registrar shall cause the accounts so sent to be audited, and, for the purposes of the audit, the trustee shall furnish the Registrar with such vouchers and information as he may require, and the Registrar may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When any such account has been audited, one copy thereof shall be filed and kept by the Registrar, and the other shall be kept by the trustee or such other person as the Registrar may direct, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

*Vacation of office by trustee.*

Release of  
trustee.

91. (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Court, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly.

(2) Where the release of a trustee is withheld, the Court may, on the application of any creditor or person interested,

make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3) An order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) The foregoing provisions of this section shall apply to the Receiver when he is, or is acting as, trustee, and when the Receiver has been released under this section, or any previous similar enactment, he shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release.

(5) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the Receiver shall be trustee.

(6) Where, on the release of a trustee, the Receiver is, or is acting as, trustee, no liability shall attach to him personally in respect of any act done or default made, or liability incurred, by any prior trustee.

92. If a receiving order is made against a trustee, he shall thereby vacate his office of trustee.

Office of trustee vacated by insolvency.

93. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinbefore provided in case of a vacancy in the office of trustee.

Removal of trustee.

(2) If the Court is of opinion—

(a) that a trustee appointed by the creditors is guilty of misconduct or fails to perform his duties under this Ordinance, or

(b) that his trusteeship is being needlessly protracted without any probable advantage to the creditors, or

(c) that he is, by reason of insanity or continued sickness or absence, incapable of performing his duties, or

(d) that his connection with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interests of the creditors generally, or

(e) where in any other matter he has been removed from office on the ground of misconduct,

the Court may, having due regard to the opinion of the creditors as expressed at a meeting summoned for that purpose, remove him from office.

## PART VI.

### JURISDICTION, PROCEDURE, AND POWERS OF COURT.

#### *Jurisdiction.*

Jurisdiction  
of the Court.

**94.** The Supreme Court shall have and exercise an exclusive jurisdiction within the Colony in respect of bankrupts and matters of bankruptcy; and such jurisdiction shall be exercised under and subject to the provisions of this Ordinance and of the rules.

Bankruptcy  
matters, how  
entitled.

**95.** Subject to the rules, all bankruptcy matters shall be entitled "In bankruptcy."

Jurisdiction  
in Chambers  
and during  
vacation.

**96.** (1) The Court may exercise the whole or any part of its jurisdiction during the vacation.

(2) Subject to the provisions of this Ordinance and to the rules, any Judge of the Court may exercise in Chambers the whole or any part of his jurisdiction.

General  
powers of  
Court.

**97.** (1) Subject to the provisions of this Ordinance, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy 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 case.

(2) If in any proceeding in bankruptcy there arises any question of fact which either of the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may, if it thinks fit, direct the trial to be had with a jury, and the trial may be had accordingly, in the same manner as if it were the trial of an issue of fact in an action.

(3) Where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Court or by the Receiver under any power conferred by this Ordinance or any enactment repealed by this Ordinance, the Court may, on the application of the Receiver or of any person interested, order such defaulting trustee, debtor, or person to comply with the order or direction so given; and the Court may also, if it thinks fit, upon any such application, make an immediate order for the committal of such defaulting trustee, debtor, or other person: Provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

#### *Judgment debtors.*

98. Where, under the Debtors Ordinance, application is made by a judgment creditor to the Court for the committal of a judgment debtor, the Court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the provisions of this Ordinance, except Part VIII. thereof, shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

Receiving  
order on  
judgment  
summons.

#### *Appeals.*

99. (1) The Court may review, rescind, or vary any order made by it under its bankruptcy jurisdiction.

Appeals in  
bankruptcy.

(2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal in the same manner as other orders of the Supreme Court.

(3) Where by this Ordinance an appeal to the Court is given against any decision of the Receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

*Procedure.*

Discretionary  
powers of  
Court.

**100.** (1) Subject to the provisions of this Ordinance and to the rules, the costs of and incidental to any proceeding in the Court under this Ordinance shall be in the discretion of the Court: Provided that, where any issue is tried by a jury, the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the Judge before whom such issue is tried otherwise orders.

(2) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3) The Court may at any time amend any written process or proceeding under this Ordinance, upon such terms, if any, as it may think fit to impose.

(4) Where, by this Ordinance or by the rules, the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

(5) Subject to the rules, the Court may in any matter take the whole or any part of the evidence either *viva voce*, or by interrogatories, or upon affidavit, or, out of the Colony, by commission.

Consolidation  
of petitions.

**101.** Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

Power to  
change  
carriage of  
proceedings.

**102.** 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 Ordinance in the case of a petitioning creditor.

103. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Continuance of proceedings on death of debtor.

104. The Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

Power to stay proceedings.

105. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Power to present petition against one partner.

106. 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.

Power to dismiss petition against some respondents only.

107. Where a receiving order has been made on a bankruptcy petition by or against one member of a partnership, and any other bankruptcy petition by or against a member of the same partnership shall be filed, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just, and the same trustee or receiver shall, unless the Court otherwise directs, be appointed as may have been appointed in respect of the property of the first mentioned member of the partnership.

Property of partners to be vested in same trustee.

108. Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he 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, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs.

Actions by trustee and bankrupt's partners.

Actions  
on joint  
contracts.

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

Proceedings  
in partner-  
ship name.

**110.** Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Ordinance in the name of the 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, or the name of such person, to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

*Search warrants and commitments to prison.*

Execution  
of search  
warrant.

**111.** A search warrant issued by the Court for the discovery of any property of a debtor may be executed in the manner prescribed, or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

Commitment  
to prison.

**112.** Where the Court commits any person to prison, the commitment shall be to the Royal Gaol.

PART VII.

SUPPLEMENTAL PROVISIONS.

*Application of Ordinance.*

Exclusion of  
registered  
companies,  
etc.  
Cap. 52-1925,  
s. 114.

**113.** A receiving order shall not be made against any corporation or against any partnership or association or company registered under the Companies Ordinance, or any enactment repealed by that Ordinance.

Application  
of Ordinance  
in case of  
small estates.  
Cap. 52-1925,  
s. 115.

**114.** Where a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the Receiver reports to the Court, that the property of the debtor is not likely to exceed in value one thousand four hundred and forty dollars, the Court may make an order that the debtor's estate

be administered in a summary manner, and thereupon the provisions of this Ordinance shall be subject to the following modifications:—

(a) if the debtor is adjudged bankrupt, the Receiver shall be the trustee in the bankruptcy;

(b) there shall be no committee of inspection, but the Receiver may do at his discretion all things which may be done by the trustee with the permission of the committee of inspection: Provided that any person aggrieved may appeal to the Court against any act or decision of the Receiver;

(c) such other modifications may be made in the provisions of this Ordinance as may be prescribed with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Ordinance relating to the examination or discharge of the debtor:

Provided that the creditors may at any time, by special resolution, resolve that some person other than the Receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

**115.** (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the Court a petition in the prescribed form, praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.

Administration in bankruptcy of estate of person dying insolvent.

Cap. 52-1925, s. 116 (1) —(10).

(2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the Court may, in the prescribed manner, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss such petition with or without costs.

The order.

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced under any other jurisdiction of the Court for the administration of the deceased debtor's estate; but the

Proceedings for administration.

Court exercising such other jurisdiction may in such case, if satisfied that the estate is insufficient to pay its debts, in the prescribed manner, make an order for the administration of the estate of the deceased debtor under this Ordinance, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

Property to  
vest in  
Receiver.

(4) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the Receiver as trustee thereof, and he shall forthwith proceed to realise and distribute it in accordance with the provisions of this Ordinance:

Provided that the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Ordinance relating to trustees and committees of inspection shall apply to trustees and committees of inspection appointed under the power so conferred.

If no committee of inspection is appointed, the Receiver may do, without the direction or permission of the committee, such acts or things as he might have done with the permission or at the direction of the committee if a committee had been appointed.

Application  
of Ordinance.

(5) With the modifications hereinafter mentioned, all the provisions of Part III. of this Ordinance (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by rules under the next succeeding section, the provisions of the following sections of this Ordinance, namely,—

section 26 (which relates to enquiries as to the debtor's conduct, dealings, and property);

section 84 (which relates to the costs of trustees, managers, and other persons);

section 114 (which relates to the summary administration of small estates); and

sub-section (4) of section 91 so far as it relates to the effect of the release of the Receiver,

shall, so far as the same are applicable, apply in the case of an administration order under this section in like manner as to an order of adjudication under this Ordinance, and subsection (1)

of section 39 shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

(6) In the administration of the property of the deceased debtor under an order of administration, the Receiver or trustees shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in the provisions of this Ordinance relating to the priority of other debts, be payable in full out of the debtor's estate, in priority to all other debts. Priority of claims.

(7) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the Receiver or trustee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Ordinance in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed. Surplus.

(8) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the Receiver or trustee; save as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration. Effect of notice to personal representative of presentation of petition.

(9) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor; and, where a petition is so presented by such a representative, this section shall apply subject to such modifications as may be prescribed by rules made under the next succeeding section. Personal representative may present petition.

(10) Unless the context otherwise requires, "creditor" "Creditor."  
in this section means one or more creditors qualified to present a bankruptcy petition as in this Ordinance provided.

*Rules.*

Rules.  
Cap. 52-1925,  
s. 116  
(11).

**116.** Rules for carrying into effect the provisions of the preceding section may be made in the same manner and to the like effect and extent as in bankruptcy.

Power to  
make rules.

**117.** (1) The Chief Justice, with the concurrence of a Puisne Judge, may make rules for carrying into effect the objects of this Ordinance, and in particular for all or any of the following matters:—

(a) for regulating sittings of the Court and the Judges thereof in Chambers;

(b) for regulating the practice and procedure in the Court;

(c) generally, for regulating any matters relating to the practice and procedure of the Court, or to the duties of the officers thereof, or to the costs of or fees upon and percentages to be charged for or in respect of proceedings therein.

(2) Provided always, that any rules so made shall not extend the jurisdiction of the Court.

(3) No such rules shall come into operation until the same shall have been laid before the Legislative Council and gazetted for one month; but when the same shall come into operation they shall have effect as if enacted by this Ordinance and shall be judicially noticed.

*Evidence.*

*Royal Gazette*  
to be  
evidence.

**118.** (1) A copy of the *Royal Gazette* containing any notice inserted therein in pursuance of this Ordinance shall be evidence of the facts stated in the notice.

(2) The production of a copy of the *Royal Gazette* containing any notice of a receiving order, or of an order adjudging a debtor a bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Evidence of  
proceedings  
at meetings  
of creditors.

**119.** (1) A minute of proceedings at a meeting of creditors under this Ordinance, signed at the same or the next ensuing

meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

120. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the Court, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Ordinance, shall, if it appears to be sealed with the seal of the Court, or purports to be signed by any Judge thereof, or is certified as a true copy by the Registrar, be receivable in evidence in all legal proceedings whatsoever.

Evidence of proceedings in bankruptcy.

121. Subject to rules, any affidavit to be used in the Court may be sworn before any person authorised to administer oaths in the Court, or, in the case of a person who is out of the Colony, before a Magistrate or Justice or other person qualified to administer oaths in the country where he resides (he being certified to be a Magistrate or Justice, or qualified as aforesaid, by a British Minister or British Consul, or by a Notary Public).

Swearing of affidavits.

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

Death of debtor or witness.

*Registration, endorsements, etc., of receiving orders.*

123. (1) The Registrar General shall, at the request of the Receiver or the trustee of a debtor's estate, register a receiving order or administration order made under this Ordinance.

Registration of receiving orders.

(2) Every order in bankruptcy, so long as the receiving order or administration order, as the case may be, is unregis-

tered, shall be void as to any land or interest in land affected by such order as against any subsequent *bonâ fide* purchaser or mortgagee of the same land or interest in land or any part thereof respectively without notice of such order.

(3) The Registrar General shall enter in a register book to be kept by him for such purpose a reference to all receiving orders and administration orders registered as aforesaid.

Endorsement  
under Real  
Property  
Ordinance.

124. (1) Where any part of the property of a debtor consists of land or any interest in land subject to the provisions of the Real Property Ordinance, the Registrar General shall, at the request of the Receiver or trustee, and on production of an office copy of the receiving order or administration order, cause a note thereof to be endorsed on the grant or certificate of title evidencing title to such land or interest in land.

(2) Where, by virtue of this Ordinance or any rules made in pursuance thereof, the property of a debtor is vested in the Receiver or a trustee, and any part of such property consists of land or any interest in land subject to the provisions of the Real Property Ordinance, the Registrar General shall, at the request of the Receiver or trustee, and on production of an office copy of the order or orders by virtue of which the property became so vested, cause such Receiver or trustee, as the case may be, to be endorsed as proprietor of such land or interest in land on the grant or certificate of title and the duplicate thereof evidencing title to such land or interest in land.

(3) Any such Receiver or trustee shall, for the purposes of the said Ordinance, be deemed to be the registered proprietor of such land or interest in land.

Registration  
fee.

125. Upon registration of any order under either of the two last preceding sections there shall be paid to the Registrar General a fee of \$4.80.

#### Miscellaneous.

Computation  
of time.

126. (1) Where, by this Ordinance, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and

as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday or public holiday or day on which the offices of the Court are closed, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

(2) Where, by this Ordinance, any act or proceeding is directed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

127. All notices and other documents, for the service of which no special mode is directed, may be sent by prepaid post letter or left at the last known address or place of business of the person to be served therewith.

Service of notices.

128. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court.

Formal defects not to invalidate proceedings.

(2) No defect or irregularity in the appointment or election of a trustee or member of a committee of inspection shall vitiate any act done by him in good faith.

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

Exemption of deeds from stamp duty.

(2) For the purposes of this section, "bankruptcy" includes any proceedings before or after adjudication, whether adjudication is made or not, and "bankrupt" includes any debtor proceeded against under this Ordinance.

Acts of corporations, partners, and insane persons.

**130.** For all or any of the purposes of this Ordinance, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a person of unsound mind may act by his committee.

Construction of Ordinances and instruments mentioning repealed Bankruptcy Ordinances.

**131.** Where, by any Ordinance or instrument, reference is made to any Ordinance repealed by this Ordinance, that Ordinance or instrument shall, unless the context otherwise requires, be construed and have effect as if this Ordinance or the corresponding provision (if any) of this Ordinance were therein referred to.

Certain provisions to bind the Crown.

**132.** Save as provided in this Ordinance, the provisions of this Ordinance relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

Solicitor's right of audience.

**133.** Nothing in this Ordinance shall take away or affect any right of audience that any solicitor may have had at the commencement of this Ordinance, and every solicitor of the Supreme Court shall be, and may practise as, a solicitor of and in the Court.

Removal of bankrupt from trusteeship.

**134.** Where a bankrupt is a trustee within the Trustee Ordinance, the Court may appoint a new trustee in substitution for the bankrupt (whether voluntarily resigning or not), if it appears to the Court expedient so to do, and all provisions of that Ordinance, and of any other Ordinance relative thereto, shall have effect accordingly.

Unclaimed funds or dividends under this and former Ordinances.

*Unclaimed funds or dividends.*

**135.** (1) Where the trustee, under any bankruptcy composition or scheme, pursuant to this Ordinance or any enactment

repealed by this Ordinance, has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay the same into Court. The Court shall cause him to be furnished with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2) (a) Where any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under any enactment repealed by this Ordinance, or any petition, resolution, deed, or other proceeding under or in pursuance of any such enactment, have remained or remain unclaimed or undistributed for six months after they became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay the same into Court. The Court shall cause such trustee or other person to be furnished with a receipt of the money so paid, which shall be an effectual discharge in respect thereof.

(b) The Court may at any time order any such trustee or other person to submit to it an account verified by affidavit of the sums received and paid by him under or in pursuance of any such petition, resolution, deed, or other proceeding as aforesaid, and may direct and enforce an audit of the account.

(3) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(4) Any person claiming to be entitled to any moneys paid into Court pursuant to this section may apply to the Court for payment to him of the same, and the Court, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due.

## PART VIII.

## BANKRUPTCY OFFENCES.

Fraudulent  
debtors.  
Ord. 19-1931,  
s. 6.

**136.** (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made under this Ordinance shall, in each of the cases following, be guilty of a misdemeanor:—

Non-  
discovery of  
property.

(a) if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless he proves that he had no intent to defraud;

Non-delivery  
of property.

(b) if he does not deliver up to the trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud;

Non-delivery  
of books, etc.

(c) if he does not deliver up to the 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 he proves that he had no intent to defraud;

Concealment  
of property.

(d) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals any part of his property to the value of forty-eight dollars or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud;

Removal of  
property.

(e) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently removes any part of his property of the value of forty-eight dollars or upwards;

Omission in  
statement  
of affairs.

(f) if he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud;

Not informing  
trustee of  
false claim.

(g) if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof;

(h) if, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

Preventing  
production  
of books, etc.

(i) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, 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 he proves that he had no intent to conceal the state of his affairs or to defeat the law;

Destruction,  
etc., of  
books.

(j) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, 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 he proves that he had no intent to conceal the state of his affairs or to defeat the law;

False entries  
in books, etc.

(k) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulently parting with, altering, or making any omission in, any document affecting or relating to his property or affairs;

Parting with  
alteration,  
etc., of  
documents.

(l) if, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within twelve months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;

Accounting  
for property  
by fictitious  
losses, etc.

(m) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 98, before the date of the order, or after the presentation of a bankruptcy petition against him and before the making of a receiving order, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same;

Obtaining  
property on  
credit by  
fraud.

(n) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case

Obtaining  
property on  
credit on  
pretence of  
carrying on  
business.

of a receiving order made under section 98, before the date of the order, or after the presentation of a bankruptcy petition against him and before the making of a receiving order, he obtains, under the false pretence of carrying on business and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud;

Pawning  
property  
obtained on  
credit.

(o) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 98, before the date of the order, or after the presentation of a bankruptcy petition against him and before the making of a receiving order, he pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging, or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud;

Obtaining  
consent of  
creditors by  
fraud.

(p) 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 his bankruptcy.

(2) Any person guilty of a misdemeanor in the cases mentioned respectively in paragraphs (m), (n) and (o) of the last foregoing subsection shall be liable, on conviction on indictment, to imprisonment with hard labour for five years, or, on summary conviction to imprisonment for twelve months.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanor under paragraph (o) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanor, and on conviction on indictment, liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanor.

(4) For the purposes of this section, the expression "trustee" means the Receiver or trustee administering the debtor's estate for the benefit of his creditors.

**137.** Where an undischarged bankrupt—

(a) either alone or jointly with any other person obtains credit to the extent of forty-eight dollars or upwards from any person without informing that person that he is an undischarged bankrupt, or

(b) engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt,

he shall be guilty of a misdemeanor.

Obtaining credit by undischarged bankrupts.

**138.** (1) If any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made—

(a) in incurring any debt or liability, has obtained credit under false pretences or by means of any other fraud,

(b) with intent to defraud his creditors or any of them, has made or caused to be made any gift or transfer of, or charge on, his property,

(c) with intent to defraud his creditors, has 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,

he shall be guilty of a misdemeanor.

Frauds by bankrupts, etc.  
Ord. 19-1931, s. 7.

(2) If any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, has with intent to defraud his creditors or any of them caused or connived at the levying of any execution against his property, he shall for the purposes of paragraph (b) of subsection (1) of this section be deemed to have made a transfer of or charge on his property, and shall accordingly be guilty of a misdemeanor.

Causing or conniving at levy of execution to be deemed transfer or charge.

**139.** (1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall be guilty of a misdemeanor, if, having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business—

(a) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or

Punishment of bankrupt for gambling, etc.

increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or

(b) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or

(c) on being required by the Receiver at any time, or in the course of his public examination by the Court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred:

Provided that, in determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused person at the time when he entered into the speculations shall be taken into consideration.

(2) A prosecution shall not be instituted against any person under this section except by order of the Court, nor where the receiving order in the bankruptcy is made within two years from the 1st of January, 1918.

(3) Where a receiving order is made against a person under section 98, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

Punishment  
of bankrupt  
failing to  
keep proper  
accounts.  
Ord. 19-1931,  
s. 8.

**140.** (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall be guilty of a misdemeanor, if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the receiving order, or has not preserved all books of account so kept:

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section—

(a) if his unsecured liabilities at the date of the receiving

order did not exceed, in the case of a person who has not on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors one thousand two hundred dollars, or in any other case four hundred and eighty dollars; or

(b) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) A prosecution shall not be instituted against any person under this section except by order of the Court, nor where the receiving order in the bankruptcy is made within two years from the 1st of January, 1918. Cap. 52-1925,  
s. 140 (2).

(3) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of annual stocktakings, and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified.

(4) Paragraphs (i), (j), and (k) of subsection (1) of section 136 (which relate to the destruction, mutilation, and falsification and other fraudulent dealing with books and documents) shall, in their application to such books as aforesaid, have effect as if "two years next before the presentation of the bankruptcy petition" were substituted for the time mentioned in those paragraphs as the time prior to the presentation within which the acts or omissions specified in those paragraphs constitute an offence.

(5) Where a receiving order is made against a person under section 98, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

141. If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the

presentation of a bankruptcy petition by or against him, or within six months before such presentation, quits the Colony and takes with him, or attempts or makes preparation to quit the Colony and take with him, any part of his property to the amount of ninety-six dollars or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of felony.

False claims,  
and fraudulent  
accounts.

**142.** If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account, which is untrue in any material particular, he shall be guilty of a misdemeanor.

Order  
to direct  
prosecution  
if desirable.

Ord. 19-1931,  
s. 9.

**143.** Where the Receiver or a trustee in bankruptcy reports to the Court that in his opinion a debtor who has been adjudged bankrupt or in respect of whose estate a receiving order has been made has been guilty of any offence under this Ordinance or any enactment repealed by this Ordinance, or where the Court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has been guilty of any such offence, the Court shall, if it appears to the Court that there is a reasonable probability that the debtor will be convicted and that the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for such offence.

Criminal  
liability after  
discharge or  
composition.

**144.** Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

Trial and  
punishment  
of offences.

Ord. 19-1931,  
s. 10.

**145.** (1) A person guilty of an offence declared to be a felony or misdemeanor under this Ordinance in respect of which no special penalty is imposed by this Ordinance shall be liable, on conviction on indictment, to imprisonment for two years, or, on summary conviction, to imprisonment for twelve months:

Provided that the maximum term of imprisonment which may be awarded on conviction on indictment under either section 138 or section 142 shall be one year.

(2) Summary proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof either by the Receiver or by the trustee in the bankruptcy, or, in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

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## SCHEDULES.

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### FIRST SCHEDULE.

(Section 14.)

#### Meetings of Creditors.

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The Receiver shall summon the meeting by giving not less than six clear days' notice of the time and place thereof in the *Royal Gazette*.

3. The Receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the cause of his failure, and any observations thereon which the Receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the Receiver most convenient for the majority of the creditors.

5. The Receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court, or so requested by a creditor in accordance with the provisions of this Ordinance.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

7. The Receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting, by resolution, appoint.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court, on application, is satisfied that the omission to value the security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the trustee or to the Receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum: Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, 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 thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the Receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment, or of any Commissioner of Affidavits.

17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the Receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

18. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of

proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:—

(a) For or against any specific proposal for a composition or scheme of arrangement;

(b) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as a member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection;

(c) On all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

20. A proxy shall not be used unless it is deposited with the Receiver or trustee before the meeting at which it is to be used.

21. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of the Receiver or a trustee 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 thinks 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.

22. A creditor may appoint the Receiver to act in manner prescribed as his general or special proxy.

23. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

24. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

25. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven nor more than twenty-one days.

26. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

27. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor: Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

28. The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

(Section 36.)

## SECOND SCHEDULE.

### Proof of Debts.

#### *Proof in ordinary cases.*

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the Receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Receiver or trustee may at any time call for the production of the vouchers.

Ord. 19-1931,  
s. 11.

5. The affidavit shall state whether the creditor is or is not a secured creditor, and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the Receiver or trustee for the general benefit of the creditors unless the Court on application is satisfied that the omission has arisen from inadvertence, and in that case the Court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the Court may consider to be just.

6. A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding eight per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

#### *Proof by secured creditors.*

9. If a secured creditor realises his security, he may prove for the balance due to him after deducting the net amount realised.

10. If a secured creditor surrenders his security to the Receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it,

and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (a) Where a security is so valued, the trustee may at any time redeem it on payment to the creditor of the assessed value.

(b) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction, the creditor, or the trustee on behalf of the estate, may bid or purchase.

(c) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the Court, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; and every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid, out of any money for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of rule 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than one hundred cents in the dollar, and interest as provided by this Ordinance.

*Proof in respect of distinct contracts.*

18. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole

contractor, and also as member of a firm, the circumstances that the 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 the contracts, against the properties respectively liable on the contracts.

*Periodical payments.*

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

*Interest.*

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

*Debt payable at a future time.*

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of eight per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

*Admission or rejection of proofs.*

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

25. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

27. The Receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.