CHAPTER 27
BANKRUPTCY ACT

• Act • Subsidiary Legislation •

ACT

Amended by

Act No. 10 of 1990

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CHAPTER 27
BANKRUPTCY ACT

An Act to provide for the administration of the estates of bankrupts.

[Amended by Act No. 10 of 1990.]

[31*st December*, 1887.]

Preliminary

1. Short title

This Act may be cited as the Bankruptcy Act.

2. Interpretation

In this Act—

"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 High Court having and exercising jurisdiction in bankruptcy under this Act;

"debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy;

"goods" includes all chattels personal;

"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;

"prescribed" means prescribed by the rules;

"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;

"Registrar" means the Registrar of the Supreme Court;

"resolution" means ordinary resolution;

"rules" means rules made under section 103 of this Act, and includes forms;

"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 or her 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.

3. Jurisdiction of Court

The High Court shall have and exercise exclusive jurisdiction in respect of bankrupts and matters in bankruptcy; and such jurisdiction shall be exercised under and subject to the provisions of this Act and of the rules.

PART I

Proceedings from Act of Bankruptcy to Discharge

Acts of Bankruptcy

4. Acts of bankruptcy

(1) A debtor commits an act of bankruptcy in each of the following cases—

(*a*) if in Grenada or elsewhere he or she makes a conveyance or assignment of his or her property to a trustee or trustees for the benefit of his or her creditors generally;

(*b*) if in Grenada or elsewhere he or she makes a fraudulent conveyance, gift, delivery, or transfer of his or her property or any part thereof;

(*c*) if in Grenada or elsewhere he or she makes any conveyance or transfer of his or her 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 or she were adjudged bankrupt;

(*d*) if with intent to defeat or delay his or her creditors he or she departs from Grenada, or being out of Grenada, remains out of Grenada, or departs from his or her dwelling-house, or otherwise absents himself or herself or begins to keep house;

(*e*) if execution issued against him or her has been levied by seizure and sale of his or her goods under any civil process in the Court;

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

(*g*) if a creditor has obtained a final judgement against him or her for any amount, and, execution thereon not having been stayed, has served on him or her in Grenada, or, by leave of the Court, elsewhere a bankruptcy notice under this Act requiring him or her to pay the judgement debt in accordance with the terms of the judgement, or to secure or compound for it to the satisfaction of the creditor or the Court, and he or she does not within seven days after service of the notice, in case the service is effected in Grenada, 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 or she has a counterclaim, set-off or cross demand which equals or exceeds the amount of the judgement debt, and which he or she could not set up in the action in which the judgement was obtained;

(*h*) if the debtor gives notice to any of his or her creditors that he or she has suspended or that he or she is about to suspend payment of his or her debts;

(*i*) if a creditor has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due of an amount of not less than one hundred and twenty-five dollars, and the debtor being a trader, has for the space of seven days, or, not being a trader, has for the space of three weeks succeeding the service of the summons neglected to pay the sum or to secure or compound for it.

(2) A bankruptcy notice under this Act shall be in the prescribed form, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner.

Receiving Order

5. Jurisdiction to make receiving order

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 Act called a receiving order, for the protection of the estate.

6. Conditions on which creditor may petition

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

(*a*) the debt owing by the debtor to the petitioning creditor or, if two or more creditors join in the petition, the sum total of debts owing to the petitioning creditors, amounts to one hundred and twenty-five dollars;

(*b*) the debt is a liquidated sum, payable immediately, or if unsecured, payable at some certain future time;

(*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 Grenada 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 Grenada.

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

7. Proceedings and order on creditor's petition

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

(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 or she is able to pay his or her debts or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.

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

(5) Where the debtor appears on the petition and denies that he or she is indebted to the petitioner, or that he or she is indebted to such an amount as would justify the petitioner in presenting a petition against him or her, 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 the debtor 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.

(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.

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

8. Debtor's petition and order thereon

(1) A debtor's petition shall allege that the debtor is unable to pay his or her 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 or her debts, and the Court shall thereupon make a receiving order.

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

9. Effect of receiving order

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

(2) But this section shall not affect the power of any secured creditor to realise or otherwise deal with his or her security in the same manner as he or she would have been entitled to realise or deal with it if this section had not been passed.

(3) The Court may from time to time appoint a fit person to be the receiver, but in the absence of any such appointment the Registrar shall *ex officio* be the receiver.

10. Discretionary powers as to appointment of interim receiver and stay of proceedings

(1) 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 some person to be interim receiver of the property of the debtor or of any part thereof, and direct him or her to take immediate possession thereof or of any part thereof.

(2) 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 civil 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.

11. Service of order staying proceedings

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 letter post to or delivering the same at the address for service of the plaintiff or other party prosecuting the proceeding.

12. Receiver's security and remuneration

The receiver and interim receiver, if any, shall give security and account in such manner as the Court shall 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 any such resolution, as the Court may direct.

13. Advertisement of receiving order

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 published in the *Gazette* and where possible advertised in a local newspaper in the prescribed manner.

Proceedings Consequent on Order

14. First and other meetings of creditors

(1) As soon as may be after the making of a receiving order against a debtor a general meeting of his or her creditors (in this Act 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 entertained, 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.

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

15. Debtor's statement of affairs

(1) Where a receiving order is made against a debtor he or she shall make out and submit to the receiver a statement of and in relation to his or her 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 or her creditors, the securities held by them respectively, the dates when the securities were given, and such further or other information as may be prescribed or as the receiver may require.

(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 the debtor bankrupt.

(4) Any person stating himself or herself in writing to be a creditor of the bankrupt may personally or by agent inspect this statement at all reasonable times, and take any copy thereof or extract therefrom; but any person untruthfully so stating himself or herself 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

16. Public examination of debtor

(1) Where the Court makes a receiving order it shall 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 or her 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 or her representative authorised in writing, may question the debtor concerning his or her affairs and the causes of his or her failure.

(5) The receiver shall take part in the examination of the debtor, and for the purpose thereof, if 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 or she 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 or her duty to answer all such questions as the Court may put or allow to be put to him or her. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over to and signed by the debtor and may thereafter be used in evidence against him or her. 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 or her examination is concluded; but such order shall not be made until after the day appointed for the first meeting of creditors.

Composition or Scheme of Arrangement

17. Creditors may accept and Court approve composition or arrangement

(1) The creditors may at the first meeting or any adjournment thereof, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the debtor, or a proposal for a scheme of arrangement of the debtor's affairs.

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed (by a majority in number representing three-fourths in value of all the creditors who have proved) at a subsequent meeting of the creditors, and is approved by the Court. Any creditor who has proved his or her debt may assent to or dissent from such composition or scheme by a letter addressed to the receiver in the prescribed form, and attested by a witness, so as to be received by the receiver not later than the day preceding such subsequent meeting, and such creditor shall be taken as being present and voting at such meeting.

(3) The subsequent meeting shall be summoned by the receiver by not less than seven days' notice, and shall not be held until after the public examination of the debtor is concluded. The notice shall state generally the terms of the proposal, and shall be accompanied by a report of the receiver thereon.

(4) The debtor or the receiver may after the composition or scheme 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.

(5) The Court shall, before approving a composition or scheme, hear a report of the receiver as to the terms of the composition or scheme and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(6) If the Court is of opinion that the terms of the composition or scheme are not reasonable or are not calculated to benefit the general body of creditors, or in any case in which the Court is required under this Act, where the debtor is adjudged bankrupt, to refuse his or her discharge, the Court shall, or if any such facts are proved as would under this Act justify the Court in refusing, qualifying or suspending the debtor's discharge the Court may in its discretion, refuse to approve the composition or scheme.

(7) If the Court approves the composition or scheme the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme, or by the terms being embodied in an order of the Court.

(8) 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.

(9) 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.

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

(11) 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 to the debtor, or that the approval of the Court was obtained by fraud, the Court may if it thinks fit, on application 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. Where a debtor is adjudged bankrupt under this subsection any debt provable in other respects, which has been contracted before the date of the adjudication shall be provable in the bankruptcy.

(12) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his or her business, Part V of this Act shall apply to the trustee as if he or she 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 arranging debtor, and an order approving the composition or scheme.

(13) Part III of this Act 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 subsection (12).

(14) 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.

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

Effect of composition or scheme

(16) Notwithstanding the acceptance and approval of a composition or scheme such 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 Act the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Adjudication of Bankruptcy and Appointment of Trustee

18. Adjudication of bankruptcy where composition not accepted or approved

(1) Where a receiving order is made against a debtor, 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 Act within fourteen days after the conclusion of the examination of the debtor or such further times as the Court may allow, the Court shall adjudge the debtor bankrupt, and thereupon the property of the bankrupt shall become divisible among his or her 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 published in the *Gazette* and, where possible, advertised in a local paper in the prescribed manner, and the date of the order shall for the purposes of this Act be the date of the adjudication.

19. Appointment of trustee

(1) Where a debtor is adjudged bankrupt or the creditors have resolved that he or she 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 or her appointment to the committee of inspection hereinafter mentioned.

(2) The person so appointed shall give security in such manner and to such amount as the creditors by resolution shall determine.

(3) (*a*) The appointment of a trustee shall be reported to the Court, and the Court upon being satisfied that the requisite security has been entered into by him or her shall give a certificate declaring him or her to be trustee of the bankruptcy named in the certificate, and such certificate shall be conclusive evidence of the appointment of the trustee.

(*b*) When the receiver is appointed trustee, or when the trustee is changed, a like certificate of the Court may be made declaring the person therein named to be trustee, and such certificate shall be conclusive evidence of the person therein named being trustee.

(4) The appointment of a trustee shall take effect as from the date of the certificate.

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

(6) 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.

(7) 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.

20. Committee of inspection

(1) The creditors qualified to vote may at their first or any subsequent meeting by resolution appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. The committee of inspection shall consist of not more than five nor less than three persons.

(2) 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 or she thinks necessary.

(3) 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.

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

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

(6) 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.

(7) 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 special resolution appoint another creditor or other person eligible as above to fill the vacancy.

(8) 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 does not exceed five.

(9) If there be no committee any act or thing or any direction or permission by this Act 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.

21. Power to accept composition or scheme after bankruptcy adjudication

(1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by special resolution 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.

(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 her 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.

(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

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

(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 or her creditors, and shall submit to such examination and give such information as the meeting may require.

(2) He or she shall give such inventory of his or her property, such list of his or her creditors and debtors and of the debts due to and from them respectively, submit to such examination in respect of his or her property, or his or her creditors, attend such other meetings of his or her creditors, wait at such times on the receiver or trustee, execute such powers of attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his or her property and the distribution of the proceeds amongst his or her creditors as may be reasonably required by the receiver or trustee or may be prescribed by the rules 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 or trustee or any creditor or person interested.

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

(4) If a debtor wilfully fails to perform the duties imposed on him or her by this section or to deliver up possession of any part of his or her property which is divisible amongst his or her creditors under this Act and which is for the time being in his or her

possession or under his or her control to the receiver or to the trustee or to any person authorised by the Court to take possession of it, he or she shall, in addition to any other punishment to which he or she may be subject, be guilty of contempt of Court and may be punished accordingly.

23. Arrest of debtor under certain circumstances

(1) The Court may by warrant addressed to any police officer or prescribed officer of the Court cause a debtor to be arrested and any books, papers, money and goods in his or her possession to be seized, and him or her and them to be safely kept as prescribed until such time as the Court may order under the following circumstances—

(*a*) if after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him or her, it appears to the Court that there is a probable reason for believing that he or she 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 appearance to any such petition, or of avoiding examination in respect of his or her affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him or her;

(*b*) if after presentation of a bankruptcy petition by or against him or her it appears to the Court that there is probable cause for believing that he or she is about to remove his or her 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 or she has concealed or is about to conceal or destroy any of his or her goods or any books, documents, or writings which might be of use to his or her creditors in the course of his or her bankruptcy;

(*c*) if after service of a bankruptcy petition on him or her or after a receiving order is made against him or her, he or she removes any goods in his or her possession above the value of twenty-five dollars without the leave of the receiver or trustee;

(*d*) if without good cause shown he or she 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 or her arrest shall have been served with such bankruptcy notice.

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

24. Re-direction of debtor's letters

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, postal letters 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 or her to the receiver or the trustee or otherwise as the Court directs, and the same shall be done accordingly.

25. Discovery of debtor's property

(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 her husband or any person known or suspected to have in his or her 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 or her dealings or property; and the Court may require any

such person to produce any documents in his or her custody or power relating to the debtor, his or her dealings or property.

(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 or her to be apprehended and brought up for 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 or his or her dealings or property.

(4) If any person on examination before the Court admits that he or she is indebted to the debtor the Court may, on the application of the receiver or trustee, order him or her 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.

(5) If any person on examination before the Court admits that he or she has in his or her possession any property belonging to the debtor the Court may, on the application of the receiver or trustee, order him or her 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.

Discharge of Bankrupt

26. Discharge of bankrupt

(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 be heard in open Court.

(2) On the hearing of the application the Court shall take into consideration a report of the receiver or of the trustee, if one has been appointed, as to the bankrupt's conduct and affairs, and may, subject to subsection (3), either grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time.

(3) The Court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanour under this Act or under the Civil Procedure Act, Chapter 55, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order 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 or her after-acquired property.

The facts hereinbefore referred to are that the bankrupt—

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

(*b*) has continued to trade after knowing himself or herself to be insolvent;

(*c*) 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 or her) of being able to pay it;

(*d*) has brought on his or her bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living;

(*e*) has put any of his or her creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him or her;

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

(*g*) has on any previous occasion been adjudged bankrupt or made a statutory composition or arrangement with his or her creditors;

(*h*) has been guilty of any fraud or fraudulent breach of trust.

(4) For the purposes of this section the report of the receiver or trustee shall be *prima facie* evidence of the statements therein contained.

(5) 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.

(6) The Court may, as one of the conditions referred to in this section, require the bankrupt to consent to judgement being entered against him or her by the receiver or trustee for any balance of the debts provable under the bankruptcy which is not satisfied at the date of his or her discharge; but in such case execution shall not be issued on the judgement without leave of the Court, which leave may be given on proof that the bankrupt has since his or her discharge acquired property or income available for payment of his or her debts.

(7) A discharged bankrupt shall, notwithstanding his or her discharge, give such assistance as the trustee may require in the realisation and distribution of such of his or her property as is vested in the trustee, and if he or she fails to do so he or she shall be guilty of a contempt of Court, and the Court may also if it thinks fit revoke his or her 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.

27. Fraudulent settlements

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 or her 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 a future settlement on or for the settlor's wife, husband or children of any money or property wherein he or she had not at the date of his or her marriage any estate or interest (not being money or property of or in right of his wife or her husband),

if the settlor is adjudged bankrupt or compounds or arranges with his or her 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.

28. Effect of order of discharge

(1) An order of discharge shall not release the bankrupt 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 the Government or of any person for any offence against a statute 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 or she shall not be discharged from such excepted debts unless the Governor-General

certifies in writing his or her consent to his or her being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he or she was a party, nor from any debt or liability whereof he or she has obtained forbearance by any fraud to which he or she was a party.

(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 proceeding that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he or she is released by the order, the bankrupt may plead that the cause of action occurred before his or her discharge and may give this Act and the special matter in evidence.

(4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him or her or any person who was surety or in the nature of a surety for him or her.

29. Undischarged bankrupt obtaining credit to fifty dollars guilty of offence

Where an undischarged bankrupt who has been adjudged bankrupt under this Act obtains credit to the extent of fifty dollars or upwards from any person without informing such person that he or she is an undischarged bankrupt, he or she shall be guilty of an offence.

PART II

Disqualifications of Bankrupt

30. Disqualifications of bankrupt

(1) Where a debtor is adjudged bankrupt he or she shall, subject to the provisions of this Act, be disqualified for—

(*a*) being a member of Parliament;

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

(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 or her is annulled; or

(*b*) he or she obtains from the Court his or her discharge, with a certificate to the effect that his or her bankruptcy was caused by misfortune without any misconduct on his or her part.

The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

31. Bankrupt to vacate office

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

32. Where Court may annul adjudication

(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, shall revert to the debtor for all his or her estate or interest therein, on such terms and subject to any such conditions, if any, as the Court may declare by order.

(3) Notice of the order annulling an adjudication shall be forthwith published in the *Gazette* and, where possible, published in a local newspaper.

33. Meaning of payment of debt in full

For the purposes of this Part any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sums and with such securities 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 III

Administration of Property

Proof of Debts

34. Description of debts provable in bankruptcy

(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.

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

(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 or she may become subject before his or her discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

(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.

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

(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 and liability shall for the purposes of this Act be deemed to be a debt not provable in bankruptcy.

(7) If in the opinion of the Court the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself without the intervention of a jury, 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.

(8) "Liability" shall, for the purposes of this Act, include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether 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, and generally it shall include any express or implied engagement, agreement or undertaking to pay, or

capable of resulting in the payment of money or money's worth, whether 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, or as to mode of valuation capable of being ascertained by fixed rules or as matter of opinion.

35. Mutual credit and set-off

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 Act and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from 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 or she had at the time of giving credit to the debtor notice of an act of bankruptcy committed by the debtor and available against him or her.

36. Rules as to proof of debts

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, the rules in that Schedule shall be observed.

37. Priority of debts

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

(*a*) all parochial or all other local rates, and all assessed taxes, and all other taxes and sums whatsoever due from the bankrupt to the Government under any law in force relating thereto at the date of the receiving order and having become due and payable within twelve months next before such time;

(*b*) all wages or salary of any clerk or servant in respect of services rendered to the bankrupt during three months before the date of the receiving order, not exceeding two hundred dollars; and

(*c*) all wages of any labourer or worker not exceeding twenty-five dollars, whether payable for time or piece work, in respect of services rendered to the bankrupt during one month before the date of the receiving order.

(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.

(3) 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 or her 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 a part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

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

(5) If there is any surplus after payment of the foregoing debts it shall be applied in payment of interest from the date of the receiving order at the rate of six per cent per annum on all debts proved in the bankruptcy.

(6) Nothing in this section shall alter the effect of the provisions of the Building Societies Act, Chapter 38.

38. Preferential claim in case of apprenticeship

(1) Where at the time of presentation of the bankruptcy petition any person is apprenticed or is an articled 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 indenture 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 or her 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 her or on his or her behalf, and to the time during which he or she served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

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

39. Power of landlord to distrain for rent

(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 or effects of the bankrupt for the rent due to him or her from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

(2) 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 fifty dollars, or of a deceased person who dies insolvent.

Property Available for the Payment of Debts

40. Relation back of trustee's title

The bankruptcy of a debtor, whether the same 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 her 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 act 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.

41. Description of bankrupt's property divisible amongst creditors

(1) The property of the bankrupt divisible amongst his or her creditors and in this Act referred to as the property of the bankrupt shall not comprise the following particulars—

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

(*b*) the tools, if any, of his or her trade, and the necessary wearing apparel and bedding of himself or herself, his wife or her husband and children to a value, inclusive of tools and apparel and bedding, not exceeding one hundred dollars in the whole.

(2) The property of the bankrupt shall comprise the following particulars—

(*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 or her before his or her discharge;

(*b*) the capacity to exercise and 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 or her own benefit at the commencement of his or her bankruptcy or before his or her discharge; and

(*c*) all goods being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt in his or her trade or business by the consent and permission of the true owner under such circumstances that he or she 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 or her trade or business shall not be deemed goods within the meaning of this paragraph.

Effect of Bankruptcy on Antecedent Transactions

42. Restriction of creditor's rights under execution or attachment

(1) Where a creditor has issued execution against the goods or lands of a debtor or has attached any debt due to him or her, he or she shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor unless he or she 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.

(2) For the purposes of this Act an execution against goods is completed by seizure and sale, an attachment of the debt is completed by the 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.

43. Duties of seizing officer as to goods taken in execution

(1) Where the goods of a debtor are taken in execution and, before the sale thereof, notice is served on the officer in charge of the warrant of execution that a receiving order has been made against the debtor, such officer shall on request deliver the goods to the receiver or trustee under the order, but the costs of the execution shall be a charge on the goods so delivered, and the receiver or trustee may sell the goods or any adequate part thereof for the purpose of satisfying the charge.

(2) Where the goods of a debtor are sold under an execution in respect of a judgement for a sum exceeding one hundred dollars the officer in charge of the execution shall deduct the costs of the execution from the proceeds of sale, and retain the balance for fourteen days; and if within that time notice is served on him or her of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon or on any other petition of which such officer has notice, such officer shall pay the balance to the trustee in bankruptcy, who shall be entitled to retain the same as against the execution creditor; but otherwise he or she shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him or her.

(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 such a sale shall in all cases acquire a good title to them against the trustee in bankruptcy.

44. Avoidance of voluntary settlements

(1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife, husband or children of the settlor of property which has accrued to the settlor after marriage in

right of his wife or her husband, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in 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 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 or her 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.

(2) Any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife, husband or children of any money or property wherein he or she had not at the date of his or her marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife or her husband, shall, on his or her becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.

(3) For the purposes of this section, "settlement" includes any conveyance or transfer of property.

45. Avoidance of preference in certain cases

(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 or her debts as they become due from his or her own money in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy 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.

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

46. Protection of *bona fide* transactions without notice

Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate in the case of a bankruptcy—

(*a*) any payment by the bankrupt to any of his or her 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) 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) 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 the payment, delivery, conveyance, assignment, contract, dealing or transaction notice of any available act of bankruptcy committed by the bankrupt before that time.

47. Possession of property by trustee

(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 or her property capable of manual delivery.

(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 or she were a receiver of the property appointed by the Court, and the Court may on his or her application enforce such acquisition or retention accordingly.

(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 or she had not become bankrupt.

(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.

(5) Any treasurer or other officer of any society, or any banker, attorney, or agent of a bankrupt shall pay and deliver to the trustee all money and securities in his or her possession or power as such officer, banker, attorney or agent, which he or she is not by law entitled to retain as against the bankrupt or the trustee. If he or she does not, he or she shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee.

(6) Notwithstanding anything contained in any law relating to Government Savings Banks, the Permanent Secretary (Finance) shall, on the application of the receiver or of the trustee, disclose what deposits of money, if any, of the debtor, are remaining to his or her credit in the Savings Bank, and shall pay the same to the receiver or trustee on demand.

48. Seizure of property of bankrupt

Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and, with a view to such seizure, may break open any house, building or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his or her property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him or her, the Court may, if it thinks fit, grant a search warrant to any police officer or officer of the Court, who may execute it according to its tenor.

49. Appropriation of portion of pay or salary to creditors

(1) Where a bankrupt is a public officer in receipt of emoluments, 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-General, may direct. Before making any order under this subsection the Court shall communicate with the Governor-General as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the Governor-General to the terms of such payment.

(2) Where a bankrupt is in the 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 or her in such manner as the Court may direct.

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

50. Vesting and transfer of property

(1) Until a trustee is appointed the receiver shall be the trustee for the purposes of this Act; and immediately on a debtor being adjudged bankrupt the property of the bankrupt shall vest in the trustee.

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

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

51. Disclaimer of onerous property

(1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stocks 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 or she 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 or her at any time within three months after the first appointment of a trustee disclaim the property:

Provided that where any such property shall not have come to the knowledge of the trustee within one month after such appointment he or she may disclaim such property at any time within two months after he or she first became aware thereof.

(2) The disclaimer shall operate to determine as from the date of disclaimer the rights, interest and liabilities of the bankrupt and his or her 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 or her, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his or her property and the trustee from liability, affect the rights or liabilities of any other person.

(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 by general rules; 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 and other matters arising out of the tenancy, as the Court thinks just.

(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 or her to decide whether he or she 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 or she 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 or she shall be deemed to have adopted it.

(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 or her as a debt under the bankruptcy.

(6) Subject to subsection (7) the Court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Act 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 or her, 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.

(7) 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 such person 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; and any mortgagee or underlessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property; and if there shall be 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 such lease, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt.

(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 debtor under the bankruptcy.

52. Trustee's powers to deal with property

Subject to the provisions of this Act 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 or her, 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 Act, and execute any powers of attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Act;

(*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.

53. Powers exercisable by trustee with permission of committee of inspection

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 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;

(*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 or her debts;

(*f*) refer any dispute to arbitration, compromise all debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any 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 arrangements 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 abovementioned 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.

Distribution of Property

54. Declaration and distribution of dividends

(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.

(2) The first dividend, if any, shall be cleared 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.

(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.

(4) Before declaring a dividend the trustee shall cause notice of his or her intention to be published in the *Gazette* and, where possible, in a local newspaper, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his or her debt.

(5) When the trustee has declared a dividend he or she 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.

55. Joint and separate dividends

(1) When 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 debts.

(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 incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

56. Provision for creditors residing at a distance

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 outside Grenada so distant that, in the ordinary course of communication, they have not had sufficient time to tender their proof or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined. He or she shall also make provision for any disputed proofs or claims and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he or she shall distribute as dividend all money in hand.

57. Right of creditor who has not proved his or her debt before declaration of dividend

Any creditor who has not proved his or her 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 or she may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he or she shall not be entitled to disturb the distribution of any dividend declared before his or her debt was proved by reason that he or she has not participated therein.

58. Final dividends

When the trustee has realised all the property of the bankrupt or so much thereof as can, in the joint opinion of himself or herself and of the committee of inspection, be realised without needlessly protracting the trusteeship, he or she shall declare a final dividend; but before so doing he or she shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him or her but not established to his or her satisfaction that, if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he or she will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grant him or her further time for establishing his or her 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.

59. No action for dividend

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 or her to pay it and also to pay out of his or her own money interest thereon for the time that it is withheld, and the costs of the application.

60. Power to allow bankrupt to manage property

(1) The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself or herself 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 or her creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

(2) The trustee may, from time to time, with the permission of the committee of inspection, make such allowance as he or she may think just to the bankrupt out of his or her property for the support of the bankrupt and his family, or in consideration of his or her services if he or she is engaged in winding-up his or her estate, but any such allowance may be reduced by the Court.

61. Bankrupt's right to surplus

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

PART IV

Receiver in Bankruptcy

62. Status of receiver

(1) The duties of the receiver shall have relation both to the conduct of the debtor and to the administration of his or her estate.

(2) The receiver may take declarations whenever the same are required to be taken in proceedings under this Act.

(3) All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires or this Act otherwise provides, include the receiver when acting as trustee.

(4) The trustee shall supply the receiver with such information and give him or her such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him or her such aid as may be requisite for enabling the receiver to perform his or her duties under this Act.

63. Duties of receiver as to the debtor's conduct

As regards the debtor it shall be the duty of the receiver—

(*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 an offence under this Act, or an act or default in respect of which the Court or a magistrate is empowered to commit him or her to prison under the provisions of the Civil Procedure Act, Chapter 55, or an act which would justify the Court in refusing, suspending or qualifying an order for his or her 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.

64. Duties of receiver as to the debtor's estate

(1) As regards the estate of the debtor it shall be the duty of the receiver—

(*a*) pending the appointment of a trustee, to act as interim receiver of the debtor's estate;

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

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

(*d*) to report to creditors as to any proposal the debtor may have made with respect to the mode of liquidating his or her affairs;

(*e*) 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;

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

(2) For the purpose of his or her duties as an interim receiver the receiver shall have the same powers as if he or she were a receiver appointed by the Court in its general jurisdiction, but he or she 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 or she thinks it advisable summon meetings of the persons claiming to be creditors; and he or she shall not, unless the Court otherwise orders, incur any expense beyond what is requisite for the protection of the debtor's property or the disposing of perishable goods:

Provided that when the debtor cannot himself or herself 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 monies and deal with all securities in such manner as the Court may from time to time direct.

(4) The Court shall have the same powers over a receiver as by this Act are given to a trustee.

PART V

Trustees in Bankruptcy

Remuneration of Trustee

65. Remuneration of trustee

(1) Where the creditors appoint any person to be trustee of a debtor's estate his or her 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, 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.

(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 no remuneration has been voted to the trustee he or she shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him or her in or about the proceedings of the bankruptcy as the taxing officer may allow.

(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 who 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 or she make any arrangement for giving up or give up any part of his or her remuneration either as receiver, manager or trustee to the bankrupt or any solicitor or other person who may be employed about a bankruptcy.

Costs

66. Allowance and taxation of costs

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

(2) Where the trustee is a solicitor he or she may contract that the remuneration for his or her 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 taxing officer of the Court; and no payment in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing officer shall satisfy himself or herself 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 necessary and proper.

(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 or her bill of costs or charges to the proper officer for taxation; and if he or she fails to do so within seven days after 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 or her, and thereupon any such claim shall be forfeited, as well against the trustee personally as against the estate.

Receipts, Payments, Accounts, Audit

67. Payment of money into bank

(1) The trustee shall open an account with Barclays Bank PLC in his or her official name as follows— "A.B., Trustee of the Estate of C.D. in Bankruptcy", and all monies received by him or her under the bankruptcy shall be paid to that account.

(2) Any interest receivable 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 seven days a sum exceeding one hundred and twenty-five dollars or such other amount as the Court in any particular case authorises him or her to retain, unless he or she explains the retention to the satisfaction of the Court, he or she shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall have no claim for remuneration, and may be removed from his or her office by the Court, and shall be liable to pay any expenses occasioned by reason of his or her default.

68. Trustee not to pay into private account

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

69. Audit of trustee's accounts

(1) The Court shall cause the accounts of any trustee in bankruptcy to be rendered, examined and audited as often as it shall think fit, but not less than twice in every year; and for the purpose of such examination or audit the trustee shall furnish and produce such books, accounts, vouchers and other documents and afford such information as the Court may require and direct.

(2) The Court may call the trustee to account for any misfeasance, neglect or omission which may appear in his or her accounts or otherwise, and may require him or her to make good any loss which the bankrupt's estate may have sustained by such misfeasance, neglect or omission, and may order him or her to pay any sum of money, or may make such other order to be performed by the trustee as the case may require, and on non-compliance therewith the trustee may be proceeded against as for a contempt of Court.

70. Trustee to furnish list of creditors

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

71. Books to be kept by trustee

The trustee shall keep, in manner prescribed, proper books in which he or she 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 or her agent inspect any such books.

Release of Trustee

72. Release of trustee

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

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

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

73. Effect of release of trustee

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

Official Name

74. Official name of trustee

The trustee may sue and be sued by the official name of "The Trustee A.B. of property of a bankrupt," inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself or herself and his or her successors in office, and do all other acts necessary or expedient to be done in the execution of his or her office.

Appointment and Removal

75. Power to appoint joint or successive trustees

(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 Act 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 not being approved of by the Court.

76. Office of trustee vacated by insolvency

If a receiving order is made against a trustee he or she shall thereby vacate his or her office of trustee.

77. Removal of trustee

(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 hereinafter provided in case of a vacancy in the office of trustee.

(2) If the Court is of opinion that a trustee appointed by the creditors is guilty of misconduct or fails to perform his or her duties under this Act, the Court may remove him or her from his or her office.

78. Proceedings on vacancy in office of trustee

(1) If any vacancy occurs in the office of trustee by death, resignation or otherwise, the creditors in general meeting shall fill such vacancy, and a general meeting for the purpose of filling such vacancy may be convened by the continuing trustee if there be more than one, or by the Registrar on the requisition of any creditor; and thereupon the same proceeding shall be taken as in the case of a first appointment.

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

Voting Powers of Trustee

79. Limitations of voting power of trustee

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

Control over Trustee

80. Discretionary powers of trustee and control thereof

(1) Subject to the provisions of this Act the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his or her 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.

(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 or her duty to summon meetings at such times as the creditors by resolution, either at the meeting appointing the trustee or otherwise, may direct, or whenever requested in writing to do so by one-fourth in value of the creditors.

(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 Act the trustee shall use his or her own discretion in the management of the estate and its distribution among the creditors.

81. Appeal to Court against trustee

If the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee he or she 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.

PART VI

Jurisdiction, Procedure and Powers of Court

Jurisdiction

82. Bankruptcy matters, how instituted

Subject to general rules all bankruptcy matters shall be instituted "In Bankruptcy".

83. Judge may exercise all jurisdiction in chambers

Subject to the provisions of this Act and of the rules a Judge of the Court may exercise in chambers the whole or any part of his or her jurisdiction.

84. General powers of the Court

(1) Subject to the provisions of this Act 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 desires 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 under any power conferred by this Act, the Court may in addition to and not in substitution for any other right or remedy in respect of such default on the application 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.

Appeals

85. Appeals in bankruptcy

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

(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 Court.

86. Discretionary powers of the Court

(1) Subject to the provisions of this Act and to the rules, the costs of and incidental to any proceeding in the Court under this Act 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 shall otherwise order.

(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 Act upon such terms, if any, as it may think fit to impose.

(4) Where by this Act 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 matters take the whole or any part of the evidence, either *viva voce* or by interrogatories or upon affidavit or by commission.

(6) 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 to do so, dispense with the public examination of one of such joint debtors if he or she is unavoidably prevented from attending the examination by illness or absence abroad.

87. Consolidation of petitions

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.

88. Power of Court to change carriage of proceedings

Where the petitioner does not proceed with due diligence on his or her petition the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.

89. Continuance of proceedings on death of debtor

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 or she were alive.

90. Power of Court to stay proceedings

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.

91. Power to present petition against one partner

Any creditor whose debt is sufficient to entitle him or her 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.

92. Power to dismiss petition against some respondents only

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.

93. Property of partners to be vested in same trustee

Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, and any other bankruptcy petition against or by a member of the same partnership shall be filed, 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, and the Court may give such directions for consolidating the proceedings under the petition as it thinks just.

94. Actions by trustee and bankrupt's partners

Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee to commence and prosecute any action in the name 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 or her, and he or she may show cause against it; and on his or her application the Court may, if it thinks fit, direct that he or she shall receive his or her proper share of the proceeds of the action, and if he or she does not claim any benefit therefrom he or she shall be indemnified against costs in respect thereof as the Court directs.

95. Actions on joint contracts

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.

96. Proceedings in partnership name

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 Act in the name of the firm; but in such cases 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.

97. Execution of search warrant

A search warrant issued by the Court for the discovery of any property of a debtor may be executed 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.

98. Commitment to prison

Where the Court commits any person to prison the commitment shall be to the prison at Richmond Hill.

PART VII

Small Bankruptcies

99. Summary administration in small cases

When 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 two thousand five hundred dollars, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications—

(*a*) if the debtor be adjudged bankrupt the receiver shall be the trustee in the bankruptcy;

(*b*) there shall be no committee of inspection, but the receiver may do, with the permission of the Court, all things which may be done by the trustee with the permission of the committee of inspection;

(*c*) such other modifications may be made in the provisions of this Act as may be prescribed by the rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the

provisions of this Act 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.

100. Court in summary jurisdiction may order administration instead of payment by instalments

(1) Where a judgement has been obtained in the Court in the exercise of its summary jurisdiction, and the debtor is unable to pay the amount forthwith and alleges that his or her whole indebtedness amounts to a sum not exceeding two hundred and fifty dollars inclusive of the debt for which the judgement is obtained, the Court may make an order providing for the administration of his or her estate and for the payment of his or her debts by instalments or otherwise, and either in full or to such extent as to the Court under the circumstances of the case appears practicable, and subject to any conditions as to his or her future earnings or income which the Court may think just.

(2) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed two hundred and fifty dollars, but in such case the Court may, if it thinks fit, set aside the order.

(3) Where it appears to the Registrar that property of the debtor exceeds in value fifty dollars he or she shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel and bedding of the debtor or his or her family and the tools and implements of his or her trade to the value in the aggregate of one hundred dollars shall to that extent be protected from seizure.

(4) When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to the Court except with the leave of the Court and on such terms as the Court may impose; and any magistrate's court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor; and such costs may, on application, be added to the debt notified.

(5) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he or she shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he or she has made default and to have refused or neglected to pay the same.

(6) The order shall be carried into effect in such manner as may be prescribed by the rules.

(7) Money paid into Court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed ten cents in the dollar on the total amount of the debts), and then in liquidation of debts in accordance with the order.

(8) Any creditor of the debtor, on proof of his or her debt before the Registrar, shall be entitled to be scheduled as a creditor of the debtor for the amount of his or her proof.

(9) Any creditor may in the prescribed manner object to any debt scheduled or to the manner in which payment is directed to be made by instalments.

(10) Any person who after the date of the order becomes a creditor of the debtor shall, on proof of his or her debt before the Registrar, be scheduled as a creditor of the debtor for the amount of his or her proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

(11) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the

administration, the order shall be superseded and the debtor shall be discharged from his or her debts to the scheduled creditors.

PART VIII

Supplemental Provisions

Application of Act

101. Exclusion of registered companies, etc.

A receiving order shall not be made against any corporation, or against any partnership or association or company registered under the Companies Act.

102. Administration in bankruptcy of estate of person dying insolvent

(1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor had he or she 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.

(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.

(3) An order of administration under this section shall not be made until the expiration of two months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal personal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the Court that the debtor committed an act of bankruptcy within three months prior to his or her decease.

(4) 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 Court in the exercise of such other jurisdiction may in such case, on the application of any creditor and on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court in the exercise of its bankruptcy jurisdiction; and thereupon the Court in its bankruptcy jurisdiction may in the prescribed manner make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(5) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in a receiver to be appointed by the Court at the time of making such order as trustee thereof, and he or she shall forthwith proceed to realise and distribute the same in accordance with the provisions of this Act.

(6) With the modifications hereinafter mentioned all the provisions of Part III of this Act relating to the administration of the property of a bankrupt shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(7) In the administration of the property of the deceased debtor under an order of administration the receiver 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 or her in and about the debtor's estate; and such claims shall be deemed a preferential debt under the order and be payable in full out of the debtor's estate in priority to all other debts.

(8) If on the administration of a deceased debtor's estate any surplus remains in the hands of the receiver 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 Act 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.

(9) 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 or her as between himself or herself and the receiver. 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.

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

(11) Rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

Rules

103. Power of Chief Justice to make rules

The Chief Justice may from time to time make, revoke or alter rules and forms for carrying into effect the objects of this Act, and may also prescribe a scale of fees and percentages to receivers and trustees, fees of Court and fees and costs of barristers and solicitors and otherwise for the performance of duties under the Act:

Provided that before any such rules, forms or scale of fees and costs, or any revocation or alteration thereof, shall come into force the same shall be laid before Parliament and approved, and notice thereof shall be published in the *Gazette*:

Provided also that the rules so made, revoked or altered shall not extend the jurisdiction of the Court.

Evidence

104. *Gazette* to be evidence

(1) A copy of the *Gazette* containing any notice inserted therein in pursuance of this Act is evidence of the facts stated in the notice.

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

105. Evidence of proceedings at meetings of creditors

(1) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting by a person describing himself or herself as or appearing to be chairperson 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.

106. Certificate of appointment of trustee

A certificate of the Court that a person has been appointed trustee under this Act shall be conclusive evidence of his or her appointment.

Time

107. Computation of time

(1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of 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 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 shall not be one of the days in this section specified.

(2) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, 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 shall not be one of the days in this section specified.

Notices

108. Service of notices

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

Formal Defects

109. Formal defects not to invalidate proceedings

(1) No proceedings 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.

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

Stamp Duty

110. Exemption of deeds from stamp duty

Every deed, conveyance, assignment, surrender or other assurance relating solely to freehold or leasehold property or to any mortgage, charge or other incumbrance on or any estate, right or interest in any real or personal property which is part of the estate of any bankrupt, and which after the execution of the deed, conveyance, assignment, surrender or other assurance 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, except in respect of fees under this Act.

Corporations, etc.

111. Acting of corporations, etc.

For all or any of the purposes of this Act 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 suffering from mental disorder may act by his or her legal guardian.

Rights of the Crown and Government

112. Certain provisions to bind the Crown and Government

Except as expressly provided in this Act to the contrary, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or a scheme of arrangement, and the effect of a discharge, shall bind the Crown and the Government.

Unclaimed Funds or Dividends

113. Disposal of unclaimed dividends

(1) Where the trustee under any bankruptcy, composition or scheme pursuant to this Act shall have under his or her control any unclaimed dividend which has remained unclaimed for more than six months, or where after making a final dividend such trustee shall have in his or her hands or under his or her control any unclaimed or undistributed monies arising from the property of the debtor, he or she shall forthwith pay the same into Court. The Court shall cause him or her to be furnished with a certificate of receipt of the money so paid, which shall be an effectual discharge to him or her in respect thereof.

(2) Any person claiming to be entitled to any money paid into Court pursuant to this section may apply to the Court for payment to him or her 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.

(3) If dividends paid into Court remain unclaimed six years or more after a final dividend has been made, it shall be lawful for the Court on motion of the Attorney-General to order that such dividends be paid to the Accountant-General who shall, on receiving the same, deposit them in any bank or other recognised place of deposit for public funds, there to be kept with such public funds, and he or she shall keep a separate account of the dividends so received:

Provided that before any such motion be granted for the transfer of such dividends as aforesaid the Court shall be satisfied that notice of such unclaimed dividends has been published in the *Gazette*, specifying the amounts, the names of the persons to whom the dividends were payable, and the dates when they were made payable:

Provided also that at the end of a period of twelve years from the time when such dividends were made payable the Accountant-General shall insert a similar notice in the *Gazette*, and if, after the lapse of six months from the publication of such notice, such dividends shall remain unclaimed, they shall be deemed forfeited, and shall thereupon be merged into and become part of the Consolidated Fund.

(4) On any claim to such dividends or any part thereof at any time within the period of twelve years being established to the satisfaction of the Minister of Finance he or she shall thereupon issue his or her warrant to the Accountant-General for payment to the claimant of the same.

PART IX

Punishment of Fraudulent Debtors

114. Punishment of fraudulent debtors

Any person adjudged bankrupt, and any person whose affairs are liquidated by arrangement under this Act, shall in each of the cases following be deemed guilty of an offence and liable to imprisonment for two years—

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

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

(*c*) if he or she does not deliver up to such trustee, or as he or she directs, all books, documents, papers, and writings in his or her custody or under his or her control relating to his or her property or affairs, unless the jury is satisfied that he or she had no intent to defraud;

(*d*) if after the presentation of a bankruptcy petition by or against him or her, or the commencement of the liquidation, or within four months next before such presentation or commencement, he or she conceals any part of his or her property to the value of fifty dollars or upwards or conceals any debt due to or from him or her, unless the jury is satisfied that he or she had no intent to defraud;

(*e*) if after the presentation of a bankruptcy petition by or against him or her, or the commencement of the liquidation, or within four months next before such presentation or commencement, he or she fraudulently removes any part of his or her property of the value of fifty dollars or upwards;

(*f*) if he or she makes any material omission in any statement relating to his or her affairs, unless the jury is satisfied that he or she had no intent to defraud;

(*g*) if, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he or she 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 or her, or the commencement of the liquidation, he or she prevents the production of any book, document, paper, or writing affecting or relating to his or her property or affairs, unless the jury is satisfied that he or she had no intent to conceal the state of his or her affairs or to defeat the law;

(*i*) if after the presentation of a bankruptcy petition by or against him or her, or the commencement of the liquidation, or within four months next before such presentation or commencement, he or she 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 or her property or affairs, unless the jury is satisfied that he or she had no intent to conceal the state of his or her affairs or to defeat the law;

(*j*) if after the presentation of a bankruptcy petition by or against him or her, or the commencement of the liquidation, or within four months next before such presentation or commencement, he or she makes or is privy to the making of any false entry in any book or document affecting or relating to his or her property or affairs, unless the jury is satisfied that he or she had no intent to conceal the state of his or her affairs or to defeat the law;

(*k*) if after the presentation of a bankruptcy petition by or against him or her, or the commencement of the liquidation, or within four months next before such presentation or commencement, he or she 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 or her property or affairs;

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

(*m*) if within four months next before the presentation of a bankruptcy petition by or against him or her, or the commencement of the liquidation, he or she by any false representation or other fraud has obtained any property on credit and has not paid for the same;

(*n*) if within four months next before the presentation of a bankruptcy petition by or against him or her, or the commencement of the liquidation, he, being a trader, obtains under the false pretence of carrying on business and dealing in the ordinary way of his or her trade any property on credit and has not paid for the same, unless the jury is satisfied that he or she had no intent to defraud;

(*o*) if within four months next before the presentation of a bankruptcy petition by or against him or her, or the commencement of the liquidation, he, being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his or her trade any property which he or she has obtained on credit and has not paid for, unless the jury is satisfied that he or she had no intent to defraud;

(*p*) if he or she is guilty of any false representation or other fraud for the purpose of obtaining the consent of his or her creditors or any of them to any agreement with reference to his or her affairs or his or her bankruptcy or liquidation.

115. Punishment for absconding with property

If any person who is adjudged a bankrupt or has his or her affairs liquidated by arrangement after the presentation of a bankruptcy petition by or against him or her, or the commencement of the liquidation, or within four months before such presentation or commencement, quits Grenada and takes with him or her, or attempts or makes preparation for quitting Grenada and for taking with him or her, any part of his or her property to the amount of one hundred dollars or upwards, which ought by law to be divided amongst his or her creditors, he or she shall (unless the jury is satisfied that he or she had no intent to defraud) be guilty of an offence and liable to imprisonment for two years.

116. False claim, etc., an offence

If any creditor in any bankruptcy 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 or she shall be guilty of an offence and liable to imprisonment for one year.

117. Debt incurred by fraud

Where a debtor makes any arrangement or composition with his or her creditors under the provisions of this Act he or she shall remain liable for the unpaid balance of any debt which he or she incurred or increased, or whereof before the date of the arrangement or composition he or she obtained forbearance by any fraud:

Provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his or her debt and accepting dividends.

118. Order by Court for prosecution on report of trustee

Where a trustee in bankruptcy reports to the Court that in his or her opinion a bankrupt has been guilty of any offence under this Act, 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 bankrupt has been guilty of any offence under this Act, the Court shall, if it appears to the Court that there is a reasonable probability that the bankrupt may be convicted, order the trustee to prosecute the bankrupt for such offence.

119. Form of indictment

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

120. Court may commit offender for trial

Where in the opinion of the Court there is ground to believe that the bankrupt or any other person has been guilty of any offence which is punishable under this Act or, in cases of bankruptcy, under the Civil Procedure Act, Chapter 55, the Court may commit the bankrupt or such other person for trial. And for the purpose of any such committal the Court shall have all the powers of a magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail and otherwise.

121. Liability to punishment under this Act not to affect liability under other laws

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

122. Criminal not exempt from liability by reason of discharge

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

First Schedule

BANKRUPTCY ACT

Meetings of Creditors

[Section 14.]

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 deems it expedient that the meeting be summoned for a later day.

2. The receiver shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *Gazette*, and in a local paper if practicable.

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 causes of his or her 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 in writing by one-fourth in value of the creditors.

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 or her proof, or, if he or she 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 or her shall be the chairperson at the first meeting. The chairperson at subsequent meetings shall be such person as the meeting by resolution appoints.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he or she has duly proved a debt provable in bankruptcy to be due to him or her 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 or she surrenders his or her security, state in his or her proof the particulars of his or her security, the date when it was given, and the value at which he or she assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him or her after deducting the value of his or her security. If he or she votes in respect of his or her whole debt he or she shall be deemed to have surrendered his or her 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 or her, unless he or she is willing to treat the liability to him or her 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 or her 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 or her 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 cent:

Provided that where a creditor has put a value on such security he or she may, at any time before he or she has been required to give up the security, correct the valuation by a new proof and deduct such new value from his or her debt; but in that case the addition of twenty per cent 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 or her debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairperson of a meeting shall have power to admit or reject a proof for the purpose of voting, but his or her decision shall be subject to appeal to the Court. If he or she is in doubt whether the proof of a creditor should be admitted or rejected, he or she 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.

17. A creditor may give a general proxy to his or her manager or clerk or any other person in his or her regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof for or against any specific resolution, or for or against any specified person as trustee or member of a committee of inspection.

19. 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.

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies or in procuring the trusteeship, or receivership, except by the direction of a meeting of creditors, the Court shall have power, if it 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.

21. A creditor may appoint the receiver of the debtor's estate to act in manner prescribed as his or her general and special proxy.

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

23. A meeting shall not be competent to act for any purpose except the election of a chairperson, 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.

24. 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 chairperson may appoint, not being less than seven or more than twenty-one days.

25. The chairperson 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 her or by the chairperson of the next ensuing meeting.

26. No person acting under either a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself or herself, his or her 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 for the appointment of himself or herself as trustee he or she may use the said proxies and vote accordingly.

Second Schedule
BANKRUPTCY ACT

Proof of Debts

[Section 36.]

Proof in Ordinary Cases

1. Every creditor shall prove his or her 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, a declaration in writing verifying the debt.

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

4. The declaration 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.

5. The declaration shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his or her 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 or her debt shall deduct therefrom all trade discounts; but he or she shall not be compelled to deduct any discount, not exceeding eight per cent on the net amount of his or her claim, which he or she may have agreed to allow for payment in cash.

Proof by Secured Creditors

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

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

11. If a secured creditor does not either realise or surrender his or her security he or she shall, before ranking for dividend, state in his or her proof the particulars of his or her security, the date when it was given, and the value at which he or she assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him or her after deducting the value so assessed.

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

(2) Subject to paragraph (3), if the trustee is dissatisfied with the value at which a security is assessed, he or she 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 trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction, the creditor or trustee on behalf of the estate may bid or purchase.

(3) The creditor may at any time by notice in writing require the trustee to elect whether he or she will or will not exercise his or her 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 or her election to exercise the power, he or she 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 or her debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his or her security he or she 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 bona fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but 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 or she may have received in excess of that to which he or she 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 or she

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 or she 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 or her 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 or she 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 the Act.

Proof in Respect of Distinct Contract

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 a 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. When 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 cent 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 cent 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 or she rejects a proof he or she 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 or her duties in relation to proofs the trustee may take declarations, which shall be in the form prescribed by the rules.

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 or her in relation thereto shall be subject to the like appeal.

CHAPTER 27
BANKRUPTCY ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation