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## THE BANKRUPTCY ACT

[1st January, 1880.]

*Preliminary*

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

2. In this Act—

“bankruptcy petition” or “petition” means a petition praying that the affairs of the debtor may be wound up, and his property administered, under the provisions of the law of bankruptcy;

“creditors” includes any two or more persons to whom a debt is owing jointly, and also incorporated joint stock companies;

“debtor” includes any person, whether a Commonwealth citizen or not, who at the time when any act of bankruptcy was done or suffered by him—

- (a) was personally present in Jamaica; or
- (b) ordinarily resided or had a place of residence in Jamaica; or
- (c) was carrying on business in Jamaica, personally or by means of an agent or manager; or
- (d) was a member of a firm or partnership which carried on business in Jamaica;

“deed of arrangement” means a deed or instrument providing by way of trust, inspectorship or otherwise, for the distribution of all or part of the property of a debtor among all his creditors, and for the payment of a composition to all his creditors out of his property or otherwise;

“person” includes a body corporate and a firm;

“prescribed” means prescribed by rules of court;

Cap. 32.  
Law  
7 of 1958.  
Acts  
38 of 1965,  
45 of 1968,  
42 of 1963  
3rd Sch.,  
15 of 1979  
2nd Sch.,  
1 of 1982,  
22 of 1993,  
34 of 1995.

Short title.

Interpreta-  
tion.

“property” includes money, goods, things in action, land, and every description of property 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;

“rules of court” includes such rules and orders of court in relation to bankruptcy proceedings as are in force for the time being;

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

“the Court” means the Court exercising jurisdiction in bankruptcy;

“the Supreme Court” means the Chief Court of Bankruptcy;

“Trustee” means the Trustee in Bankruptcy as in this Act hereafter mentioned, whether acting as Receiver or Trustee.

### *Constitution and Jurisdiction of Courts*

The Chief  
Court of  
Bankruptcy.

3.—(1) The Supreme Court shall be the Chief Court of Bankruptcy.

(2) The Judges of the Supreme Court shall be the Judges of the Chief Court of Bankruptcy.

(3) The clerks and officers of the Supreme Court, and such other clerks and officers as may be appointed, shall be the clerks and officers of the Chief Court of Bankruptcy.

(4) The Chief Court of Bankruptcy shall be a Court of Law and of Equity, and a principal Court of Record, and, for the purposes of this Act, shall have all the powers and jurisdiction of the Supreme Court.

(5) Every Judge of the Chief Court of Bankruptcy shall, for the purposes of this Act, have all the powers, jurisdiction and privileges of a Judge of the Supreme Court;

and the orders of every such Judge shall be of the same force as if they were judgments of the Supreme Court.

(6) The clerks and other officers of the Chief Court of Bankruptcy, in proceedings in bankruptcy, shall have the same powers, duties, and responsibilities, that they have in proceedings within the ordinary jurisdiction of the Supreme Court, and such further powers, duties, and responsibilities as shall be assigned to them by the Judges of the Chief Court of Bankruptcy, for the purposes of this Act, under rules to be sanctioned by the Minister.

(7) A single Judge may carry on the business of the Chief Court of Bankruptcy, except in cases of appeal.

(8) A Judge of the Chief Court of Bankruptcy may sit in Chambers, and when in Chambers shall have the same jurisdiction, and exercise the same powers as if in Court.

4.—(1) The Resident Magistrates' Courts shall be Resident Magistrates' Courts of Bankruptcy, and the Judges, and clerks and officers of the Resident Magistrates' Courts shall be the Judges, and clerks, and officers of the Resident Magistrates' Courts of Bankruptcy.

Resident Magistrates' Courts of Bankruptcy, their Judges and officers; their powers, duties, etc.

(2) Every Resident Magistrate's Court of Bankruptcy in regard to all proceedings in bankruptcy shall be a Court of Law and Equity, and a Court of Record; and the Resident Magistrates thereof in all such proceedings, shall have all the powers, jurisdiction, and privileges exercised by a Resident Magistrate in matters within the ordinary jurisdiction of such Court, and the Resident Magistrate of such Court, for the purposes of this Act, in addition to his ordinary powers as a Resident Magistrate, shall have all the powers, jurisdiction, and privileges of a Judge of

the Supreme Court; and the officers of every such Court in proceedings in bankruptcy shall have the same powers, duties, and responsibilities that they have in proceedings within the ordinary jurisdiction of their Courts, and such further powers, duties, and responsibilities as may be assigned to them by the Judges of the Chief Court of Bankruptcy, for the purposes of this Act, under rules to be sanctioned by the Minister.

Proceedings  
in bank-  
ruptcy.  
In what  
Court to be  
commenced;  
and how and  
when they  
may be  
transferred.  
22/1993  
S. 3.

5.—(1) All proceedings in bankruptcy, shall be commenced by petition in the Chief Court of Bankruptcy, except in cases where the petitioning creditor, on presenting his petition in a Resident Magistrate's Court of Bankruptcy, files along with it an affidavit of his belief that the estate of the debtor, in respect of whom adjudication is sought, is below the value of thirty thousand dollars. When such an affidavit is so filed the proceedings may be commenced and carried out in the Resident Magistrate's Court of the parish in which the debtor resides or carries on business.

(2) If whilst proceedings in any case in bankruptcy are pending in the Chief Court of Bankruptcy, it shall appear to the Court to be expedient it may remit the case and all proceedings therein to the Resident Magistrate's Court of Bankruptcy of the parish in which the debtor resides or carries on business, or to such other Resident Magistrate's Court of Bankruptcy as to it may seem fit.

(3) If whilst proceedings in any case in bankruptcy are pending in any Resident Magistrate's Court of Bankruptcy, it shall—

- (a) appear to such Resident Magistrate's Court that the estate of the debtor is not below the value of thirty thousand dollars, and that the proceedings may be more conveniently conducted in the Chief Court, or that the majority of the creditors desire

22/1993  
S. 3.

that the proceedings should be transferred to the Chief Court; or

- (b) be made to appear on application to the Chief Court that the proceedings may be more conveniently conducted in the Chief Court,

it shall be lawful for such Resident Magistrate's Court or Chief Court, as the case may be, to order the transfer of the case and the proceedings therein to the Chief Court upon such terms as to costs and otherwise as to the Court ordering the transfer may seem fit.

6. Nothing in the foregoing section shall be deemed to prevent any Resident Magistrate's Court from adjudicating a debtor bankrupt on his own petition :

Debtor may apply to Resident Magistrate's Court to be declared bankrupt.

Provided that where any debtor presents any such petition he shall file along with it an affidavit of his belief that the whole of his estate is below the value of thirty thousand dollars.

34/1995  
S. 2.

### *Original Jurisdiction*

7. Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or of fact, arising in any case of bankruptcy coming within the cognizance of such Court, or which such Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case; and no such Court shall be subject to be restrained in the exercise of its powers under this Act by the order of any other Court, nor shall any appeal lie from the decisions of any such Court, except in the manner directed by or under the authority of this Act.

Powers of Court to decide all questions.

Sittings of  
Chief Court.

**8.**—(1) The Chief Court of Bankruptcy shall sit at such times and places as may be determined by the Judges thereof.

(2) It shall be lawful for a Judge of the Chief Court of Bankruptcy to hear any matter or proceeding in bankruptcy within the original jurisdiction of such Court either with or without a jury; if with a jury at any Circuit Court, and if without a jury either at an ordinary or special sitting of the Chief Court, or at a Circuit Court, and at every Circuit Court the Judge thereof may appoint a sitting and sit as a Judge in Bankruptcy for the disposal of such business as shall be brought before him.

Trial of  
questions of  
fact by jury;  
when and  
how.

**9.** If in any proceedings in bankruptcy before the Chief Court or a Resident Magistrate's Court there arises any question of fact which the Chief Court or Resident Magistrate's Court, as the case may be, thinks ought to be tried before a jury, it may direct such trial to be had accordingly—

- (a) if the case is pending in the Chief Court of Bankruptcy then at any Circuit Court in the same manner as if it were the trial of an issue in the Supreme Court;
- (b) if the case be pending in a Resident Magistrate's Court of Bankruptcy then at such Resident Magistrate's Court in the manner in which jury trials in ordinary cases are by law held in a Resident Magistrate's Court.

#### *Appellate Jurisdiction*

Court may  
vary orders.

**10.** Every Court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it in pursuance of this Act.

Appeals.

**11.**—(1) Any person aggrieved by any order of a Resident Magistrate's Court of Bankruptcy, or of a single Judge of the Chief Court of Bankruptcy in respect of a matter of

fact or of law, may appeal to the Court of Appeal, and it shall be lawful for such Court to alter, or reverse, or confirm any such order as it sees fit, and if the order be in respect of a matter of fact, to direct the rehearing of such a matter of fact, either by a Resident Magistrate's Court or by the Chief Court, with or without a jury, in such manner and on such terms as it sees fit. But no appeal shall be allowed from any order relating to a matter of fact unless the amount involved is not less than thirty thousand dollars.

34/1995  
S. 2.

(2) The judgment of the Court of Appeal upon appeal shall be final, subject only to the right of appeal to Her Majesty in Council. An appeal from Chambers shall be made in the same way as an appeal from an order in Court.

### *Costs, Fees, etc.*

12. Every Court having jurisdiction in bankruptcy may make any such order regarding the costs of proceedings pending before it as it sees fit.

Powers as  
to costs.

13. The fees to be charged for any business done under this Act shall be according to a scale to be prescribed by the Minister, who shall have power to direct by whom and in what manner the same shall be collected, accounted for, and appropriated. The Minister may, at any time, alter the amount of any of the fees prescribed under this Act, and notice of such alteration shall be given in the *Gazette*, and the scale so altered shall come into operation at such time as may be specified in such notice.

Fees, how  
fixed, pay-  
able and  
applicable.

### *Officers in Bankruptcy*

14.—(1) It shall be lawful for the Governor-General to appoint—

Trustee in  
Bankruptcy.  
22/1993  
S. 5.

- (a) such person, other than the Administrator-General, as he may see fit to be Trustee in Bankruptcy in the Supreme Court and the Resident Magistrates'

Courts throughout the Island who shall administer the estates of debtors in bankruptcy subject to the provisions of this Act, and any enactment relating to bankruptcy; and

- (b) such clerks and assistants as may from time to time be necessary for the functions of the office of the Trustee.

(2) The Minister shall provide the Trustee with a suitable office in Kingston and all expenses of that office including the salary of the Trustee and all expenses incurred by him in the performance of his functions shall be defrayed out of the Consolidated Fund.

Trustee in  
Bankruptcy:  
his power  
to appoint  
agents, etc.  
22/1993  
S. 6 (a).

15.—(1) The Trustee may, on such terms as to remuneration and otherwise as may be prescribed, and with the approval of the Court, appoint a proper person to act as his agent in respect of any estate vested in or administered by him under this Act, or in respect of any part of the business thereof.

(2) No change of the Trustee shall affect any estate or trust vested in or administered by the Trustee, but such estates and trusts shall vest in or be administered by the succeeding Trustee, who shall hold the same position with regard to such estates and trusts as the former Trustee held.

(3) No proceedings pending on a change of the person holding the office of Trustee shall be affected by such change, but may be continued by and against the succeeding Trustee without suggestion, revival, or other similar proceeding.

22/1993  
S. 6 (b).

(4) The Trustee shall be entitled, on the grant of a provisional order in bankruptcy, to a commission of six per cent on all dividends of any estate or trust paid by him in the administration of a bankrupt's estate under this Act, and

a commission of six per cent on all dividends of any estate or trust paid by him (or sanctioned by the Court) in the administration of a debtor's estate under a deed of arrangement under this Act.

(5) Such remuneration shall be for the time and responsibility of the Trustee in the general administration of the estate or trust, and the estate or trust shall not be subject to any other charge in respect thereof, but any expenses in respect of any other matters, including travelling expenses relating to any estate or trust, may be charged against the estate or trust in such manner and to such extent as may be prescribed or specially sanctioned or allowed by the Court.

(6) The word "dividends", as used in subsection (4), which provides that the Trustee shall be entitled to a commission on all dividends of any estate or trust paid by him, shall be deemed to include and to have included all sums of money paid by the Trustee out of the net amount realized of any such estate or trust in satisfaction in whole or in part of any debt or liability of the bankrupt or debtor :

22/1993  
S. 6 (c) (i).

22/1993  
S. 6 (c) (ii).

22/1993  
S. 6 (c) (iii).

Provided always, that nothing herein contained shall entitle the Trustee to recover from any creditor of any such bankrupt or debtor, any sum of money which he has paid to him and which, under the provisions of this Act, he would have been entitled to retain.

22/1993  
S. 6 (c) (iii).

(7) The Trustee shall be entitled to recover, as a first charge on every estate or trust or the proceeds thereof, all auctioneer's fees and charges and other similar expenses (the same having been duly taxed by the Registrar of the Court) paid by him in and about the realization of any estate under this Act.

(8) The Trustee in Bankruptcy in the Supreme Court shall have an office in Kingston.

Commissions and fees to be paid into Consolidated Fund. 42/1969 3rd Sch.

16. All commissions, fees and remuneration other than salary payable to, or receivable by the Trustee under and in pursuance of the provisions of this Act or under or in pursuance of the provisions of any enactment amending or substituted for this Act shall, as the same are received by him, be paid into the Treasury and shall form part of the Consolidated Fund.

17. [*Repealed by Act 22 of 1993.*]

Reimbursement of expenses of Trustee in Bankruptcy. 22/1993 S. 9 (b).

18. When in the performance of the duties of his office the Trustee has incurred any expense or made himself liable to any claim or demand, and there is no fund out of which he may or can lawfully reimburse himself in respect of the same, then on any Judge of the Supreme Court or Resident Magistrate, as the case may be, certifying that such expense was properly incurred or that such liability was properly undertaken as aforesaid, it shall be lawful for the Minister to order that such expenses shall be reimbursed out of, or such liability be provided for from the Consolidated Fund.

#### PROCEEDINGS ON A BANKRUPTCY PETITION

*As to who may present a petition and on what grounds*

Who may be petitioning creditors, and what are acts of bankruptcy. 22/1993 S. 10.

19. A single creditor or two or more creditors, if the debt owing to such single creditor or the aggregate amount of debts owing to such several creditors from any debtor amounts to a sum of not less than three thousand dollars, may present a bankruptcy petition to the Court against a debtor, alleging as the grounds of the petition any one or more of the following acts or defaults, in this Act deemed to be and included under the expression "acts of bankruptcy"—

- (a) that the debtor has, in Jamaica or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally, or has executed any other instrument whereby his property is made available for general distribution amongst his creditors;
- (b) that the debtor has, in Jamaica or elsewhere, made a fraudulent conveyance, gift, delivery or transfer, of his property or any part thereof;
- (c) that the debtor has with intent to defeat or delay his creditors, done any of the following things, namely, departed out of Jamaica, or being out of Jamaica remained out of Jamaica, or departed from his dwelling-house, or otherwise absented himself, or begun to keep house, or begun to sell his stock-in-trade at an under-value;
- (d) that the debtor has by any act declared himself unable to meet his engagements;
- (e) that the debtor has presented a bankruptcy petition against himself;
- (f) that execution issued in Jamaica against the debtor on any legal process for the obtaining payment of any sum of money has been levied by seizure and sale of his goods, or enforced by delivery of his goods;
- (g) that the creditor presenting the petition has served on the debtor a writ in an action in the Supreme Court, or a summons in the Resident Magistrate's Court wherein the creditor claims payment of a

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[The inclusion of this page is authorized by L.N. 42/1995]

22/1993  
S. 10.

liquidated sum amounting to not less than three thousand dollars, and has also served on the debtor in Jamaica in the prescribed manner, at or at any time after the date of the service of the writ, or summons, a bankruptcy notice in writing, in the prescribed form, requiring him to pay the amount endorsed upon such writ, or summons, and the debtor has not within seven days after the service of such notice paid the amount due to the creditor, or secured or compounded for the same to the satisfaction of the creditor, provided that no bankruptcy petition shall be presented on the ground of such last-mentioned act of bankruptcy unless the creditor has obtained final judgment or final order in the action for not less than three thousand dollars within three months from the service of the writ or summons;

45/1968  
S. 2(a).  
22/1993  
S. 10.

45/1968  
S. 2(b).

(h) that the creditor presenting the petition has obtained final judgment or final order against the debtor in an action in the Supreme Court, or in a Resident Magistrate's Court, for a sum of not less than three thousand dollars, and has served on the debtor in Jamaica a bankruptcy notice in writing, in the prescribed manner and form, requiring him to pay the amount for which such judgment or order has been obtained, and the debtor has not within seven days after the service of such notice paid such amount, or secured or compounded for the same to the satisfaction of the creditor;

22/1993  
S. 10.

45/1968  
S. 2(c).

(i) that the creditor presenting the petition, having a demand against the debtor of not less than three thousand dollars upon a negotiable security for money upon which the debtor was primarily liable, and upon which payment was at least fourteen days overdue, served on the debtor in Jamaica

22/1993  
S. 10.

a bankruptcy notice in writing, in the prescribed manner and form, requiring him to pay the amount of such debt and that the debtor has not within seven days after the service of such notice paid such amount or secured or compounded for the same to the satisfaction of the creditor;

(j) that the debtor has, in Jamaica or elsewhere, made any conveyance or transfer of his property or any part thereof, or created any charge thereon, which would under any law relating to bankruptcy, be void as a fraudulent preference if he were adjudged bankrupt;

(k) that the debtor has, in the *Gazette* or in a daily paper circulated in Kingston given notice of his intention to convey, assign or transfer his stock-in-trade, debts or things in action relating to his business to any other person; and that the creditor presenting the petition having a demand against the debtor of a liquidated sum amounting to not less than three thousand dollars has served on the debtor in Jamaica a bankruptcy notice in writing, in the prescribed manner and form, requiring him to pay the amount of such debt, and that the debtor has not within seven days after the service of such notice paid such amount or secured or compounded for the same to the satisfaction of the creditor;

22/1993  
S. 10.

(l) that the debtor has paid money to or given or delivered any satisfaction or security for the debt of a petitioning creditor, or any part thereof, after such creditor has presented a bankruptcy petition against him;

Provided—

(i) that the alleged act of bankruptcy must have occurred within six months before the presentation of the petition;

(ii) that the debt of the petitioning creditor must be a liquidated sum due or growing due at law or in equity, and must not be a secured debt unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of a provisional order being made, or unless the petitioner give an estimate of the value of the security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on an application being made in the course of the proceedings within the prescribed time by any person interested, give up his security to be dealt with as part of the property of the debtor for the benefit of the creditors upon payment of such estimated value;

45/1968  
S. 2(d).

(iii) that any person who is for the time being entitled to enforce a final judgment or final order shall be deemed a creditor who has obtained a final judgment or final order within the meaning of this section;

(iv) that where any debtor is absent from the Island, any act done or suffered by any agent or manager of the debtor managing any property, or engaged in carrying on any business of the debtor in Jamaica, which if such agent or manager were the owner of the property or business would have constituted an act of bankruptcy available against such person, shall, in all cases be deemed to have been expressly authorized by the debtor and shall be available as an act of bankruptcy against the debtor unless the authority of the agent or manager shall be shown to have been exceeded.

20. A debtor may present a bankruptcy petition against himself stating the grounds on which the petition is made.

Debtor's  
petition.  
22/1993  
S. 11.

*As to the verification of the allegations of a petition*

21. Every petition presented by a creditor shall be accompanied by an affidavit of the petitioner in the prescribed form verifying the statements contained in such petition.

Creditor's  
petition,  
how to be  
verified.

22.—(1) Every petition presented by a debtor shall be accompanied by a statement verified in the prescribed manner of the debtor's property, and of his debts and liabilities, and of his creditors, and of the value and dates of the securities held by them, and of the dates when such securities were actually given, together with a general statement of the profits, losses and expenses of any business in which he may have been engaged during the twelve months preceding the presentation of the petition, and a memorandum explanatory of the causes of his insolvency.

Debtor's  
petition,  
what state-  
ment to  
accompany  
same.

(2) No petition by a debtor against himself shall be received unless accompanied by the statement required by subsection (1), nor shall any order be made on any such petition unless a copy thereof shall have been served on the Trustee, and the Trustee shall apply for such order. Any order made on such petition shall be an absolute order.

*Appointment of Receiver*

23. At any time after a petition has been filed the Court may order that the Trustee become the Receiver or Manager of the property or business of the debtor, or of any part thereof, and the Trustee shall thereon enter upon and act in the performance of his office in relation to such property or business at such time, and in such manner and to such extent, as the Court may from time to time direct, and if

Appoint-  
ment  
of Receiver;  
his powers  
and duties.

22/1993  
S. 13.

directed by the Court, and so far as the nature of the case will admit, do anything which might be done by the Trustee after an absolute order for bankruptcy under this Act, and shall, in relation to and for the purpose of acquiring or retaining possession of the property of the debtor, and in addition to any powers given to him by this Act, be in the same position in all respects as if he were a Receiver appointed by the Supreme Court, and the Court may on his application enforce such acquisition and retention accordingly.

*As to Parties to Proceedings under a Petition—  
Companies, Partners, Firms*

Companies  
may proceed  
by agent.

24. A company or other body incorporated or authorized to sue, may present a petition and act in any proceedings thereon by an agent duly authorized on its behalf.

Firms may  
be named  
by their  
style.

25. Any two or more persons being partners may take proceedings or be proceeded against under this Act in the name of their firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

Special  
provision  
as to certain  
companies.

26. A provisional order or deed of arrangement under this Act shall not be made against or by any partnership association or company corporate or registered under the Companies Act.

*As to Consolidating, Staying, Adjourning, Continuing,  
and Dismissing, Proceedings under a Petition*

Consoli-  
dating  
petitions  
against  
partners  
separately.

27. Where a petition is presented against a member of a partnership whilst bankruptcy proceedings are pending on a petition against another member of the same partner-

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[The inclusion of this page is authorized by L.N. 42/1995]

ship, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

28. When 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, upon such terms as the Court thinks fit.

Consolidating petitions against same debtor.

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

Staying proceedings.

30. The Court may adjourn any petition, either conditionally or unconditionally, for the procurement of further evidence or for any other just cause, or may dismiss the petition with or without costs as it thinks just.

Adjourning and dismissing petitions.

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

Substitution of other creditor as petitioner in case of delay.

32. When a debtor by whom a petition has been presented or against whom a provisional order has been made dies, the proceedings shall be continued as if he were alive.

Proceedings continued though debtor dies.

### *Provisional Order*

33. It shall not be necessary to serve a petition or any notice thereof on the debtor.

Notice of petition need not be served.

34. As soon as may be after the presentation of a petition the Court, if satisfied by *ex parte* evidence or otherwise in the case of a creditor's petition of the petitioning creditor's debt and of the act or of one of the acts of bankruptcy alleged, shall make on the petition an order, in this Act referred to as a "provisional order", that the affairs of the debtor shall be wound up and his property administered under the law of bankruptcy.

Provisional order, when to be made.

Service of  
provisional  
order.

**35.**—(1) Where a provisional order is made on a creditor's petition, a copy of the order shall be served on the debtor in the prescribed manner, together with a notice that within a specified number of days the debtor may show cause why the provisional order should be revoked.

22/1993  
S. 14 (b).

(2) A certified copy of the provisional order referred to in subsection (1) shall be served on the Trustee.

Revocation  
of pro-  
visional  
order.

**36.** If the debtor, within the time appointed, shows to the satisfaction of the Court that either the proof of the petitioning creditor's debt, or of the act of bankruptcy, is insufficient, and if upon such showing no other sufficient petitioning creditor's debt or act of bankruptcy is proved, or if any ground is shown to exist which would render the making of a provisional order inequitable, the Court shall revoke the provisional order, and unless it sees good cause to the contrary shall order costs to be paid to the debtor.

Order for  
debtor to file  
statement of  
his affairs,  
and service  
thereof.

**37.**—(1) If the provisional order is not so revoked, an order shall be served on the debtor, in the prescribed manner, requiring him to file in the Court, within the specified number of days after the date of the service of the order, a statement verified in the prescribed manner, and containing the particulars specified in section 22, and giving notice that if he does not do so the provisional order may, on the application of a creditor or the Trustee, be made an absolute order for bankruptcy, and that the bankruptcy will be gazetted.

1/1982  
S. 2.

22/1993  
S. 15 (b).

(2) A copy of the order served on the debtor pursuant to subsection (1) shall be served on the Trustee.

Absolute  
order for  
bankruptcy.

1/1982  
S. 2.

**38.** If the debtor fails to comply with the order, or to show a sufficient excuse for not having complied with it, the Court may, on the application of any creditor or the Trustee, make an absolute order for bankruptcy against the debtor and direct such bankruptcy to be gazetted.

**39.**—(1) When a provisional or an absolute order has been made against a debtor, 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 such debt, except in manner directed by this Act.

Effect of order as to staying proceedings to recover debts.

(2) All proceedings to recover any such debt shall, if not already stayed, be stayed upon notice of such order being given in manner prescribed, but the Court may on application by any creditor or person interested, allow any proceedings commenced to be continued upon such terms and conditions as it thinks just.

(3) The provisions of this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with the same if the section had not been passed.

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

Relation back of provisional order.

Debtor's  
property,  
when and  
how  
divisible.

**41.** When a provisional order has been made against a debtor, his property shall become divisible amongst his creditors in proportion to the debts proved by them.

Debtor's  
property,  
when it vests  
in Trustee,  
and when  
and how to  
be adminis-  
tered.

**42.** When a provisional order has been made against a debtor, the property of the debtor shall immediately pass to and vest in the Trustee, without any conveyance or assignment or transfer whatever, to be by him in due course, either under an absolute order for bankruptcy, or under a deed of arrangement as hereinafter provided by this Act, realized, administered and distributed with as much despatch as is reasonably practicable for the benefit of the creditors :

Provided, that until the provisional order is made absolute, it shall be the duty of the Trustee, as far as the nature of the property seized permits, to preserve all such property in such state as to permit of its being returned to the debtor in the condition in which it was when it was seized, in the event of the revocation of the provisional order :

Provided always, that it shall be lawful for the Trustee, before any such order is made absolute, to make sales of any part of the debtor's stock-in-trade, or other property, and take such other action in the interests of the debtor's estate, as in the ordinary course of the debtor's business may seem expedient.

Duty of  
debtor to  
aid Trustee.

**43.** When a provisional or an absolute order has been made against a debtor, it shall become the duty of the debtor to the utmost of his power, so far as he may be required, to aid in the realization of his property, and the distribution of the proceeds amongst his creditors, and subject to the provisions of this Act to submit to such examinations in respect of his property or his creditors as the Trustee or the Court may require, and to execute such powers of attorney, conveyances, deeds and instruments, and generally to do all

such things in relation to his property, and the distribution of the proceeds amongst his creditors, as the Trustee or Court may reasonably require or as may be prescribed.

44. If the debtor wilfully fails to perform any of the duties imposed on him by this Act, or if he fails to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which may for the time being be in his possession or control, to the Trustee or any person authorized by the Court to take possession thereof, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court and may be punished accordingly.

When debtor punishable as for a contempt of court.

#### *Meeting of Creditors and Resolutions*

45. The Court shall, as soon as practicable after the provisional order, summon a general meeting of the creditors of the debtor; but if under any of the foregoing provisions an absolute order for bankruptcy has been made against the debtor before the day appointed for such meeting, the meeting shall not be held.

Meeting of creditors, when to be summoned.

46. The meeting shall be held in the prescribed manner, and subject to the prescribed regulations as to the quorum of creditors, adjournment of meeting, and all other matters relating to the conduct of the meeting, or the proceedings thereat:

Meeting, how to be held and conducted, and as to voting thereat.

Provided that—

- (a) a person shall not be entitled to vote as a creditor unless he has in the prescribed manner proved a debt that is due to him;
- (b) a creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained;

- (c) a secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security; and the amount of such balance shall, until the security is realized be determined or assessed in the prescribed manner. He may, however, give up or abandon the security, and thereupon he shall rank as a creditor in respect of the whole sum due to him;
- (d) a creditor shall not vote in respect of any current bill of exchange or promissory note held by him under discount, unless he is willing to treat the liability of every person who is liable thereon antecedently to the debtor, and whose estate is not in course of administration under this Act, as security in his hands, and to estimate the value thereof and deduct the same from his proof, in which case he shall, on application being made within the prescribed time by any person interested, give up such security for the benefit of the creditors of the debtor upon payment of such estimated value:

Provided, that such estimate (except so far as the creditor may receive any payment as aforesaid in respect thereof) shall not prejudice the right of such creditor to receive from the estate of the debtor a dividend upon the whole amount of such bill or note;

- (e) votes may be given either personally or by proxies as may be prescribed.

Duty and  
power of  
Trustee at  
meeting.

47. The Trustee shall attend the meeting, and shall receive and decide upon proof of debts in the prescribed manner, and in so far as it may be necessary for determining the right of voting at such meeting.

**48.—(1)** At the meeting the creditors may, by the votes of a majority in value of the creditors present, personally or by proxy—

Resolutions  
at meeting.

- (a) resolve that the proceedings under the petition be stayed, and the affairs of the debtor wound up and his property administered under a deed of arrangement, the nature of which may or may not be specified in the resolution; or
- (b) resolve that adjudication of bankruptcy be made; and
- (c) resolve, at their discretion, that a creditor to be named at such meeting shall be associated with the Trustee to assist and advise the Trustee in the administration of the debtor's estate, but the appointment of such creditor shall not affect the responsibility of the Trustee.

**(2)** A creditor so appointed shall receive out of the debtor's estate such remuneration for his services as the Court may think fit.

**49.—(1)** The resolutions come to shall be filed with the proceedings, and reported by the Trustee to the Court.

Report to  
the Court  
as to  
resolutions.

**(2)** The Trustee shall report to the Court also in case no meeting is held, or no resolution come to.

**50.** If the resolution be that the proceedings under the petition be stayed, the Court shall make an order that the proceedings be stayed accordingly for such time as may be necessary to obtain the confirmation of a deed of arrangement as hereinafter provided, and such order may be made on such terms and subject to such conditions as the Court may think just.

Procedure  
on resolution  
for  
deed of  
arrange-  
ment.

**51.** If no meeting is held, or if no resolution is come to, or if the resolution be that adjudication of bankruptcy be made, or if it is shown to the satisfaction of the Court that

Absolute  
order for  
bankruptcy,  
when to be  
made.

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[The inclusion of this page is authorized by L.N. 480/1973]

there is no reasonable probability of the confirmation of a deed of arrangement and that delay will not be for the benefit of the creditors, the Court shall make an absolute order for bankruptcy against the debtor.

*Proceedings under an Order for a Deed of Arrangement*

Deed of arrangement, how made, executed, proved and filed.

52. Where an order is made that proceedings in bankruptcy against a debtor be stayed for such time as may be necessary to obtain the confirmation of a deed of arrangement, a deed may be entered into between a debtor and his creditors, subject to the following provisions—

- (a) the deed must be assented to by a majority in number representing three-fourths in value of the creditors of the debtor, and no creditor shall be reckoned in such majority unless he has proved his debt in manner prescribed.

The assent of a creditor shall be testified by his signing the deed of arrangement, or some document in a form prescribed for that purpose;

- (b) the deed shall be acknowledged or proved in the manner provided by the Probate of Deeds Act;
- (c) when the deed has been executed by the debtor an attested copy thereof shall be filed in the Court;
- (d) there shall be filed with the deed—
  - (i) a list showing the debts and liabilities of the debtor, and the time when the same were contracted or incurred, and the considerations, for the same, the names, residences, and occupations of his creditors, and the respective amounts due to them, and all securities held by them, and the date when such securities were respectively given;
  - (ii) a detailed statement of his debts and property, and the estimated value thereof;

- (iii) an affidavit in the prescribed form by the debtor, or some person able to depose there-  
to, verifying such list and statement;
- (f) the list or statement may be from time to time amended by leave of the Court, and every such amendment shall be in like manner verified by affidavit.

53. At the time appointed for the confirmation of the deed, the Court shall on the application of any creditor of the debtor take the deed into consideration.

Considera-  
tion of  
deed by  
the Court.

54.—(1) No deed of arrangement shall be taken into consideration by the Court until the debtor shall have submitted himself to the public examination of the Court, and the Trustee shall have made a report to the Court as provided by section 71; and no such deed as aforesaid shall be confirmed by the Court unless on a consideration of the report as aforesaid it shall appear to be in the interest of the creditors generally that it should be confirmed.

Conditions  
for con-  
firmation.

(2) All applications to confirm any deed as aforesaid shall be made to the Judge before whom the public examination of the debtor was held, save as in section 72 (1) provided in cases where the services of such Judge are not available.

55. If there is no application to the Court to consider the deed, or if no deed has been filed, or if the Court does not confirm the deed, the Court shall order that the proceedings in bankruptcy shall forthwith continue from the point at which they were stayed, or if it thinks fit may order the adjournment of the consideration to allow time for the execution of the deed or another deed.

Proceeding  
when deed  
is not con-  
firmed.

56. If upon the consideration of the deed the Court is satisfied that the requirements of this Act have been complied with, it may in its discretion, by order, confirm

Proceeding  
on con-  
firmation  
of  
deed.

the deed, and may make such order as to the further staying of any proceedings, or the annulling of any provisional order under the petition, as it thinks fit.

Confirmation of deed conclusive as to its validity.

**57.** The order of the Court confirming the deed shall be conclusive evidence of the validity of the deed, and after such order the deed shall not be liable to be impeached or disturbed in any court on the ground of anything being contained therein or omitted therefrom, or on any other ground whatsoever except in manner provided by this Act.

Administration of estate under confirmed deed.

**58.** If the deed is confirmed it shall be binding on all creditors, and all questions under it shall be determined by the Court according to the law of bankruptcy and every creditor under the deed shall be entitled to be paid his debt or, as the case may be, a dividend or composition thereon ratably with the other creditors of the arranging debtor, but all creditors who would be entitled to priority of payment under an adjudication of bankruptcy against the arranging debtor shall be entitled to the like priority under the deed, and regard shall be had to the rule in bankruptcy as to the application of joint or separate estate in payment of creditors.

Discharge of debtor when deed carried out.

**59.—(1)** The Court may at any time after the confirmation of the deed make an order for the discharge of the debtor in accordance with the terms of the deed, or if there are no terms relating to discharge then upon the report of the Trustee that the arrangements under the deed have been fully carried out.

(2) Such order shall, except in so far as may be otherwise expressly provided in this Act, have all the effect of an unconditional discharge of a bankrupt as hereinafter mentioned made upon proceedings after an absolute order for bankruptcy.

60. If at any time after the confirmation of the deed it appears to the Court that the debtor has not acted in good faith in relation to the bankruptcy proceedings before or under the deed, or is not assisting the Trustee to the utmost of his power to administer the estate in accordance with the terms of the deed, or that for other reasons it is expedient or just, the Court may by order declare that the deed so far as regards any release to the debtor therein contained or provided for shall be void, and the deed shall accordingly be void to such extent, and the Court may without any further condition make an absolute order for bankruptcy against the debtor, which shall take effect from the time of the making thereof, provided that no act done in pursuance of a deed which has been confirmed shall be impeached or disturbed by reason of any such order, and in the administration of the property of the debtor thereafter regard shall be had to all payments made in pursuance of the deed.

When deed may be declared void, and effect thereof.

61. This Part shall apply to any case in which members of a partnership enter into a deed of arrangement with their creditors under the provisions of this Act, and any such deed of arrangement may be entered into with the joint creditors without any of the separate creditors being parties to or included in the deed, or with separate creditors without any of the joint creditors being parties to or included in the deed:

As to deeds of arrangement in cases of partners.

Provided, that in a distinct arrangement with any particular class of creditors the rule in bankruptcy respecting the application of joint or separate estate to the payment of creditors shall not be contravened.

62. Where a deed of arrangement is made by members of a partnership with their joint and separate creditors, any delay in obtaining, or failure to obtain, the assent of some or one of the classes of separate creditors shall not

As to assent of certain creditors in cases of partners.

prevent the deed being confirmed so as to bind the joint creditors and any other class of separate creditors.

As to debt incurred, or increased or forborne, by means of fraud.

63. Where a debtor who has executed a deed of arrangement has incurred or increased a debt or obtained forbearance thereof by fraud, he shall be liable to pay to the defrauded creditor the balance of such debt after deducting any sum or sums which may have been received by such creditor by way of composition or dividend under the deed, provided that such creditor has not assented to the deed in manner provided by this Act.

Rights of creditors against third parties not affected.

64. No creditor of the arranging debtor, whether assenting to the deed or not, shall be prejudicially affected by this Part with respect to any right or remedy against any person other than the arranging debtor.

Administration of estate on confirmation of deed.

65. When the deed of arrangement is confirmed, the Trustee shall proceed to administer the debtor's estate so as to give full effect to the deed, and subject to the provisions of this Act so far as the same may be applicable.

#### *Proceedings under an Absolute Order for Bankruptcy*

Examination of debtor, and into his affairs.

66.—(1) When an absolute order for bankruptcy has been made against a debtor the Court shall direct the adjudication to be gazetted, and shall direct a public sitting to be held on a day to be named for the purpose of examining into the affairs of the debtor, and the debtor shall attend at such sitting and shall submit himself to examination as to his conduct, dealings and property.

(2) The sitting may be adjourned as often as the Court thinks fit, and the debtor shall attend at each adjourned meeting.

(3) The Court may at such sitting take such evidence as it thinks necessary, and such evidence as may be tendered by the creditors, or the Trustee, or the debtor, or any of them.

(4) For the purposes of the examination, the Court may take evidence *viva voce*, or by affidavit, or by interrogatories, or by commission, as it thinks fit.

(5) When the Court is satisfied that the debtor's affairs have been sufficiently investigated it may declare the examination finished.

(6) On the public examination of the debtor under this section the debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

67.—(1) If at any time after an absolute order for bankruptcy has been made against a debtor it appears to the Court that the debtor, having been engaged in any trading or other business, has not kept and produced proper books of account, papers or vouchers, by means of which the Trustee may be able to obtain a correct knowledge of his affairs, it may if it thinks fit order the debtor to be imprisoned in some convenient prison for any period not exceeding one year, unless good cause is shown to the Court why such books, papers and vouchers have not been kept and produced.

Omission to keep or produce proper books, when and how punishable.

(2) If the books of account in this section required to be kept and produced shall not have been kept written or printed in the English language, they shall not be deemed

to be proper books of account within the meaning of this section, unless for good cause shown by the debtor the Court otherwise determines.

(3) For the purposes of this section a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased respectively and statements of annual stock-takings.

Debts incurred by breach of trust or recklessness or extravagance, how far punishable.

68. If at any time before an order of discharge is granted to a debtor it appears to the Court that the debtor has incurred or contracted any debt by means of a breach of trust, or without having had any reasonable or probable ground of expectation at the time when he incurred or contracted such debt of being able to pay the same, or that he has lived extravagantly or beyond his proper means, it may if it thinks fit order the debtor to be imprisoned in some convenient prison for any period not exceeding one year :

Provided, that if in the opinion of the Court the conduct of the debtor has rendered him liable to punishment for a misdemeanour under this Act, it may direct the prosecution of the debtor for such misdemeanour, and cause the Trustee to prepare a statement of the case for the conduct of the prosecution.

Administration of debtor's estate after order absolute.

69. When an absolute order for bankruptcy has been made against a debtor the Trustee shall proceed to administer the debtor's estate for the benefit of the creditors subject to the provisions of this Act.

*Bankruptcy Proceedings against Estate of a Deceased Debtor*

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

Proceedings  
in bank-  
ruptcy  
against  
estate of a  
deceased  
debtor.

(2) Upon notice being given to the legal personal representative of the deceased debtor, the Court may, 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 may be made at any time after the grant of probate or letters of administration.

(4) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced for the administration of the deceased debtor's estate; but the Court in which such proceedings have been taken may, in any such case in which it is made to appear that the estate is insufficient to pay its debts, make an order for the administration of the estate of the deceased debtor in bankruptcy, and thereupon the like consequences shall ensue as under an administration order made on the petition of a creditor.

(5) Upon an order being made under this section for the administration of a deceased debtor's estate, the property of the debtor shall vest in the Trustee in Bankruptcy, and he shall forthwith proceed to realize and

distribute the same in accordance with the provisions of the laws of bankruptcy.

(6) In the administration by the Trustee in Bankruptcy of the assets of any person pursuant to an order under this section, the Court shall, on the petition of the Trustee, have and exercise all the powers which, in the case of administration of the assets by the Court, it would have, under section 112, on the petition of a creditor or creditors.

(7) With the modifications hereinafter mentioned, all the provisions 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.

(8) In the administration of the property of the deceased debtor under an order made under this section, the Trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order and be payable in full, out of the debtor's estate, in priority to all other debts.

(9) If, on the administration of a deceased debtor's estate any surplus remains in the hands of the Trustee, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this 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 ordered by the Court.

(10) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order

for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the Trustee; save as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(11) "Court" in this section means any Court in which the deceased debtor might immediately before his death have been adjudicated bankrupt.

#### OF THE DISCHARGE OF A BANKRUPT

##### *As to the Granting of a Discharge*

71.—(1) It shall be the duty of the Trustee, as soon as possible after the close of the public examination of the debtor, to make a report as to the state of the debtor's affairs, and as to the conduct of the debtor both before and during the bankruptcy, and shall note particularly any matters which in his judgment might constitute offences under this Act, or any enactment relating to bankruptcy, or which would justify the Court under this Act in refusing, suspending or qualifying an order for the debtor's discharge.

Report of  
Trustee, its  
purport.

(2) Such report may be made, as to the bankrupt's affairs and estate, although, if the estate has not been fully administered, the Trustee may be unable to speak precisely as to details:

Provided, that in such a case, if it appear to the Court or the Judge before whom the debtor's examination was held, material to do so with reference to an application on the part of the debtor for an order of discharge, it shall be lawful for the Court or Judge aforesaid to order the Trustee to make a further and exact report, and in any case where

the estate of the debtor shall have been fully administered, the Trustee shall make a further and full report to the Court as to the assets and liabilities of the debtor, and as to the dividend paid.

Consideration of application for discharge and dealing with same.

72.—(1) The debtor may, at any time after the filing of the report aforesaid, apply to the Judge hereinafter mentioned to appoint a day for hearing his application for an order of discharge.

(2) The Judge shall thereupon appoint a day and place for hearing such application.

(3) The prescribed notice of the time and place appointed shall be given in the prescribed manner.

(4) Any such application for an order of discharge shall be made in open court, before the Judge before whom the examination of the debtor was held unless such Judge is ill, absent from the Island or otherwise incapacitated, in which case it shall be made (in the case of the Supreme Court) before another Judge, or (in the case of the Resident Magistrate's Court) before the *locum tenens* or successor of such Judge:

Provided, that in the case last aforesaid, it shall be lawful for such other Judge or *locum tenens* or successor, to use the notes of the Judge before whom the examination was held, and to take such action upon them as the Judge himself might have taken under the provisions of this Act.

(5) The Trustee or any creditor may oppose the discharge and may show cause why it should be refused, or postponed, or made subject to conditions.

(6) Whether any such opposition is made or cause shown or not, the Court shall take into consideration the report of the Trustee aforesaid, and may either grant or refuse an absolute order of discharge, or suspend the

operation of the order for a specified time, or grant an order or discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the debtor, or with respect to his after-acquired property :

Provided, that the Judge shall refuse the discharge in all cases where the debtor has been convicted of a misdemeanour under this Act, or any other misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, unless for special reasons to be stated in the order the Judge otherwise determines; and further if, on a consideration of the report of the Trustee, or of representations made by the Trustee or any creditor on the hearing of the application, and of the Judge's notes of the examination of the debtor, and of the evidence (if any) adduced at the hearing of the application, and after hearing the debtor in support of the same, it shall appear to the Judge that any of the facts hereinafter mentioned has been proved, the Judge shall, either—

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

leave may be given on proof that the debtor has since his discharge acquired property or income available towards payment of his debts :

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

Facts on proof of which Judge may refuse or suspend order of discharge or make it conditional.

(7) The facts hereinbefore referred to are—

- (a) that the debtor's assets are not of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities, unless he satisfies the Judge that the fact that the assets are not of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;
- (b) that the debtor has omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;
- (c) that the debtor has continued to trade after knowing himself to be insolvent;
- (d) that the debtor has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;
- (e) that the debtor has failed to account satisfactorily for any loss of assets, or for any deficiency of assets to meet his liabilities;

- (f) that the debtor has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;
- (g) that the debtor has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;
- (h) that the debtor has, within three months preceding the date of the act of bankruptcy, incurred unjustifiable expense by bringing a frivolous or vexatious action;
- (i) that the debtor has, within three months preceding the date of the act of bankruptcy, when unable to pay his debts as they become due, given an undue preference to any of his creditors;
- (j) that the debtor has, within three months preceding the date of the act of bankruptcy, incurred liabilities with a view of making his assets equal to fifty cents in the dollar on the amount of his unsecured liabilities;
- (k) that the debtor has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors;
- (l) that the debtor has been guilty of any fraud or fraudulent breach of trust;
- (m) that the debtor has carried on trade by means of fictitious capital or by means of money raised or obtained at excessive rates of interest or under any plan or scheme involving the payment of excessive interest, fines, premiums, commissions or bonus;

- (n) that he is indebted for damages recovered in any action for malicious injury to the person, reputation or property, of the plaintiff therein;
- (o) that he has failed to deliver up to the Trustee all books, papers, documents or writings, in his custody or under his control, or to disclose the name of the person or persons in whose custody or under whose control the same may be;
- (p) that his insolvency has arisen from rash or hazardous conduct as a trader; or
- (q) that he has wilfully failed to perform any of the duties cast upon him by section 43.

(8) For the purposes of this section a debtor's assets shall be deemed of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities when the Court is satisfied that the property of the debtor has realized, or is likely to realize, or with due care in realization might have realized, an amount equal to fifty cents in the dollar on his unsecured liabilities, and a report by the Trustee shall be *prima facie* evidence of the amount of such liabilities.

(9) For the purposes of this section the report of the Trustee shall be *prima facie* evidence of the statements therein contained.

(10) Notice of the appointment by the Judge 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 Judge may hear the Trustee, and may also hear any creditor. At the hearing the Judge may put such questions to the debtor and receive such evidence as he may think fit.

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

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

73. Where any application is by section 54 or by sections 70 to 72 required to be made in the first instance to a single Judge, an appeal shall lie from his order to the Court of Appeal.

74. When the Court grants an order of discharge it may grant it subject to any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings or income, which may afterwards become due to the bankrupt, and touching after acquired property of the bankrupt, and it may order that the bankrupt shall thereafter pay to the Trustee for the benefit of the creditors under the bankruptcy such sum as may be stated in the order granting him his discharge, but payment of such sum shall only be enforced against the debtor by leave of the Court, and to such extent from time to time as the Court may approve, and if subsequently the debtor should be adjudged bankrupt, or a provisional order be made against him, the amount (if any) remaining unpaid under any such order for payment shall be postponed until the debts due to the creditors under such subsequent bankruptcy or provisional order shall have been fully paid or satisfied.

Conditions  
of dis-  
charge.

*As to the Effect of an Order of Discharge*

How far  
order of  
discharge  
releases  
debtor  
from his  
debts.

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

(a) debts due to the Crown or to the Government of Jamaica;

(b) debts with which the bankrupt stands charged at the suit of the Crown, or of any person, for any offence relating to any branch of the Public Revenue, or at the suit of any public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence, and he shall not be discharged from such excepted debts unless the Accountant-General certifies in writing his consent to his being discharged therefrom.

Does not  
release part-  
ner or joint  
debtor.

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

How order  
of dis-  
charge  
pleaded and  
proved.

**77.** An order of discharge shall be sufficient evidence of the bankruptcy; and of the validity of the proceedings thereon; and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

*Administration of a Debtor's Estate by the Trustee  
Duties and Powers of the Trustee*

**78.** The Trustee under the control of the Court shall administer the debtor's estate for the benefit of the creditors subject to the provisions of this Part.

Estate of debtor to be administered for the benefit of his creditors.

**79.** The Trustee shall as soon as may be after the making of a provisional order but subject to the directions of the Court, take possession of all property real and personal, and all books, papers and documents, of the debtor, and exercise such of the powers conferred on him by this Act as may be necessary for the purpose of acquiring and retaining possession thereof, and for the purpose of protecting the rights of the creditors.

Trustee to take possession of debtor's property.

**80.** The Trustee shall to the best of his power discover and recover all debts due to the debtor's estate.

Trustee to recover debts.

**81.** The Trustee shall examine and verify the books, papers and vouchers relating to the debtor's affairs.

Trustee to examine debtor's books.

**82.** The Trustee may sell all or any part of the property of the debtor (including the goodwill of the business, if any, and the debts growing due to the debtor) by public auction or tender, or private contract, and transfer the whole thereof to any person or company, or sell the same in parcels, and accept as the consideration for such transfer and sale a sum to be paid or secured to be paid at such times and in such manner as he thinks fit.

Power of Trustee to sell property.

**83.** The Trustee may carry on the trade of the debtor so far as may be necessary or expedient for the beneficial winding up or sale of the same, and for that purpose, or for the general management and realization of his property, employ the debtor himself, or any other person or persons.

How far Trustee may carry on debtor's trade.

Trustee's  
power to  
bring or  
defend  
actions.

**84.** The Trustee may bring, institute or defend, any action or other legal proceeding relating to the property of the debtor.

May  
recover  
dividends.

**85.** The Trustee may prove rank, claim and draw dividend, in respect of any debt due to the debtor.

Trustee's  
power to  
arbitrate or  
compromise  
claim of  
debtor.

**86.** The Trustee may refer any dispute to arbitration, compromise all debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the debtor and any person who may have incurred any liability to the debtor, upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon.

Trustee's  
power to  
compromise  
claims  
against  
debtor.

**87.** The Trustee may 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 petition.

Trustee's  
power to  
compromise  
claims as to  
debtor's  
property.

**88.** The Trustee may make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the debtor, made or capable of being made on the Trustee by any person, or by the Trustee on any person.

Powers of  
Trustee  
as to  
exercising  
discretion  
or execut-  
ing deeds.

**89.** The Trustee may exercise any powers and discretions the capacity to exercise which is vested in the Trustee under this Act, and may execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Act.

Trustee's  
power as to  
estates tail.

**90.** The Trustee may deal with any property to which the debtor is beneficially entitled as tenant in tail in the same manner as the debtor might have dealt with the same.

91. The Trustee shall receive and decide on proof of debts. Proof of debts.

92. The Trustee shall be deemed an accounting party to the Court, and shall be under the control and subject to the directions of the Court. Trustee under control of the Court.

93. The Trustee may at any time apply to the Court for directions respecting his rights or duties with regard to the debtor's estate, or with regard to any matters arising out of the management or conduct of the estate. Trustee may ask the Court for directions.

94. The Trustee obtaining *bona fide* direction of the Court or acting *bona fide* on such direction, shall be deemed, so far as regards his own responsibility, to have discharged his duty therein as Trustee with regard to the matter in respect of which such direction is given. Trustee acting under such directions protected.

95.—(1) The Trustee shall keep in manner prescribed proper books, in which he shall from time to time make or cause to be made entries or minutes of such matters in relation to the debtor's estate as may be prescribed. Trustee to keep books.

(2) Any creditor of the debtor may, at such times as may be prescribed, personally or by his agent inspect such books.

96.—(1) All sums of money from time to time received by the Trustee in the course of the administration of estates of debtors shall forthwith or within such time as may be prescribed— Money received to be deposited in Workers Savings and Loan Bank. 22/1993 S. 16 (a).

(a) be paid by the Trustee into a commercial bank to the credit of an account to be entitled "The Trustee in Bankruptcy Account"; or

(b) be invested by the Trustee in securities issued by the Government of Jamaica.

(2) Interest shall be allowed on such money in the same way as interest is allowed on deposits by executors, administrators and trustees under the Trustees, Attorneys and 7/1958 S. 2.

Executors (Accounts and General) Act, except that there shall be no limit of amount.

22/1993  
S. 16 (b).

(3) A Trustee shall, for the purposes of administering any estate—

(a) withdraw from the commercial bank referred to in subsection (1) any money standing to the credit of the Trustee in Bankruptcy Account; or

(b) sell any securities purchased pursuant to subsection (1) (b),

and until any money so withdrawn or derived from the sale of any securities, as the case may be, is applied to such purposes as aforesaid the Trustee shall, subject to any order of a court of competent jurisdiction, deal with such money in accordance with such general or special directions as may be given by the Minister :

Provided that a Trustee shall never expend the money of one estate for the purposes of another estate.

All moneys  
to be paid  
into Court  
after two  
years.

97. The Trustee shall, at the expiration of two years from the date of the provisional order, pay all moneys then in hand, and all moneys thenceforth received by him, into Court in manner prescribed, unless under special circumstances the Court shall by order extend the time.

Audit of  
Trustee's  
accounts.

98. The Trustee shall submit his accounts for audit at such times and in such manner as may be prescribed.

*Control of the Court over the Administration of the  
Debtor's Estate by the Trustee*

Trustee  
responsible  
to the  
Court.

99. The Court shall examine all statements submitted to it by the Trustee, and may order the Trustee to account for any misfeasance, neglect or omission and to make good any loss which the estate of the debtor may have sustained by such misfeasance, neglect or omission.

Power of  
Court to  
examine  
Trustee and  
his books.

100. The Court may at any time require the Trustee to answer any enquiry in relation to any matter in which he is engaged, and may examine him, or any other person on

oath concerning such matter, and may cause his bankruptcy books, either generally or in relation to any particular estate, to be examined by any person to be named by it.

**101.**—(1) If the Trustee at any time improperly neglects, refuses or delays, to assume the management of any estate or trust under this Act, or if he improperly acts or omits to act in the management of any estate or trust vested in or administered by him, or the duties of which he has entered upon, or if he improperly neglects, refuses, or delays, to pay forthwith the amount of any judgment, decree or order, recovered against him, or if he pays the amount of any such judgment, decree or order, out of any funds not properly liable to such payment, or if he improperly acts or omits to act in any other matter with respect to any estate or trust vested in or administered by him, or with respect to any duty imposed upon him by this Act, or if there is reasonable ground to think that he is about improperly to act, or to omit to act, with respect to any of the matters aforesaid, any person interested in such estate, trust or matter may apply to the Court for an order, requiring him to do, or to refrain from doing, the act in respect of which such person complains, and the Court may thereupon make such order as it thinks fit.

Power of  
Court to  
control  
Trustee.

(2) Such order may direct that the Trustee shall pay out of his own pocket any sum of money required to compensate any person, estate or trust, for the consequences of any wrongful act or omission of the Trustee or Receiver.

**102.** The debtor, or any of the creditors, or any other person, if aggrieved by any act or decision or estimate of the Trustee, may apply to the Court, and the Court may confirm, reverse or vary, the act complained of, and may make such order in the matter as it thinks just, and may direct any question of fact or assessment of value or damage to be tried by a jury.

Application  
to the  
Court  
against  
Trustee.

Power of Court to enable any person to do acts for the debtor.

**103.** Where the debtor refuses or neglects to do any act in reference to the recovery, sale or transfer of, or otherwise dealing with, any property remaining in him under this Act in trust for his creditors, for twenty-four hours after he has been required by the Receiver or Trustee to do the same, the Court may, on application by the Receiver or Trustee, by order authorize such act to be done in the name of the debtor, or otherwise by any person named in the order for that purpose, and every act done by such person shall be as effectual for all purposes as if the debtor had done the same, and shall not be revocable or impeachable by the debtor.

#### DISTRIBUTION OF DEBTOR'S PROPERTY

##### *General Provisions as to Property of Debtors*

What the property of the debtor comprises.

**104.** The property of the debtor divisible amongst his creditors and vesting in the Trustee, and in this Act referred to as the property of the debtor;

shall comprise—

- (a) all such property as may belong to or be vested in the debtor at the commencement of the bankruptcy, or may be acquired by or devolve on him at any time previously to his discharge; and
- (b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the debtor for his own benefit at the commencement of the bankruptcy, or at any time previously to his discharge; and
- (c) all goods and chattels being at the commencement of the bankruptcy in the possession order or disposition of the debtor by the permission of the true owner, of which goods and chattels the debtor is reputed owner, or of which he has taken upon himself the sale or disposition as owner, provided

that things in action, other than debts due or growing due to him, shall not be deemed goods and chattels within the meaning of this section; and shall not comprise—

- (d) property held by the debtor in trust for any other person; or
- (e) the tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children to a value, inclusive of tools and apparel and bedding, not exceeding sixty dollars in the whole.

*Special Provisions as to Certain Kinds of Property  
of Debtor*

**105.** Where a debtor is in the enjoyment of any salary, pension or allowance, paid by the Government of this Island, the Trustee shall receive for distribution amongst the creditors so much of the debtor's salary, pension or allowance, as the Court upon application of the Trustee thinks just and reasonable, to be paid in such manner and at such times as the Court directs.

Appropriation of portion of salary of debtor payable by Government.

**106.** Where a debtor is in the receipt of a salary or income other than as aforesaid, the Court upon the application of the Trustee shall from time to time make such order as it thinks just for the payment of such salary or income, or of any part thereof, to the Trustee, to be applied by him in such manner as the Court may direct.

Appropriation of portion of other salary or income.

**107.** Any treasurer or other officer, or any banker, attorney or agent of a debtor, shall pay and deliver to the Trustee all moneys and securities in his possession or power, as such officer or agent, which he is not by law entitled to retain as against the debtor or the Trustee or Receiver.

Delivery to Trustee of moneys and securities of debtor.

Transfer of  
stocks,  
shares, etc.

**108.** Where any part of the property of the debtor consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person, the right to transfer such property shall be absolutely vested in the Trustee to the same extent as the debtor might have exercised the same if a petition had not been filed against or by him.

Onerous and  
unprofitable  
property of  
debtor.  
Power of  
Trustee to  
disclaim  
same.  
Effect of  
disclaimer.

**109.—(1)** Where any part of the property of the debtor consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the Trustee, notwithstanding that he has endeavoured to sell, or has taken possession of such property, or exercised any act of ownership in relation thereto, may by writing under his hand disclaim such property, and upon the execution of such disclaimer the property disclaimed shall if the same be a contract be deemed to have determined at the date of the filing of the bankruptcy petition so far as regards the interest of the debtor therein, and the liability of himself and property and of the Trustee thereunder, and if the same be a lease to have determined at the same date, so far as regards the interests of the debtor therein, and the liability of himself and his property and the Trustee to the performance of the covenants and the conditions thereof, and if the same be shares in any company to have been forfeited at the same date; and whatever be the nature of the property it shall (unless the Court otherwise order) pass to the person (if any) entitled thereto on the determination of the estate or interest of the debtor therein, and in no case shall any estate or interest or liability therein or thereunder remain in the debtor.

(2) Such disclaimer shall not prejudice the rights or remedies or affect the obligations of any person other than

the debtor and the Trustee and the Court may, on application made by any person claiming any interest in the disclaimed property, and upon hearing such persons as it thinks fit, make an order for the vesting of the same property in or delivery thereof (together with any deeds or documents relating thereto) to any person or persons entitled thereto, or a trustee for him or them, and upon such terms as the Court may think just, and upon any such vesting order being made the property comprised therein shall vest according to the tenor thereof in the person or persons therein named in that behalf, without any conveyance or assignment for the purpose.

(3) Any person injured by the operation of any such disclaimer as aforesaid shall be deemed to be a creditor of the debtor to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy petition.

110. The Trustee shall not be entitled to disclaim any property in pursuance of this Act in any case where an application in writing has been made to him as Trustee, by any person interested in such property, requiring such Trustee to decide whether he will disclaim or not, and the Trustee has for a period of not less than twenty-eight days after the receipt of such application, or such further time as may be allowed by the Court, declined or neglected to give notice whether he disclaims the same or not.

Limit to  
Trustee's  
right to  
disclaim.

*Special Provisions as to the Benefit of Transactions  
Affecting the Debtor and his Property*

111.—(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 or children of the settlor of property which has accrued to the settlor after marriage, in right of

Settlements  
by debtor,  
how far  
void as  
against  
Trustee.

his wife, shall, if a provisional order in bankruptcy, or an absolute order in bankruptcy in cases where no provisional order is made, take effect against the settlor within two years after the date of the settlement, be void against the Trustee, 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 unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

(2) Any covenant or contract made by any person in consideration of marriage, for the future settlement upon his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder and not being money or property of or in right of his wife, shall, if a provisional order, or an absolute order in bankruptcy in cases where no provisional order is made, take effect against him before such money or property has been actually transferred or paid pursuant to such contract or covenant be void against the Trustee.

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

Extension of  
Power to  
avoid  
certain  
voluntary  
settlements,  
etc., as  
against the  
representa-  
tives of  
deceased  
settlers  
whose  
estates are  
insolvent.

112. In the administration by the Court of the assets of any deceased person, it shall be lawful for the Court, on the petition of any creditor or creditors of such deceased person whose claim, or claims together, against the estate would have been sufficient to support a petition in bankruptcy against such person had he not died, and on proof that the assets of such person were at the time of his death insufficient to pay his debts and liabilities in full, to order that any settlement of property made by such deceased person

within the meaning of the last preceding section and except as therein excepted, or any conveyance or transfer of property or charge thereon, or any payment, obligation or judicial proceeding, made, incurred, taken or suffered by such person, he being at the time of making, taking, paying or suffering, the same, unable to pay his debts as they become due from his own moneys, in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor preference over the other creditors, and which settlement, conveyance, transfer, charge, payment, obligation or judicial proceeding, would have been void against the Trustee in Bankruptcy if a provisional order had taken effect against such deceased person at the moment of his death, shall be void as against the executor, administrator, receiver or other person, charged with the administration of the assets of such deceased person :

Provided that such petition shall be presented within six months after the death of such deceased person :

Provided also that the proper funeral and testamentary expenses, incurred by the legal personal representative in and about the deceased person's estate, shall be deemed a preferential debt, and the payment thereof by the legal personal representative shall be valid, or, if the same have not been paid at the time of the making of any order under this section, they shall be payable in full out of the debtor's estate, in priority to all other debts :

Provided also, that nothing herein shall be deemed to make the legal personal representative of such deceased person personally liable in respect of any payment made, or act or thing done, in good faith before the date of the order for the administration of the assets of such person by the Court.

Voluntary expenditure of moneys on the property of another to be deemed a settlement if order in bankruptcy takes effect within two years against the person so expending the same.

**113.** The voluntary expenditure of any moneys by any person in building or making permanent improvements on the property of another shall be deemed to be a settlement of such moneys on such other person within the meaning of section 111, and if an order in bankruptcy, as mentioned in the said section 111, take effect against the person making such expenditure within two years from the date of such expenditure the Trustee shall be entitled to recover, from the owner of the property benefited by such expenditure, an amount equal to the increase in the value of such property brought about by such expenditure, and shall have a lien on such property for such amount, and on the proceeds thereof if the same have been sold :

Provided always, that such lien shall not prevail against a *bona fide* purchaser for valuable consideration who at the time of the purchase, either had no notice of such expenditure as aforesaid, or if he had such notice had no notice of an act of bankruptcy on the part of the person making the same, available for adjudication against him.

Bankruptcy of a firm or of one or more partners, effect thereof on the partnership assets and on the property of each partner.

**114.—(1)** When a provisional order has been made against a firm of partners, all the separate property of each of the bankrupts as well as all the joint property of the partnership, shall immediately pass to and vest in the Trustee.

(2) Where a provisional order has been made against one partner in a firm, there shall pass to the Trustee as well the separate property of such partner as the share to which, as between himself and his partners, the bankrupt is entitled in the assets of the firm after paying or providing for all the liabilities. For the purpose of ascertaining such share, the accounts of the firm shall be taken in such manner as the Court may direct.

(3) In the case of bankruptcy of partners, or of any member of a partnership firm, the joint estate shall be applic-

able in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the rights and interest of each partner in the joint estate.

**115.**—(1) Every conveyance or transfer of property, or charge thereon, every payment, every obligation, and every judicial proceeding, made, incurred, taken or suffered, by any person unable to pay his debts as they become due from his own moneys, in 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 a provisional order take effect against the person making, taking, paying or suffering the same within six months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the Trustee.

Fraudulent preferences.

(2) Every conveyance or transfer of property, real or personal, made by any person unable to pay his debts to any other person in trust for any creditor shall be absolutely void unless the same were made and executed with the assent of three-fourths in number and value of the creditors of such person.

Conveyances to a Trustee for a creditor, how far void.

**116.** Every conveyance, assignment, transfer, sale or disposition made by any trader unable to pay his debts, of his stock-in-trade, debts or things in action relating to his business or any part thereof, otherwise than in the ordinary way of business, to any other person shall, if a provisional order or an absolute order take effect against the person making the same within six months after the date of making the same be deemed fraudulent and void as against the Trustee; unless the same were made and executed with the

Conveyance, assignment, etc., of stock-in-trade, etc.

assent of three-fourths in number and value of the creditors of such person; or unless the same were made and executed after not less than twenty-one days' notice in the *Gazette* and in a daily paper printed and published in Jamaica of the intention of the trader to make such conveyance, assignment or transfer, sale or disposition.

42/1969  
3rd Sch.

Entry of  
vacatur on  
margin of  
recorded  
deed  
declared  
void.

**117.** When any deed is declared void under the provisions of this Act, the Court shall direct the Deputy-Keeper of the Records to enter a note of such decree on the margin of any deed to which it relates that may be recorded in the Record Office.

Proceeds of  
executions  
against  
debtor.

**118.** When the goods of a person have been taken in execution in respect of a judgment and sold, the bailiff or officer executing the process shall, if he have notice of a petition filed by or against such person, hold the balance of the proceeds of the sale, after deducting expenses, upon trust to pay the same to the Trustee or other person entitled thereto under the petition.

Delivery of  
goods taken  
in execution  
but not sold.

**119.** When the goods of a person have been taken in execution in respect of a judgment, and not sold before the bailiff or officer executing the process receives notice of the appointment of a receiver or trustee under a bankruptcy petition presented against or by such person, such officer shall forthwith after receipt of the notice deliver up such goods to the Receiver or Trustee, and the costs incurred by such officer in respect of such execution shall be paid out of the property of the debtor.

How far  
creditor  
entitled to  
benefit of  
execution  
or attach-  
ment  
against  
debtor.

**120.** A creditor who has levied execution on the property of a debtor, or has made an attachment thereof, shall not be entitled to retain the benefit of such execution or attachment unless and except in so far as he has, before the filing of a petition against or by such debtor, enforced such

execution by sale of the property seized, or enforced such attachment by actual possession of the moneys attached or (as the case may be) by sale of the property attached.

121. [Repealed by Act 15 of 1979, 2nd Sch.]

122. Subject to the provisions of this Act relating to the proceeds of the sale of goods which have been seized, and to the provisions of this Act and every other enactment avoiding, on the ground of their being fraudulent, certain settlements, conveyances, transfers, charges, payments, obligations and judicial proceedings, the following dealings and transactions relating to the property of the debtor, if they take place before the filing of the petition, shall be valid notwithstanding any prior act of bankruptcy committed by the debtor, that is to say—

Protection  
of certain  
*bona fide*  
transactions  
with bank-  
rupt before  
petition  
filed.

- (a) every payment by the debtor to any of his creditors and every payment or delivery to him; and
- (b) every conveyance, sale or assignment for valuable consideration by and with him; and
- (c) every execution and attachment against his goods and chattels executed and levied by seizure and sale:

Provided that the person to, by or with whom such payment, delivery, conveyance, assignment, sale contract, dealing or transaction, was made, executed or entered into, or at whose suit or on whose account every such execution or attachment was issued, had not at the time of such payment, delivery, conveyance, assignment, contract, dealing or transaction, or at the time of the executing or levying of such execution or attachment, or at the time of the making of any sale thereunder, notice of any act of bankruptcy

committed by the debtor and available for adjudication against him at the time of the filing of the petition.

*Debts Provable Against the Debtor's Estate*

What debts  
are and  
what are  
not provable  
against  
debtor's  
estate.

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

(2) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the provisional order, or to which he may become subject by reason of any obligation incurred previously to the date of the order, shall be deemed to be debts provable under a bankruptcy petition in pursuance of this Act.

Estimate of  
debts of  
uncertain  
value.

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

Liability  
defined.

**125.** "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 such breach does or does not occur, or is or is not likely to occur, or capable of occurring, before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of money or money's worth, whether such payments be—

- (a) as respects amount, fixed or unliquidated, and payment in one sum or by instalments, or periodical payments;
- (b) as respects time, present or future, certain or dependent on any one contingency, or on two or more contingencies;
- (c) as to mode of valuation, capable of being ascertained by fixed rules, or assessable only by a jury, or as matter of opinion.

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

**127.—(1)** Where a debt has been proved and the debt includes interest or any pecuniary consideration in lieu of interest, or in the nature of premiums, fines, bonus or commissions, such interest or consideration shall, for the purpose of dividend, be calculated at a rate not exceeding six *per centum* per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of Interest on debts, how calculated.

interest to which he may be entitled after all the debts proved in the estate have been paid in full.

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

- (a) any account settled between the debtor and the creditor within three years preceding the date of the provisional order may be examined, and, if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalization of interest or ascertainment of loans or otherwise), the account may be reopened and the whole transaction treated as one;
- (b) any payments made by the debtor to the creditor before the provisional order whether by way of bonus, premium, fines, commissions, or otherwise, and any sums received by the creditor before the provisional order from the realization of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated in the first place to the satisfaction of interest at a rate not exceeding six *per centum* per annum as in this section previously provided, and thereafter to the satisfaction of the principal;
- (c) where the debt due is secured and the security is realized after the provisional order, or the value thereof is assessed in the proof, the amount realized or assessed shall be appropriated in the first place to the satisfaction of interest at a rate not exceeding six *per centum* per annum as in this section previously provided, and thereafter to the satisfaction of the principal.

**128.**—(1) Where a married woman has been adjudged bankrupt, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted by him to his wife for the purposes of her trade or business until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

Postpone-  
ment of  
husband's  
and wife's  
claim.

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

**129.**—(1) A secured creditor may on giving up his security prove for his whole debt, or he may prove for any balance due to him after realizing or giving credit for the value of his security in manner and at the time prescribed.

Secured  
creditors,  
how they  
may prove.

(2) A secured creditor not complying with the foregoing conditions shall be excluded from proof.

**130.** If the debtor is at the date of the provisional 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 joint contractor, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts against the properties respectively liable upon such contracts.

Proofs in  
respect of  
distinct  
contracts in  
different  
capacities.

Mutual  
dealings and  
set off.

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

132. [*Repealed by Act 15 of 1979, 2nd Sch.*]

May prove  
for proportion  
of  
rent to date  
of provisional  
order.

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

#### *Distribution of Assets and Dividends*

Notice of  
dividend.

134. Before declaring a dividend the Trustee shall cause a notice to be gazetted, stating the day on which the dividend is intended to be declared, and, except as hereinafter provided, those debts only in respect of which proof has been made or tendered before that day shall be allowed to participate in the dividend.

Calculation  
and distribution  
of  
dividend.

135. In the calculation and distribution of a dividend it shall be obligatory on the Trustee to make provision for debts provable under this Act appearing from the debtor's statements, or otherwise, to be due to persons resident in places so distant from the place where the Trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, and also for debts provable under the bankruptcy petition which have

been notified to him in manner prescribed, and are subject of claims not yet determined, and on such debt being established the creditor shall be entitled to receive the dividend reserved thereon.

136. Creditors may prove their debts in manner prescribed, and creditors who have not proved their debts before the declaration of any dividend or dividends shall, on the occasion of the next dividend being declared, be entitled to be paid any dividend or dividends they have failed to receive before any moneys are made applicable to the payment of any other dividend or dividends, but they shall not be entitled to disturb the distribution of any dividend declared before their debts were proved, by reason that they have not participated therein.

Rights of  
creditors  
who prove  
after  
dividend.

137.—(1) When all the property of the debtor from which any moneys available for division amongst the creditors can in the opinion of the Trustee be reasonably expected to arise has been realized, the Trustee shall declare a final dividend.

Final  
dividend,  
notice  
thereof.

(2) Before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors of the debtor have been notified to him, and not established to his satisfaction, that if they do not establish such claims to the satisfaction of the Court within a time to be limited for that purpose by the notice he will proceed to make final division of the property without regard to such claims.

(3) After the expiration of such time, or if the Court on application by any such claimant grants further time to him for establishing his claim, then on the expiration of such further time the property of the debtor divisible amongst the creditors shall be divided amongst the creditors who have proved their debts without regard to the claims of any other person.

How  
dividend  
recoverable  
if not paid.

**138.** No action shall lie for a dividend, but if the Trustee having control of any dividend refuses to pay the same the Court may if it thinks fit order him to pay the same, and also to pay out of his own moneys interest thereon for the time that it is withheld, and the cost of the application.

*Rules as to Priority of Payment*

Preferential  
debts.

**139.**—(1) The debts hereinafter mentioned shall be paid in priority to all other debts, and between themselves such debts shall rank equally, and shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportion between themselves, that is to say—

- (a) all public taxes imposed by law due from the debtor at the date of the provisional order not exceeding in the whole one year's taxes;
- (b) all wages or salary of any clerk or servant in respect of services rendered to the debtor during four months next preceding the date of the provisional order, not exceeding one thousand six hundred dollars;
- (c) all wages of any labourer or workman in respect of services rendered to the debtor during four months next preceding the date of the provisional order;
- (d) contributions payable pursuant to the National Insurance Act;
- (e) redundancy payments payable under the Employment (Termination and Redundancy Payments) Act; and
- (f) all amounts by way of contributions for which the debtor is liable pursuant to sections 11 and 12 of the National Housing Trust Act and which have become due and payable.

(2) Save as aforesaid, all debts provable under the petition shall be paid *pari passu*.

1/1982  
S. 3.

38/1965  
S. 51  
7th Sch.

38/1965  
S. 51  
7th Sch.  
31/1974  
S. 19.

1/1982  
S. 3(d)

**140.** If a provisional order is made against one member of a partnership, a creditor to whom that partner 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 first mentioned partner until all the separate creditors have received the full amount of their respective debts.

Creditors of a debtor's firm postponed to separate creditors of debtors.

### *As to Payment to the Debtor*

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

Allowances to debtor for support or services.

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

Surplus of estate payable to debtor.

### *Bankruptcy Unclaimed Estates*

**143.** Where any moneys of an insolvent or bankrupt estate have been or shall be lodged in the Treasury in pursuance of any former enactment or in pursuance of any enactment now or hereafter to be in force, and have remained or hereafter shall remain in the books of the Accountant-General for twenty years or upwards, and during that period no claim has been or shall be successfully made thereto, it shall be the duty of the Accountant-General to report the facts of the case to the Minister.

When moneys of insolvent estate remain in Treasury for twenty years Accountant-General to report to Minister.

**144.** On the direction of the Minister in writing on such report, that proceedings be taken under this Act, the Accountant-General shall give public notice by advertisement in the *Gazette*, and in one or more newspapers printed

Advertisement in *Gazette* and newspaper.

42/1969  
3rd Sch.

Claims to be made within one year of advertisement.

and published in this Island that a given part of the estate of a bankrupt or insolvent, to be named in such advertisement, has been lying in the Treasury for a period to be specified as aforesaid, and that unless within one year from the date of the first publication of such advertisement, claim to the moneys therein specified be made and substantiated to the satisfaction of the Accountant-General or a court of competent jurisdiction, such moneys will become subject to the provisions hereinafter mentioned. The advertisement aforesaid shall be published as aforesaid as often during the said year as the Accountant-General may deem expedient, but not less than four times.

Unclaimed funds to become Consolidated Fund and assets of the Island.

**145.** Upon the expiration of one year from the date of the first publication of such advertisement as aforesaid, or from the date of the latest of such advertisements if they are not simultaneous, and after the due publication of the same as aforesaid, any of the moneys in question to which no claim shall have been made and substantiated as aforesaid shall lapse to and become part of the Consolidated Fund and assets of the Island:

Provided always that, if within the year aforesaid, a claim to any portion of the moneys in question shall have been duly made, but shall be pending at the expiration of the said year—

- (a) before the Accountant-General for consideration; or
- (b) before a court of competent jurisdiction, and there shall be lodged with the Accountant-General a certificate to that effect signed by a Judge of that court,

then such moneys shall not lapse to or become part of the Consolidated Fund and assets of the Island until—

- (i) the Accountant-General shall have decided that such claim is not good and no certificate as afore-

- said shall have been lodged with the Accountant-General within one month of such decision; or
- (ii) any such certificate be cancelled or revoked.

**146.** It shall be lawful for any person desirous of claiming any moneys lodged in the Treasury as aforesaid but whose claim has been rejected by the Accountant-General, to claim the same by means of an action against the Attorney-General of Jamaica on behalf of the Government of the Island as defendant:

Action for money claimed to be against the Attorney-General.

Provided that if the sum claimed does not exceed two hundred dollars the action may be brought in the Resident Magistrate's Court for the parish of Kingston.

42/1969  
3rd Sch.

#### SUPPLEMENTAL PROVISIONS

##### *As to Joint Debtors*

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

Petition against partners or joint debtors.

**148.** 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.

Dismissal of petition against some respondents only.

**149.** Where a provisional order has been made against all the members of a partnership, or against several joint debtors, the operation of such order shall in the first instance be limited to the debt jointly due from such partners or debtors, but the Court may, on sufficient cause being shown by any joint or separate creditor within the prescribed time after the making of the order, direct the order to apply to the separate debts and properties of the partners or debtors,

Power to extend provisional order against partners to their separate estate.

or of some or one of them, and such order shall have effect accordingly :

Provided that nothing herein shall prejudice or affect any disposition made by a debtor in good faith, and for valuable consideration, of or in reference to the separate property to which such provisional order is so directed to apply, in the interval between the date of the provisional order and the date when such direction has been given.

Creditor of partners may prove for certain purposes his claims in proceedings against one partner.

**150.** When a provisional order is made against one member of a firm or partnership, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting, and may vote at a meeting of creditors.

Trustee's right of action when debtor is member of a firm.

**151.**—(1) Where the debtor is a member of a partnership, the Trustee administering his estate under the provisions of this Act may, when authorized by the Court, bring or prosecute any action in the name of himself and of the debtor's partner.

(2) In such case any release by such partner of the debt or demand to which the action relates shall be void.

(3) Before applying to the Court for authority to bring such action the Trustee must give notice to the partner, who may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and shall if no benefit be claimed by him therefrom be indemnified against costs in respect thereof as the Court directs.

As to debtor's joint contracts.

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

**153.**—(1) When a provisional order has been made against a member or members of a firm, and any one or more other persons being a member or members of the same firm is or are out of this Island, or of unsound mind, the Court shall have jurisdiction, after giving the prescribed notices, to make a provisional order for the administration of the joint property of the members of the firm, on its being proved to the satisfaction of the Court that the firm are unable to pay their debts, but it shall not be lawful to adjudge any member a bankrupt under this section.

Provisional order when a member of a firm is absent or lunatic.

(2) Upon such order being made, the property of the firm shall vest in the Trustee, and shall be administered in all respects as if a bankruptcy petition had been presented and a provisional order had been made in the first instance against all the members of the firm.

#### *As to Discovery of Debtor's Property*

**154.** At any time after the presentation of a petition, the Court may summon before it the debtor, or his wife, or any person known or suspected to have in his possession any of the property of the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, or his property, his trade, or dealings, or affairs, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, or his property, trade, or dealings, or affairs; and if any person so summoned, after having been tendered a reasonable sum, refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may by warrant cause such person to be apprehended and brought before it for examination.

Power of Court to summon debtor and other persons, to require production of documents as to debtor's affairs.

And to  
examine  
witnesses.

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

And to  
order pay-  
ment of  
admitted  
debt.

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

(2) If any person, on examination before the Court, admits having in his possession any property of the debtor vested in the Trustee under this Act, the Court may, on the application of the Trustee, grant a warrant for the seizure of the same:

Provided that if on such examination as aforesaid such person claims a lien on such property, such warrant shall authorize the seizure of the same only on satisfaction of such lien.

Power to  
seize  
debtor's  
property,  
and to  
search for  
same.

157. Any person acting under warrant of the Court may seize any property of the debtor divisible amongst his creditors under this Act and in the debtor's custody or possession, or in that of any other person, and with a view to such seizure may break open any house, building or room, of the debtor where the debtor is supposed to be, or any building or receptacle of the debtor where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that the property of the debtor is concealed in a house or place not belonging to him the

Court may, if it thinks fit, grant a search warrant to any constable or prescribed officer of the Court, who may execute the same according to the tenor thereof.

**158.** At any time after the presentation of a petition—

Arrest of  
debtor in  
certain  
events.

- (a) if it appears to the Court that there is probable reason for believing that the debtor is about to leave the Island, or to quit his place of residence with a view of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings under the petition, or that he is about to remove his property with a view of preventing or delaying such property being placed under the control or possession of the Receiver or Trustee, or that he has concealed or is about to conceal or make away with any of his property, or any books, documents, or writings, which might be of use to his creditors in the course of the proceedings; or
- (b) if the debtor knowing that a petition has been filed removes any property in his possession above the value of ten dollars without the leave of the Receiver or Trustee, or without good cause shown fails to attend any examination ordered by the Court,

the Court may cause the debtor to be arrested, and imprisoned in such convenient prison as the Court may direct, and any books, papers, or property in his possession to be seized and safely kept until such time as the Court may order.

**159.** The Court, upon the application of the Trustee, may from time to time order that for such time as the Court thinks fit, not exceeding three months from the date of such order, post letters addressed to the debtor at any place or places mentioned in the order shall be redirected by the

Dealing  
with letters  
addressed  
to debtor.

Postmaster General, or the officers acting under him, to the Trustee or otherwise as the Court directs, and the same shall be done accordingly.

### *Orders and Warrants of Court*

Enforce-  
ment of  
warrants  
and orders  
of Courts.

**160.** All the Courts in bankruptcy and the officers of such Courts, shall act in aid of and shall be auxiliary to each other in all matters of bankruptcy and any order of any one Court in a proceeding in bankruptcy may, on application to another Court, be made an order of such other Court, and may be carried into effect accordingly. And an order of any Court in bankruptcy seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise in regard to the matters directed by such order, the like jurisdiction which the Court which made the request, as well as the Court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

Warrants of  
Bankruptcy  
Courts.

**161.** Any warrant of a Court having jurisdiction in bankruptcy under this Act may be executed in any part of this Island in the same manner and subject to the same privileges in, and subject to which a warrant issued by any Justice against a person for an indictable offence may be executed; and any search warrant issued by a Court having jurisdiction in bankruptcy under this Act for the discovery of any property of a bankrupt may be executed in manner prescribed or in the same manner and subject to the same privileges, in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

Commit-  
ment to  
prison.

**162.** Where any Court having jurisdiction in bankruptcy under this Act commits any person to prison, the commitment may, unless otherwise prescribed, be to such con-

venient prison as the Court thinks expedient; and if the gaoler of any prison refuses to receive any prisoner so committed, he shall be liable, for every such refusal, to a penalty not exceeding two hundred dollars.

*Change of Jurisdiction by Minister*

163. Notwithstanding anything in this Act contained, the Minister, may from time to time, by order published in the *Gazette*, exclude any Resident Magistrate's Court from having jurisdiction in bankruptcy over any part or the whole of its district; and, for the purposes of bankruptcy jurisdiction, may attach its district, or any part thereof, to any other Resident Magistrate's Court or Courts, and may from time to time in like manner revoke or alter any order so made.

Change of jurisdiction by Minister.

MISCELLANEOUS PROVISIONS

*Provisions Relating to Evidence*

164. Copies, authenticated by the signature of the Trustee, of any entries in the books kept by him with respect to any estate or trust vested in or administered by him under this Act shall be admissible in evidence, and shall have the same effect in evidence in all respects as the originals from which such copies were made.

Certified copies of entries in Trustee's books.

165. In all legal proceedings judicial notice shall be taken of the signature of the Trustee; but any Court or Judge may require such signature to be proved in the ordinary way if it is doubtful to such Court or Judge whether the alleged signature is genuine.

Signature of Trustee.

166. Any bankruptcy petition or copy thereof, any order or copy of an order made by any Bankruptcy Court, any certificate or copy of a certificate made by a Bankruptcy Court, any deed of arrangement or copy thereof, and any other instrument or copy of an instrument, affidavit, or

Evidence of documents in proceedings under this Act.

document, made or used in the course of any proceedings under this Act, may, if any such document or instrument or copy appears to be sealed with the seal of any Bankruptcy Court, or purports to be signed by the Judge, or certified to be a true copy by the Registrar of any Bankruptcy Court, be receivable in evidence in all legal proceedings whatever.

Depositions  
of deceased  
persons.

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

Gazette  
notice  
conclusive  
evidence of  
certain  
facts.

168. The production of a *Gazette* containing a *Gazette* notice of a provisional order, or of an absolute order for bankruptcy, shall be conclusive evidence in legal proceedings that the provisional order was duly made, or that the debtor against whom the absolute order has been made has been duly adjudged bankrupt, and also of the date of such orders.

#### *Provisions Relating to Legal Proceedings*

Service on  
Trustee.

169. Documents in any legal or other proceedings by or against the Trustee may be served by being left at his office, and such service shall have the same effect as if it had been made personally.

Notice of  
action  
against  
Trustee.

170. No action or other proceeding shall be commenced against the Trustee, as such, unless one month's notice stating the cause thereof, the name and address of the person bringing the action or other proceeding, and the name and address of his solicitor (if any) has been given to the Trustee, and if no action or proceeding shall have been commenced

against the Trustee in terms of such notice before the expiration of sixty days from the service thereof the said notice shall lapse and cease to be effective.

171. Every deed, conveyance, assignment, surrender, admission 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 debtor under this Act, and which, after the execution of such deed, conveyance, assignment, surrender, admission or other assurance, either at law or in equity, is or remains the property of the debtor or Trustee, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond, or other instrument or writing, relating solely to the property of any such debtor, or to any proceeding under this Act, shall be exempt from stamp duty (except in respect of fees under this Act).

Exemptions  
from stamp  
duty.

172. Proceedings under this Act shall not be invalidated by any irregularity, unless the Court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity, and that such injustice cannot be remedied by any order of such Court.

Irregulari-  
ties not to  
invalidate  
proceedings.

173. Any person to whom anything in action belonging to the debtor is assigned in pursuance of this Act may bring or defend any action relating to such thing in action in his own name.

Actions in  
respect of  
debtor's  
things in  
action  
assigned.

#### *As to Apprenticeship*

174. Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk, to the debtor, the provisional order shall, if either the debtor or apprentice or clerk give notice in writing to the Trustee or Receiver to that effect, be a complete dis-

As to dis-  
charge of  
indenture of  
apprentice  
of debtor,  
and pre-  
ferential  
allowance  
thereon.

charge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of such apprentice or clerk to the debtor as a fee, the Trustee or Receiver may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as such Trustee or Receiver, subject to an appeal to the Court, thinks reasonable, out of the debtor's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the debtor under the indenture or articles before the date of the provisional order, and to the other circumstances of the case.

*As to the Annuling or Revoking of Orders in  
Bankruptcy*

Power to  
revoke  
orders, etc.,  
effect  
thereof.

**175.**—(1) The Court may at any time, for sufficient reason, revoke a provisional order for bankruptcy, or annul an adjudication; but in such case all sales and dispositions of property and payments duly made, and all acts theretofore done by the Trustee or any person acting under his authority, or by the Court, shall be valid, but the property of the debtor shall in such case vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein, upon such terms and subject to such conditions, if any, as the Court may declare by order.

(2) A copy of the order of revocation or annulment, unless such order has been made on cause shown by the debtor in the first instance, may be forthwith published in the *Gazette*, and advertised locally in the prescribed manner, and the production of a copy of the *Gazette* containing such order of revocation or annulment shall be conclusive evidence of the fact of such revocation or annulment, and of the terms of the order.

176. The revocation of a provisional order shall operate as a revocation of the appointment of the Trustee under the petition, and shall revive the remedy of any creditor against the property or person of the debtor that was suspended or stayed by the order.

Effect of  
revocation  
of a pro-  
visional  
order.

#### FRAUDULENT BANKRUPTCY

##### *Crimes Against Bankruptcy Act*

177. Any person against whom a provisional order or an absolute order in bankruptcy has been made and has not been revoked shall in each of the cases following be guilty of a misdemeanour, and shall be liable, on conviction, to imprisonment, with or without hard labour, for a term not exceeding one year, that is to say—

Crimes  
against the  
Bankruptcy  
Act, and  
where  
triable.

- (a) if he does not to the best of his knowledge and belief fully discover to the Trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part of his property except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family;
- (b) if he does not deliver up to the Trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud;
- (c) if he does not deliver up to the Trustee, or as he directs, all books, documents, papers and writings, in his custody or under his control, relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud;

- (d) if since the presentation of the petition by or against him or within six months before such presentation, he has concealed or removed any part of his property to the value of twenty dollars or upwards, or concealed any debt due to or from him, unless the jury is satisfied that he had no intent to defraud;
- (e) if he makes any material omission in any statement required under this Act relating to his affairs, unless the jury is satisfied that he had no intent to defraud;
- (f) if, knowing or believing that a false debt has been proved by any person under the bankruptcy proceedings, he fails for the period of a month to inform the Trustee thereof, unless the jury is satisfied that he had no intent to defraud;
- (g) if after the presentation of the petition by or against him he prevented the production of any book, document, paper or writing, affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;
- (h) if after the presentation of the petition, or within six months before such presentation, he has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;
- (i) if, either before or after the presentation of the petition, he made or was privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the

jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;

- (j) if after the presentation of the petition, or within six months before such presentation, he has parted with, altered, or made any omission in, or has been privy to the parting with, altering, or making any omission in, any document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud;
- (k) if after or within six months before the presentation of the petition he has attempted to account for any part of his property by fictitious losses or expenses;
- (l) if within six months before the presentation of the petition he by any false representation or other fraud has obtained any property on credit, and has not paid for the same;
- (m) if within six months before the presentation of the petition he obtained, under the false pretence of carrying on business and dealing in the ordinary way of his business, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud;
- (n) if within six months before the presentation of the petition he has pawned, pledged, or disposed of otherwise than in the ordinary way of his business any property which he had obtained on credit and had not paid for, unless the jury is satisfied that he had no intent to defraud;
- (o) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs, or his bankruptcy or liquidation;

- (p) if after or within six months before the presentation of the petition he has quitted this Island and taken with him, or attempted or made preparation for quitting this Island and for taking with him any part of his property to the amount of forty dollars or upwards, which would by law be divisible amongst his creditors under the bankruptcy, unless the jury is satisfied that he had no intent to defraud;
- (q) if in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud;
- (r) if he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery or transfer of, or any charge on his property;
- (s) if he has, with intent to defraud his creditors, concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him.

Misdemeanours under this section shall not be triable in a Resident Magistrate's Court.

Undischarged bankrupt obtaining credit to extent of forty dollars without informing creditor of his bankruptcy guilty of misdemeanour.

178. Where an undischarged bankrupt who has been adjudged bankrupt under this Act obtains credit to the extent of forty dollars or more from any person without informing such person that he is an undischarged bankrupt he shall be guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour.