

LEGISLATIVE COUNCIL.

No. S. 162.—The following Bills were read a first time at a meeting of the Council held on the 7th May, 1931 :—

BANKRUPTCY ORDINANCE, 1931.

[ORDINANCE No. OF 1931]

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C.S.O. 982/25.

[No. 22:—27.4.31.—6.]

A BILL

INTITLED

An Ordinance to amend the law relating to bankruptcy.

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows:—

PART I.

SHORT TITLE AND INTERPRETATION.

1. This Ordinance may be cited as the Bankruptcy Short title Ordinance, 1931.

2. In this Ordinance:—

(a) "Affidavit" includes statutory declaration, affirmation, and attestation on honour.

Interpretation.
4 & 5 Geo. 5,
c. 59, s. 167.

(b) "Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made.

(c) "Bailiff" includes any officer charged with the execution of a writ or other process.

(d) "Court" means the Supreme Court sitting in its bankruptcy jurisdiction.

(e) "Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Ordinance made provable in bankruptcy.

(f) "Gazetted" means published in the Hong Kong Government Gazette.

(g) "Goods" includes all chattels personal.

(h) "Oath" includes affirmation, declaration, and attestation on honour.

(i) "Ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution.

(j) "Prescribed" means prescribed by general rules within the meaning of this Ordinance.

(k) "Property" includes money, goods, things in action, land, and every description of property, whether real or personal and whether situate in this Colony or elsewhere; 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.

(l) "Resolution" means ordinary resolution.

(m) "Secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor.

(n) "Special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution.

(o) "Registrar" includes the Registrar of the Supreme Court and any Deputy Registrar of the Supreme Court.

(p) "Trustee" means the trustee in bankruptcy of a debtor's estate.

PART II.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

Acts of Bankruptcy.

Acts of
bankruptcy.
4 & 5 Geo. 5,
c. 59, s. 1 (1).

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

- (a) If in this Colony or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally.
- (b) If in this Colony or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof.
- (c) If in this Colony or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would be void as a fraudulent preference if he were adjudged bankrupt.
- (d) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of the Colony, or being out of the Colony remains out of the Colony, or departs from his dwelling-house or usual place of business, or otherwise absents himself, or begins to keep house, or removes his property or any part thereof beyond the jurisdiction of the court.
- (e) If execution against him has been levied by seizure of his goods under process in an action, or proceeding in the court, and the goods have been either sold or held by the bailiff for twenty-one days: Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days.
- (f) If he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself.
- (g) If a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in this Colony, or, by leave of the court, elsewhere, a bankruptcy notice under this Ordinance, and he does not, within seven days after service of the notice, in case the service is effected in the Colony, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counter-claim, set off or cross demand which equals or exceeds the amount of the judgment

debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained. For the purposes of this paragraph, and of section 4 of this Ordinance, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order.

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

(2) In this Ordinance, the expression "a debtor," 4 & 5 Geo. 5, c. 59, s. 1 (2). unless the context otherwise implies, includes any person, whether a British subject or not, who at the time when any act of bankruptcy was done or suffered by him—

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

4. A bankruptcy notice under this Ordinance shall be issued to a judgment creditor, or creditor who has obtained a final order, by the Registrar on the filing of a request for that purpose, and shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner: Bankruptcy notices. 4 & 5 Geo. 5, c. 59, s. 2.

Provided that a bankruptcy notice—

- (a) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;
- (b) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but, if the debtor does not give such notice, he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

Receiving Order and Official Receiver.

5. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Ordinance called a receiving order, for the protection of the estate. Jurisdiction to make receiving order. 4 & 5 Geo. 5, c. 59, s. 3.

Conditions on which creditor may petition. 4 & 5 Geo. 5, c. 59, s. 4 (1).

6.—(1) Subject to the provisions of section 7, a creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

- (a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to five hundred dollars, and
- (b) the debt is a liquidated sum, payable either immediately or at some certain future time, and
- (c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition, and
- (d) the debtor is domiciled in the Colony, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, in the Colony, or has carried on business in the Colony, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in the Colony by means of a partner or partners, or an agent or manager.

4 & 5 Geo. 5, c. 59, s. 4 (2).

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

Liability of firm to have receiving order made against it. Ord. No. 7 of 1891, s. 6.

7.—(1) The following provisions shall have effect in the case of a firm carrying on business in the Colony:—

(a) A creditor of the firm shall be entitled to present a bankruptcy petition against the firm, and a receiving order may be made against the firm in respect of an act of bankruptcy committed in reference to the business of the firm by any partner of the firm or by any person having the control or management of the business of the firm. An act of bankruptcy shall be deemed to be committed in reference to the business of the firm in all cases in which the act relates to the property or creditors of the firm and would be an act of bankruptcy by such partner or person as aforesaid if it related to his property or creditors.

(b) It shall be sufficient that a receiving order against the firm be made in the firm name, without mentioning the names of the partners, and such receiving order shall affect the joint and separate property of all the partners.

(c) The right of a creditor to present a bankruptcy petition against the firm, and the jurisdiction of the court to make a receiving order or an adjudication of bankruptcy against the firm, shall not be affected by the fact, if it is so, that all or any of the partners of the firm are not British subjects or are not resident or domiciled in the Colony.

(2) The provisions of this section shall, so far as the nature of the case will permit, apply to any person carrying on business in the Colony in a name or style other than his own name.

8.—(1) Immediately on the filing of any petition the Official Receiver may, in cases where he has reason to believe that any offence under this Ordinance or any fraud has been or is about to be perpetrated, by notice sent by messenger or by ordinary post, summon the debtor to attend before him to give such information as he requires, and may, either by himself or his agent authorised by him in writing, enter on any premises occupied by the debtor between the hours of 8 a.m. and 6 p.m. for the purpose of inspecting his property stock in trade and books of account.

(2) It shall be the duty of the debtor to furnish the Official Receiver with all such information as it is in the debtor's power to give or to obtain.

(3) If the debtor fails without reasonable cause to attend on the Official Receiver as aforesaid, or to furnish him with such information as aforesaid, or if the debtor obstructs the search of the premises or the production of any book or document required in connexion therewith, or authorises or permits any such obstruction, the debtor shall upon summary conviction be liable to imprisonment for any term not exceeding six months, and every person who takes any part in any such obstruction, whether authorised or permitted by the debtor or not, shall be liable to the like penalty.

9.—(1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and shall be served in the same manner as a writ of summons, unless some other manner of service be prescribed.

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

(3) If the court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is not satisfied that the assets for division among the unsecured creditors, after payment of all costs, charges and expenses, and the debts which are preferential under this Ordinance, will be sufficient to pay a dividend of fifteen per cent, or considers that for other sufficient cause no order ought to be made, the court may dismiss the petition.

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

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

(6) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make

tor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

4 & 5 Geo. 5, c. 59, s. 5 (7). (7) A creditor's petition shall not, after presentation, be withdrawn without the leave of the court.

Debtor's petition and order thereon. 4 & 5 Geo. 5, c. 59, s. 6 (1). **10.**—(1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order, provided that it shall be lawful for the Court in its discretion to refuse the order if it is not satisfied that the assets for division among the unsecured creditors after payment of all costs, charges and expenses, and the debts which are preferential under this Ordinance, will be sufficient to pay a dividend of fifteen per cent, or if the Court considers that for other sufficient cause that no order ought to be made.

"Sufficient cause" in this sub-section shall be deemed to include, *inter alia*, the non-attendance of the debtor, or, in the case of a firm, of at least one of the partners thereof, on the hearing of the petition, the absence of any material book of account, or any fraud, or misconduct not amounting to fraud by the debtor in relation to his affairs, or, in the case of a firm or person carrying on business under a Chinese firm name, the non-production of the partnership book or of the receipt and money-payment chops used in connection with the business.

4 & 5 Geo. 5, c. 59, s. 6 (2). (2) A debtor's petition shall not, after presentation, be withdrawn without the leave of the court.

Appearance of Official Receiver on petition. **11.** On the hearing of any creditor's or debtor's petition it shall be lawful for the Official Receiver to appear, and to call, examine and cross-examine any witness and, if he so thinks fit, to support or oppose the making of a receiving order.

Effect of receiving order. 4 & 5 Geo. 5, c. 59, s. 7. **12.**—(1) On the making of a receiving order the Official Receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose.

(2) This section shall not affect the power of any secured creditor to realise or otherwise deal with his security.

Power to appoint interim receiver. 4 & 5 Geo. 5, c. 59, s. 8. **13.** The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the Official Receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

Power to stay pending proceedings. 4 & 5 Geo. 5, c. 59, s. 9 (1). **14.**—(1) The court may, at any time after the presentation of a bankruptcy petition, either stay any action, execution, or other legal process against the property or person of the debtor or allow it to continue on such terms as it may think just.

4 & 5 Geo. 5, c. 59, s. 9 (2). (2) Where the court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by post to the address for service of the plaintiff or other party prosecuting

(3) Without prejudice to the provisions of sub-Ordinance section (1), if the court orders the release of any debtor who is under execution for a civil debt, it may impose such conditions as it thinks fit, and, in particular, it may require as a condition of such release that the debtor find security to attend in the subsequent bankruptcy proceedings, and to abide by all orders of the court relating to the said proceedings.

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

(2) The special manager shall give security and account in such manner as the court may direct.

(3) The special manager shall receive such remuneration as may be prescribed.

16. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted by the Official Receiver.

Proceedings consequent on Order.

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

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

18.—(1) Where a receiving order is made against a debtor, he shall make out and submit to the Official Receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts and liabilities, wherever situate, the names, residences and occupations of his creditors, whether in the Colony or elsewhere, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Official Receiver may require. Such statement shall also give details of all property held by him in a tong name or under any alias, or by his wife, or any concubine of his, or by any person in trust for him or them, with full particulars as to the manner and date of its being acquired.

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

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

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

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

4 & 5 Geo. 5,
c. 59,
s. 14 (3). (3) If the debtor fails without reasonable excuse to comply with the requirements of this section, he may be punished for a contempt of court and the court may, on the application of the Official Receiver, or of any creditor, adjudge him bankrupt.

4 & 5 Geo. 5,
c. 59,
s. 14 (4). (4) Any person stating himself to be a creditor of the bankrupt may, on payment of the prescribed fee, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or Official Receiver.

Public Examination of Debtor.

Public
examination
of debtor.
4 & 5 Geo. 5,
c. 59,
s. 15 (1). **19.**—(1) Where the court makes a receiving order, it shall, save as in this Ordinance provided, hold a public sitting, on a day to be appointed by the court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

4 & 5 Geo. 5,
c. 59,
s. 15 (2). (2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

4 & 5 Geo. 5,
c. 59,
s. 15 (3). (3) The court may adjourn the examination from time to time.

4 & 5 Geo. 5,
c. 59,
s. 15 (4). (4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

4 & 5 Geo. 5,
c. 59,
s. 15 (5). (5) The Official Receiver shall take part in the examination of the debtor, and for the purpose thereof, if specially authorised by the court, may employ a solicitor with or without counsel. No solicitor or counsel shall be allowed to take part in the examination on behalf the debtor.

4 & 5 Geo. 5,
c. 59,
s. 15 (6). (6) If a trustee is appointed before the conclusion of the examination, he may take part therein.

4 & 5 Geo. 5,
c. 59,
s. 15 (7). (7) The court may put such questions to the debtor as it may think expedient.

4 & 5 Geo. 5,
c. 59,
s. 15 (8). (8) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. Such notes of the examination as the court thinks proper shall be taken down either in shorthand or longhand and they or a transcript thereof shall be read over either to or by the debtor and signed by him, and [Sec. s. 143]. may thereafter, save as in this Ordinance provided, be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times upon payment of the prescribed fee.

4 & 5 Geo. 5,
c. 59,
s. 15 (9). (9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

4 & 5 Geo. 5,
c. 59,
s. 15 (10). (10) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the court makes him unfit to attend his public examination, or is absent from the Colony, the court may make an order dispensing with such

examination, or directing that the debtor be examined on such terms, in such manner, and at such place as to the court seems expedient.

Compositions and Schemes of Arrangement.

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

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

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

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter addressed to the Official Receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

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

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

(7) For the purpose of approving a composition or scheme by joint debtors, the court may, if it thinks fit, and on the report of the Official Receiver that it is expedient so to do, dispense with the public examination of any of the joint debtors if they are or any one of them is prevented from attending the examination by illness or absence from the Colony but one at least of such joint debtors shall be publicly examined.

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

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

- 4 & 5 Geo. 5,
c. 59,
s. 16 (10). (10) If any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the debtor's discharge were he adjudged bankrupt, the court shall refuse to approve the proposal, unless it provides reasonable security for the payment of not less than twenty-five per cent on all the unsecured debts provable against the debtor's estate.
- 4 & 5 Geo. 5,
c. 59,
s. 16 (11). (11) In any other case the court may either approve or refuse to approve the proposal.
- 4 & 5 Geo. 5,
c. 59,
s. 16 (12). (12) If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the court.
- 4 & 5 Geo. 5,
c. 59,
s. 16 (13). (13) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy.
- 4 & 5 Geo. 5,
c. 59,
s. 16 (14). (14) A certificate of the Official Receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.
- 4 & 5 Geo. 5,
c. 59,
s. 16 (15). (15) The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.
- 4 & 5 Geo. 5,
c. 59,
s. 16 (16). (16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the Official Receiver or the trustee or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.
- 4 & 5 Geo. 5,
c. 59,
s. 16 (17). (17) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 29 and Part V of this Ordinance shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy", "bankrupt", and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme.
- 4 & 5 Geo. 5,
c. 59,
s. 16 (18). (18) Part III of this Ordinance shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee", "bankruptcy", "bankrupt", and "order of adjudication", as in the last preceding sub-section.
- 4 & 5 Geo. 5,
c. 59,
s. 16 (19). (19) No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Ordinance would not be released by an order of discharge if the debtor had been adjudged bankrupt. 4 & 5 Geo. 5, c. 59, s. 16 (20).

21. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Ordinance the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme. Effect of composition or scheme. 4 & 5 Geo. 5, c. 59, s. 17.

Adjudication of Bankruptcy.

22.—(1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Ordinance within fourteen days after the conclusion of the examination of the debtor or such further time as the court may allow, the court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee. Adjudication of bankruptcy where composition not accepted or not approved. 4 & 5 Geo. 5, c. 59, s. 18 (1).

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, the date of the adjudication, and the name of the trustee, shall be gazetted, and shall be advertised in at least two local newspapers, one of which shall be Chinese, or as may be prescribed, and the date of the order shall for the purposes of this Ordinance be the date of the adjudication. 4 & 5 Geo. 5, c. 59, s. 18 (2).

(3) It shall be sufficient that an adjudication order against a firm be made in the firm name, without mentioning the names of the partners, and such adjudication order shall affect the joint and separate property of all the partners. Ordinance No. 7 of 1891, s. 6, para. (2).

23.—(1) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint the Official Receiver or some other fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt, or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned. A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty. Appointment of trustee. 4 & 5 Geo. 5, c. 59, s. 19 (1).

(2) The person appointed shall, unless he is the Official Receiver, give such security as the Court may direct or as may be prescribed, and the Court, if satisfied with the security, shall certify under the hand of the Registrar that his appointment has been duly made, unless the appointment is disapproved by the court on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connexion with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally. 4 & 5 Geo. 5, c. 59, s. 19 (2).

(3) The appointment of a trustee shall take effect as from the date of the certificate 4 & 5 Geo. 5, c. 59, s. 19 (4).

(4) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the 4 & 5 Geo. 5, c. 59, s. 19 (8).

Official Receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee. If no trustee is then appointed by the creditors the court shall on the application of the Official Receiver appoint the Official Receiver or some other fit person to be trustee.

- Committee of inspection.** 4 & 5 Geo. 5, c. 59, s. 20 (1). **24.**—(1) The creditors qualified to vote may, at their first or any subsequent meeting, by resolution, appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.
- 4 & 5 Geo. 5, c. 59, s. 20 (2). (2) The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications:—
- (a) that of being a creditor or the holder of a general proxy or general power of attorney from a creditor, provided that no creditor and no holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been admitted; or
 - (b) that of being a person to whom a creditor intends to give a general proxy or general power of attorney, provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been admitted.
- 4 & 5 Geo. 5, c. 59, s. 20 (3). (3) The committee of inspection shall meet at such times as they shall from time to time appoint, and, the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- 4 & 5 Geo. 5, c. 59, s. 20 (4). (4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.
- 4 & 5 Geo. 5, c. 59, s. 20 (5). (5) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.
- 4 & 5 Geo. 5, c. 59, s. 20 (6). (6) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.
- 4 & 5 Geo. 5, c. 59, s. 20 (7). (7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.
- 4 & 5 Geo. 5, c. 59, s. 20 (8). (8) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other person eligible as above to fill the vacancy.
- 4 & 5 Geo. 5, c. 59, s. 20 (9). (9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body, and, where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five.

(10) If there be no committee of inspection, any act or thing or any direction or permission by this Ordinance authorised or required to be done or given by the committee may be done or given by the court on the application of the trustee. 4 & 5 Geo. 5, c. 59, s. 20 (10).

25.—(1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by a majority in number and three-fourths in value of all the creditors who have proved, satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs, and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication. Power to accept composition or scheme after adjudication. 4 & 5 Geo. 5, c. 59, s. 21 (1).

(2) If the court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the court may appoint, on such terms, and subject to such conditions, if any, as the court may declare. 4 & 5 Geo. 5, c. 59, s. 21 (2).

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court that the composition or scheme, cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy. 4 & 5 Geo. 5, c. 59, s. 21 (3).

Control over Person and Property of Debtor.

26.—(1) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require. Duties of debtor as to discovery and realisation of property. 4 & 5 Geo. 5, c. 59, s. 22 (1).

(2) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, and submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the Official Receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the Official Receiver, special manager, or trustee, or may be provided by this Ordinance, or be prescribed, or be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the Official Receiver, special manager, trustee, or any creditor or person interested. 4 & 5 Geo. 5, c. 59, s. 22 (2).

(3) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors. 4 & 5 Geo. 5, c. 59, s. 22 (3).

4 & 5 Geo. 5,
c. 59,
s. 22 (4). (4) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Ordinance, and which is for the time being in his possession or under his control, to the Official Receiver or to the trustee, or to any person authorised by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

Arrest of debtor under certain circumstances.
4 & 5 Geo. 5,
c. 59,
s. 23 (1). **27.**—(1) The court may, by warrant addressed to any person or persons named therein, cause a debtor to be arrested, and any books, papers, money and goods in his possession or under his control or relating to his affairs to be seized, and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances:—

- (a) if, after a bankruptcy notice has been issued under this Ordinance, or after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he has absconded, or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding delaying or embarrassing proceedings in bankruptcy against him;
- (b) if, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to dispose of, or remove, his goods with a view to preventing or delaying possession being taken of them by the Official Receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy;
- (c) if, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of twenty-five dollars, without the leave of the Official Receiver or trustee;
- (d) if, without good cause shown, he fails to attend any examination ordered by the court;
- (e) if there is probable cause for believing that he has committed an offence punishable under this Ordinance:

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

4 & 5 Geo. 5,
c. 59,
s. 23 (2). (2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Ordinance relating to fraudulent preferences.

Re-direction of debtor's telegrams and letters.
4 & 5 Geo. 5,
c. 59, s. 24. **28.** Where a receiving order is made against a debtor, the court, on the application of the Official Receiver or trustee, may from time to time order that for such time, not exceeding three months, as the court thinks fit, telegrams, and post letters, and other postal packets, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed sent or delivered by the agent

of the telegraph organisation or the Postmaster General, or the officers acting under them, to the Official Receiver, or the trustee, or otherwise as the court directs, and the same shall be done accordingly.

29.—(1) The court may, on the application of the Official Receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

Enquiry as to debtor's conduct, dealings, and property. 4 & 5 Geo. 5, c. 59, s. 25 (1).

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant, cause him to be apprehended and brought up for examination.

4 & 5 Geo. 5, c. 59, s. 25 (2).

(3) The court may, by itself or by a commissioner appointed for the purpose, examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings, or property.

4 & 5 Geo. 5, c. 59, s. 25 (3).

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

4 & 5 Geo. 5, c. 59, s. 25 (4).

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

4 & 5 Geo. 5, c. 59, s. 25 (5).

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

4 & 5 Geo. 5, c. 59, s. 25 (6).

(7) In the case of the death of the debtor or his wife or of any other witness whose evidence has been duly taken under this Ordinance, the deposition of the person so deceased purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall in all legal proceedings be admitted as evidence of the matters therein deposed to, saving all just exceptions.

Ord. No. 7 of 1891, s. 26 (7).

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

Discharge of bankrupt. 4 & 5 Geo. 5, c. 59, s. 26 (1).

Ord. No. of 1891, s. 27 (2).

(2) Where the bankrupt does not of his own accord, within such time as the court may deem reasonable, apply for his discharge, the court may, of its own motion or on the application of the Official Receiver or the trustee or any creditor who has proved, make an order calling upon the bankrupt to come up for his discharge on a day to be fixed by the court, and, on due service of the order, if the bankrupt does not appear on the day fixed thereby, the court may make such order as it thinks fit, subject to the provisions of this section, and the debtor 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.

4 & 5 Geo. 5, c. 59, s. 26 (2).

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

16 & 17 Geo. 5, c. 7, s. 1 (1) (a).

Provided that where the bankrupt has committed any misdemeanour under this Ordinance, or any enactment repealed by this Ordinance, or any other misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, or where in any case any of the facts hereinafter mentioned are proved the court shall, either—

16 & 17 Geo. 5, c. 7, s. 1 (1) (b).

- (a) refuse the discharge; or
- (b) suspend the discharge for such period as the court thinks proper; or
- (c) suspend the discharge until a dividend of not less than fifty per cent has been paid to the creditors; or
- (d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the Official Receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after acquired property of the bankrupt in such manner and subject to such conditions as the court may direct; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available 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 bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

(4) The facts hereinbefore referred to are—

4 & 5 Geo. 5, c. 59, s. 26 (3).

- (a) that the bankrupt's assets are not of a value equal to fifty per cent of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value of

fifty per cent of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

- (b) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy, or, in the case of a firm carrying on business under a Chinese firm name, that a partnership book has not been kept, or that such books have not been available for the trustee during the bankruptcy proceedings, unless they have been accidentally lost or destroyed, the onus of proof of such accidental loss or destruction being on the bankrupt;
- (c) that the bankrupt has continued to trade after knowing himself to be insolvent;
- (d) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;
- (e) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
- (f) that the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;
- (g) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him; 16 & 17 Geo. 5, c. 7, s. 1 (2).
- (h) that the bankrupt has, brought on or contributed to his bankruptcy by incurring unjustifiable expense by bringing a frivolous or vexatious action;
- (i) that the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;
- (j) that the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to fifty per cent of his unsecured liabilities;
- (k) that the bankrupt has, on any previous occasion, whether in this Colony or elsewhere, been adjudged bankrupt, or made a composition or arrangement with his creditors;
- (l) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(5) The court may, on proof to its satisfaction of any of the facts mentioned in paragraphs (b), (c), (d), (f), (g), (h), (i) or (l) of sub-section (4), summarily sentence the bankrupt to imprisonment for any term not exceeding one year. Ord. No. 7 of 1891, s. 27 (5).

(6) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to fifty per cent of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to fifty per cent of his unsecured liabilities, and a report by the Official Receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities. 4 & 5 Geo. 5, c. 59, s. 26 (5).

4 & 5 Geo. 5, (7) For the purposes of this section, the report of
c. 59, the Official Receiver shall be *prima facie* evidence of
s. 26 (6). the statements therein contained.

4 & 5 Geo. 5, (8) Notice of the appointment by the court of the
c. 59, day for hearing the application for discharge shall be
s. 26 (7). published as the court may direct or as may be
prescribed and shall be sent fourteen days at least
before the day so appointed to each creditor who has
proved, and the court may hear the Official Receiver
and the trustee, and may also hear any creditor. At
the hearing the court may put such questions to the
debtor and receive such evidence as it may think fit.

4 & 5 Geo. 5, (9) The powers of suspending and of attaching con-
c. 59, ditions to a bankrupt's discharge may be exercised
s. 26 (8). concurrently.

4 & 5 Geo. 5, (10) A discharged bankrupt shall, notwithstanding
c. 59, his discharge, give such assistance as the trustee may
s. 26 (9). require in the realisation and distribution of such of
his property as is vested in the trustee, and, if he
fails to do so, he shall be guilty of a contempt of
court; and the court may also, if it thinks fit, revoke
his discharge, but without prejudice to the validity of
any sale, disposition or payment duly made or thing
duly done subsequent to the discharge but before its
revocation.

Fraudulent settlements. 31. In either of the following cases, that is to
4 & 5 Geo. 5, say—
c. 59, s. 27.

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

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

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

Effect of order of discharge. 32.—(1) An order of discharge shall not release the
4 & 5 Geo. 5, bankrupt—
c. 59, s. 28 (1).

(a) from any debt on a recognisance nor from
any debt with which the bankrupt may be
chargeable at the suit of the Crown or of any
person for any offence against a statute relat-
ing 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 Treasurer certify in writing his
consent to his being discharged therefrom; or

(b) from any debt or liability incurred by means
of any fraud or fraudulent breach of trust to
which he was a party, or from any debt or
liability whereof he has obtained forbearance
by any fraud to which he was a party.

(2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy. 4 & 5 Geo. 5, c. 59, s. 28 (2).

(3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge. 4 & 5 Geo. 5, c. 59, s. 28 (3).

(4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him. 4 & 5 Geo. 5, c. 59, s. 28 (4).

33.—(1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where the court is satisfied that the assets for division among the unsecured creditors after payment of all costs, charges and expenses and the debts which are preferential under this Ordinance are not and will not be sufficient to pay a dividend of fifteen per cent, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, by order annul the adjudication. Power for court to annul adjudication in certain cases. 4 & 5 Geo. 5, c. 59, s. 29 (1).

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Official Receiver, trustee, or other person acting under their authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court may declare by order. 4 & 5 Geo. 5, c. 59, s. 29 (2).

(3) Notice of the order annulling an adjudication shall be forthwith gazetted, and shall be advertised in at least two local newspapers, one of which shall be Chinese, or as may be prescribed. 4 & 5 Geo. 5, c. 59, s. 29 (3).

(4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court. 4 & 5 Geo. 5, c. 59, s. 29 (4).

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

34.—(1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy. Description of debts provable in bankruptcy. 4 & 5 Geo. 5, c. 59, s. 30 (1).

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice. 4 & 5 Geo. 5, c. 59, s. 30 (2).

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or 4 & 5 Geo. 5, c. 59, s. 30 (3).

by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

4 & 5 Geo. 5,
c. 59,
s. 30 (4) (4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

4 & 5 Geo. 5,
c. 59,
s. 30 (5) (5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court.

4 & 5 Geo. 5,
c. 59,
s. 30 (6) (6) If, in the opinion of the court, the value of the debt or liability is incapable of being fairly estimated, the court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Ordinance, be deemed to be a debt not provable in bankruptcy.

4 & 5 Geo. 5,
c. 59,
s. 30 (7) (7) If, in the opinion of the court, the value of the debt or liability is capable of being fairly estimated, the court may direct the value to be assessed before the court itself without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

4 & 5 Geo. 5,
c. 59,
s. 30 (8) (8) "Liability" shall, for the purposes of this Ordinance, include—

- (a) any compensation for work or labour done;
- (b) any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor;
- (c) generally, any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth, whether the payment is, as respects amount, fixed or unliquidated, as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies, or, as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

Mutual
credit and
set-off.
4 & 5 Geo. 5,
c. 59, s. 31.

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

Rules as
to proof
of debts.
4 & 5 Geo. 5,
c. 59, s. 32.
Second
Schedule.

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

37.—(1) The assets remaining after payment of the actual expenses incurred in realizing any of the assets of the debtor shall, subject to any order of the court, first be liable to the following payments, which shall be made in the following order of priority, namely,—

- (a) the actual expenses incurred by the Official Receiver in protecting or attempting to protect the property or assets of the debtor or any part thereof and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor;
- (b) the fees, percentages, and charges payable to, or costs, charges, and expenses incurred or authorised by, the Official Receiver, whether acting as Official Receiver or trustee;
- (c) the remuneration of the special manager, if any; and
- (d) the taxed costs of the petitioner, so far as the same may not have been disallowed by the court;

(2) Whenever the court is satisfied that property of a debtor in respect of whose estate a receiving order has been made has been preserved for the benefit of the creditors by means of legal proceedings brought by a creditor against the debtor without notice of any available act of bankruptcy committed by the debtor, the court may, in its discretion, order the payment of the costs of such legal proceedings or any part of them (taxed as between party and party) out of the estate, with the same priority as to payment as is herein provided in respect of the taxed costs of the petitioner.

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

- (a) all debts due from the bankrupt to the Crown at the date of the receiving order, and having become due and payable within twelve months next before that time;
- (b) all wages or salary (including commission) provided that the amount thereof is fixed or ascertainable at the date of the receiving order) of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding three hundred dollars;
- (c) all wages of any labourer or workman not exceeding one hundred dollars, whether payable for time or for piece work, in respect of services rendered to the bankrupt during four months before the date of the receiving order.

(2) The foregoing debts shall rank equally between themselves, and shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the provisions contained in section 37 and to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order, the debts to which priority

is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof: Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

4 & 5 Geo. 5,
c. 59,
s. 33 (5). (5) This section shall apply in the case of a deceased person who dies insolvent as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

4 & 5 Geo. 5,
c. 59,
s. 33 (6). (6) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

4 & 5 Geo. 5,
c. 59,
s. 33 (7). (7) Subject to the provisions of this Ordinance, all debts proved in the bankruptcy shall be paid *pari passu*.

4 & 5 Geo. 5,
c. 59,
s. 33 (8). (8) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of eight per cent per annum on all debts proved in the bankruptcy.

Preferential claim in case of apprenticeship.
4 & 5 Geo. 5,
c. 59,
s. 34 (1). **39.**—(1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and, if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

4 & 5 Geo. 5,
c. 59,
s. 34 (2). (2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articulated clerk to the bankrupt, or any person acting on behalf of such apprentice or articulated clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Landlord's power of distress.
4 & 5 Geo. 5,
c. 59, s. 35.
Ordinance No. 1 of 1883. **40.** The landlord or other person to whom any rent is due from the bankrupt may, subject to the provision of the Distress for Rent Ordinance, 1883, at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that, if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for six months rent accrued due prior to the date of the order of adjudication and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

41.—(1) Where a married woman has been Postpone-
adjudged bankrupt, her husband shall not be entitled ment of
to claim any dividend as a creditor in respect of any husband's
money or other estate lent or entrusted by him to and wife's
her until all claims of the other creditors of his wife claims.
for valuable consideration in money or money's worth 4 & 5 Geo. 5,
have been satisfied. c. 59,
s. 36 (1).

(2) Where a debtor has been adjudged bankrupt, 4 & 5 Geo. 5,
any money or other estate of his wife lent or entrusted c. 59,
by her to him shall be treated as assets of his estate, s. 36 (2).
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 the debtor for valuable consideration in money or
money's worth have been satisfied.

(3) In this section "married woman" and "wife"
include "concubine".

Property available for Payment of Debts.

42. The bankruptcy of a debtor, whether it Relation
takes place on the debtor's own petition or upon back of
that of a creditor or creditors, shall be deemed to trustee's
have relation back to, and to commence at, the time title.
of the act of bankruptcy being committed on which a 4 & 5 Geo. 5,
receiving order is made against him, or, if the bank- c. 59, s. 37.
rupt is proved to have committed more acts of
bankruptcy than one, to have relation back to, and
to commence at, the time of the first of the acts of
bankruptcy proved to have been committed by the
bankrupt within three months next preceding the
date of the presentation of the bankruptcy petition,
but no bankruptcy petition, receiving order or adjudi-
cation shall be rendered invalid by reason of any act
of bankruptcy anterior to the debt of the petitioning
creditor.

43. The property of the bankrupt divisible amongst Description
his creditors, and in this Ordinance referred to as of bank-
the property of the bankrupt, shall not comprise the rupt's
following particulars:— property
divisible
amongst
creditors.

- (a) property held by the bankrupt on trust for
any other person; 4 & 5 Geo. 5,
c. 59,
s. 38 (1).
- (b) the tools (if any) of his trade and the
necessary wearing apparel and bedding of
himself, and his family dependent on and
residing with him, to a value, inclusive of tools
and apparel and bedding, not exceeding one
hundred dollars in the whole;

but it shall comprise the following particulars:—

- (c) all such property as may belong to or be
vested in the bankrupt at the commencement
of the bankruptcy, or may be acquired by or
devolve on him before his discharge;
- (d) the capacity to exercise and to take proceed-
ings for exercising all such powers in or over
property as might have been
exercised by the bankrupt for his own benefit
at the commencement of his bankruptcy or
before his discharge;
- (e) all goods being, at the commencement of the
bankruptcy, in the possession, order or dis-
position of the bankrupt, in his trade or
business, by the consent and permission of
the true owner, under such circumstances that
he is the reputed owner thereof, provided that
things in action other than debts due or
growing due to the bankrupt in the course
of his trade or business shall not be deemed
goods within the meaning of this section.

Provisions
as to
second
bankruptcy.
16 & 17 Geo
5, c. 7,
s. 3.

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

(2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall subject to any disposition thereof made by the Official Receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section 52, vest in the trustee in the subsequent bankruptcy or administration in bankruptcy as the case may be.

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

Effect of Bankruptcy on antecedent and other Transactions.

Restriction
of rights of
creditor
under
execution
or attach-
ment.
4 & 5 Geo. 5,
c. 59,
s. 40 (1).

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

Ordinance
No. 7 of
1891,
s. 38 (2).

(2) For the purposes of this Ordinance, an execution shall be deemed to be completed:—

- (a) in the case of movable property in the possession of the debtor, or of negotiable instruments, or of money, by receipt or recovery by the judgment creditor of the full amount of the levy, after due compliance by the bailiff with the provisions of section 46;
- (b) in the case of movable property to which the debtor is entitled subject to a lien or right of some person to the immediate possession thereof, by attachment by prohibitory order and sale;
- (c) in the case of lands, houses, or other immovable property or any interest therein, either at law or in equity, by attachment by prohibitory order and due registration thereof in the appropriate Land Office;

- (d) in the case of an attachment of a debt not being a negotiable instrument, by receipt of the debt;
- (e) in the case of shares in any public company or corporation, by attachment by prohibitory order;
- (f) in the case of property in the custody or under the control of any public officer in his official capacity or in *custodia legis*, by attachment by prohibitory order duly obtained and served; and
- (g) in the case of any equitable interest in lands, houses, or other immovable property, by the appointment of a receiver or manager.

(3) An execution completed as aforesaid is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the bailiff shall, in all cases, acquire a good title to them against the trustee in bankruptcy. 4 & 5 Geo. 5, c. 59, s. 40 (3).

46.—(1) Where any movable property, or negotiable instruments, or money, of a debtor are taken in execution, and before the receipt or recovery by the judgment creditor of the full amount of the levy, notice is served on the bailiff that a receiving order has been made against the debtor, the bailiff shall, on request, deliver the movable property, negotiable instruments, or money, or any money received in satisfaction or part satisfaction of the execution, to the Official Receiver, but the costs of the execution shall be a first charge on the property so delivered, and the Official Receiver or trustee may sell the movable property, or negotiable instruments, or an adequate part thereof, or apply the money, for the purpose of satisfying the charge. Duties of bailiff as to goods taken in execution. 4 & 5 Geo. 5, c. 59, s. 41 (1).

(2) Where, under an execution in respect of a judgment for a sum exceeding one hundred dollars, the property of a debtor is sold or money is paid in order to avoid sale, the bailiff shall deduct his costs of the execution from the proceeds of sale or the money paid, and pay the balance into court, and, if within fourteen clear days of such sale or payment as aforesaid a bankruptcy petition is presented by or against the debtor, the said balance shall remain in court and if the debtor is adjudged bankrupt the balance shall be paid out to the trustee in the bankruptcy, who shall be entitled to retain the same as against the execution creditor, but otherwise it shall be dealt with as if no bankruptcy petition has been presented. Ordinance No. 7 of 1891, s. 39 (2).

47.—(1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbent in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof. Avoidance of certain settlements. 4 & 5 Geo. 5, c. 59, s. 42 (1).

4 & 5 Geo. 5, c. 59, s. 42 (2). (2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

4 & 5 Geo. 5, c. 59, s. 42 (3). (3) Any payment of money (not being payment of premiums on a policy of life assurance), or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid, shall be void against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove either:—

- (a) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy; or
- (b) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or
- (c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor;

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

4 & 5 Geo. 5, c. 59, s. 42 (4). (4) "Settlement" shall, for the purposes of this section, include any conveyance or transfer of property.

Avoidance of general assignments of book debts unless registered. 4 & 5 Geo. 5, c. 59, s. 43 (1). **43.**—(1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered with the Registrar of the Supreme Court in a register to be kept by him for this purpose.

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in

a transfer of a business made *bonâ fide* and for value, or in any assignment of assets for the benefit of creditors generally.

(2) For the purposes of this section, "assignment" includes assignment by way of security and other charges on book debts. 4 & 5 Geo. 5, c. 59, s. 43 (2).

49.—(1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy. Avoidance of preference in certain cases. 4 & 5 Geo. 5, c. 59, s. 44 (1).

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt. 4 & 5 Geo. 5, c. 59, s. 44 (2).

50.—(1) Subject to the provisions of this Ordinance with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments and preferences, nothing in this Ordinance shall invalidate, in the case of a bankruptcy:— Protection of *bonâ fide* transactions without notice. 4 & 5 Geo. 5, c. 59, s. 45.

- (a) any payment by the bankrupt to any of his creditors;
- (b) any payment or delivery to the bankrupt;
- (c) any conveyance or assignment by the bankrupt for valuable consideration;
- (d) any contract, dealing, or transaction by or with the bankrupt for valuable consideration:

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

- (i) that the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and
- (ii) that the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

(2) Where any money or property of a bankrupt has, on or after the date of the receiving order before notice thereof has been gazetted in the prescribed manner, been paid or transferred by a person having possession of it to some other person, and the payment or transfer is under the provisions of this Ordinance void as against the trustee in the bankruptcy, then, if the person by whom the payment or transfer was made proves that when it was made he had not had notice of the receiving order, any right of recovery which the trustee may have against him in respect of the money or property shall not be enforced by any legal proceedings except where and in so far as the court is satisfied that it is not reasonably practicable to recover the money or property. Recovery of property transferred without knowledge of receiving order. 16 & 17 Geo. 5, c. 7, s. 4.

uable for the trustee to recover in respect of the money or property or of some part thereof from the person to whom it was paid or transferred.

Validity of certain payments to bankrupt and assignees.
4 & 5 Geo. 5, c. 59, s. 46.

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

Dealings with un-discharged bankrupt.
4 & 5 Geo. 5, c. 59, s. 47 (1).

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

This sub-section shall apply to transactions with respect to leasehold property completed before the 1st day of January, 1932, in any case where there has not been any intervention by the trustee before that date.

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

Cf. 4 & 5 Geo. 5, c. 59, s. 47 (2).

(2) Where any individual, company or firm has ascertained that a person having a deposit, whether a deposit in respect of capital or not, or a credit balance, with such individual, company or firm is an undischarged bankrupt, then it shall be the duty of such individual, company or firm forthwith to inform the Official Receiver, and the trustee in the bankruptcy, of the existence of the deposit or credit balance, and such individual, company or firm shall not make any payment out of or in respect of the deposit or credit balance except under an order of the court or in accordance with instructions from the Official Receiver or the trustee in the bankruptcy.

(3) In case of any contravention of the provisions of sub-section (2) the individual, or the directors and officers of the company, or the partners and manager of the firm, as the case may be, shall upon summary conviction be liable to a fine not exceeding one thousand dollars and to imprisonment for any term not exceeding six months.

Realisation of Property.

Possession of property by trustee.
4 & 5 Geo. 5, c. 59, s. 48 (1).

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

4 & 5 Geo. 5, c. 59, s. 48 (2).

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

(3) Where any part of the property of the bankrupt ^{4 & 5 Geo. 5, c. 59, s. 48 (3).} consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the property of the bankrupt ^{4 & 5 Geo. 5, c. 59, s. 48 (5).} consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

(5) Subject to the provisions of this Ordinance with ^{4 & 5 Geo. 5, c. 59, s. 48 (6).} respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, clerk, servant, comprador, employer, or agent, of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee.

54. Any person acting under warrant of the court ^{Seizure of property of bankrupt. 4 & 5 Geo. 5, c. 59, s. 49} may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor, or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt or the debtor, where the bankrupt or the debtor is supposed to be, or any building or receptacle of the bankrupt or the debtor where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of a bankrupt, or of a debtor concealed in a house or place not belonging to him, the court may, if it thinks fit, grant a search warrant to any constable or officer of the court, who may execute it according to its tenor.

55. Where the bankrupt is possessed of any pro- ^{Sale of property out of the Colony.} perty out of the Colony, the trustee shall require him to join in selling the same for the benefit of the creditors and to sign all necessary authorities, powers, deeds, and documents for the purpose, and if ^{Ordinance No. 7 of 1891, s. 45.} so often as the bankrupt refuses to do so he may be punished for a contempt of court.

56.—(1) Where a bankrupt is an officer of the navy ^{Appropriation of portion of pay, etc., to creditors. 4 & 5 Geo. 5, c. 59, s. 51 (1).} or an officer or clerk or otherwise employed or engaged in the Civil Service of the Crown, or where a bankrupt is in receipt of any pay or pension from the Government of Hong Kong, or is entitled to any allowance or compensation granted by the Government of Hong Kong, the trustee shall receive for distribution among the creditors so much of the bankrupt's pay, salary, pension, allowance or compensation as the court, with the consent of the Governor, on the application of the trustee, may direct.

(2) Where a bankrupt is in receipt of a salary or ^{4 & 5 Geo. 5, c. 59, s. 51 (2).} income other than as aforesaid, the court, on the application of the trustee, may from time to time make such order as it thinks just for the payment of the salary, or income, or of any part thereof, to the trustee, to be applied by him in such manner as the court may direct.

(3) Nothing in this section shall take away ^{4 & 5 Geo. 5, c. 59, s. 51 (3).} or abridge any power to dismiss a bankrupt, or to declare the pay, pension, allowance, compensation, salary or income of any bankrupt to be forfeited.

Appropriation of income of property restrained from anticipation.
4 & 5 Geo. 5, c. 59, s. 52.

57. Where a married woman who has been adjudged bankrupt has separate property the income of which is subject to a restraint on anticipation, the court shall have power, on the application of the trustee, to order that, during such time as the court may order, the whole or some part of such income be paid to the trustee for distribution amongst the creditors, and in the exercise of such power the court shall have regard to the means of subsistence available for the woman and her children.

Vesting and transfer of property.
4 & 5 Geo. 5, c. 59, s. 53 (1).

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

4 & 5 Geo. 5, c. 59, s. 53 (2).

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

4 & 5 Geo. 5, c. 59, s. 53 (3).

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

Disclaimer of onerous property.
4 & 5 Geo. 5, c. 59, s. 54 (1).

59.—(1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

4 & 5 Geo. 5, c. 59, s. 54 (2).

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

4 & 5 Geo. 5, c. 59, s. 54 (3).

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

4 & 5 Geo. 5, c. 59, s. 54 (4).

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property

requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy. ^{4 & 5 Geo. 5, c. 59, s. 54 (5).}

(6) The court may, on application by any person either claiming to have any interest in any disclaimed property or to be under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose: ^{4 & 5 Geo. 5, c. 59, s. 54 (6).}

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

- (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

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

(7) Where, on the release, removal, resignation or death of a trustee in bankruptcy, the Official Receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercise- ^{4 & 5 Geo. 5, c. 59, s. 54 (7).}

able only within twelve months after the Official Receiver has become trustee in the circumstances aforesaid, or has become aware of the existence of such property, whichever period may last expire.

4 & 5 Geo. 5, c. 59, s. 54 (8). (8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Powers of trustee to deal with property. 4 & 5 Geo. 5, c. 59, s. 55. **60.** Subject to the provisions of this Ordinance and to any order of the court, the trustee may do all or any of the following things:—

Ordinance No. 25 of 1923.

- (a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels, and any transfer of a business of a bankrupt by the Official Receiver or trustee shall be deemed to be exempted from the provisions of the Fraudulent Transfers of Businesses Ordinance, 1923;
- (b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt;
- (d) exercise any powers, the capacity to exercise which is vested in the trustee under this Ordinance and execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Ordinance.

Powers exercisable by trustee with permission of committee of inspection. 4 & 5 Geo. 5, c. 59, s. 56. **61.** The trustee may, with the permission of the committee of inspection, do all or any of the following things:—

- (a) carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same;
- (b) bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt;
- (c) employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;
- (d) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit;
- (e) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;
- (f) refer any dispute to arbitration, or compromise any debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on;
- (g) make such compromise or other arrangement as may be thought expedient with creditors.

- or persons claiming to be creditors in respect of any debts provable under the bankruptcy,
- (h) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;
 - (i) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

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

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

Power to allow bankrupt to manage property. 4 & 5 Geo. 5, c. 59, s. 57.

63. The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the court.

Allowance to bankrupt for maintenance or service. 4 & 5 Geo. 5, c. 59, s. 58.

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

Right of trustee to inspect goods, pawned, &c. 4 & 5 Geo. 5, c. 59, s. 59.

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

Limitation of trustee's powers in relation to copyright. 4 & 5 Geo. 5, c. 59, s. 60.

66. Where the Official Receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises or under the control of a debtor against whom a receiving order has been made, and it is thereafter made to appear that the said goods, chattels, property, or other effects were not, at the date of the receiving

Protection of Official Receiver and trustee from personal liability in certain cases. 4 & 5 Geo. 5, c. 59, s. 61.

order, the property of the debtor, the Official Receiver or trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the court is opinion that the Official Receiver or trustee has been guilty of *mala fides* or of gross negligence in respect of the same.

Distribution of Property.

Declaration and distribution of dividends. 4 & 5 Geo. 5, c. 59, s. 62 (1). **67.**—(1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

4 & 5 Geo. 5, c. 59, s. 62 (2). (2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the court that there is sufficient reason for postponing the declaration to a later date.

4 & 5 Geo. 5, c. 59, s. 62 (3). (3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

4 & 5 Geo. 5, c. 59, s. 62 (4). (4) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

4 & 5 Geo. 5, c. 59, s. 62 (5). (5) When the trustee has declared a dividend, he shall cause to be gazetted and shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable.

Joint and separate dividends. 4 & 5 Geo. 5, c. 59, s. 63 (1). **68.**—(1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

4 & 5 Geo. 5, c. 59, s. 63 (2). (2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, unless otherwise directed by the Court on the application of any person interested, be declared together, and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Provision for creditors residing at a distance, &c. 4 & 5 Geo. 5, c. 59, s. 64 (1). **69.**—(1) In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the Colony that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.

4 & 5 Geo. 5, c. 59, s. 64 (2). (2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

4 & 5 Geo. 5, c. 59, s. 64 (3). (3) Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

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

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

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

- (a) any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and, if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be re-opened and the whole transaction treated as one;
- (b) any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate;
- (c) where the debt due is secured and the security is realised after the receiving order, or the value thereof is assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

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

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

No action for dividend. 4 & 5 Geo. 5, c. 59, s. 68. **73.** No action for a dividend shall lie against the trustee, but, if the trustee refuses to pay any dividend, the court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Right of bankrupt to surplus. 4 & 5 Geo. 5, c. 59, s. 69. **74.** The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Ordinance provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

PART IV.

OFFICIAL RECEIVER.

Appointment of Official Receiver. Ordinance No. 7 of 1891, s. 9. **75.**—(1) Subject to the provisions of sub-section (2), the Governor may appoint such persons as he thinks fit to be Official Receiver and Deputy Official Receiver of debtors' estates under this Ordinance and may remove such persons from such offices.

Ordinance No. 1 of 1871. (2) No person shall be appointed Official Receiver unless at the time of such appointment he possesses such qualifications as would entitle the court to approve, admit and enrol him as a barrister or as a solicitor under section 21 of the Legal Practitioners Ordinance, 1871.

(3) The Official Receiver shall act under the general authority and direction of the Governor and shall also be an officer of the court.

(4) Every Deputy Official Receiver shall have all the powers conferred on the Official Receiver by this Ordinance or by any Ordinance amending or substituted for the same.

(5) Every Deputy Official Receiver shall act under the general authority and direction of the Official Receiver for the time being, or, if there be no Official Receiver for the time being, under the general authority and direction of the Governor, and shall also be an officer of the court.

Status of Official Receiver. 4 & 5 Geo. 5, c. 59, s. 72 (1). **76.**—(1) The duties of the Official Receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

4 & 5 Geo. 5, c. 59, s. 72 (2). (2) The Official Receiver may, for the purpose of affidavits verifying proofs, petitions, or proceedings under this Ordinance administer oaths.

4 & 5 Geo. 5, c. 59, s. 72 (3). (3) All provisions in this or any other Ordinance referring to the trustee in a bankruptcy shall, unless the context otherwise requires, or the Ordinance otherwise provides, include the Official Receiver when acting as trustee.

4 & 5 Geo. 5, c. 59, s. 72 (4). (4) The trustee shall supply the Official Receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the Official Receiver to perform his duties under this Ordinance.

Duties of Official Receiver as regards the debtor's conduct. 4 & 5 Geo. 5, c. 59, s. 73. **77.** As regards the debtor, it shall be the duty of the Official Receiver:—

(a) to investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under this Ordinance or any

enactment repealed by this Ordinance, or which would justify the court in refusing, suspending or qualifying an order for his discharge;

- (b) to conduct the public examination of the debtor;
- (c) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Attorney General may direct.

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

Duties of
Official Re-
ceiver as to
debtor's
estate.
4 & 5 Geo. 5,
c. 59,
s. 74 (1).

- (a) pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;
- (b) to raise money in any case where, in the interests of the creditors, it appears necessary so to do;
- (c) to summon and preside at the first meeting of creditors;
- (d) to issue forms of proxy for use at the meetings of creditors;
- (e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;
- (f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;
- (g) to act as trustee during any vacancy in the office of trustee;
- (h) to assist the debtor in preparing his statement of affairs in the case the debtor has no solicitor acting for him and is unable properly to it prepare himself, and for this purpose he may employ at the expense of the estate any person or persons to assist in its preparation.

(2) For the purpose of his duties as interim receiver or manager, the Official Receiver shall have the same powers as if he were a receiver and manager appointed by the court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the court otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property, or the disposing of perishable goods:

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

PART V.

TRUSTEES IN BANKRUPTCY.

Official Name.

79. The official name of a trustee in bankruptcy shall be "the trustee of the property of bankrupt" (inserting the name of the bankrupt), and by that name the trustee may hold property of every description, make contracts, sue and be sued.

Official name
a of trustee.
4 & 5 Geo. 5,
c. 59, s. 76.

enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Appointment.

Power to appoint joint or successive trustees. **4 & 5 Geo. 5, c. 59, s. 77 (1).** **80.**—(1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the term "trustee", and shall be joint tenants of the property of the bankrupt.

4 & 5 Geo. 5, c. 59, s. 77 (2). (2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being approved by the Court.

Proceedings in case of vacancy in office of trustee. **4 & 5 Geo. 5, c. 59, s. 78 (1).** **81.**—(1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

4 & 5 Geo. 5, c. 59, s. 78 (2). (2) The Official Receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

4 & 5 Geo. 5, c. 59, s. 78 (3). (3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the Official Receiver shall report the matter to the Court, and the Court may appoint a trustee.

4 & 5 Geo. 5, c. 59, s. 78 (4). (4) During any vacancy in the office of trustee the Official Receiver shall act as trustee.

Control over Trustee.

Discretionary powers of trustee and control thereof. **4 & 5 Geo. 5, c. 59, s. 79 (1).** **82.**—(1) Subject to the provisions of this Ordinance, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

4 & 5 Geo. 5, c. 59, s. 79 (2). (2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, and it shall be lawful for any creditor, with the concurrence of one-fourth in value of the creditors (including himself), at any time to request the trustee or Official Receiver to call a meeting of the creditors, and the trustee or Official Receiver shall call such meeting accordingly within fourteen days:

Provided that the person at whose instance the meeting is summoned shall, if so required, deposit with the trustee or the Official Receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the court so direct.

(3) The trustee may apply to the court in manner 4 & 5 Geo. 5, prescribed for directions in relation to any particular c. 59, matter arising under the bankruptcy. s. 79 (3).

(4) Subject to the provisions of this Ordinance the 4 & 5 Geo. 5, trustee shall use his own discretion in the manage- c. 59, ment of the estate and its distribution among the s. 79 (4). creditors.

83. If the bankrupt or any of the creditors, or any Appeal to other person, is aggrieved by any act or decision of court against the trustee, he may apply to the court, and the court trustee. may confirm, reverse, or modify the act or decision 4 & 5 Geo. 5, complained of, and make such order in the premises c. 59, s. 80. as it thinks just.

84.—(1) The court shall take cognizance of the Control of conduct of trustees, and, in the event of any trustee court over not faithfully performing his duties, and duly observ- trustee. ing all the requirements imposed on him by Ordin- 4 & 5 Geo. 5, ance, rules, or otherwise, with respect to the per- c. 59, s. 81. formance of his duties, or in the event of any complaint being made to the court by any creditor in regard thereto by notice duly served on the trustee at least eight clear days before the date of hearing, the court shall inquire into the matter and take such action thereon as may be deemed expedient.

(2) The court may either of its own motion or on 4 & 5 Geo. 5, the application of the Official Receiver at any time c. 59, require any trustee to answer any inquiry made by s. 81 (2). it or him in relation to any bankruptcy in which the trustee is engaged, and may examine on oath the trustee or any other person concerning the bank- ruptcy.

(3) The court may also direct an investigation to 4 & 5 Geo. 5, be made of the books and vouchers of the trustee. c. 59, s. 81 (3).

Remuneration and Costs.

85.—(1) Where the creditors appoint any person Remunera- to be trustee of a debtor's estate, his remuneration tion of (if any) shall be in the nature of a commission or trustee. percentage, of which one part shall be payable on the 4 & 5 Geo. 5, amount realised by the trustee, after deducting any c. 59, sums paid to secured creditors out of the proceeds of s. 82 (1). their securities, and the other part on the amount distributed in dividend. Such percentages shall be as the court may approve or as may be prescribed.

(2) The remuneration shall cover all expenses except 4 & 5 Geo. 5, actual out of pocket expenses properly incurred and c. 59, no liability shall attach to the bankrupt's estate, or s. 32 (3). to the creditors, in respect of any other expenses.

(3) Where a trustee acts without remuneration, he 4 & 5 Geo. 5, shall be allowed out of the bankrupt's estate such c. 59, proper expenses incurred by him in or about the s. 82 (4). proceedings of the bankruptcy as the court may approve.

(4) A trustee shall not, under any circumstances 4 & 5 Geo. 5, whatever, make any arrangement for or accept from c. 59, the bankrupt, or any solicitor, auctioneer, or any s. 82 (5). other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond his said remuneration payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt or any solicitor or other

Allowance and taxation of costs.
4 & 5 Geo. 5, c. 59, s. 83 (1).

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

4 & 5 Geo. 5, c. 59, s. 83 (2).

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

4 & 5 Geo. 5, c. 59, s. 83 (3).

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

4 & 5 Geo. 5, c. 59, s. 83 (4).

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

Receipts, Payments, Accounts, Audit.

Trustee to furnish list of creditors.
4 & 5 Geo. 5, c. 59, s. 84.

87. The trustee or Official Receiver shall, whenever required by any creditor so to do, furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of twenty-five cents per folio of seventy-two words.

Trustee to furnish statement of accounts.
4 & 5 Geo. 5, c. 59, s. 85.

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

Provided that the person at whose instance the accounts are furnished shall, if so required, deposit with the trustee or Official Receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate, if the court so direct.

Annual statement of proceedings.
4 & 5 Geo. 5, c. 59, s. 87 (1).

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

4 & 5 Geo. 5, c. 59, s. 87 (2).

(2) The Official Receiver shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission, which may appear on the said statements or in his accounts or otherwise, and may apply to the

court for an order that the trustee do make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

90. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his banking account, or use it otherwise than in the administration of the estate. Trustee not to pay into private account. 4 & 5 Geo. 5, c. 59, s. 88.

91.—(1) The Official Receiver shall open in his name as Official Receiver an account at a bank approved by the Governor, and shall pay to the credit thereof all sums received by him as such Official Receiver or as trustee, and every trustee in a bankruptcy, other than the Official Receiver, receiving money as such trustee shall open an account at such bank in the name of the debtor's estate, and shall pay to the credit of such account all sums which may from time to time be received by him as such trustee. Payment into bank. Ordinance No. 7 of 1891, s. 60 (1).

(2) If a trustee at any time retains for more than ten days a sum exceeding five hundred dollars, or such other amount as the court in any particular case may authorise him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall have no claim to remuneration, and may be removed from his office by the court and shall be liable to pay any expenses occasioned by reason of his default. 4 & 5 Geo. 5, c. 59, s. 89 (5).

(3) Any trustee paying money into his private banking account or using it otherwise than in the administration of the estate may without prejudice to any other liability be dismissed from office without remuneration and may be ordered by the court to make good all losses and expenses which the creditors may suffer in consequence of his conduct. Ordinance No. 7 of 1891, s. 60 (3).

92.—(1) The trustee shall keep a record in writing in which he shall enter a minute of all proceedings had and resolutions passed at any meeting of creditors or of the committee of inspection and a statement of all negotiations and proceedings necessary to give a correct view of the management of the bankrupt's property. Such record if in Chinese shall be supplemented by a correct English translation thereof and shall be produced for inspection to the Official Receiver at any time on demand. Record and account to be kept by trustee. Ordinance No. 7 of 1891, s. 61.

(2) He shall also keep an account, to be called the Estate Account, in the form of an ordinary debtor and creditor account, in which he shall enter from day to day all his receipts and payments as trustee.

(3) The trustee shall produce at every meeting of creditors and at every meeting of the committee of inspection the record and account above mentioned and also the pass-book of the estate's bank account, and such documents shall be open to the inspection of any creditor at all reasonable times.

93.—(1) Every trustee other than the Official Receiver shall, at such times as may be prescribed, but not less than once in each year during his tenure of office, send to the Official Receiver, under his receipts and payments as such trustee. Audit of trustee's accounts. 4 & 5 Geo. 5, c. 59, s. 92 (1).

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form. 4 & 5 Geo. 5, c. 59, s. 92 (2).

(3) The Official Receiver shall cause the accounts so sent to be audited, and, for the purposes of the audit the trustee shall furnish him with such 4 & 5 Geo. 5, c. 59, s. 92 (3).

vouchers and information as he may require, and he may at any time require the production of and inspect any books or accounts kept by the trustee.

4 & 5 Geo. 5,
c. 59,
s. 92 (4). (4) When any such account has been audited, it shall be filed and kept by the Official Receiver and shall be open on payment of the prescribed fee to the inspection of any creditor, or of the bankrupt, or of any person interested.

Ordinance
No. 7 of
1891,
s. 62 (3). (5) The court may if it so desires, examine the trustee and after hearing the explanation, if any, of the trustee, make such order as it may think just for compelling the trustee to make good any loss to the estate which, after such audit or examination, may appear to the court to have been occasioned by any misfeasance, neglect, or improper conduct or omission of the trustee.

Vacation of Office by Trustee.

Release of
trustee.
4 & 5 Geo. 5,
c. 59,
s. 93 (1). **94.**—(1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, he shall apply to the court for his release, and if all the requirements of the court with respect of accounts and with respect to any order of the court against the trustee have been fulfilled, the court may make an order for release accordingly.

4 & 5 Geo. 5,
c. 59,
s. 93 (2). (2) Where the release of a trustee is withheld, the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

4 & 5 Geo. 5,
c. 59,
s. 93 (3). (3) An order of the court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

4 & 5 Geo. 5,
c. 59,
s. 93 (4). (4) The foregoing provisions of this section shall apply to the Official Receiver when he is, or is acting as, trustee, and when the Official Receiver has been released under this section, or any previous similar enactment, he shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release.

4 & 5 Geo. 5,
c. 59,
s. 93 (5). (5) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the Official Receiver shall be the trustee.

4 & 5 Geo. 5,
c. 59,
s. 93 (6). (6) Where, on the release of a trustee, the Official Receiver is, or is acting as, trustee, no liability shall attach to him personally in respect of any act done or default made, or liability incurred, by any prior trustee.

Office of
trustee
vacated by
insolvency.
4 & 5 Geo. 5,
c. 59 s. 94 **95.** If a receiving order is made against a trustee, he shall thereby vacate his office of trustee.

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

Removal of trustee.
4 & 5 Geo. 5,
c. 59,
s. 95 (1).

(2) If the court is of opinion—

4 & 5 Geo. 5,
c. 59,
s. 95 (2).

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

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

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

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

(e) that the interests of the creditors require it, the court may remove him from his office, and appoint another person in his place.

PART VI.

CONSTITUTION, PROCEDURE, AND POWERS OF COURT.

Jurisdiction.

97.—(1) Subject to the provisions of this Ordinance, the court shall have full power to decide questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

General power of court.
4 & 5 Geo. 5,
c. 59,
s. 105 (1).

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

4 & 5 Geo. 5,
c. 59,
s. 105 (3).

Review and Appeals.

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

Review and appeals in bankruptcy.

(2) Every order of the court shall be subject to appeal to the Full Court. The appeal shall be commenced within twenty-one days from the time when the decision appealed against is pronounced or made.

4 & 5 Geo. 5,
c. 59, s. 108.
Ordinance No. 7 of 1891,
s. 71 (3).

Procedure.

99.—(1) The rules and practice of the Supreme Court for the time being for regulating the ordinary civil procedure of the court shall, so far as may be applicable and not inconsistent with the provisions of this Ordinance, be applied to bankruptcy proceedings, and every order of the court made in connexion with bankruptcy proceedings may be enforced in the same way as a judgment of the court made in respect of any other civil proceedings may be enforced.

General rules of procedure.
Ordinance No. 7 of 1891,
s. 71 (1).

Ordinance No. 7 of 1891, s. 71 (2). (2) The Registrar shall, in cases of urgency, have power to make interim orders and to hear and determine unopposed or ex parte applications, and any order so made shall, subject to the appeal to the court, be deemed to be an order of the court.

Discretionary powers of court. 4 & 5 Geo. 5, c. 59, s. 109 (1). **100.**—(1) Subject to the provisions of this Ordinance and to general rules, the costs of and incidental to any proceeding in court under this Ordinance shall be in the discretion of the court: Provided that, where any issue is tried by a jury, the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the judge before whom such issue is tried otherwise orders.

4 & 5 Geo. 5, c. 59, s. 109 (2). (2) The court may at time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

4 & 5 Geo. 5, c. 59, s. 109 (3). (3) The court may at any time amend any written process or proceeding under this Ordinance upon such terms, if any, as it may think fit to impose.

4 & 5 Geo. 5, c. 59, s. 109 (4). (4) Where by this Ordinance, or by general rules, the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof, upon such terms, if any, as the court may think fit to impose.

4 & 5 Geo. 5, c. 59, s. 109 (5). (5) Subject to general rules, the court may in any matter take the whole or any part of the evidence either *visà voce*, or by interrogatories, or upon affidavit, or, out of the Colony, by commission.

Consolidation of petitions. 4 & 5 Geo. 5, c. 59, s. 110. **101.** Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings, or any of them, on such terms as the court thinks fit.

Power to change carriage of proceedings. 4 & 5 Geo. 5, c. 59, s. 111. **102.** Where the petitioner does not proceed with due diligence on his petition, the court may either dismiss the petition or substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by the Ordinance in the place of the petitioning creditor.

Continuance of proceedings on death of debtor. 4 & 5 Geo. 5, c. 59, s. 112. **103.** If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive.

Power to stay proceedings. 4 & 5 Geo. 5, c. 59, s. 113. **104.** The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think just.

Power to present petition against one partner. 4 & 5 Geo. 5, c. 59, s. 114. **105.** Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Power to dismiss petition against some respondents only. 4 & 5 Geo. 5, c. 59, s. 115. **106.** Where there are more respondents than one to a petition, the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Actions by trustee and bankrupt's partners. 4 & 5 Geo. 5, c. 59, s. 117. **107.** Where a member of a partnership is adjudged bankrupt, the court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of

the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

108. Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt. Actions under joint contracts. 4 & 5 Geo. 5, c. 59, s. 118.

109. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Ordinance in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the court may direct. Proceedings in partnership name. 4 & 5 Geo. 5, c. 59, s. 119.

PART VII.

SUPPLEMENTAL PROVISIONS.

Disobedience to Order of Court.

110. Where default is made by the trustee, the debtor, or any other person, in obeying any order or direction made or given by the court under this Ordinance, the court may make an immediate order for the committal of such trustee, debtor or other person for contempt of court: Provided that the power given by this section shall be deemed to be in addition to and not in substitution for any other right, remedy, or liability in respect of such default. Disobedience to order of court. 4 & 5 Geo. 5, c. 59, s. 105 (5). Ordinance No. 7 of 1891, s. 70.

Application of Act.

111.—(1) Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were a feme sole. Married women. 4 & 5 Geo. 5, c. 59, s. 125 (1).

(2) Where a married woman carries on a trade or business and a final judgment or order for any amount has been obtained against her, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid. 4 & 5 Geo. 5, c. 59, s. 125 (2).

112. A receiving order shall not be made against any corporation, or against any association or company registered under the Companies Ordinance, 1911, or any enactment repealed by that Ordinance, or against any partnership registered under the Limited Partnerships Ordinance, 1912. Exclusion of corporations, companies, and limited partnerships. 4 & 5 Geo. 5, c. 59, s. 126.

Ordinance No. 18 of 1912.

113.—(1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration in bankruptcy of the estate of the deceased debtor, according to the law of bankruptcy. Administration in bankruptcy of estate of person dying insolvent. 4 & 5 Geo. 5, c. 59, s. 130 (1).

(2) The petition shall be served on the legal personal representative of the deceased debtor or, if there is none in the Colony, on the Official Administrator, and the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is

4 & 5 Geo. 5, c. 59, s. 130 (2).

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 the petition with or without costs.

4 & 5 Geo. 5,
c. 59,
s. 130 (3).

(3) A petition for administration in bankruptcy under this section shall not be presented to the court after proceedings have been commenced under the Code of Civil Procedure for the administration of the deceased debtor's estate, but the court may, when satisfied that the estate is insufficient to pay its debts, make an order for the administration in bankruptcy of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

4 & 5 Geo. 5,
c. 59,
s. 130 (4).

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

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

If no committee of inspection is appointed, any act or thing or any direction or permission which might have been done or given by a committee of inspection may be done or given by the court.

4 & 5 Geo. 5,
c. 59,
s. 130 (5).

(5) With the modifications hereinafter mentioned, all the provisions of Part III of this Ordinance (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by general rules under sub-section (10) of this section, the following provisions, namely, section 29 of this Ordinance (which relates to inquiries as to the debtor's conduct, dealings, and property); and section 86 of this Ordinance (which relates to the costs of trustees, managers, and other persons), 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 Ordinance, and section 40 of this Ordinance shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

4 & 5 Geo. 5,
c. 59,
s. 130 (6).

(6) In the administration of the property of the deceased debtor under an order of administration, the Official Receiver or 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 shall, notwithstanding anything to the contrary in the provisions of this Ordinance relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

4 & 5 Geo. 5,
c. 59,
s. 130 (7).

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

(8) Service on the legal personal representative of a deceased debtor or on the Official Administrator 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 service no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the Official Receiver or trustee; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

4 & 5 Geo. 5,
c. 59,
s. 130 (8).

(9) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor or by the Official Administrator; and, where a petition is so presented by such a representative or by the Official Administrator, this section shall apply subject to such modifications as may be prescribed by general rules made under sub-section (10) of this section.

4 & 5 Geo. 5,
c. 59,
s. 130 (9).

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

4 & 5 Geo. 5,
c. 59,
s. 130 (10).

General Rules.

114. The Chief Justice with the approval of the Legislative Council may make general rules for carrying into effect the objects of this Ordinance.

Power to
make general
rules.
4 & 5 Geo. 5,
c. 59,
s. 132 (1).

Fees, and Remuneration.

115.—(1) The Chief Justice with the approval of the Legislative Council may prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Ordinance.

Fees and
remunera-
tion.
4 & 5 Geo. 5,
c. 59,
s. 133 (1).

(2) The court may remit the payment of any particular fee or fees due from any debtor, or any part thereof, either absolutely or on such terms as it may think fit.

116. All fees and commissions received by or payable to the Official Receiver on the appointment of a trustee other than himself or for acting as trustee, and any remuneration received by the Official Receiver as an interim receiver or otherwise, shall be paid by such officer forthwith into the Treasury.

Disposal of
Official
Receiver's
fees.
Ordinance
No. 7 of
1891, s. 87.

Evidence.

117.—(1) A minute of proceedings at a meeting of creditors under this Ordinance, signed by a person describing himself as, or appearing to be, chairman of the meeting, shall be received in evidence without further proof.

Evidence of
proceedings
at meetings
of creditors.
4 & 5 Geo. 5,
c. 59,
s. 133 (1).

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

4 & 5 Geo. 5,
c. 59,
s. 133 (2).

118. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the court, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Ordinance shall, if it appears to be sealed with the seal of the court or pur-

Evidence of
proceedings
in bank-
ruptcy.
4 & 5 Geo. 5,
c. 59, s. 139.

ports to be signed by the Registrar, or is certified as a true copy by the Registrar, be receivable in evidence in all legal proceedings whatsoever.

Swearing of affidavits.
4 & 5 Geo. 5, c. 59, s. 140.

119. Subject to general rules, any affidavit to be used in a bankruptcy court may be sworn before any person authorised to administer oaths, or, in the case of a person who is out of the Colony, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid, by a British minister or British consul, or by a notary public).

Death of debtor or witness.
4 & 5 Geo. 5, c. 59, s. 141.

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

Statements made to Official Receiver or trustee through an interpreter.

121. Any statement made by a debtor or creditor in any bankruptcy to the Official Receiver or trustee through an interpreter shall be deemed to have been made to the Official Receiver or trustee as the case may be respectively, and evidence thereof shall be receivable from the Official Receiver or trustee, on it being proved that the interpreter employed was either a sworn interpreter or that he held the substantive or acting appointment of interpreter, or of clerk and interpreter, to the Official Receiver.

Certificate of appointment of trustee.
4 & 5 Geo. 5, c. 59, s. 143.

122. A certificate of the Official Receiver that a person has been appointed trustee under this Ordinance shall be conclusive evidence of his appointment.

Miscellaneous.

Computation of time.
4 & 5 Geo. 5, c. 59, s. 145 (1).

123.—(1) Where by this Ordinance any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed.

Ordinance No. 5 of 1912.

(2) Where the limited time so appointed or allowed is less than six days public holidays and general holidays as defined by the Holidays Ordinance, 1912, shall not be reckoned in the computation of such time.

4 & 5 Geo. 5, c. 59, s. 145 (2).

(3) Where the limited time so appointed or allowed expires on one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

Ordinance No. 5 of 1898.

(4) The provisions of this section shall take effect notwithstanding anything contained in the Supreme Court (Vacations) Ordinance, 1898.

Service of notices.
4 & 5 Geo. 5, c. 59, s. 146.

124. All notices and other documents for the service of which no special mode is directed may be sent by post to the last known address of the person to be served therewith.

125.—(1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court. Formal defect not to invalidate proceedings. 4 & 5 Geo. 5, c. 59, s. 147 (1).

(2) No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee shall vitiate any act done by him in good faith. 4 & 5 Geo. 5, c. 59, s. 147 (2).

126. Every deed, conveyance, assignment, surrender, or other assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any estate, right or interest in, any real or personal property, which is part of the estate of a bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Ordinance. Exemption of deeds, &c. from stamp duty. 4 & 5 Geo. 5, c. 59, s. 148.

127. For all or any of the purposes of this Ordinance a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or curator bonis. Acting of corporations, &c. 4 & 5 Geo. 5, c. 59, s. 149.

128. Where by any Ordinance or instrument reference is made to any enactment repealed by this Ordinance, the Ordinance or instrument shall, unless the context otherwise requires, be construed and have effect as if this Ordinance or the corresponding provision (if any) of this Ordinance were therein referred to. Construction. 4 & 5 Geo. 5, c. 59, s. 150 (2).

129. Save as provided in this Ordinance, the provisions of this Ordinance relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown. Certain provisions to bind Crown. 4 & 5 Geo. 5, c. 59, s. 151.

Unclaimed Funds or Dividends.

130.—(1) Where the trustee, under any bankruptcy, composition or scheme, pursuant to this Ordinance has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay it to the Registrar, who shall carry the same to an account to be termed the Bankruptcy Estates Account. The Registrar's receipt for the money so paid shall be a sufficient discharge to the trustee in respect thereof. Unclaimed dividends or funds under this and former Ordinances. 4 & 5 Geo. 5, c. 59, s. 153 (1).

(2) The trustee, whether he has obtained his release or not, may be called upon by the court to account for any unclaimed funds or dividends, and any failure to comply with the requisitions of the court in this behalf may be dealt with as a contempt of court. Ordinance No. 7 of 1891, s. 80 (2).

(3) Any person claiming to be entitled to any moneys paid into the Bankruptcy Estate Account under this Ordinance or under the Bankruptcy Ordinance, 1891, may, within five years of the date when the same was so paid in, apply to the Registrar for payment to him of the same, and the Registrar, if satisfied that the person claiming is entitled, shall Ordinance No. 7 of 1891, s. 80 (3).

make an order for the payment to such person of the sum due. Any person dissatisfied with the decision of the Registrar may appeal to the court.

(4) After any money has remained unclaimed in the Bankruptcy Estates Account for a period of five years, it shall be dealt with in accordance with the provisions of the Unclaimed Balances Ordinance, 1929.

Ordinance
No. 5 of
1929.

PART VII.

BANKRUPTCY OFFENCES.

131.—(1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall in each of the cases following be guilty of a misdemeanour:—

Fraudulent
debtors.
4 & 5 Geo. 5,
c. 59, s. 154.

16 & 17 Geo.
5, c. 7,
s. 5.

- (1) if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expenses of his family, unless he proves that he had no intent to defraud;
- (2) if he does not deliver up to the trustee, or as he directs, all such part of his movable or immovable property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud;
- (3) if he does not deliver up to the trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;
- (4) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals any part of his property to the value of fifty dollars or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud;
- (5) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently removes any part of his property to the value of fifty dollars or upwards;
- (6) if he makes any material omission or misstatement in any statement relating to his affairs, unless he proves that he had no intent to defraud;
- (7) if, knowing or having any reason to believe that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof;
- (8) if, after the presentation of a bankruptcy petition by or against him, he prevents or is party or privy to preventing the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (9) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he

removes, conceals, destroys, mutilates, or falsifies, or is privy to the removal, concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

- (10) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (11) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulently parting with, altering, or making any omission in, any document affecting or relating to his property or affairs;
- (12) if, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within twelve months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;
- (13) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or after the presentation of a bankruptcy petition and before the making of a receiving order, he, by any false representation or other fraud, has obtained any property on credit, and has not paid for the same;
- (14) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or after the presentation of a bankruptcy petition and before the making of a receiving order, he obtains under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud;
- (15) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging, or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud;
- (16) 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 an agreement with reference to his affairs or to his bankruptcy.

(2) A person who has sent out of the Colony any property which he has obtained on credit and has not paid for shall, until the contrary is proved, be deemed to have disposed of the same otherwise than in the ordinary way of his trade, if, such property not having been paid or accounted for at the date of the receiving order by the person to whom the same was sent, such last-mentioned person does not pay or account for the same within a reasonable time.

Ordinance No. 7 of 1891, s. 82 (2).

being called upon to do so by the trustee, or cannot be found within a reasonable time.

(3) In any prosecution under paragraph (9) of sub-section (1) of this section the absence of any such book or document as is referred to in the said paragraph shall be *prima facie* evidence that such book or document was removed by the debtor contrary to the provisions of the said paragraph, or that he was privy to its removal contrary to those provisions, and thereupon the onus shall be upon the debtor to prove that he did not so remove such book or document and that he was not privy to such removal.

(4) In any prosecution under paragraph (9) of sub-section (1) of this section the mutilation or falsification of any such book or document as is referred to in the said paragraph shall be *prima facie* evidence that such book or document was mutilated or falsified by the debtor in contravention of the provisions of the said paragraph, or that he was privy to its mutilation or falsification contrary to those provisions, and thereupon the onus shall be upon the debtor to prove that he did not so mutilate or falsify the said book or document and that he was not privy to such mutilation or falsification.

16 & 17 Geo. 5, c. 7, s. 5 (2).

(5) Every person guilty of a misdemeanour in the cases mentioned respectively in paragraphs (13), (14) and (15) of sub-section (1) of this section shall upon conviction on indictment be liable to imprisonment for any term not exceeding five years, or upon summary conviction to imprisonment for any term not exceeding one year.

(6) For the purposes of this section, the term "trustee" includes the Official Receiver, whether acting as Official Receiver or as a trustee.

Certain offences other than the debtor.

132.—(1) If any manager, accountant, or book-keeper, in the employment of the debtor does any act which is committed by the debtor would be a contravention of any of the provisions of paragraph (9) or paragraph (10) of sub-section (1) of section 131 of this Ordinance, or is privy to any such act whether committed by the debtor or by any other person, such manager, accountant, or book-keeper, shall be deemed to be guilty of a misdemeanour.

16 & 17 Geo. 5, c. 7, s. 5 (2).

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (15) of sub-section (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid, shall be guilty of a misdemeanour and shall upon conviction on indictment be liable to imprisonment for any term not exceeding five years, or upon summary conviction to imprisonment for any term not exceeding one year.

Undischarged bankrupt obtaining credit. 4 & 5 Geo. 5, c. 59, s. 155.

133. Any undischarged bankrupt shall in each of the cases following be guilty of a misdemeanour:—

- (a) if either alone or jointly with any other person he obtains credit to the extent of one hundred dollars or upwards from any person without first informing that person that he is an undischarged bankrupt; or
- (b) if he engages in any trade or business under a name which he was other than that or those under which he was adjudicated bankrupt, and in the course of such trade or business obtains credit from any person without first disclosing to such person the name or names under which he was adjudicated bankrupt.

- (c) if he engages in any trade or business under a name or names other than that or those under which he was adjudicated bankrupt without first publishing, once in the Gazette, and in three successive issues of two local newspapers, one of which shall be Chinese, a notice containing the following particulars:—
- (i) the name or names under which he was adjudicated bankrupt, and
 - (ii) the last address at which he carried on any trade or business prior to the adjudication;
 - (iii) the name or names under which he intends to carry on the trade or business,
 - (iv) the nature of the trade or business which he intends to carry on, and
 - (v) the address or addresses at which he intends to carry it on.

134. Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall in each of the cases following be guilty of a misdemeanour:—

- (a) if in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud; or
- (b) if with intent to defraud his creditors or any of them, he has made or caused to be made any gift or transfer of, or charge on, his property; or
- (c) if with intent to defraud his creditors, he has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him; or
- (d) if with intent to defraud his creditors or any of them, he has caused or connived at the levying of any execution against his property.

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

- (a) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or
- (b) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or
- (c) on being required by the Official Receiver at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred:

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

4 & 5 Geo. 5, c. 59, s. 157 (2). (2) A prosecution shall not be instituted against any person under this section except by order of the court, nor where the receiving order in the bankruptcy is made within two years from the 1st day of January, 1932.

Bankrupt failing to keep proper accounts. 16 & 17 Geo. 5, c. 7, s. 7. **136.**—(1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall be guilty of a misdemeanour, if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the receiving order, or has not preserved all books of account so kept:

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

(a) if his unsecured liabilities at the date of the receiving order did not exceed, in the case of a person who has not on any previous occasion in this Colony or elsewhere been adjudged bankrupt or made a composition or arrangement with his creditors, five thousand dollars, or in any other case one thousand dollars; or

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

4 & 5 Geo. 5, c. 59, s. 158 (2). (2) A prosecution shall not be instituted against any person under this section except by order of the court, nor where the receiving order in the bankruptcy is made within two years from the 1st day of January, 1932.

16 & 17 Geo. 5, c. 7, s. 7. (3) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of annual stocktakings, and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified. In the case of books or accounts kept in the Chinese language a person shall, for the purposes of this section, be deemed not to have kept proper books of account if he has not kept such books or accounts as may be proved to be usual and necessary, for the purposes aforesaid, in the particular trade or business

137.—(1) If any person who is adjudged bankrupt, Bankrupt or in respect of whose estate a receiving order has absconding been made, after the presentation of a bankruptcy with pro- petition by or against him, or within six months before perty. such presentation, quits the Colony and takes with 4 & 5 Geo. 5, c. 59, s. 159. him, or attempts or makes preparation to quit the Colony and take with him, any part of his property to the amount of one hundred dollars or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of a misdemeanour.

138. If any person against whom a receiving order Debtor is made conceals himself or absents himself from his concealing usual or last known place of abode or business or quits himself to the Colony, with intent to avoid service of any process avoid in bankruptcy, or to avoid examination in respect of Ordinance his affairs, or otherwise to defeat, embarrass, or delay No. 7 of any proceedings against him in bankruptcy, he shall 1891, be guilty of a misdemeanour. A person who, after s. 82 (4). the presentation of a bankruptcy petition by or against him, or within three months next before such presentation, conceals or absents himself as aforesaid or quits the Colony shall until the contrary is proved be deemed to have concealed or absented himself or quitted the Colony with such intent as is mentioned in this section.

139. If any creditor, or any person claiming to be False claim, a creditor, in any bankruptcy proceedings, wilfully &c. and with intent to defraud makes any false claim, or 4 & 5 Geo. 5, any proof, declaration or statement of account, which c. 59, s. 160. is untrue in any material particular, he shall be guilty of a misdemeanour.

140. Where the Official Receiver or a trustee in a Order by bankruptcy reports to the court that in his opinion a court for debtor who has been adjudged bankrupt or in respect prosecution of whose estate a receiving order has been made has on report of been guilty of any offence under this Ordinance or trustee. 4 & 5 Geo. 5, any enactment repealed by this Ordinance, or where c. 59, s. 161. the court is satisfied upon the representation of any 15 & 17 Geo. creditor or member of the committee of inspection 5, c. 7, s. 8. that there is ground to believe that the debtor has been guilty of any such offence, the court shall, if it appears to the court that there is a reasonable probability that the debtor will be convicted and that the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for such offence, but no such order shall be a condition antecedent to any prosecution under this Ordinance.

141. Where a debtor has been guilty of any Criminal criminal offence, he shall not be exempt from being liability after proceeded against therefor by reason that he has discharge or obtained his discharge or that a composition or scheme composition. 4 & 5 Geo. 5, of arrangement has been accepted or approved. c. 59, s. 162.

142.—(1) A person guilty of an offence declared Trial and to be a misdemeanour under this Ordinance in respect punishment of which no special penalty is imposed by this Ord- of offences. inance, shall be liable, on conviction on indictment, 4 & 5 Geo. 5, to imprisonment for any term not exceeding two c. 59, years, or, on summary conviction, to imprisonment s. 164 (1). for any term not exceeding six months. 16 & 17 Geo. 5, c. 7, s. 10.

(2) Summary proceedings in respect of any such 4 & 5 Geo. 5, offence shall not be instituted after one year from the c. 59, first discovery thereof either by the Official Receiver s. 164 (2). or by the trustee in the bankruptcy, or, in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

4 & 5 Geo. 5, c. 59, s. 164 (4). (3) In an indictment for an offence under this Ordinance, it shall be sufficient to set forth the substance of the offence charged in the words of this Ordinance specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of, the court acting under this Ordinance or any Ordinance repealed by this Ordinance.

Evidence as to frauds by agents. 4 & 5 Geo. 5, c. 59, s. 166. Ordinance No. 5 of 1865. **143.** A statement or admission made by any person in any compulsory examination or deposition before the court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any of the misdemeanours referred to in section 72 of the Larceny Ordinance, 1865, (which section relates to frauds by agents, bankers and factors).

Summary prosecution. Ordinance No. 7 of 1891. Ordinance No. 3 of 1890. **144.** Any offence under this Ordinance, or under the Bankruptcy Ordinance, 1891, may be dealt with summarily by a magistrate under the Magistrates Ordinance, 1890.

Alteration of Schedules.

Alteration of Schedules. **145.** The Chief Justice may with the approval of the Legislative Council alter the First and Second Schedules in any manner whatsoever.

Repeals.

Repeal of enactments and savings. Third Schedule. **146.**—(1) The enactments mentioned in the Third Schedule are hereby repealed to the extent mentioned in the second column of that Schedule.

4 & 5 Geo. 5, c. 59, s. 168 (2). Ordinance No. 7 of 1891. (2) This Ordinance shall apply to proceedings under the Bankruptcy Ordinance, 1891, pending at the commencement of this Ordinance, as if commenced under this Ordinance.

4 & 5 Geo. 5, c. 59, s. 168 (3). Ordinance No. 7 of 1891. (3) Until revoked or altered under the powers of this Ordinance, any fees prescribed under the Bankruptcy Ordinance, 1891, shall continue in force, and shall have effect as if made under this Ordinance.

Commencement. **147.** This Ordinance shall come into operation on the 1st day of January, 1932.

SCHEDULES.

[s. 17.]

FIRST SCHEDULE.

MEETINGS OF CREDITORS.

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

2. The Official Receiver shall summon the meeting by giving not less than four clear days notice of the time and place thereof in the Gazette and in a local paper.

3. The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, but the proceedings at the first meeting shall not be invalidated by reason of any such notice not having been sent or received before the meeting.

4. The meeting shall be held at the office of the Official Receiver.

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

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

7. The Official Receiver, or some person nominated by him shall be the chairman at the first meeting, and at subsequent meetings until the appointment of a trustee other than the Official Receiver, when such trustee shall be chairman.

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

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

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

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

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

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

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

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

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the Official Receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment, or of any commissioner to administer oaths in the Supreme Court, or of the Official Receiver.

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

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

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

- (a) for or against any specific proposal for a composition or scheme of arrangement;
- (b) for or against the appointment of any specified person as trustee, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection;
- (c) on all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

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

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

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

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

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

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

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

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

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

SECOND SCHEDULE. [s. 36.]

PROOF OF DEBTS.

Proof in ordinary cases.

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

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

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

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

5. The affidavit shall state whether the creditor is or is not a secured creditor, and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a

secured creditor, the secured creditor shall surrender his security to the Official Receiver or trustee for the general benefit of the creditors unless the Court on application is satisfied that the omission has arisen from inadvertence, and in that case the Court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the Court may consider to be just.

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

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

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

Proof by secured Creditors.

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

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

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

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

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

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

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

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

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

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

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Ordinance.

Proof in respect of Distinct Contracts.

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

Periodical Payments.

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

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

Interest.

Debt payable at a future time.

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

Admission or Rejection of Proofs.

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

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

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the court may, on the application of the creditor, reverse or vary the decision. The Official Receiver or trustee shall not be personally liable for any costs in respect of the rejection by him in whole or in part of any proof, unless it is proved to the satisfaction of the court that he has acted *mala fide* or with gross negligence.

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

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

THIRD SCHEDULE. [s 146.]

ENACTMENTS REPEALED.

Title.	Extent of Repeal.
The Bankruptcy Ordinance, 1891.	The whole Ordinance
The Magistrates Ordinance, 1890.	Paragraph 9 of the Third Schedule, as amended by section 26 of the Magistrates Amendment Ordinance, 1927
The Bankruptcy Amendment Ordinance, 1929.	The whole Ordinance.

TABLE OF CORRESPONDENCE

BETWEEN

THE BILL, ORDINANCE No. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914.

SUBJECT MATTER.	BILL.	ORDINANCE No. 7 OF 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Short title.	1	1	169	
Interpretation.	2	2	167	
Acts of bankruptcy.	3	3 (1) (3)	1	In clause 3 (<i>d</i>) "or departs from hisusual place of business" is new and considered necessary as it is often the only address known; and "or removes his property or any part thereof beyond the jurisdiction of the court" is taken from Ordinance No. 7 of 1891, s. 3 (1) (<i>d</i>).
Bankruptcy notices.	4	3 (2)	2	
Jurisdiction to make receiving order.	5	4	3	
Conditions on which creditor may petition.	6	5	4	Minimum debt increased from \$300 to \$500 (England, £50). Act of bankruptcy to be within 3 months before petition instead of 4 months (England, 3 months). Reference to deeds of arrangement omitted because no law on the subject in Hong Kong.
Liability of firm to have receiving order made against it.	7	6	—	
Powers of Official Receiver and duties of debtor on petition being filed.	8	—	—	New provision. The first part of sub-clause, (1) merely anticipates the procedure after the Receiving Order provided for in clause 26. See also clause 29. Debtors frequently abscond before the hearing and allegations that goods or books have been removed are common. It is easy to get out of the Colony.

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE No. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914,—Continued.

SUBJECT MATTER.	BILL.	ORDINANCE No. 7 of 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Creditor's petition.	9	7	5	The clause <i>prima facie</i> requires assets sufficient to pay a dividend of 15%. The existing practice under section 7 (1) of Ordinance No. 7 of 1891 is to take 10% as the standard.
Debtor's petition.	10	8	6	The clause <i>prima facie</i> requires assets sufficient to pay a dividend of 15%. The existing practice under section 8 (1) of Ordinance No. 7 of 1891 is to take 10% as the standard. It also specifies certain things which will be "sufficient cause" for refusing a receiving order, <i>e.g.</i> , the absence of material books of account.
Appearance of Official Receiver on petition.	11	—	—	New provision, but in accordance with present practice.
Effect of receiving order.	12	{ 10 11 (2)	7	See also clause 14. Clause 12 (1) follows the English section.
Power to appoint interim receiver.	13	11 (1)	8	
Power to stay pending proceedings.	14	{ 10 (1) 11 (2)	9	The present Ordinance is unsatisfactory on this point: See <i>Re Yim Ka Yan, etc.</i> (1927) 22 H.K. L.R. 118.
Power to appoint special manager.	15	12	10	
Advertisement of receiving order.	16	13	11	
Majority of creditors in Scotland or Ireland.	—	—	12	Unnecessary.

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE No. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914,—*Continued.*

SUBJECT MATTER.	BILL.	ORDINANCE No. 7 OF 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
First and other meet- ings of creditors.	17	15	13	
Debtor's statement of affairs.	18	16	14	The clause expressly requires the debtor to give details of property held by him in a true name, or under an <i>alias</i> , or held by his wife, or a concubine, or held for him or them by a trustee.
Public examination of debtor.	19	17	15	The last sentence of sub-clause (5) is taken from section 17 (3) of the present Ordinance.
Compositions and schemes of ar- rangement.	20	18	16	This clause follows the section in the Act closely. It differs in details from the section in the present Ordinance.
Effect of composi- tion or scheme.	21	—	17	
Adjudication of Bankruptcy.	22	{ 19 6 (2)	18	This clause follows the present Ordinance in allowing an adjudication order to be in the name of a firm.
Appointment of trustee.	23	20	19	
Committee of inspec- tion.	24	21	20	More detailed than existing section.
Power to accept composition or scheme after ad- judication.	25	22	21	
Duties of debtor as to discovery and realisation of prop- erty.	26	23	22	
Arrest of debtor under certain cir- cumstances.	27	24	23	For paragraph (e) see Ordinance No. 7 of 1891, s. 24.
Re-direction of debt- or's telegrams and letters.	28	25	24	

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE No. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914,—*Continued.*

SUBJECT MATTER.	BILL.	ORDINANCE No. 7 OF 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Inquiry as to debtor's conduct dealings and property.	29	26	25	The provision for use of depositions in case of death is taken from the present section.
Discharge of bankrupt.	30	27	26	The clause gives the court (1) power to require a bankrupt to come up for his discharge, and (2) a power of summary imprisonment in certain cases. These powers are taken from the present Ordinance. <i>See also</i> 16 & 17 Geo. 5, c. 7, s. 1, and Ordinance No. 2 of 1929, s. 2. Sub-clause (4) (b) contains a new provision relating to Chinese firms.
Fraudulent settlements.	31	—	27	
Effect of order of discharge.	32	28	28	
Power for court to annul adjudication in certain cases.	33	29	29	Specific provision as to insufficiency of assets.
Description of debts provable in bankruptcy.	34	31	30	
Mutual credit and set-off.	35	32	31	
Rules as to proof of debts.	36	30	32	
Priority of costs and charges.	37	33	—	<i>See also</i> the Bankruptcy Rules (England), Rule No. 117.
Priority of debts.	38	34	33	Sub-clause (1) (b) includes commission.
Preferential claim in case of apprenticeship.	39	34(1)(d)	34	<i>See also</i> 16 & 17 Geo. 5, c. 7, s. 2.
Landlord's power of distress.	40	35	35	

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE No. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914.—Continued.

SUBJECT MATTER.	BILL.	ORDINANCE No. 7 of 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Postponement of husband's and wife's claims.	41		36	"Wife" is made to include concubine. The words "for the purposes of her trade or business" in subsection (1) and the corresponding words in subsection (2) of the Act have been omitted. Bogus proofs are frequently put forward on behalf of wives or concubines.
Relation back of trustee's title.	42	36	37	
Description of bankrupt's property divisible amongst creditors.	43	37	38	
Provisions as to second bankruptcy.	44	—	—	See 16 & 17 Geo. 5, c. 7, s. 3.
Restriction of rights of execution creditor.	45	{ 38 39 (3)	40	Sub-clause (2), which is fuller than the subsection in the Act, is taken from Ordinance No. 7 of 1891.
Duties of bailiff as to goods taken in execution.	46	39	41	
Avoidance of certain settlements.	47	40	42	
Avoidance of general assignments of book debts.	48	—	43	Words "otherwise than" omitted as Ordinance No. 7 of 1886 does not provide for the registration of bills of sale given otherwise than by way of security for the payment of money.
Avoidance of preference in certain cases.	49	41	44	
Protection of <i>bona fide</i> transactions without notice.	50	42	45	See also 16 & 17 Geo. 5, c. 7, s. 4.

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE No. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914,—*Continued.*

SUBJECT MATTER.	BILL.	ORDINANCE No. 7 OF 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Validity of certain payments to bankrupt and assignee.	51	—	46	
Dealings with undischarged bankrupt.	52	—	47	Sub-section (2) is expanded because of the practice of deposits in Chinese firms, and sub-section (3) provides a penalty.
Possession of property by trustee.	53	43	48	
Seizure of property of bankrupt.	54	44	49	
Sequestration of ecclesiastical benefice.	—	—	50	Unnecessary.
Sale of property out of the Colony.	55	45	—	
Appropriation of portion of pay or pension to creditors.	56	46	51	Local pensioners included and Governor substituted for chief officer of department.
Appropriation of income of property restrained from anticipation.	57	—	52	
Vesting and transfer of property.	58	47	53	
Disclaimer of certain property.	59	48	54	
Powers of trustee to deal with property.	60	49	55	
Powers exercisable by trustee with permission of committee of inspection.	61	50	56	
Power to allow bankrupt to manage property.	62	57 (1)	57	
Allowance to bankrupt for maintenance or service.	63	57 (2)	58	
Right of trustee to inspect goods pawned, etc.	64	—	59	

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE No. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914,—*Continued.*

SUBJECT MATTER.	BILL.	ORDINANCE No. 7 OF 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Limitation of trustee's powers in relation to copyright.	65	—	60	
Protection of official receiver and trustee from personal liability in certain cases.	66	—	61	"Gross" inserted before "negligence", and <i>mala fides</i> made an additional ground.
Declaration and distribution of dividends.	67	51	62	
Joint and separate dividends.	68	52	63	
Provision for creditors residing at a distance.	69	53	64	
Right of creditor who has not proved debt before declaration of a dividend.	70	54	65	
Interest on debts.	71	—	66	
Final dividend.	72	55	67	
No action for dividend.	73	56	68	
Right of bankrupt to surplus.	74	58	69	
Appointment of official receiver.	75	9	70, 71	On sub-clause (2) compare Ordinance No. 35 of 1912, s. 2 (2) (a).
Status of official receiver.	76	—	72	
Duties of official receiver as regards the debtor's conduct.	77	14 (2)	73	
Duties of official receiver as to debtor's estate.	78	14 (1)	74	
General power to appoint officers.	—	—	75	Unnecessary.
Official name of trustee.	79	66	76	

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE NO. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914,—*Continued.*

SUBJECT MATTER.	BILL.	ORDINANCE NO. 7 OF 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Power to appoint joint or successive trustees.	80	—	77	
Proceedings in case of vacancy in office of trustee.	81	—	78	
Discretionary powers of trustee and control thereof.	82	68	79	
Appeal to court against trustee.	83	69	80	
Control of court over trustee.	84	—	81	
Remuneration of trustee.	85	63	82	Remuneration to be fixed by court or creditors and not by creditors.
Allowance and taxation of costs.	86	—	83	
Trustee to furnish list of creditors.	87	—	84	
Trustee to furnish statement of accounts.	88	—	85	
Annual statement of proceedings.	89	—	87	
Trustee not to pay into private account.	90	60 (2)	88	
Payment of moneys into bank.	91	60 (1)(3)	89	
Record and account to be kept by trustee.	92	61	86	
Financial.	—	—	90, 91	Unnecessary.
Audit of trustee's accounts.	93	62	92	
Release of trustee.	94	65	93	
Office of trustee vacated by insolvency.	95	—	94	
Removal of trustee.	96	67	95	"Hereinafter" in the Act seems to be a mistake: See clauses 23 and 81.

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE NO. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914.— *Continued.*

SUBJECT MATTER.	BILL	ORDINANCE NO. 7 OF 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Jurisdiction.	—	—	96 to 103 and 107	Unnecessary.
General power of court.	97	—	105	For s. 105 (5) of the Act: <i>See</i> clause 110.
Peers, &c.	—	—	106	Unnecessary.
Review and appeals.	98	71 (3)	108	
General rules of pro- cedure.	99	71 (1)(2)	—	
Discretionary powers of court.	100	—	109	
Consolidation of peti- tions.	101	72	110	
Power to change carriage of pro- ceedings.	102	—	111	
Continuance of pro- ceedings on death of debtor.	103	73	112	
Power to stay pro- ceedings.	104	74	113	
Power to present petition against one partner	105	—	114	
Power to dismiss petition against some respondents only.	106	75	115	
Same trustee for partners.	—	—	116	Unnecessary.
Actions by trustee and bankrupt's partners.	107	76	117	
Actions under joint contracts.	108	77	118	
Proceedings in part- nership name.	109	78 (1)	119	
Miscellaneous.	—	—	120-124	Unnecessary.
Disobedience to order of court.	110	70	105 (5)	
Married women.	111	—	125	
Exclusion of corpora- tions, etc.	112	—	126	

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE NO. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914,—*Continued.*

SUBJECT MATTER.	BILL.	ORDINANCE No. 7 OF 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Limited partnerships.	—	—	127	<i>See</i> clause 112.
Privilege of Parliament.	—	—	128	Unnecessary.
Small estates.	—	—	129	Unnecessary.
Administration in bankruptcy of estate of person dying insolvent.	113	81	130	
Outstanding bankruptcies.	—	—	131	Unnecessary. <i>See</i> clause 146 (2) on current bankruptcies.
Power to make general rules.	114	79	132	
Fees and remuneration.	115	86	133	
Disposal of official Receiver's fees.	116	87	—	
Administrative.	—	—	134-136	Unnecessary.
Gazette to be evidence.	—	—	137	<i>See</i> Ord. No. 31 of 1911, s. 37.
Evidence of proceedings at meeting of creditors.	117	—	138	
Evidence of proceedings in bankruptcy.	118	—	139	
Swearing of affidavits.	119	—	140	
Death of debtor or witness.	120	—	141	
Court seal.	—	—	142	Unnecessary.
Statements made to official receiver or trustee through interpreter.	121	—	—	New provision. The Official Receiver would usually employ an interpreter in Chinese cases.
Certificate of appointment of trustee.	122	—	143	
Computation of time.	123	—	145	Compare Ordinance No. 3 of 1901, s. 701.
Service of notices.	124	—	146	

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE NO. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914,—*Continued.*

SUBJECT MATTER	BILL.	ORDINANCE NO. 7 OF 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Formal defect not to invalidate proceedings.	125	—	147	
Exemption of deeds from stamp duty.	126	—	148	
Acting of corporations, partners, &c.	127	—	149	
Construction.	128	—	150	
Certain provisions to bind Crown.	129	—	151	
Saving for existing rights of audience.	—	—	152	Unnecessary.
Unclaimed and undistributed dividends or funds.	130	80	153	
Fraudulent debtors.	131	82	154	Sub-clauses (3) and (4) are new and considered desirable. For sub-clause (5) <i>see</i> 16 & 17 Geo. 5, c. 7, s. 5. For the general penalty: <i>See</i> clause 142.
Certain offences by persons other than the debtor.	132	—	—	Clause 132 (1) is new. For clause 132 (2) <i>see</i> 16 & 17 Geo. 5, c. 7, s. 5 (2).
Undischarged bankrupt obtaining credit.	133	82 (1)(m)	155	Paragraph (c) is new.
Frauds by bankrupts.	134	82 (5)	156	<i>See also</i> 16 & 17 Geo. 5, c. 7, s. 6.
Bankrupt guilty of gambling, etc.	135	—	157	
Bankrupt failing to keep proper accounts.	136	—	158	<i>See also</i> 16 & 17 Geo. 5, c. 7, s. 7. The last sentence of clause 136 (3) is new.
Bankrupt absconding with property.	137	82 (3)	159	

Table of Correspondence

BETWEEN

THE BILL, ORDINANCE NO. 7 OF 1891, AND THE
BANKRUPTCY ACT, 1914,—*Continued.*

SUBJECT MATTER.	BILL.	ORDINANCE No. 7 of 1891.	BANK- RUPTCY ACT, 1914.	REMARKS.
Debtor concealing himself to avoid service, etc.	138	82 (4)	—	Absence from place of abode or business is made an offence, as absence from the Colony is often impossible to prove.
False claim.	139	83	160	
Order by Court for prosecution on report of trustee, etc.	140	84	161	
Criminal liability after discharge or composition.	141	84 (3)	162	
Power to commit for trial.	—	—	163	Section 163 of the Bankruptcy Act, 1914, was repealed by 16 & 17 Geo. 5, c. 16, s. 9.
Trial and punishment of offences.	142	82 (1)	164	
Public prosecutor to act in certain cases.	—	—	165	Unnecessary.
Evidence as to frauds by agents.	143	—	166	
Summary prosecution.	144	—	—	New provision. Five reference to Ordinance No. 7 of 1891. See clause 146 (2).
Alteration of Schedules.	145	—	—	
Repeal of enactments and savings.	146	—	168	
Commencement.	147	—	169	
First and Second Schedules.	—	—	First and Second Schedules.	
Third Schedule.	—	—	—	

Objects and Reasons

The object of this bill is to repeal the existing Ordinance of 1891 which is out of date and to replace it by an Ordinance based on the Bankruptcy Act, 1914, but adapted to local conditions. Its commencement is postponed until the 1st January, 1932, so as to give time for the preparation of the rules which are to be made thereunder. The principal differences between the bill and the statute law now in force in England are shown in the Table of Correspondence. That Table also shows the principal differences between the bill and the present Bankruptcy Ordinance.

C. G. ALABASTER,
Attorney General.

February, 1931.

C.S.O 2821/ 7.

[No. 5.—8.4.31—2.]

A BILL

INTITULED

An Ordinance to amend further the Merchant Shipping Ordinance, 1899.

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Merchant Shipping Amendment (No. 2) Ordinance, 1931. Short title.
2. Section 4 (2) of the Merchant Shipping Ordinance, 1899, is amended by the addition of the following proviso at the end thereof:— Amendment of Ordinance No. 10 of 1899, s. 4 (2).

Provided further that it shall be lawful and shall be deemed always to have been lawful for the Governor in Council to grant special exemption, which may be subject to any conditions he may impose, from all or any of the requirements of this sub-section in the case of any ship regularly plying between the Colony and Dosing, Swabue (Shanmi), Ping Hoi, Ma Kung, Sha Yu Chung, Nam O, Tip Fuk, O Tau or any other non-treaty port if the master and mate shall have passed a special examination before the Harbour Master and shall be approved by him for service on such voyages.
3. Section 44 of the Merchant Shipping Ordinance, 1899, is amended by the deletion of the words "a fee of one dollar" in the last line thereof and by the substitution thereof of the words "such fee as the Governor in Council shall prescribe". Amendment of Ordinance No. 10 of 1899, s. 44.
4. This Ordinance shall not come into operation unless and until the Governor notifies by Proclamation that it is His Majesty's pleasure not to disallow the same and thereafter it shall come into operation upon such day as the Governor shall notify by the same or any other Proclamation. Suspending clause.

Objects and Reasons.

It has been the practice to grant special exemption from the requirements of section 4 of the Merchant Shipping Ordinance, to certain small steamers holding Hong Kong passenger licences regularly plying between the Colony and places not open to general trade. The practice would seem to require an amendment of the section, which is relaxed by its proviso in the case of river steamers and trawlers and which was further relaxed in 1917, in the case of river steamers, for a period of 6½ years, by Ordinance No. 13 of 1917 and Notification No. 432 of 1923. Section 2 of this Ordinance accordingly adds a third proviso to section 4 (2) of the principal Ordinance. Section 3 amends section 44 of the principal Ordinance by substituting the words "such as the Governor in Council shall prescribe" for the words "a fee of one dollar" which is considered an inadequate sum to charge for the informative abstract which is to be supplied under the section. Section 4 of this Ordinance is the suspending clause usual in the case of an Ordinance relating to Merchant Shipping.

C. G. ALABASTER,
Attorney General.

March, 1931.

C.S.O. 1 in 4922/31.

[No. 6 :—20.4.31.—1.]

A BILL

INTITLED

An Ordinance to amend the Vaccination Ordinance, 1923.

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. 1. This Ordinance may be cited as the Vaccination Amendment Ordinance, 1931.

Amendment of Ordinance No. 12 of 1923, s. 14. 2. Section 14 of the Vaccination Ordinance, 1923, is amended :—

(i) by the substitution of the words "six weeks" for the words "six months" in the last line of sub-section (2) ;

(ii) by the substitution of the words "six weeks" for the words "one month" in the last line of sub-section (3) ;

(iii) by the substitution of the words "six weeks" for the words "six months or one month" in the third line of sub-section (4) ;

(iv) by the repeal of sub-section (9).

Amendment of Ordinance No. 12 of 1923, s. 15. 3. Section 15 of the Vaccination Ordinance, 1923, is amended by the substitution of the words "six weeks" for the words "six months" in the second and fourth lines of paragraph (d).

Amendment of Ordinance No. 12 of 1923, s. 21. 4. Section 21 of the Vaccination Ordinance, 1923, is amended :—

(i) by the repeal of sub-section (1) ; and by the substitution of the words "six weeks" for the words "six months" in the last line of sub-section (2)

Objects and Reasons.

This Ordinance reduces the period of grace for unvaccinated children born within the Colony or admitted to school therein, from six months to six weeks and repeals the sub-section of section 14 of the principal Ordinance which exempted guardians from penalties for not causing children to be vaccinated during the summer months. Sub-section (3) of that section is altered so as to allow six weeks instead of one month as the period of grace in the case of children brought here for the first time. This Ordinance also repeals a sub-section of section 21 of the principal Ordinance the effect of which is spent.

C. G. ALABASTER,
Attorney General.

March, 1931.

C.S.O. /

[No. 4:—7.4.31.—2.]

A BILL

INTITLED

An Ordinance to amend the Legal Practitioners Ordinance, 1871.

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Legal Practitioners Amendment Ordinance, 1931. Short title.
2. Section 21 of the Legal Practitioners Ordinance, 1871, is amended by the deletion of the last seven lines thereof and by the substitution therefor of the words:— Amendment of Ordinance No. 1 of 1871, s. 21.

“and such persons as have been admitted to practise as attorneys, solicitors, law agents or proctors in Great Britain or Ireland, to practise as solicitors in the court.”
3. Section 2 of the Legal Practitioners Ordinance, 1871 is amended by the repeal of paragraph (e). Amendment of Ordinance No. 1 of 1871, s. 2
4. Section 22 of the Legal Practitioners Ordinance, 1871, is amended:— Amendment of Ordinance No. 1 of 1871, s. 22.
 - (i) in the first line of paragraph (b) by the deletion of the word “writer” and by the substitution therefor of the words “law agent”;
 - (ii) in the third line of paragraph (b) by the deletion of the words “Hongkong Law Society” and by the substitution therefor of the words “Incorporated Law Society of Hong Kong”;
 - (iii) in the ninth line of paragraph (b) by the deletion of the words “or writers” and by the substitution therefor of the words “, law agents or proctors”;
 - (iv) in the tenth line of paragraph (b) by the deletion of the words “at London, Dublin or Edinburgh” and by the substitution therefor of the words “in Great Britain or Ireland”;

(v) in the sixth line of the paragraph (c) by the deletion of the words “and writers” and by the substitution therefor of the words “, law agents or proctors”;

Amendment of Ordinance No. 1 of 1871, s. 23. 5. Section 23 of the Legal Practitioners Ordinance, 1871, is amended by the deletion of the word "solicitor" in the seventh line thereof and by the substitution therefor of the words "attorney, solicitor, law agent or proctor".

Amendment of Ordinance No. 1 of 1871, s. 23A. 6. Section 23A of the Legal Practitioners Ordinance, 1871, is amended by the deletion of the words "Hongkong Law Society" in the first line and by the substitution therefor of the words "Incorporated Law Society of Hong Kong"

Objects and Reasons.

1. Under section 21 of the principal Ordinance the court is empowered to approve, admit, and enrol such persons as have been admitted as attorneys, solicitors, or writers in one of the courts of London, Dublin or Edinburgh, or as proctors in any Ecclesiastical Court in England, to practise as solicitors in the court, and the expression "writer" is to be deemed to include "law agents" as defined in section 1 of the Act, 36 and 37 Victoria, chapter 63.

2. It is felt that the limitation to named cities is too restrictive. The rights and duties of Law Agents in Scotland are regulated by the Law Agents (Scotland) Acts, 1873 and 1891. The term "Law Agent" (equivalent to "solicitor in England") is defined by the former Act as "Law Agents, shall include Writers to the Signet, Solicitors in the Supreme Court, Procurators in any Sheriff Court, and every person entitled to practise as an Agent in a court of Law in Scotland".

3. The Secretary of State, in a recent circular Despatch (dated the 8th January, 1931) forwarding an extract from a memorandum of the Council of the Scottish Law Agents Society regarding admission to practise in the Colonies, states that he is sure that the intention is that the same privilege should be conferred upon solicitors in Scotland as upon solicitors in England and that therefore the reference, so far as Scotland is concerned, should be "law agents admitted to practise in Scotland" and nothing more.

4. Section 21 of the principal Ordinance is amended accordingly and sections 22 and 23 are made uniform therewith.

5. Sections 2, 22 and 23A of the principal Ordinance are also amended so as to give The Incorporated Law Society of Hong Kong its correct title.

C. G. ALABASTER,
Attorney General.

April, 1931.