

Duration of the
General Assembly
limited to four years

IV. And be it enacted, That every General Assembly of this Province hereafter to be summoned and chosen, shall, notwithstanding any demise of the Crown, continue for four years from the day of the return of the Writs for choosing the same, and no longer, subject nevertheless to be sooner prorogued or dissolved by the Lieutenant Governor or person administering the Government of the Province.

Acts suspended until
Her Majesty's ap-
probation be had.

V. And be it enacted, That this Act shall not come into operation or be in force until Her Majesty's Royal approbation be thereunto had and declared.

[This Act was specially confirmed, ratified, and finally enacted by an Order of the Queen in Council, dated the 11th day of August, 1842, and published and declared in the Province on the 7th day of September, 1842.]

CAP. XLII.

An Act to increase the Representation of the County of Restigouche.

Passed 29th March 1842.

Preamble.

WHEREAS the increase of population, commercial advancement and 'progressive improvement of the County of Restigouche, render it 'expedient and just to increase the Representation of the said County in the 'General Assembly of this Province;

County of Resti-
gouche to send one
additional Member
to serve in General
Assembly.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the said County of Restigouche shall be entitled to send one additional Member to serve in General Assembly of this Province for the said County, to be elected by the Freeholders in the said County, in like manner and subject to the like Laws, Rules and Regulations, under which the other Members are elected in the several Counties in this Province respectively: Provided always, that no Writ shall issue for the election of such Member, until there shall be a General Election for the Province.

No Writ to issue
until there be a
General Election.

Acts suspended until
Her Majesty's ap-
probation be de-
clared.

II. And be it enacted, That this Act shall not come into operation or be in force until Her Majesty's Royal approbation be thereunto had and declared.

[This Act was specially confirmed, ratified, and finally enacted by an Order of the Queen in Council, dated the 11th day of August, 1842, and published and declared in the Province on the 7th day of September, 1842.]

CAP. XLIII.

An Act relating to Bankruptcy in this Province.

Passed 4th April 1842.

Preamble.

WHEREAS a due regard to the interest and security of Creditors, as well 'as to the relief of Debtors in insolvent circumstances, renders it 'necessary to make Legislative provision respecting the same;

Commissioners of
the Estates of Bank-
rupts in certain
Counties to be ap-
pointed.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That it shall and may be lawful for His Excellency the Lieutenant Governor or Commander in Chief of this Province for the time being, by and with the advice of Her Majesty's Executive Council, to appoint for each of the following Counties in this Province, that is to say—the County of Northumberland, the County of Carleton, the County of York, the County of Charlotte, and the City and County of Saint John, one person, being a Barrister of the Supreme Court of Judicature of this Province, of not less than five years standing, to be Commissioner in the said Counties and City and County respectively, of the

the Estates and Effects of Bankrupts within the provisions of this Act ; each of which said Commissioners shall have jurisdiction and shall reside in the County or City and County for which he shall be so appointed, and shall hold his place and be removable therefrom at the pleasure of the Lieutenant Governor or Commander in Chief for the time being, who shall and may from time to time, by and with the advice aforesaid, fill up any vacancy or vacancies as the same may occur ; and each of the said Commissioners, before entering on the duties of his said Office, shall be sworn to the faithful discharge of the same, before the Clerk of the Peace of the County or City and County for which he shall or may be so appointed, or before such other person as shall be named for that purpose in the Warrant or Commission appointing such Commissioner, and shall subscribe his name to a Roll to be kept by such Clerk of the Peace for that purpose, on which Roll shall be written the affidavit following, that is to say :—

Jurisdiction and
tenure of Office.

To be sworn.

‘ I, A. B. do swear that I will faithfully, impartially and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as a Commissioner of Bankruptcy for the City and County of Saint John, (or County of —, as the case may be) and such other County and Counties as may hereafter be united thereto, by virtue of an Act relating to Debtors and Creditors, and of any Act or Acts made or to be made in addition to or alteration or amendment of the same.

Oath of Office.

‘ SO HELP ME GOD.’

II. And be it enacted, That it shall and may be lawful for His Excellency the Lieutenant Governor or Commander in Chief of this Province for the time being, by and with the advice of Her Majesty’s Executive Council, whenever hereafter His Excellency and Council may deem it necessary, to extend the provisions of this Act to the Counties of Restigouche, Gloucester, Kent, Westmorland, Sunbury, Queen’s County and King’s County, either by appointing one Commissioner for each of the said Counties, to have jurisdiction in the County for which he may be so appointed, under this Act, and subject and liable to the provisions thereof, or one Commissioner to have jurisdiction in and for two or more of the said Counties, or by uniting one or more of them, for the purposes of this Act, with any of the Counties mentioned in the first Section hereof : Provided always, that should it be deemed expedient at any time or times hereafter to appoint one person to be Commissioner of Bankruptcy in and over two or more of the said Counties of Restigouche, Gloucester, Kent, Westmorland, Sunbury, Queen’s County, and King’s County, such Commissioner shall and may reside in and be sworn before the Clerk of the Peace of any of the Counties for which he shall be so appointed.

Provisions of this
Act may be ex-
tended to other
Counties.

III. And be it enacted, That all persons whosoever residing in this Province, owing debts to the amount of not less than five hundred pounds, currency, shall be liable to become Bankrupts within the meaning of this Act ; and may, upon Petition to the Chancellor or Master of the Rolls of this Province, of one or more of their Creditors, to whom they owe debts amounting in the whole to not less than two hundred pounds currency, or of any other person or persons on the behalf of such Creditor or Creditors, on oath, in duplicate, accompanied by the further proof hereinafter mentioned, be declared accordingly, by fiat of the said Chancellor or Master of the Rolls as hereinafter mentioned in the following cases : that is to say,—Whenever such persons shall depart from this Province with intent to defraud their Creditors, or to avoid service of, or arrest by the ordinary process of the Law, or shall conceal themselves to avoid being arrested, or having been arrested

All persons owing
debts to the amount
of £500 liable to be-
come Bankrupts,
and may be de-
clared such by the
Chancellor or Mas-
ter of the Rolls,
upon application.

What shall consti-
tute an Act of
Bankruptcy.

arrested by mesne or final process, or rendered in discharge of their bail shall escape or remain a prisoner either in Gaol or on the limits thereof, for the space of two months, or shall willingly or fraudulently procure themselves to be arrested, or their Goods, Chattels, Lands or Tenements to be attached, distrained, sequestered or taken in execution, or shall remove their goods, chattels or effects, or conceal them to prevent their being levied upon or taken in execution, or by other process, or shall make any fraudulent conveyance, sale, assignment, gift, loan or transfer, Warrant of Attorney to confess a Judgment, or other device of, or affecting their Lands, Tenements, Goods or Chattels, Monies, Credits or Evidences of Debt: Provided always, that no person shall be liable to become Bankrupt by reason of any such Act of Bankruptcy committed more than six months before the issuing of the fiat in Bankruptcy against him.

Filing a Declaration of Insolvency in the Court of Chancery, and publishing a Memorandum thereof deemed an Act of Bankruptcy.

IV. And be it enacted, That if any person owing debts to the amount of not less than five hundred pounds currency, shall file in the office of the Register of the Court of Chancery of this Province, a declaration in writing, signed by such person and attested by an Attorney or Solicitor, that he is insolvent or unable to meet his engagements, the said Register shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the Printer of the Royal Gazette to insert an advertisement of such declaration therein, and every such declaration shall be deemed an Act of Bankruptcy committed by such person at the time when such declaration was filed, and a fiat may be granted thereupon upon the application of Creditors as and to the amount aforesaid: Provided always, that no fiat shall be so granted after the expiration of three calendar months, nor unless such advertisement shall have been inserted in the Royal Gazette within fifteen days after such declaration was filed.

Allegations necessary to be set forth in applications for a fiat of Bankruptcy.

V. Provided always, and be it enacted, That the Petitions so to be made, by or at the instance of a Creditor or Creditors aforesaid, shall set forth the nature and amount of the debts alleged to be due to such Creditor or Creditors, together with a declaration to the best of the knowledge and belief of the Petitioner or Petitioners that the person against whom such application is being made, is owing debts to an amount to be in no case less than the said sum of five hundred pounds, and shall also contain a particular statement of the facts and circumstances relied on as constituting an Act or Acts of Bankruptcy, which facts and circumstances shall further be verified by the affidavit in duplicate of at least two reputable Witnesses.

Fiat of Bankruptcy, &c., to be transmitted to the proper Commissioner.

VI. And be it enacted, That whenever any fiat in Bankruptcy shall have been granted as aforesaid, the same, together with one set of the documents exhibited on the application therefor, shall be transmitted by the said Chancellor or Master of the Rolls, under close cover, sealed with his seal, to the Commissioner of Bankruptcy having jurisdiction in the County, City and County, or District, in which the said Bankrupt resided at or immediately before the time of the said application, and the other set shall remain with the Chancellor or Master of the Rolls, to be filed in the Registry of the Court of Chancery.

All property, &c., of the declared Bankrupt vested in such Assignee as may be appointed.

VII. And be it enacted, That all the property and rights of property, of every name and nature, and whether real or personal, except as hereinafter excepted, of every person who shall by fiat as aforesaid be declared a Bankrupt within this Act, shall by mere operation of Law, *ipso facto*, from the time of the receipt of such fiat by the proper Commissioner, be deemed to be divested out of such person without any assignment or other conveyance whatever, and the same be vested by force of the same fiat in such Assignee as from time to time shall be appointed as hereinafter directed.

VIII.

VIII. And be it enacted, That when and so soon as the proper Commissioner shall have received any fiat and documents as aforesaid, he shall forthwith endorse thereon the day and hour on which he received the same, and by Warrant under his hand and seal, shall appoint one fit and proper person to be a provisional assignee of the estate and effects of the said alleged Bankrupt, and shall cause notice to be personally served on such alleged Bankrupt, if he shall be found within the jurisdiction of such Commissioner; and if not so found then to be left at the last place of abode or business of the said alleged Bankrupt, or delivered to his wife, or some adult member of his family, or agent, by which notice the said alleged Bankrupt shall be required within thirty days after service thereof as aforesaid, to surrender and conform to, or dispute the alleged Bankruptcy; and in case the said alleged Bankrupt should within the said period of thirty days file with said Commissioner a declaration in writing of such dissent, and desire to contest such alleged Bankruptcy, that then the said Commissioner shall forthwith transmit such declaration to the Chancellor or Master of the Rolls who shall proceed to the determination of the question so in contest as hereinafter directed, and in case the said alleged Bankrupt should not within the said period of thirty days after service of such notice file with the said Commissioner such declaration, or when the said Chancellor or Master of the Rolls shall have determined and confirmed the said fiat of Bankruptcy, that then the said Commissioner shall as soon as may be thereafter, cause public notice of the said appointment to be published in one or more of the Newspapers of the County, City and County, or District, in which such Commissioner hath jurisdiction, and if there shall be no Newspaper printed in said County, City and County, or District, then in the Royal Gazette of this Province, and shall thereby require all persons indebted to the said Bankrupt by a certain day to be therein expressed, to pay all such sum or sums of money, debts or duties, as they may owe to the said Bankrupt, and deliver up all other property and effects of said Bankrupt in their possession, power or custody to him the said Assignee, and by the same notice shall require all the Creditors of the said Bankrupt who shall or may be resident in this Province, or in any other of Her Majesty's North American Provinces, or in the West Indies, or in the United States of America, within three months of the day of the date of such notice, to deliver in and prove to the satisfaction of the said Commissioner their respective claims and demands whether the same be actually due or to become due against the said Bankrupt; and if it should appear, or if the said Commissioner should have reason to believe that any Creditors of the said Bankrupt reside in any part of the United Kingdom of Great Britain and Ireland, then notice shall be forthwith transmitted for publication in the London Gazette, calling upon such Creditors to appoint an Agent or Agents in this Province, and to deliver and prove to the satisfaction of the said Commissioner their respective claims and demands as aforesaid against the said Bankrupt within three months from the day of the date of the said notice so published in the London Gazette.

IX. And be it enacted, That if such Chancellor or Master of the Rolls shall find the petitioning Creditor's debt or debts, or the general debt or debts due by the said alleged Bankrupt, or the facts and circumstances relied on as constituting the Act or Acts of Bankruptcy, are not sufficiently proved to satisfy the provisions of this Act, that then the said fiat so by him first granted shall thereby be annulled, and all the property and rights of property affected by such fiat shall thereupon revert in the said alleged Bankrupt as fully and completely to all intents and purposes as if the said fiat never had been granted or provisional Assignee appointed.

Commissioner to endorse date of receipt of fiat, and appoint a Provisional Assignee of the Estate.

Notice to be served on the alleged Bankrupt.

Proceedings when dissent by Bankrupt is entered and disallowed, and fiat confirmed.

Appointment of Provisional Assignee to be published, and the Debtors and Creditors called upon to pay and prove amounts due, &c.

If Acts of Bankruptcy, &c. be not sufficiently proved, fiat to be annulled and property to revert in the Bankrupt.

Person of Bankrupt liable to be imprisoned in certain cases.

X. And be it enacted, That if it shall be proved to the satisfaction of any Commissioner after the receipt of any fiat in Bankruptcy as aforesaid, by the oaths of two or more reputable witnesses, that there is reasonable or probable cause for believing that the Bankrupt or alleged Bankrupt therein named is about to quit this Province, or to remove or conceal or otherwise dispose of any of the property or rights of property divested out of him by operation of Law as aforesaid, or hath removed any of the same, or concealed them upon his person or elsewhere, with intent to defraud his Creditors, it shall and may be lawful for such Commissioner to issue a Warrant under his hand and seal, directed to any person or persons such Commissioner shall think fit, whereby such person or persons shall have full power and authority to arrest and search the person of such Bankrupt or alleged Bankrupt, and seize and take the goods and chattels aforesaid, wheresoever he or they may be found within this Province, and for that purpose taking with him or them a Peace Officer, shall and may break open any house, outhouse, chamber, shop, warehouse, trunk, chest, or any place or thing wherein any such property shall be sworn to be concealed as aforesaid, and him the said Bankrupt or alleged Bankrupt and the said property to safely keep until the expiration of the time for annulling such fiat, or until such Bankrupt shall be dealt with according to the provisions of this Act: Provided always, that in case the said Bankrupt or alleged Bankrupt shall happen to be a Prisoner in any Gaol at the time of the executing of such Warrant, no search of his person shall be made, unless in the presence of the Sheriff, Deputy Sheriff or Gaoler, in whose custody he may be, and such Sheriff, Deputy Sheriff and Gaoler shall and may and they are hereby required to be aiding and assisting in the executing of the said Warrant.

Search for concealed property.

Search of Bankrupt's person.

Appointments of Provisional Assignees and Assignees.

XI. And be it enacted, That the Provisional Assignee so appointed shall hold his place until some other person or persons shall be appointed by the Chancellor or Master of the Rolls, on the application of a majority of the Creditors in number and value of the said Bankrupt, if they think proper so to do; and in case of the vacancy of any Assignee by death, the said Commissioner shall appoint another fit and proper person to fill such vacancy, who shall in like manner hold his situation until some other person or persons shall be appointed by the Chancellor or Master of the Rolls on the application of Creditors as aforesaid; and every Assignee before entering upon the duties of his office shall be sworn before the Commissioner to the faithful performance of the duties of the same; and the said Commissioner shall also require and receive from every Assignee a Bond with at least two Sureties satisfactory to such Commissioner, and in such sum as he may deem proper, conditioned for the faithful discharge of all his duties as such Assignee; which Bond shall be given to such Commissioner by the name of his office, and shall and may in case of any breach of the conditions thereof be sued and sueable by the said Commissioner or his successor in office, under the order of the Chancellor or Master of the Rolls, in any Court of Record in the Province, for the benefit of the Creditors and others interested.

Assignees to be sworn and give security.

Powers of Assignees.

XII. And be it enacted, That the Assignee duly appointed under this Act, shall be vested with all legal and equitable right, title, power and authority, to collect, sell, manage and dispose of all the property and rights of property of the said Bankrupt, and also to annul and defeat any conveyance, transfer, security or judgment by the said Bankrupt, or on his behalf, given or made at any time before his Bankruptcy, and void or voidable by reason of fraud or want of consideration, and to recover back any money or other property, lent, given away, or transferred by the said Bankrupt, with intent at any time to defraud or delay his Creditors as before mentioned; and to sue for and defend on behalf of the estate,

estate, subject to the orders and directions of the proper Commissioner, as fully to all intents and purposes as the same were vested in or might be exercised by such Bankrupt or his Creditors before or at the time of his Bankruptcy declared as aforesaid; and all suits at Law or in Equity, then pending, in which such Bankrupt is a party, may be prosecuted and defended by such Assignee to their termination in the same manner and with the same effect as they might have been by said Bankrupt, and no suit commenced by or against any Assignee shall be abated by his death or removal from office, but the same may be prosecuted and defended by his successor in the same office; provided that there shall be excepted from the operation of this Act the wearing apparel, the necessary household and kitchen furniture, and such other articles and necessaries of such Bankrupt as the proper Commissioners shall designate and set apart, having reference to the amount of the family, condition and circumstances of the Bankrupt.

Certain matters reserved for the use of the Bankrupt and his family.

XIII. And be it enacted, That all bargains, sales, judgments, transfers, assignments, mortgages, conveyances, agreements, payments, bills, bonds, notes or other acts of whatsoever nature or kind, by which any lands, tenements, hereditaments or interests in the same, or any goods, chattels, effects, money, rights, credits or evidence of debt shall be directly or indirectly affected, if made, done or executed by any Bankrupt within four calendar months of the day of the date of the fiat granted against him, notwithstanding the same may have been made and done for valuable consideration, shall be deemed and taken to be fraudulent as regards the said Bankrupt, if it shall appear to the proper Commissioner that the same had been made, done or executed by him, the said Bankrupt, or on his behalf, in contemplation of Bankruptcy, or for the purpose of giving any surety, creditor, indorser, acceptor or other person, any preference or priority over the general creditors of such Bankrupt; and all such bargains, sales, judgments, mortgages, transfers, assignments, conveyances, agreements, payments, bills, bonds, notes or other acts so made within two months of the day of the date of the fiat as aforesaid, shall be deemed fraudulent and utterly void and not sufficient in Law or Equity to pass, incumber or affect any property whatsoever, if it shall appear that the said bargains, sales, judgments, transfers, assignments, mortgages, conveyances, agreements, payments, bills, bonds, notes or other acts, although made, done and executed for full value, were accepted or received, collusively, or with knowledge that the said Bankrupt contemplated Bankruptcy at the time of making, doing or executing the same; and the said Assignee shall be entitled to claim, sue for, recover and receive the same as part of the assets of the Bankrupt.

Transfers and preferences by Bankrupt made in contemplation of Bankruptcy to disqualify Bankrupt from obtaining a Certificate.

To be void if made collusively.

XIV. And be it enacted, That every Bankrupt who shall have duly surrendered, and in all things conformed himself to the provisions of this Act, shall be discharged from all debts due by him at the time of issuing the fiat, and from all claims and demands against him in case he shall obtain a certificate of such conformity so signed and allowed, and subject to such provisions as hereinafter directed, but no such certificate shall release or discharge any person who was a partner with such Bankrupt at the time of his Bankruptcy, or who was then jointly bound or had made any joint contract with such Bankrupt.

Bankrupt conforming to this Act, to be discharged from all debts, on obtaining a Certificate of such conformity.

XV. And be it enacted, That such certificate shall be signed by four fifths in number and value of the Creditors of the Bankrupt who shall have proved debts to the amount of ten pounds or upwards who shall thereby testify their consent to the Bankrupt's discharge as aforesaid; but no such certificate shall be such discharge unless the Commissioner shall in writing, under his hand and seal, certify to the Chancellor or Master of the Rolls, that such Bankrupt has made a full discovery

Certificate of discharge, how to be signed and certified.

discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery, and also that the Creditors have signed in manner herein directed, and unless the Bankrupt make oath in writing that such certificate and consent were obtained without fraud.

Jurisdiction of the Commissioners.

XVI. And be it enacted, That every Commissioner so to be appointed as aforesaid shall have jurisdiction in all matters and proceedings in Bankruptcy arising under this Act, or any Act hereafter to be passed on the subject of Bankruptcy within the County, City and County or District for which he shall be so appointed; and the jurisdiction hereby conferred on any and every Commissioner shall extend to all cases and controversies in Bankruptcy arising between the Bankrupt and any person claiming any debt or demand under the Bankruptcy, to all cases and controversies between the Creditor and the Assignee of the Estate, whether in office or removed, to all cases and controversies between such Assignee and the Bankrupt, and to all matters and things to be done under and by virtue of the Bankruptcy, until the final distribution and settlement of the Estate of the Bankrupt, and the close of the proceedings in Bankruptcy, subject however to appeal to or review by the Court of Chancery as before and hereinafter provided.

Court of Chancery to have appellate Jurisdiction, with power to order the trial of feigned issues in the Supreme Court, in questions of fact.

XVII. And be it enacted, That the Court of Chancery in this Province shall have an appellate jurisdiction of all matters cognizable by the said Commissioner, and if upon the hearing of any matter whatever upon appeal or otherwise brought before the said Court relating to Bankruptcy, any question of fact shall arise which in the opinion of the said Court cannot be satisfactorily determined without a trial by Jury, such Court shall have authority to order a feigned issue to be made up in the Supreme Court, and to prescribe the manner of making up such issue so as to present the question in dispute, and to direct the County in which the same shall be tried; and the Supreme Court shall have power to grant new trials of such issues as in personal actions pending in that Court, and the final determination of such issue shall be conclusive as to the facts therein controverted in the proceedings before the Court of Chancery, and it shall be in the discretion of the said Court of Chancery to order and direct by whom and in what manner the costs and expenses attending such issue shall be paid.

Commissioners may employ Clerks, &c.

XVIII. And be it enacted, That it shall and may be lawful for the said Commissioners respectively, from time to time, as they shall think fit, to hire and employ a Clerk or Clerks and all such other officers and servants as may by them be deemed necessary for the purpose of assisting the Assignee in the management of the Estate, and transaction of the affairs thereof, or of assisting the Commissioners in any of the proceedings in Bankruptcy, and such Commissioners respectively shall allow and order to be paid to such Clerk or Clerks, and all such other officers and servants, and shall allow to every Assignee to be appointed by virtue of this Act, such reasonable compensation for his or their services as such Commissioners may think proper or as may be agreed upon, and the said Commissioners may also if they think fit, appoint the Bankrupt to assist in settling the Estate and Effects of the said Bankrupt, in such manner and on such terms as they may think best for the interest of the Creditors; provided always, that should a majority of the Creditors object to the amount of any allowance to be made to any such Assignee, or other officer as aforesaid, the same shall be heard by Petition before the said Chancellor or Master of the Rolls and by him decided according to the very right of the case.

Payment of expenses.

Employment of Bankrupt allowed.

Creditors may object to amount of expenses.

Proof of debts.

XIX. And be it enacted, That all the Creditors who shall come in and prove their

their debts under any Bankruptcy, shall at the time of lodging their claim with the Assignee of the Bankrupt Estate, accompany the same with an affidavit or affidavits verifying the truth and justice of such debts sworn by themselves, their Agents or other persons, before any Judge of the Supreme or Inferior Court of Common Pleas of this Province, or any Commissioner for taking affidavits, or Master or Master Extraordinary in Chancery, or before any Judge of any Superior Court, or Mayor or Chief Magistrate of any City or Town in any part of the British Dominions, or British Consul, if in any Foreign Country; and in order to afford an opportunity for contesting the same or any claim which may be preferred by the Assignee in opposition thereto, the said Commissioner shall appoint one or more public meetings of the Creditors of the said Bankrupt's Estate by reasonable notice of the time and place of such meeting in any one or more of the public Newspapers printed and published in the County, City and County, or district of the proper Commissioner, or Royal Gazette, if there be no such Newspaper printed and published as aforesaid, when and where all persons interested may attend for the purposes aforesaid, and may at any time prior to any such meeting, examine the said claims with the said Assignee, and be prepared to present to the proper Commissioner a minute in writing, containing the particular point or points intended to be disputed, and all claims made by any person in manner aforesaid, which shall not be objected to by the Assignee or any of the Creditors of the said Bankrupt at the first meeting after the same shall be lodged, and any balance thereof, after deducting any payment or set off not already credited and not disputed by such claimant, shall be deemed to be proved debts; and all debts so proved, together with all other debts which shall from time to time be established against the Bankrupt after contest, shall entitle the persons to whom the same may be payable, to share in the Bankrupt's property, and effects in proportion to the amount thereof, without any priority or preference whatsoever, except only debts due by the said Bankrupt to the Queen's Majesty, Her Heirs and Successors, excepting also any debt due before the fiat of Bankruptcy to any Clerk or Servant, Labourer or Workman of such Bankrupt, in respect of the wages or salary of such Clerk or Servant, Workman or Labourer, not exceeding six months wages or salary, and such Clerk or Servant, Workman or Labourer to be at liberty to prove under the fiat for any greater amount; and all Creditors whose debts are not due and payable until a future day, all Annuitants, Holders of Bottomry and Respondentia Bonds, Holders of Policies of Insurance, Sureties, Drawers, Indorsers, Bail, or other persons having uncertain or contingent demands against such Bankrupt, shall be permitted to come in and prove such debts or claims under this Act, and shall have a right when their debts and claims become absolute, to have the same allowed them in case no dividend or dividends shall already have been paid on such debts, and such Annuitants and holders of debts payable at a future day, may have the present value thereof ascertained under the direction of the proper Commissioner, and allowed them accordingly as debts actually due; and no Creditor or other person coming in and proving his debt or claim shall be allowed to maintain any suit at Law or in equity therefor, but shall be deemed thereby to have waived all right of action against such Bankrupt, and all proceedings already commenced for any such debt or claim.

XX. And be it enacted, That no Creditor having security shall receive upon any such security more than a rateable part of such debt, except in respect of any execution levied by seizure upon or any mortgage upon any part of the property of such Bankrupt or any lien on his personal property before the fiat in Bankruptcy.

A Meeting of Creditors to contest or pass debts or claims to be called.

Proved debts to entitle to a proportionate share in Bankrupt's estate.

Exceptions.

Admission of debts due at a future time.

No action to be had by Creditors proving their debts.

What securities shall entitle to more than a rateable part of the debt.

Bankrupt not to be entitled to a second discharge under this Act, unless his Estate pay 50 per cent. on amount of debts.

Meetings of Creditors may be called to receive offers of composition.

Proceedings, if composition be accepted.

Expenses of taking out and carrying through the proceedings in Bankruptcy.

Person of Bankrupt after surrender to be free from arrest.

Bankrupt uncertified to remain liable.

XXI. And be it enacted, That if any person who shall have been discharged under this Act shall afterwards become Bankrupt, he shall not again be entitled to a discharge under this Act, unless his Estate shall produce after all charges sufficient to pay every Creditor fifty per cent on the amount of the debt which shall have been allowed to each Creditor.

XXII. And be it enacted, That it shall and may be lawful for the Chancellor or Master of the Rolls, at any time after the issuing of a Fiat in Bankruptcy against any person or persons, on application by Petition to him made by the Bankrupt or Bankrupts, or any of his friend, or successors, if deceased, to call a public meeting of his or their Creditors, for the purpose of offering a composition, with sureties to the said Creditors for payment of such composition, giving at thirty days notice in the Royal Gazette and one or more Newspapers printed and published in this Province; and the Assignee of the Estate shall preside at such meeting, and take a record of the proceedings thereof; and if three fourths of the Creditors then present, in number and amount, shall resolve that the offer of and security shall be intertained for consideration, the Assignee shall call another meeting, to be held at a specified hour on a specified day thereafter then to be decided upon, being not less than thirty days thereafter, and at a specified place, and shall at least twenty days before such other meeting, advertise a notice thereof in the Royal Gazette and one other Newspaper printed and published in this Province; and if at the meeting so called, a majority of three fourths in number and value of the Creditors shall accept the said offer, then it shall be lawful for the Chancellor or Master of the Rolls as aforesaid, to make an order releasing and discharging the said Bankrupt from all his debts, except the composition agreed upon at such meeting, and to supersede the Bankruptcy, and the property and effects of every description shall reinvest in the said Bankrupt as fully as before the issuing of the Fiat, as well as any monies or securities in the hands of the Assignee; Provided also, that all expenses be paid by the Bankrupt.

XXIII. And be it enacted, That all the expenses incurred in taking out and carrying through the proceedings in Bankruptcy, under the provisions of this Act, shall be in the first instance borne by the petitioning Creditor or Creditors, and repaid to him or them out of the proceeds of the Bankrupt's Estate.

XXIV. And be it enacted, That from and after the time when, after any such Fiat shall be so received, the Bankrupt shall surrender and conform or shall prefer his petition against the alleged Bankruptcy, such Bankrupt or alleged Bankrupt shall not be arrested or imprisoned by or at the suit of any Creditor on any process whatever; and if any such Bankrupt, after the surrender or petition against the alleged Bankruptcy as aforesaid, or during the continuance of the proceedings in Bankruptcy, or after the granting of the Bankrupt's Certificate of discharge as aforesaid, be arrested or have any action brought against him for any debt, claim or demand, proved or provable under the Fiat against such Bankrupt, the Court out of which the process may have issued or wherein such action may have been brought, or any Judge thereof, shall forthwith discharge such Bankrupt from the said arrest on Common Bail; and if any Bankrupt shall be taken in Execution or detained in Prison, or on the Limits for any such debt, claim or demand, it shall be lawful for any Court out of which the process issued and on which such Bankrupt was taken in Execution, detained in Prison or on the Limits as aforesaid, or any Judge thereof, forthwith to order any Officer who shall have such Bankrupt in custody by virtue of such Execution or process as aforesaid, to discharge such Bankrupt without exacting any Fee: Provided always, that nothing herein shall be construed to prevent any Creditor from proceeding

proceeding to arrest or imprison any Bankrupt who shall be finally refused his Certificate of discharge under the provisions of this Act.

XXV. And be it enacted, That all sales, transfers and other conveyances by the Assignee of the Bankrupt's Estate, of any property or rights of property, shall be made at such times and in such manner as shall be ordered and approved by the proper Commissioner, and not otherwise; and that every conveyance of lands made by any Assignee under the provisions of this Act, containing a recital of the Fiat in Bankruptcy, the appointment of the Assignee, and the order of the sale of any lands of the Bankrupt having been first duly acknowledged or proved according to the Laws relating to the Registry of Deeds, and affidavit having been made by such Assignee before any Officer or Court duly authorized to take acknowledgment or proof of the execution of Conveyances, and indorsed on the said Conveyance that the Premises mentioned in such Conveyances have been duly advertized and sold according to the order of the proper Commissioner, may be registered in the Registry Office where the Lands lie; and such Conveyance so registered, or a copy thereof, may be given in evidence in any Court of Law or Equity in this Province, and shall have effect in like manner with and under the same rules and restrictions as any other Registered Deed, and when so given in evidence, shall be deemed and taken to be evidence that all the proceedings on which such Conveyance is founded were rightly had and done, and shall be as effectual to pass all the title and interest of such Bankrupt's Estate in such Lands.

Sales and conveyances of Bankrupt Estate and Effects how made.

Effect of proof, and registration of deed or conveyance.

XXVI. And be it enacted, That in order to ensure a speedy settlement and close of the proceedings in each case in Bankruptcy, it shall be the duty of the several Commissioners to order and direct a collection of the assets and a reduction of the same to money, and a distribution thereof at as early a period as practicable, consistently with a due regard to the interests of the Creditors, and a dividend and distribution of such assets as shall be collected and reduced to money or as much thereof as can be safely so disposed of, consistently with the rights and interests of third persons having adverse claims thereto, shall be made among the Creditors who have proved their debts, as often as once in six months from the time of the Fiat in Bankruptcy, notice of such dividends and distribution to be given in some Newspaper or Newspapers of the County, City and County, or District of the proper Commissioner, or in the Royal Gazette, where no such Newspaper shall be published, fourteen days at least before the order therefor shall be passed; and the pending of any suit at Law or in Equity by or against such third persons shall not postpone such division or distribution, except so far as the assets may be necessary to satisfy the same, and where any Creditor shall not have proved his debt until a dividend and distribution shall have been made and declared, he shall be entitled to be paid the same amount in proportion, out of the remaining dividends or distributions thereafter made, as the other Creditors have already received before the latter shall be entitled to any portion thereof.

Assets to be reduced to money, and Dividend declared.

Creditor not having proved his debt before first Dividend to be paid pro rata out of the second.

XXVII. And be it enacted, That after the lapse of twelve months from the date of the Fiat, if it shall appear to the Commissioner expedient to sell any interest which the Creditors have in the outstanding debts, he shall fix a day for holding a meeting of the Creditors to take the same into consideration, and shall give thirty days notice thereof in one or more of the Newspapers printed and published within the District for which he may act, if any such there be, and in the Royal Gazette of this Province, of the time and place of such meeting, and if three fourths of such Creditors in number and value then assembled, shall decide in favor of such sale, such debts may be sold under the order of the Commissioner

Sale of outstanding debts may be made if agreeable to three fourths of the creditors in number and value.

at

Certificate of sale to be evidence in all Courts of Law.

at such time as he may direct, giving due notice thereof, and a certificate signed by such Commissioner of such sale shall be in all Courts of Justice evidence of such sale and assignment, and the purchasers thereof may sue for and recover such debt or debts in any Court of competent jurisdiction within this Province as assignee thereof.

Bankrupt refusing to answer, &c. may be committed to close custody.

XXVIII. And be it enacted, That whenever any Bankrupt shall wilfully refuse to answer any questions put to him by the proper Commissioner touching the Estate of the said Bankrupt in Bankruptcy, or relating to the disposal or management thereof, before the receipt of the Fiat in Bankruptcy, or whenever from any other cause the confinement of the said Bankrupt in close custody may become necessary, in order that a full disclosure of all property and rights of property may be made by the said Bankrupt for the benefit of the Creditors, it shall and may be lawful for the said Commissioner, by warrant under his hand and seal, upon being satisfied of the necessity for so doing, on the oaths of two or more reputable persons, to order and direct the said Bankrupt to be committed to the custody of the Sheriff of the County, City and County, or County of the District of such Commissioner, to be confined in the Common Gaol of the same, and there to be kept without bail or mainprize until he shall be purged of his offence by submission, or make satisfactory disclosures relating to the said Estate, or shall be delivered from such custody by an order of the Chancellor or Master of the Rolls, upon his petition for that purpose made, and upon good cause shewn therefor to the satisfaction of such Chancellor or Master of the Rolls, and it shall be the duty of the said Commissioner to order a reasonable allowance to be paid by the Assignee for the necessary support of such Bankrupt during the time he shall be so in confinement as aforesaid.

Monies received by Assignee to be lodged in a Bank, and drawn by order, countersigned by the Commissioner.

XXIX. And be it enacted, That all monies from time to time received by any Assignee in Bankruptcy on account of the Bankrupt's Estate, shall be paid over by him into any one of the Banks in this Province, and also be entered there as deposits of the particular estate for which he may be Assignee, and shall only be drawn therefrom and paid on the order of the said Assignee, countersigned by the proper Commissioner for the time being.

Partners in trade becoming Bankrupt, proceedings in such cases.

XXX. And be it enacted, That where two or more persons who are partners in trade become insolvent, an order may be made in the manner provided in this Act on the petition of any Creditor of the partners; upon which order all the joint stock and property of the Company and also all the separate Estate of each of the partners shall be taken, excepting such parts thereof as are herein excepted, and all the Creditors of the Company and the separate Creditors of each partner shall be allowed to prove their respective debts, and the Assignees shall also keep separate accounts of the joint stock or property of the company and of the separate Estate of each member thereof, and after deducting out of the whole amount received by such Assignees the whole of the expenses and disbursements paid by them, the net proceeds of the joint stock shall be appropriated to pay the Creditors of the Company, and the net proceeds of the separate Estate of each partner shall be appropriated to pay his separate Creditors; and if there shall be any balance of the separate Estate of any partner after the payment of his separate debts such balance shall be added to the joint stock for the payment of the Joint Creditors; and if there shall be any balance of the joint stock after payment of the joint debts, such balance shall be divided and appropriated to and among the separate Estates of the several partners according to their respective rights and interests therein and as it would have been if the partnership had been dissolved without any Bankruptcy; and the sum so appropriated to the separate Estate of each

Disposition of balances in favor of partnership business, or separate Estates of the Partners.

partner

partner shall be applied to the payment of his separate debts, and the certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been against him alone under this Act, and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone.

Certificates of discharge.

XXXI. And be it enacted, That whenever it shall appear to the Chancellor or Master of the Rolls of this Province for the time being, that the proper Commissioner to whom any fiat in Bankruptcy ought to be transmitted under the provisions of this Act shall be disqualified from acting under the authority of such fiat by reason of affinity to either of the parties by or against whom such fiat shall be prayed or by reason of being interested therein, such fiat with the documents aforesaid shall be transmitted by the Chancellor or Master of the Rolls as aforesaid, to such person as he may think suitable to act as the Commissioner in the whole of the proceedings in Bankruptcy under that fiat, and such Commissioner shall have the like powers and privileges and be subject to the like duties in all respects under such fiat as are given to the proper Commissioner under this Act; and in case the Commissioner before whom any proceedings under this Act may be pending shall die or remove from the County, City and County or District for which he may be appointed or be superseded, such proceedings shall be continued by the Commissioner to be appointed in his place in the same manner and with like effect as if done by the Commissioner who began the same, and should any matter require to be adjudicated before any such Commissioner wherein either party may be of affinity with such Commissioner, or wherein such Commissioner may have an interest, the same may be heard and determined by any suitable person to be nominated for that purpose by the Chancellor or Master of the Rolls as aforesaid, whose duties shall in that respect be the same as those of the proper Commissioner in such case.

In case of the death or disqualification by affinity of the proper Commissioner, Court of Chancery to appoint another.

XXXII. Provided always and be it enacted, That nothing in this Act shall extend or be construed to extend to release or discharge the person or property of any Crown Debtor from liability as such Crown Debtor; but all Crown claims and demands shall remain to be sued for, prosecuted and recovered, in all respects, as if this Act had not been passed.

Act not to affect the person or property so far as concerns Crown Debts.

XXXIII. And be it enacted, That the words and expressions hereinafter mentioned which in their ordinary signification have a more confined or a different meaning shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows: that is to say, the words "Her Majesty" shall mean also and include the Heirs and Successors of Her Majesty; the word "Property" shall mean and include Lands, Tenements and Hereditaments, and any interest therein, and Money, Fees, Offices, Annuities, Goods, Chattels, Wares, Merchandizes and Debts; and the word "Month" shall mean a Calendar Month; and the word "Oath" shall include affirmation, where by Law such affirmation is required or allowed to be taken in place of an Oath, and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and bodies corporate as well as individuals, and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things, and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and that this Act shall extend to Aliens, Denizens and Women, both to make them subject thereto and to entitle them to all the benefits given thereby; and that this Act shall be construed in the most beneficial manner for promoting the ends hereby intended.

Interpretation clause.

"Her Majesty."

"Property."

"Month."
"Oath."

Singular and Plural numbers.

Gender.

Aliens, Denizens and Women.

Act suspended
until Her Majesty's
approbation be had
and declared.

XXXIV. And be it enacted, That this Act shall not come into operation or be in force until Her Majesty's Royal approbation be thereunto first had and declared.

TABLE OF FEES TO BE ALLOWED UNDER THIS ACT.

Fees.			
To the Commissioner for receiving, opening and filing every Fiat of Bankruptcy,.....	£1	3	4
For the appointment of Assignee by Warrant,.....	0	5	0
For Warrant to arrest Bankrupt, &c.....	0	5	0
For causing the necessary Notices of Bankruptcy to be inserted in the Newspapers,.....	1	3	4
For receiving Petition of alleged Bankrupt, &c.....	0	5	0
For granting Copy of same and Documents, per folio, 1s.; to be paid by the alleged Bankrupt.			
For every Warrant to summon Jury or Witness,.....	0	2	6
For each days sitting in Court to hear any cause for meeting of Creditors to prove or contest debts, make distribution or oppose Bankrupt's Certificate, to be apportioned among the different cases,.....	1	3	4
For Copy of Minutes and Evidence for the Chancellor or Master of the Rolls, per folio, 1s.; to be paid by the party appealing.			
For Bankrupt's Certificate,.....	0	11	8
For any Order made on hearing,.....	0	11	8
For Examination of Bankrupt or Order on personal inspec- tion of his property,.....	1	3	4
For Administering an Oath,.....	0	1	0

[*This Act was specially confirmed, ratified, and finally enacted by an Order of the Queen in Council, dated the 11th day of August, 1842, and published and declared in the Province on the 7th day of September, 1842.*]