

dred and forty-two and one thousand eight hundred and forty-three, shall be distributed and apportioned under the orders of the Governor and Council, according to any Act which may be provided in that behalf during the present Session of the Legislature, or in default thereof, as may appear to the Governor in Council just and equitable, in aid of the building of School Houses, or for other Common School purposes, in the several counties or other territorial divisions of Upper Canada and of Lower-Canada, respectively.

Interpretation  
clause.

VI. And be it enacted, that the word "Governor" wherever it occurs in this Act, shall be construed to apply to the person administering the Government of this Province.

Accounting  
clause.

VII. And be it enacted, that the due application of all monies to be applied or expended under the authority of this Act, shall be accounted for to Her Majesty, Her Heirs and Successors, in such manner and form as Her Majesty, Her Heirs and Successors may direct; and the accounts for the same shall also be laid before each branch of the Provincial Legislature during the first fifteen days of each Session thereof.

#### C A P. X.

An Act to repeal an Ordinance of Lower Canada, intituled, *An Ordinance concerning Bankrupts, and the administration and distribution of their estates and effects,* and to make provision for the same object throughout the Province of Canada.

[9th December, 1843.]

Preamble.

**W**HEREAS it is desirable to repeal a certain Ordinance of the Governor and Special Council of the Province of Lower Canada, passed in the second year of Her Majesty's Reign, intituled, *An Ordinance concerning Bankrupts, and the administration and distribution of their estates and effects,* and to provide, by a general law of this Province, for the discovery and securing of the estates and effects of bankrupts, for the benefit of their creditors, and for the administration and distribution thereof, and also for the relief of such traders as shall, without any fraud or gross misconduct, have become unable to pay all their debts in full, and who shall have made a full disclosure and discovery of all their estates and effects, as hereinafter required; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council

Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that all persons being merchants, or using the trade of merchandize, bankers, brokers, persons insuring ships or other vessels, or their freight or other matters, against perils of the sea or of inland navigation, builders, carpenters, shipwrights, keepers of inns, taverns, hotels or coffee houses, millers, lumberers or ship-owners, and all persons who, either for themselves or as agents or factors for others, seek their living by buying or selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders, within the scope and meaning of this Act: Provided, that no farmer, grazier, common laborer or workman for hire, or member of or subscriber to any incorporated commercial or trading company, established by Royal Charter or Legislative enactment, shall be deemed as such a trader liable, by virtue of this Act, to become bankrupt.

What persons will be liable to be made bankrupts.

Proviso.

II. And be it enacted, that every such trader who shall be arrested on mesne process, in any civil action founded on a demand proveable, in its nature, against a bankrupt's estate, according to the provisions of this Act, and who shall not give bail therein on or before the return day of such process; and every such trader who shall fly or abscond for his personal safety from such arrest; and every such trader who shall be actually imprisoned in or confined upon the limits of any Gaol in this Province, for more than thirty days, either upon mesne process or in execution in any civil action, founded on a demand proveable as aforesaid, or who shall escape from any such imprisonment; and every such trader whose goods or estate shall be attached on mesne process, in any civil action founded on a demand proveable as aforesaid, who shall not dissolve or supersede such attachment by giving security or otherwise, within twenty days after the return day thereof; and every such trader who shall depart this Province, or abscond, or remain concealed therein, with intent to defraud his creditors; and every such trader who shall make, or cause to be made, within this Province, any fraudulent grant or conveyance of any of his lands, household goods, or chattels, or any fraudulent gift, delivery or transfer of any of his monies, goods or chattels, or other effects or assets, or of his credits or evidences of debt; and every such trader who shall willingly or fraudulently procure himself to be arrested, or his goods or chattels, debts or credits, lands or tenements, to be attached, distrained, sequestered or taken in execution; and every such trader who shall remove or cause to be removed, or who shall conceal or cause to be concealed, any of his goods, chattels or effects, in order to prevent their being levied upon, or taken in execution under attachment or other process, shall be deemed to have thereby committed an act of bankruptcy.

What shall be acts of bankruptcy.

E

III.

Any trader may be summoned by his creditor before a Judge or Commissioner.

III. And be it enacted, that if any creditor of any such trader, or the duly accredited and appointed agent or attorney of any such creditor of such trader, shall make an affidavit before the proper Judge or Commissioner, in the form specified in the Schedule hereunto annexed (A. No. 1,) of the truth of his debt, and that the debtor, as he verily believes, is such trader as aforesaid, and that he has caused to be delivered to such trader personally, or to some grown person belonging to his family or his establishment, at his usual place of business, an account in writing of the particulars of his demand, with a notice thereunder requiring immediate payment thereof, in the form specified in the said Schedule (A. No. 2,) which affidavit shall be duly filed, it shall be lawful for such Judge or Commissioner to issue a Summons, in writing, in the form specified in the said Schedule (A. No. 3,) calling upon such trader to appear before him, and stating in such Summons the purpose for which such trader is called upon to appear, as hereinafter provided.

Proceedings on the appearance of the trader on such summons.

IV. And be it enacted, that upon the appearance of any such trader so summoned as aforesaid, it shall be lawful for such Judge or Commissioner to require him to state whether or not he admits the demand of his creditor, so sworn to as aforesaid, or any and what part thereof; and if such trader shall admit the demand, or any part thereof, to reduce such admission into writing in the form specified in the Schedule hereunto annexed, (B. No. 1,) and the admission so reduced into writing he is hereby required to sign, and the same is thereupon to be filed; and it shall also be lawful for the Judge or Commissioner to allow such trader, on his said appearance, to make a deposition upon oath, in writing, under his hand, (to be also filed,) in the form specified in the said Schedule, (B. No. 2,) that he verily believes he has a good answer to the said demand, or to some and what part thereof.

The trader so summoned, and failing to comply with the requirements of this section shall be deemed to have committed an act of bankruptcy.

V. And be it enacted, that if any such trader, so summoned as aforesaid, shall not come before the Judge or Commissioner, at the time appointed, (having no lawful impediment made known to, and allowed at the said time by the Judge or Commissioner,) or if any such trader, upon his appearance to such Summons, shall refuse to admit the demand, and shall not make a deposition in the form hereinbefore mentioned, that he believes he has a good answer to such demand, then and in either of the said cases, if such trader shall not, within twenty-one days after personal service of such Summons, pay, secure or compound for the demand, to the satisfaction of his creditor, or enter into a bond in such sum and with two sufficient sureties as the Judge or Commissioner shall approve of, to pay such sum as shall be recovered in any action which shall have been or shall thereafter be brought for the recovery of the same, together with such costs as shall be given in that action, every such trader shall be deemed to have committed an act of bankruptcy

ruptcy on the twenty-second day after service of such Summons : Provided, a commission of bankruptcy shall issue against such trader within two months from the filing of the said affidavit of the creditor.

Proviso.

VI. And be it enacted, that if any such trader, so summoned as aforesaid, shall, upon his appearance thereto, refuse to state whether or not he admits such demand, or any part thereof, or, whatever may be the nature of his statement, shall, notwithstanding, refuse to sign the admission in that behalf required as aforesaid, it shall be deemed for the purposes of this Act, that every such trader thereby refuses to admit such demand : Provided always, that it shall be lawful for such Judge or Commissioner to enlarge the time for calling upon such trader to state whether or not he admits such demand or any part thereof, for such reasonable time as the said Judge or Commissioner shall think fit.

Trader refusing to sign the admission required of him.

Proviso.

VII. And be it enacted, that if any such trader, so summoned as aforesaid, upon his said appearance, shall sign an admission of the demand in the form aforesaid, and shall not within twenty-one days next after the filing of such admission, pay or tender and offer to pay to his creditor the amount of the said demand, or secure or compound for the same to the satisfaction of his creditor, every such trader shall be deemed to have committed an act of bankruptcy on the twenty-second day after the filing of such admission : Provided a commission of bankruptcy shall issue against such trader within two months from the filing of the said affidavit of the creditor.

Trader signing admission, but not discharging the debt.

Proviso.

VIII. And be it enacted, that if any such trader, so summoned as aforesaid, shall, upon his said appearance, sign an admission only for part of the demand, in the form aforesaid, and shall not make a deposition in the form herein-before required, that he believes he has a good defence to the residue of the said demand, then, if such trader, as to the sum so admitted, shall not, within twenty-one days next after the filing of such admission, pay or tender and offer to pay to his creditor the sum so admitted, or secure and compound for the same, to the satisfaction of the creditor, and as to the residue of such demand, shall not, within twenty-one days after personal service of such Summons, pay, secure, or compound for the same, to the satisfaction of his creditor, or enter into a bond, in such sum and with two sufficient sureties, as the Judge or Commissioner shall approve of, to pay whatever sum shall be recovered in any action which shall have been, or shall thereafter be brought for the recovery thereof, together with such costs as shall be given in that action, every such trader shall be deemed to have committed an act of bankruptcy, on the twenty-second day after the service of the Summons : Provided a commission of bankruptcy shall issue against such trader within two months from the filing of the said affidavit of the creditor.

Trader signing admission for the demand, but not complying with the other requirements.

Proviso.

IX.

Trader signing admission to a part of demand, arbitrators may be appointed to determine the amount due.

IX. And be it enacted, that in any case, when any such trader so summoned as aforesaid, shall, upon his said appearance, make a deposition in the form hereinbefore required, that he believes he has a good answer to the said demand, or to some and what part thereof, it shall and may be lawful for the Judge or Commissioner, on the application of the said trader, or of his creditor acting as aforesaid, to name one arbitrator, for the said trader to name a second, and for the creditor, whose claim is disputed, to name a third, to arbitrate and adjudge between the parties respectively as to such demand; and in case either the said trader or the creditor shall refuse or neglect to name an arbitrator as aforesaid on his behalf, then the said Judge or Commissioner shall nominate and appoint such arbitrator; and the award and determination of any two of them, the said arbitrators, shall be final and conclusive, unless the same shall be set aside by the Court of Review, as hereinafter provided; and every such trader who shall not, within twenty-one days next after the filing with such Judge or Commissioner by such arbitrators of such award and determination, pay or tender and offer to pay to his creditor the amount of the said award or determination, if against him, in whole or in part, or secure or compound for the same, to the satisfaction of his creditor, every such trader shall be deemed to have committed an act of bankruptcy on the twenty-second day after the filing of such award and determination: Provided, a commission of bankruptcy shall issue against such trader within two months from the filing of the said affidavit of the creditor.

Admissions made elsewhere than before a Judge or Commissioner.

Proviso.

Proviso.

Proviso.

X. And be it enacted, that an admission of any debt signed by any such trader elsewhere than before the summoning Judge or Commissioner, may be filed by him, or on his behalf, and shall be of the same force and effect, to all intents and purposes, as an admission signed by such trader, so summoned as aforesaid, on his appearance: Provided, there be present some Attorney of one of the Superior Courts of this Province, or any Notary Public in and for that part of the Province heretofore called Lower Canada, on behalf of such trader, expressly named by him and attending at his request, to inform him of the effect of such admission, before he shall sign the same: And provided also, that the said Attorney or Notary do subscribe his name thereto as a witness to the due execution thereof, and in such attestation declare himself to be Attorney or Notary attending on behalf of such trader, and state therein that he subscribes as such Attorney or Notary: And provided, such admission shall be in the form of the Schedule (C. No. 1.) hereunto annexed.

Costs to the trader summoned.

XI. And be it enacted, that when any trader against whom an affidavit of debt is filed as aforesaid, shall be summoned to appear before any Judge or Commissioner, as aforesaid, and such Summons shall be dismissed without any proceeding being thereupon taken against any such trader, every such trader shall have such costs and charges as the Judge or Commissioner shall think fit.

XII.

XII. And be it enacted, that in every action brought after the commencement of this Act, wherein any such creditor is plaintiff, and any such trader is defendant, and wherein the plaintiff shall not recover the amount of the sum for which he shall have filed an affidavit under the provisions of this Act, such defendant shall be entitled to costs of suit, to be taxed according to the custom of the Court in which such action shall have been brought: Provided, that it shall be made to appear, to the satisfaction of the Court in which such action is brought, upon motion to be made in Court for that purpose, and upon hearing the parties by affidavit, that the plaintiff in such action had not any reasonable or probable cause for making such affidavit of debt, in such amount as aforesaid: And provided, such Court shall thereupon, by a rule or order, direct that such costs shall be allowed to the defendant; and the plaintiff shall, upon such rule or order being made, be disabled from taking out any execution for the sum recovered in the said action, unless the same shall exceed (and then in the sum only that the same shall exceed) the amount of the taxed costs of the defendant; and in case the sum recovered in the said action shall be less than the amount of the costs of the defendant, to be taxed as aforesaid, that then the defendant shall be entitled, after deducting the sum of money recovered by the plaintiff in such action, from the amount of his costs, so to be taxed as aforesaid, to take out execution for such costs, in like manner as a defendant may now by law have execution for costs in other cases.

Costs allowed to trader in cases where the plaintiff shall not recover the amount sworn to as aforesaid.

Proviso.

Proviso.

XIII. And be it enacted, that if any plaintiff shall recover judgment in any action personal, in any of Her Majesty's Courts of Record, in this Province, against any such trader, and shall be in a situation to sue out execution thereupon, and there be nothing due from the plaintiff by way of set off against his judgment, and such trader shall not, within twenty-one days after notice in writing personally served upon him requiring immediate payment, pay, secure or compound for the same, to the satisfaction of the plaintiff, he shall be deemed to have committed an act of bankruptcy upon the twenty-second day after the service of such notice: Provided always, that if such execution shall in the mean time be suspended or restrained by any rule, order or proceeding of any Court having jurisdiction in that behalf, no further proceeding shall be had upon such notice, but that it shall be lawful nevertheless for such plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner before directed.

Plaintiff having recovered judgment in a personal action against a trader.

XIV. And be it enacted, that if any decree or order shall be pronounced in any cause depending in any Court of Law or Equity, or any order be made in any matter of bankruptcy or lunacy against any such trader ordering him to pay any sum of money, and such trader shall disobey such order, the same having been

Trader refusing to pay money ordered to be paid by a Court of Law or Equity.

been duly served upon him, the person entitled to receive the money under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may apply to the Court by which the same shall have been pronounced, to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last mentioned order twenty-one days before the day therein appointed for payment of the money, shall neglect to pay the same, he shall be deemed to have committed an act of bankruptcy on the twenty-second day after the service of such order.

A certain declaration voluntarily made by a trader to be an act of bankruptcy.

**XV.** And be it enacted, that if any trader shall file, with the Judge or Commissioner within the District in which such trader resides, or in which he has his usual place of business, a declaration in writing in the form of the Schedule (D) hereunto annexed, signed by such trader, and attested by an Attorney or Notary as aforesaid, that he is unable to meet his engagements, every such trader shall be deemed thereby to have committed an act of bankruptcy at the time of filing such declaration, provided a commission of bankruptcy shall issue against such trader within two months from the filing of such declaration; and a copy of such declaration, sealed with the seal of the Court over which the Judge shall preside, or with the seal of the Commissioner with whom the same shall be filed, shall be received as evidence of such declaration having been filed.

Within what time a commission of bankruptcy may issue.

**XVI.** And be it enacted, that no trader shall be liable to become bankrupt by reason of any act of bankruptcy committed more than four months prior to the issuing of a commission of bankruptcy against him.

Commission not to be deemed invalid if obtained by agreement.

**XVII.** And be it enacted, that no commission of bankruptcy shall be deemed invalid by reason of any act of bankruptcy of the person against whom such commission shall be issued, having been concerted or agreed upon between the bankrupt and any creditor or other person.

Publication of a commission of bankruptcy in the Canada Gazette to be evidence of certain facts.

**XVIII.** And be it enacted, that if the bankrupt shall not, (if he were within the Province at the date of the commission.) within twenty-one days after notice of the bankruptcy in the Gazette of Canada, or (if out of the Province at the date of the commission within four months after such notice,) have commenced an action, suit, or other proceeding to dispute the commission, and have prosecuted the same with due diligence and effect, the Gazette containing such notice shall be conclusive evidence in all cases, as well criminal as civil, against the bankrupt, and in all actions at law, or suits in equity, brought by, or against the assignees, or by or against any person claiming any right, estate, or interest, by, through or under the bankrupt, that such person against whom the commission issued became

came a bankrupt before the date and suing forth of the said commission, and that such commission was sued forth on the day in which the same is stated in the Gazette to bear date.

XIX. And be it enacted, that all payments, securities, conveyances or transfers of property, or agreements made or given by any trader in contemplation of bankruptcy, and for the purpose of giving any creditor, indorser, surety or other person, any preference or priority over the general creditors of such bankrupt, and all other payments, securities, conveyances or transfers of property or agreements, made or given by such trader in contemplation of bankruptcy, to any person or persons whatever, not being a *bonâ fide* creditor or purchaser for a valuable consideration without notice, shall be deemed utterly void, and a fraud under this Act; and the assignees under the bankruptcy shall be entitled to claim, sue for, recover and receive the same as part of the assets of the bankrupt, and the person making such unlawful preference or payment shall receive no discharge under the provisions of this Act: Provided always, that all dealings and transactions, by and with any bankrupt, *bonâ fide* made and entered into more than thirty days before the issuing of the commission against him, shall not be invalidated or affected by this Act: Provided, that the other party to such dealings or transaction had no notice of a prior act of bankruptcy: And provided also that nothing in this Act contained shall be construed to annul, destroy or impair any lawful rights of married women, or minor, or any liens, mortgages, hypothecs or other securities on property, real or personal, which may be valid by the laws of any part of this Province, and which are not inconsistent with the provisions of this Act.

Conveyances made for the purpose of giving undue preference to any creditor to be void.

Proviso.

Proviso.

XX. And be it enacted, that the several Judges of the District Courts in this Province, and the several Commissioners appointed under the Ordinance of Lower Canada concerning bankrupts, or to be hereafter appointed, shall and may within their respective Districts, locality and jurisdiction, exercise, fulfill and perform, the acts, powers, duties and authority, by this Act vested in, given to, or directed or authorized to be performed by them, for the several purposes in this Act contained: Provided, that nothing in this Act contained shall prevent the Governor from removing any one or more of the Commissioners heretofore appointed, as in and by the said Ordinance is declared and provided: And provided also, that in any District in this Province, where the business may appear to be greater than the Judge of the District Court can conveniently dispose of, it shall be lawful for the Governor, from time to time, to appoint a Commissioner to have concurrent jurisdiction, power and authority, in matters of bankruptcy within such District with the Judge thereof, and to remove such Commissioner, and appoint another in his place: And provided always, that no person shall be a Judge or Commissioner as aforesaid in this Province, unless he be a Barrister at Law, of at least five years standing.

Who shall be or act as commissioners of bankrupts.

Proviso.

Proviso.

XXI.



Amount which must be due to the creditor or creditors petitioning for a commission of bankruptcy.

**XXI.** And be it enacted, that the amount of the debt or debts of any creditor or creditors, petitioning for a commission of bankruptcy under this Act, shall be as follows, that is to say : the single debt of such creditor, or of two or more persons, being partners petitioning for the same, shall amount to fifty pounds or upwards ; and the debts of two creditors so petitioning, shall amount to seventy pounds or upwards ; and the debts of three or more creditors so petitioning, shall amount to one hundred pounds or upwards ; and that every person who has given credit to any trader upon valuable consideration, for any sum payable at a certain time, which time shall not have arrived when such trader committed an act of bankruptcy, may so petition, or join in petitioning as aforesaid, whether he shall have had any security in writing for such sum or not.

Issuing of the Commission and proceedings thereon.

**XXII.** And be it enacted, that after any act of bankruptcy as aforesaid committed, such creditor may make application, upon affidavit, to the Judge or Commissioner for the District within which such trader resides, or has his usual place of business, setting forth the nature and amount of the debt due to him by such trader, and the act of bankruptcy by him committed ; which act of bankruptcy shall also be proved on the oath of at least one credible witness, not being a creditor of the trader ; and thereupon it shall and may be lawful for such Judge or Commissioner, by commission under his hand and seal, to appoint and authorize the Sheriff of the District aforesaid, to take and receive possession of all the estate, real and personal, of such trader, excepting such as may be by law exempted from attachment, and of all the deeds, books of account and papers, of such trader, and to keep the same safely until the appointment of assignees.

First meeting of creditors appointed.

**XXIII.** And be it enacted, that the Judge or Commissioner shall, in the commission, fix the day and place for the first meeting of the creditors of such bankrupt, which shall be at some convenient place within the District wherein such commission is issued ; and the time shall not be less than fourteen days, nor more than thirty days, after the date of the commission.

Notice to be given.

**XXIV.** And be it enacted, that the Sheriff shall forthwith give public notice in such newspapers within the District as the Judge or Commissioner shall designate, and also such personal or other notice to any person concerned, as the Judge or Commissioner shall prescribe, setting forth the issuing of the commission, and naming the day and place appointed in such commission for the meeting of the creditors of the bankrupt ; and further, that such Sheriff shall forthwith transmit a similar notice for insertion in the Gazette of Canada, which notice shall be in the form in the Schedule (E.) to this Act annexed ; Provided always, that if in any case it shall be shewn by affidavit to the Judge or Commissioner, that the party to whom any Summons is directed, or on whom any notice

Proviso :—  
Case of any party avoiding service of notice provided for.

is.

is appointed to be served, in pursuance of any provision of this Act, is keeping out of the way, and cannot be personally served with such Summons or notice, it shall be lawful for the Judge or Commissioner to order, by endorsement on such Summons or notice, that the delivery of a copy thereof to the wife or servant, or some adult inmate of the family of such party, at his usual place of abode, and explaining the purport thereof to such wife, servant or inmate, shall be equivalent to personal service, and in every such case the service of such Summons or notice, in pursuance of such order, shall be deemed and taken to be of the same force and effect, to all intents and purposes, as if a copy of such Summons or notice had been delivered to the party or person.

XXV. And be it enacted, that the Sheriff shall, as soon as may be after the issue of the commission, demand and receive from the bankrupt, and from all other persons, all the estate in his or in their possession which belongs to such bankrupt, with all the deeds, books of account and papers relating thereto; and the bankrupt shall accordingly deliver to the Sheriff such part of the said estate and other things above specified as may then be within his possession or power, and shall disclose the situation of such parts thereof as may then be in the possession of any other person, or so to enable the Sheriff to demand and receive the same; and the bankrupt shall also make a schedule containing a full and true account of all his creditors, with the place of residence of each creditor, if known to him, and the sum due to each; and the said schedule shall also set forth the nature of each debt, whether founded on written security, on account, or otherwise, and also the true cause or consideration thereof, and a statement of any existing mortgage, hypothec, pledge, or other collateral security, given for the payment of the same, which schedule he shall produce at the first meeting of his creditors, to be delivered to the assignees who shall then be chosen.

Sheriff to take possession of the bankrupt's estate.

Bankrupt to make a schedule of his debts.

XXVI. And be it enacted, that the Judge or Commissioner shall attend the meeting, and shall receive proof of the debts due to the creditors of such bankrupt who shall be present, and shall allow all the debts which shall be duly proved, and cause a list thereof to be made, which shall be certified by himself, and be recorded and filed with the other papers in the case; and the creditors so present as aforesaid, who shall have proved their debts, shall then proceed in presence of the Judge or Commissioner to choose one or more assignee or assignees of the estate of the bankrupt, such choice to be made by the greater part in value of the creditors according to the debts then proved.

Debts to be proved, and assignees chosen.

XXVII. And be it enacted, that before such meeting any creditor desiring to vote thereat, may make oath of the amount and nature of the debt due to him by such bankrupt, and at such meeting any person duly authorized by a creditor, and producing

Creditors may vote by attorney after duly proving their claims.

producing the affidavit of debt, and a letter of attorney from such creditor, the execution whereof shall in like manner be proved by oath, shall be entitled to have the debt of such creditor allowed and included in such list as aforesaid, (provided the affidavit shall in the opinion of such Judge or Commissioner sufficiently prove the same) and to vote in the choice of assignees.

Commissioner may require further proof of debt;

Appeal

XXVIII. And be it enacted, that the Judge or Commissioner may, in his discretion, require further proof on oath of any debt claimed before him, and may examine the party claiming the same, or the agent who shall present the claim in his behalf, and also the bankrupt, on their respective oaths, on all matters relating to such claim; and any supposed creditor or person interested in the administration of the bankrupt's estate who shall be dissatisfied with the decision of the Judge or Commissioner, in regard to the rejection or admission of any claim, may appeal from such decision, and have the matter determined in a summary way by the Court of Review hereinafter mentioned.

In case of failure to elect assignees, the Commissioner may appoint them.

XXIX. And be it enacted, that in case no choice of an assignee or assignees shall be made by the creditors at the said first meeting, the Judge or Commissioner shall appoint one or more assignees, and if any assignee so chosen or appointed shall not, within six days after notice thereof, signify his acceptance in writing, and delivered to such Judge or Commissioner, then his election or appointment shall be considered void, and the Judge or Commissioner shall from time to time proceed to appoint until the acceptance is duly signified.

Assignees accepting, to be appointed by an instrument.

Effect of copies of such instrument.

XXX. And be it enacted, that as soon as such acceptance shall be signified to the Judge or Commissioner as aforesaid, he shall, by an instrument under his hand and seal, declare the choice or appointment of such assignees and their acceptance; and the said instrument shall be executed in duplicate, one of which shall be lodged in the office wherein the other papers in the case are hereinafter required to be finally deposited, and the other shall be delivered to the assignees; and either of such duplicates, purporting to be under such hand and seal, shall be received in all Courts in this Province, as *primâ facie* evidence that the same was executed on the day on which it purports to bear date, and that the assignees named therein were duly chosen and appointed, and accepted the office, and of their authority to bring and defend actions and suits in that character.

Powers of the assignees under such instrument.

XXXI. And be it enacted, that the said instrument, so signed and sealed as aforesaid, shall vest, and be construed to vest in the assignees named therein, all the property of the bankrupt, both real and personal, which he could in any way have lawfully sold, assigned or conveyed, or which might have been taken in execution on any judgment against him at the date of the Commission, although the same

same may then be attached on mesne process as the property of the said bankrupt, and any such attachment shall, by such instrument, be superseded and dissolved; and the said instrument shall vest, and be construed to vest in the assignees named therein, all debts due to the bankrupt, or to any person in trust for him or to his use, all liens and securities therefor, and all the bankrupt's rights of action for any goods or estate, real or personal, and all his rights of redeeming any such goods or estate, and shall give power to the assignees named therein to redeem all mortgages, hypothecs, conditional contracts, pledges and liens of or upon any goods or estate of the bankrupt, or to sell the same subject to such mortgage or other incumbrance; and the bankrupt shall likewise, at the expense of the estate, make and execute all such deeds and writings, and endorse all such bills, notes and other negotiable papers, and draw checks and orders for monies deposited, and do all such other lawful acts and things as the assignees shall at any time reasonably require, and which may be necessary for enabling the assignees to demand, recover and receive all his estate and effects, whether in or out of this Province, and the assignees shall have the like remedy to recover all the said estate, debts and effects, in their own names, as the bankrupt might have had if no commission had issued against him; and if at the date of such commission any suit or action shall be pending in the name of the bankrupt, for the recovery of any debt or other thing, which might or ought to pass to the assignee or assignees, such assignee or assignees, if they desire it, shall be admitted to intervene and become a party to, and to substitute their names for that of the bankrupt, and thenceforth in their own names to prosecute, in like manner and to the like effect, as if the same had been originally commenced by them as such assignees; and in case of the death or removal of any assignee, the surviving or remaining assignee, or the new assignee, as the case may be, shall, upon his application to be admitted to prosecute such suit or action, and to the like effect, as if the same had been originally commenced by him; and if the bankrupt shall die after the date of the said commission, all proceedings shall notwithstanding be continued and concluded in the like manner, and with the same validity and effect as if he had lived; and in that case the allowance to the bankrupt on the net produce of his estate, if any, shall be paid to his executors or administrators, and shall be disposed of and distributed in the same manner as any other property of which he may die possessed.

XXXII. And be it enacted, that the assignees shall forthwith give public notice of their election or appointment, in such manner as the Judge or Commissioner shall direct; and shall demand and receive from the Sheriff, and from all other persons, all the estate and property of whatever description in his or their possession, respectively, which shall have been vested or have been intended to be vested in them according to this Act; and they shall collect all the debts and effects

Estate of bankrupt vested in them.

Redeeming incumbrances.

Bankrupt to perform all necessary acts.

Suits pending, to which the bankrupt is a party.

Death of the bankrupt.

Duties of the assignees.

Collecting debts.

Selling pro-  
perty.

Keeping ac-  
counts of the  
estate.

Paying dis-  
bursements.

Referring to  
arbitration.

How credit-  
ors may re-  
move assignees  
and appoint  
others.

Power of  
such new as-  
signees.

effects of the bankrupt, and for that purpose bring all necessary actions in their own names as such assignees, and shall sell and dispose of all the estate and property, real and personal, of the said bankrupt, which shall come to their hands, or over which they shall procure and obtain a power of disposition, on such terms as they shall think best for the interest of the creditors; and shall keep one or more distinct books of account, wherein they shall duly enter all sums of money and other effects which they shall get in or receive out of the said bankrupt's estate, to which books every creditor who shall have proved his debt, or his agent or attorney, shall at all reasonable times have resort to inspect the same; and the assignees shall, as soon as may be after receiving any monies belonging to the bankrupt's estate, deposit the same in some bank in their names as assignees, or otherwise keep the same distinct and apart from all other monies in their possession; and they shall likewise, as far as practicable, keep all the goods and effects belonging to such estate separate and apart from all other goods in their possession, or designated by appropriate marks, so that the monies, goods and effects, of such estate may be easily distinguished from other like things in their possession, and may not be exposed to be taken as their property, or for the payment of their debts; and they shall be allowed to retain out of the monies in their hands all the necessary disbursements made by them in the discharge of their duty; and they shall have power, under the direction of the Judge or Commissioner, to submit any controversy that shall arise in the settlement of any demands against the estate of the bankrupt, or of debts due to his estate, to the determination of one or more arbitrators, to be chosen by the assignees and the other party to such controversy; and the assignees shall likewise have power, under the direction of the Judge or Commissioner, to compound and settle any such controversy by agreement with the other party thereto, as they shall think proper and most for the interest of the creditors; and it shall be in the power of the creditors, by such a vote as is provided in the twenty-sixth section of this Act for the choice of assignees, at any regular meeting called by order of the Judge or Commissioner for that purpose, and called in his discretion, on the application of a majority of the creditors who have proved their debts either in number or value, to remove all or any of the assignees; and upon such removal, or upon any vacancy by death or otherwise, the said creditors may, in manner hereinbefore mentioned, choose other assignees in their place, who shall notify their acceptance, and obtain the same kind of instrument from the Judge or Commissioner, and give notice thereof as the original assignees are required to do; and all the estate of the bankrupt, not before lawfully disposed of, shall forthwith and from thenceforth become vested in such new assignees, as if they had originally been elected or appointed as aforesaid; and the former assignees, and their executors or administrators, shall, on the request and at the expense of the estate in the hands of the new assignees, make and execute to them all such deeds, conveyances and assurances, and do all such

such other acts and things, as may be needful or proper to enable the new assignees to demand, recover, receive, sell and dispose of all the said estate ; and the provisions of this Act shall apply to the survivors, when more than one assignee was originally chosen or appointed, and the others or other shall happen to die.

Death of assignees.

XXXIII. And be it enacted, that whenever the assignee shall deem it advantageous, and for the interest of the bankrupt and of his creditors, to sell any real estate belonging to such bankrupt, it shall be the duty of the Judge or Commissioner, on the application of the assignees to that effect, to appoint a day upon or after which such sale may take place, and the said assignees shall cause an advertisement of the day so appointed to be inserted in the Gazette of Canada, and also in such other newspaper or newspapers, and by such other public notification as the said Judge or Commissioner shall direct, which advertisement shall call upon all persons having or pretending to have any claim to, upon or respecting such real estate, to make known to the Judge or Commissioner the nature and extent thereof, in writing, at least fifteen days before the day so appointed, in order that such claim may be heard and determined upon: Provided, that no sale shall be appointed to take place at a day earlier than the expiration of four calendar months from the first publication of the advertisement thereof in the Gazette of Canada.

What proceedings to be adopted when the assignees are desirous to sell real estate of the bankrupt.

Proviso.

XXXIV. And be it enacted, that if any claim to, upon or respecting such real estate, shall be made within the period aforesaid, the Judge or Commissioner shall proceed after necessary proof and hearing of the parties, to adjudge and determine the same; and if the claim shall be admitted by the Judge or Commissioner in whole or in part, the real estate shall be subject to such claim in whole or in part, as shall have been adjudged and determined, and shall be sold accordingly; and if no such claim shall be made as aforesaid, or having been made shall be wholly rejected or disallowed, the sale may take place as appointed in manner aforesaid, and the assignees shall have power in their discretion, at any time after the day appointed and notified, to make such sale either by public auction or private bargain, and upon such terms and conditions as to them may seem most advantageous and for the interest of the bankrupt and his creditors; and every deed or conveyance executed by the assignees, according to the usual form of law, in furtherance and execution of a sale or sales made as aforesaid, shall have the like force and effect in avoiding claims or incumbrances on the real estate so conveyed, as if the sale and deed or conveyance had been made by a Sheriff under the authority of a writ of execution against lands and tenements issuing out of any Court of Common Law in this Province; Provided always, that an appeal shall lie to the proper Court of Review against any adjudication

Claims upon real estate determined, and titles from assignees rendered effectual.

Proviso.

OR

or determination of the said Judge or Commissioner, by the assignees of the bankrupt, or by the party setting up any such claim to, upon or respecting such estate as aforesaid.

Debts owing by the bankrupt may be proved, although the term of credit be not expired.

XXXV. And be it enacted, that all debts due and payable by any bankrupt, at the date of the commission against him, may be proved and allowed against his estate, and all debts then absolutely due, although not payable until afterwards, may be proved and allowed as if payable presently, with a discount or rebate of interest, when no interest is payable by the contract until the time when the debt would become payable; and all monies due by any bankrupt, on any bottomry or *respondentia* bond, or on any policy of insurance, may be proved and allowed, in case the contingency or loss should happen before the declaring of the first dividend, in like manner as if the same had happened before the date of the commission; and in case the bankrupt shall be liable for any debt, in consequence of having made or indorsed any bill of exchange or promissory note before the date of the commission, or in consequence of the payment by any party to any bill or note of the whole, or any part of the money secured thereby, or of the payment of any sum of money by a surety of the bankrupt in any contract whatsoever, although such payment shall in either case be made after the date of the commission, provided it be made before the declaring of the first dividend, such debt shall be considered, for all the purposes of this Act, as contracted at the time when such bill or note, or other contract, shall have been so made or indorsed, and may be proved and allowed as if the said debt had been due and payable by the bankrupt before the date of the commission; and also any claim or demand by or in right of the wife of the bankrupt, founded on her contract of marriage with the bankrupt, and which is valid as against creditors, according to the laws of the part of this Province where such contract was made, or for or in relation to her separate property; and all demands against the bankrupt, for or on account of any goods or chattels wrongfully obtained, taken, or withheld by him, may be proved and allowed to the amount of the worth of the property, and no debt other than those above mentioned shall be proved or allowed against the estate of any bankrupt; and when it shall appear that there has been mutual credit given by the bankrupt and any other person, or mutual debts between them, the account between them shall be stated, and one debt shall be set off against the other, and the balance of such account, and no more, shall be allowed and paid on either side respectively; and when any creditor shall have any hypothec or mortgage, lien or security, upon or of any real estate of the bankrupt at the date of the commission, or any pledge of, or lien on any personal property of the bankrupt, for securing the payment of any debt claimed by him, the property, real or personal, so liable or held as security, shall, if he require it, be sold, and the proceeds shall be applied towards the payment of his debt, and he shall be admitted as a creditor

Claims of the bankrupt's wife.

Claims for goods wrongfully detained.

Mutual credit.

Creditors secured by privilege on property.

tor for the residue thereof, if any, and such sale shall be made in such manner as the Judge or Commissioner shall order, and the creditor and assignee, respectively, shall execute all such deeds and papers as may be necessary or proper for effecting the conveyance; and if the creditor shall not require such sale, and join in effecting the conveyance, he may release and deliver up to the assignee the premises so held as security, and shall thereupon be admitted as a creditor for the whole of his said debt; and if the said property shall not be either sold or released, and delivered up as aforesaid, the creditor shall not be allowed to prove any part of his debt secured thereby.

XXXVI. And be it enacted, that the Judge or Commissioner shall have full power, by writing under his hand, to summon any witness to be examined on oath (to be taken before him) touching and concerning the several matters which may arise in any case in bankruptcy, and to enforce the attendance of and to compel such witness to answer, by the like means, and to the same extent, as may be used or done in any of the Superior Courts of Record.

Commissioner to have power to summon and enforce the attendance of witnesses.

XXXVII. And be it enacted, that all conveyances and contracts, and other dealings and transactions by and with any bankrupt, *bonâ fide* made and entered into before the date of the commission against him, and all executions against the lands and tenements, goods and chattels of such bankrupt, *bonâ fide* executed and levied before the date of such commission shall be valid, notwithstanding any act of bankruptcy by him committed: Provided the person so dealing with such bankrupt, or at whose suit or on whose account such execution issued, had not at the time of such conveyance, contract, dealing or transaction, or at the time of levying such execution, notice of any act of bankruptcy before then committed by such bankrupt.

Conveyances, &c. made *bonâ fide* by the bankrupt before the commission to be valid.

XXXVIII. And be it enacted, that all payments *bonâ fide* made by any bankrupt or any person on his behalf, before the date of the commission, to a creditor of such bankrupt, (such payment not being a fraudulent preference of the creditor,) shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; and all payments *bonâ fide* made to any bankrupt before the date of the commission, shall be deemed valid notwithstanding any prior act of bankruptcy by such bankrupt committed, and the creditor shall not be liable to refund the sum to the assignee, or the debtor of the bankrupt to make re-payments to the assignee, provided they respectively had not, at the time of such payment, notice that such act of bankruptcy had been committed.

Payments *bonâ fide* made to the bankrupt before the commission to be valid.

XXXIX. And be it enacted, that no revendication of goods, sold and delivered to the bankrupt without day or term of payment shall be allowed to the vendor thereof,

Goods sold to the bankrupt without term of payment.



thereof, by reason of the non-payment of the price of the same ; nor shall the vendor of any goods be entitled to claim a preference on the proceeds of such goods for the price thereof, by reason of their being in the possession of the bankrupt at the time of the bankruptcy, in the same state and condition as when sold to him ; but the vendor may, in case of the failure of the purchase, stop *in transitu* or reclaim the goods sold by him, and the price of which has not been paid to him, as may, under similar circumstances, be done according to the law of England, and not otherwise.

Second meet-  
ing.

**XL.** And be it enacted, that the Judge or Commissioner shall appoint a second general meeting of the said creditors, to be held at such time, not more than three months after the date of the commission, as such Judge or Commissioner shall think fit, regard being had to the distance at which the creditors or any of them reside, at which meeting any creditors who have not before proved their debts shall be allowed to prove the same, which shall be allowed, and a list thereof made, certified and filed in like manner as is provided in respect of debts proved at the first meeting ; and the bankrupt shall there be allowed to amend the schedule of his creditors, and to correct any mistake therein, and he shall then make and subscribe an oath, before the Judge or Commissioner, which shall be certified by him and filed in the case, in substance as in the Schedule (F.) to this Act annexed ; and the bankrupt shall then also submit to such further examination on oath as the Judge or Commissioner shall see fit to require.

Schedule to  
be amended  
and attested  
on oath.

Creditors may  
compound  
with the bank-  
rupt after the  
second general  
meeting and  
supersede the  
commission of  
bankruptcy.

**XLI.** And be it enacted, that if at such second general meeting of the said creditors, and after the creditors who may not have proved their debts at the first general meeting, have been allowed to prove, and have proved the same, and the bankrupt has taken and subscribed the oath herein-before prescribed, and submitted to such examination as aforesaid, two thirds of the creditors in number and value agree to compound with the said bankrupt, such agreement shall be valid and effectual to all intents and purposes according to the tenor thereof, and equally binding upon the remaining third of the creditors aforesaid, and shall have the effect of superseding the said commission of bankruptcy from the date of such agreement, and the jurisdiction of the said Judge or Commissioner over the estate and effects of the said bankrupt, shall thenceforth cease and determine.

A clerk to be  
appointed.

His duty.

**XLII.** And be it enacted, that the Judge or Commissioner, at the commencement of the proceedings in each case under this Act, shall appoint a clerk, who shall sign a declaration in writing that he will faithfully discharge his duty, and who shall keep a record of all the regular meetings of the creditors, and of all the proceedings thereat, and shall preserve all papers duly filed in the course of the proceedings, and shall perform such other duties appertaining to his office as shall be

be prescribed by the Judge or Commissioner, and the record of proceedings in each case and of the certificate of discharge ; and all papers so filed shall, at the termination of the proceedings, be deposited, together with a list thereof, in the office hereinafter appointed, and shall be there preserved ; and the Judge or Commissioner may remove such clerk, and appoint another in his place ; and the copies of the same proceedings, so returned and filed, or of any part thereof, duly certified by the officer in whose custody they shall be deposited, shall in all cases be admissible as evidence *primâ facie* of the facts therein stated and contained, in all Courts in this Province.

Proceedings  
and papers,  
how preserved.

Their effect  
as evidence.

XLIII. And be it enacted, that the Judge or Commissioner shall attend and preside at all meetings of the creditors, and shall regulate the proceedings thereat, and may adjourn any meeting from time to time, as occasion shall require ; and all things done at any such adjourned meeting shall be of the like force and effect as if done at their original meeting.

Judge or  
commissioner  
to preside at  
meetings, and  
may adjourn.

XLIV. And be it enacted, that when two or more persons, who are partners in trade, become bankrupt, a commission may be issued in the manner provided in this Act, upon which all the joint stock or property of the firm, and also all the separate estate of each of the partners shall be taken, excepting such parts thereof as may be by law exempted from attachment ; and all the creditors of the firm, and the separate creditors of each partner, shall be allowed to prove their respective debts ; and the assignees in such case shall be chosen by the creditors of the firm, and they shall keep distinct accounts of the property of the firm, and of the separate estates of each partner thereof, and after deducting, out of the whole amount received by the assignees, the whole of the expenses and disbursements paid by them, the net proceeds of the partnership estate shall be appropriated to pay the creditors of the firm, and the net proceeds of the separate estates 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 payment of his debts, such balance shall be added to the proceeds of the partnership estate, if necessary for the payment of the creditors of the firm ; and if there shall be any balance of the partnership estate, after payment of the debts of the firm, such balance shall be appropriated among the separate estates of the respective partners, according to their 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 any partner shall be applied to the payment of his separate debts.

Provisions  
in cases where  
partners be-  
come bank-  
rupts.

Rights of the  
creditors of the  
firm, and of  
those of each  
partner.

XLV. And be it enacted, that if the assignees commence any action or suit for any money due to the bankrupt's estate, before the time allowed by this Act for the

Provision in  
cases of suit  
before the

the

bankrupt has  
disputed the  
commission.

the bankrupt to dispute the commission shall have elapsed, the defendant in any such action or suit shall be entitled, after notice given to the assignees, to pay the same or any part thereof into the Court in which such action or suit is brought, and with the costs of suit up to that time, and all proceedings with respect to the money so brought into Court, shall thereupon be stayed; and after the time aforesaid shall have elapsed, the assignees shall have the money paid to them out of Court.

Wages or  
salary due to  
clerks or ser-  
vants,

XLVI. And be it enacted, that when any bankrupt shall have been indebted, at the date of the commission against him, to any servant or clerk of such bankrupt, in respect of his wages or salary, it shall be lawful for the Judge or Commissioner, upon proof thereof, to order so much as shall be due as aforesaid, not exceeding twelve months, wages or salary, to be paid to such servant or clerk out of the estate of such bankrupt, and such servant or clerk shall be at liberty to prove, under the commission, for any sum exceeding such twelve months' wages or salary.

Wages due  
to workmen  
and labourers.

XLVII. And be it enacted, that when any bankrupt shall have been indebted, at the date of the commission against him, to any labourer or workman of such bankrupt in respect of his wages, it shall be lawful for the Judge or Commissioner, upon proof thereof, to order so much as shall be so due as aforesaid, not exceeding one month's wages or labour, to be paid to such workman or labourer out of the estate of such bankrupt, and such workman or labourer shall be at liberty to prove, under the commission, for any sum exceeding such one month's wages.

Rent due by  
the bankrupt.

XLVIII. And be it enacted, that no distress for rent made or levied after an act of bankruptcy, upon the goods or effects of any bankrupt, (whether before or after the issuing of the commission,) shall be available for more than twelve months' rent accrued prior to the date of the commission, but the landlord, or party to whom the rent shall be due, shall be allowed to come in as a creditor under the commission for any overplus of the rent due, and for which the distress shall not be available.

Power to  
search for  
concealed property  
of a bankrupt.

XLIX. And be it enacted, that in all cases where it shall be made to appear to the satisfaction of any Judge or Commissioner authorized to issue a commission of bankruptcy, that there is reason to suspect and believe that property of any bankrupt is concealed in any house, premises or other place not belonging to such bankrupt, such Judge or Commissioner is hereby directed and authorized to grant a search warrant to the Sheriff of the District, and it shall be lawful for such Sheriff, or his Deputy or other officer, to execute such warrant, according to the tenor thereof, and the Sheriff, or other officer employed by him to execute such warrant, shall

shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen or concealed.

L. And be it enacted, that if any bankrupt, after the commencement of this Act, shall at the time of his bankruptcy be a member of a firm, it shall be lawful for the Judge or Commissioner by whom the commission of bankruptcy is issued, to authorize the assignee to commence or prosecute any action at law or suit in equity, in the name of such assignee and of the remaining partner, against any debtor of the partnership, and to obtain such judgment or decree or order therein, as if such action or suit had been instituted with the consent of such partner, and if such partner shall execute any release of the debt or demand, such release shall be void: Provided, that every such partner, if no benefit is claimed by him in virtue of the said proceedings, shall be indemnified against the payment of any costs in respect of such action or suit, and it shall be lawful for the Judge or Commissioner, on the application of such partner, to direct that he may receive so much of the proceeds of such action or suit, as such Court shall direct.

Case of bankrupts who, at the time of their bankruptcy, shall be members of a firm, provided for.

LI. And be it enacted, that if any bankrupt (being within this Province at the date of the commission) shall not, before three o'clock of the afternoon of the day appointed for the first meeting of his creditors, after notice thereof in writing, to be left at the usual place of abode of such bankrupt, or personal notice, in case such bankrupt be then in prison, and notice given in the Gazette of the commission, appear before such Judge or Commissioner, and submit to be examined before him from time to time upon oath, or if any such bankrupt, upon such examination, shall not discover all his real or personal estate, and how and to whom, upon what consideration, and when he disposed of, assigned or transferred, any of such estate, and all books, deeds, papers and writings, relative thereto, (except such part as shall have been really and *bonâ fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expenses of his family,) or if any such bankrupt shall not, upon such examination, deliver up to the Judge or Commissioner all such part of his estate, and all books, deeds, papers and writings relating thereunto, as shall still remain in his possession, custody or power, (except the necessary wearing apparel of himself, his wife and children,) or if any such bankrupt shall remove, conceal or embezzle any part of such estate, of the value of ten pounds or upwards, or any books of account, deeds, papers, or other writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and being convicted thereof, shall be liable, in the discretion of the Court, to be imprisoned with or without hard labour in any common Gaol, for a term not to exceed one year, or in the Provincial Penitentiary for any term not less than three nor more than five years.

Punishment of bankrupts neglecting to appear, or fraudulently concealing their property, books, &c.

LII.

Commissioner  
may enlarge  
the time for ap-  
pearing.

LII. And be it enacted, that the Judge or Commissioner shall have power, as often as he shall under the circumstances of any case think fit, from time to time to enlarge the time named for such bankrupt appearing, for so long and until such further day as the Judge or Commissioner shall reasonably appoint, so as every such order of enlargement be made six days at least before the day on which such bankrupt was to appear.

Power to cause  
any bankrupt  
in person to be  
before the  
Commissioner,  
&c.

LIII. And be it enacted, that if the bankrupt shall be in prison either on mesne process or in execution, in any suit or proceeding for or on account of any debt or demand whatever, proveable against his estate, at any time when his attendance may be required before the Judge or Commissioner, or the assignees, or at any meeting of his creditors, as provided in this Act, the said Judge or Commissioner may in his discretion, by warrant under his hand and seal, require the Sheriff or Gaoler, in whose custody the said bankrupt may be, to produce such bankrupt for the purposes aforesaid, at such time and place as may be specified in the warrant; and in case the bankrupt shall, by reason of imprisonment or sickness, or any other cause which shall be deemed sufficient by the Judge or Commissioner, be unable to attend before him or before the assignees, at any meeting of his creditors as provided in this Act, then such Judge or Commissioner, or some person deputed by him, shall attend to take the examination of the bankrupt, and the examination thus taken shall be of the same force and effect as if the bankrupt had attended in person before the Judge or Commissioner, or the assignees, or at the meeting aforesaid, and had undergone the same examination; and if the bankrupt shall be without this Province, and shall be unable to return and give his personal attendance at the first meeting of his creditors, or at the other times, and for the purposes in this Act set forth, and if it shall appear that such absence was not occasioned by any wilful default of the bankrupt, and he shall, as soon as may be after the removal of the impediment, attend on some day subsequent to the one first named, which shall have been appointed by the Judge or Commissioner under the foregoing sections of this Act, and submit to the examination, and do and perform all other things by this Act required, then such bankrupt shall not incur the penalty and punishment in the fifty-first section of this Act contained, and shall be entitled to his certificate in like manner as if he had appeared and conformed at the time first appointed.

Bankrupt  
prevented by  
sickness from  
attending.

Bankrupt ab-  
sent from the  
Province.

Punishment  
of bankrupt  
fraudulently  
altering his  
books, &c.

LIV. And be it enacted, that if any bankrupt shall after an act of bankruptcy committed, or in contemplation of bankruptcy, or with intent to defeat the object of this Act, have destroyed, altered, mutilated or falsified any of his books, papers, writings or securities, or made or been privy to the making of any false or fraudulent entries in any book of account or other document with intent to defraud his creditors, every such bankrupt shall be deemed to be guilty of a felony, and being convicted

convicted thereof, shall be liable, in the discretion of the Court, to be imprisoned, with or without hard labour, in any common Gaol for a term not to exceed one year, or in the Provincial Penitentiary for any term not less than three nor more than five years.

LV. And be it enacted, that if any bankrupt shall, within three months next preceding the date of the commission against him, under the false colour or pretence of carrying on business or dealing in the ordinary course of trade, have obtained on credit from any other person, any goods or chattels, with intent to defraud the owner thereof, or if any such bankrupt shall, within the time aforesaid, with such intent, have removed, concealed or disposed of any goods or chattels so obtained, knowing them to have been so obtained, every such person so offending shall be deemed to be guilty of a misdemeanor, and being convicted thereof, shall be liable to imprisonment in any common Gaol in this Province, for any term not exceeding one year, as the Court before whom he shall be tried shall think fit.

Punishment of bankrupt fraudulently obtaining credit immediately before his bankruptcy.

LVI. And be it enacted, that every person who, in any examination before a Commissioner, Judge, or any person lawfully deputed by him, or in any affidavit or deposition authorized or directed by this Act, shall wilfully and corruptly swear or affirm falsely, shall, on conviction thereof, suffer the pains and penalties in force in this Province against wilful and corrupt perjury.

False swearing or affirmation to be deemed perjury.

LVII. And be it enacted, that the several Judges and Commissioners authorized to issue commissions of bankruptcy, and to act in the prosecution thereof, shall be auxiliary to each other for the proof of debts, and for the examination of witnesses on oath, or for either of such purposes; and the Judge or Commissioner so acting as auxiliary in the prosecution of a commission of bankruptcy in the examination of witnesses, shall possess the same powers to compel the attendance of, and to examine witnesses, and to enforce both obedience to such examination, and the production of books, deeds, papers, writings and other documents, as are possessed by the Judge or Commissioner issuing such commission: Provided always, that all such examinations of witnesses shall be taken down in writing, and shall be annexed to and form part of the proceedings under such commission, and that no proof of debts or examination of witnesses, in the prosecution of any commission, shall be taken by any such auxiliary authority, without the permission in writing of the Judge or Commissioner by whom such commission was issued.

Judges and commissioners to be auxiliary to each other in prosecuting proceedings in bankruptcy.

Proviso.

LVIII. And be it enacted, that nothing in this Act contained shall prevent any Judge or Commissioner, when two or more persons who are partners in trade as

What proceedings may be adopted where there

a

are parties residing in different Districts.

a firm, reside in different Districts in this Province to that in which any commission of bankruptcy shall be prosecuted against such firm, from having jurisdiction over the said partner resident beyond the District for which he is appointed, as far as it relates to the interest or share of such partner in such firm, if such partner be included in such commission; and it shall and may be lawful for the Judge or Commissioner for the District in which any such other partner shall reside, to take and receive any examination or declaration, administer any oath or affirmation, or otherwise take such proceedings in respect to such partner as may be taken, received or administered by the Judge or Commissioner of the District in which the original proceedings in bankruptcy against the said firm shall have been prosecuted: Provided always, that all such examinations, declarations, oaths, affirmations or other such proceedings, shall be taken down in writing, and be transmitted to the Judge or Commissioner by whom such commission shall have been issued, to be by him annexed to and form part of the said commission: And provided also, that all such proceedings shall have been so taken with the permission and under the authority in writing of the Judge or Commissioner by whom such commission was issued.

Effect of the certificate to be granted to a bankrupt.

LIX. And be it enacted, that every bankrupt, who shall have duly appeared, and made a full disclosure and delivery of all his estate and effects, and in all things conformed himself to the provisions of this Act, shall be discharged from all debts due by him at the date of the commission, and from all claims and demands made proveable under the commission, in case he shall obtain a certificate from the Judge or Commissioner under his hand and seal, in the form of the Schedule (G) to this Act annexed, subject to such provisions as are hereinafter mentioned; and no such certificate shall release or discharge such bankrupt from such debts, claims or demands, unless the same shall be obtained, allowed and confirmed, according to such provisions: Provided always, that no such certificate shall release or discharge any person who was partner with such bankrupt at the time of his bankruptcy, or was then jointly bound, or had made any contract jointly with such bankrupt, if such partner of, or person so jointly bound or liable with such bankrupt, has not been included in such commission of bankruptcy: And provided always, that such Judge or Commissioner may in his discretion grant such certificate to any one or more partners or persons so jointly bound or liable, and refuse or suspend the same as hereinafter mentioned as to any other partner or person so jointly bound or liable.

Proviso.

Cases in which no certificate shall be granted, or shall be void if granted.

LX. And be it enacted, that no bankrupt shall be entitled to his certificate, and that any such certificate, if obtained, shall be void, if such bankrupt shall have lost, by any sort of gaming or wagering in one day twenty pounds, within one year next preceding the date of the commission against him, or one hundred pounds

pounds within that year, or if such bankrupt shall, after an act of bankruptcy, or in contemplation of bankruptcy, or with intent to defeat the object of this Act, have concealed, destroyed, altered, mutilated or falsified, or caused to be concealed, destroyed, altered, mutilated or falsified any of his books, papers, writings or securities, or made, or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, or shall have concealed any part of his property, or if any person having proved a false debt under the commission, such bankrupt being privy thereto, or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after his knowledge.

**LXI.** And be it enacted, that it shall be lawful for the Judge or Commissioner, by whom the commission was issued, to appoint a public sitting for the allowance of such certificate to the bankrupt named in such commission, (whereof, and of the purport whereof, twenty-one days notice shall be given in manner to be directed by such Judge or Commissioner, and a copy of such notice shall be served on one of the assignees or on their Solicitor,) and at such sitting any of the creditors of such bankrupt may be heard against the allowance of the certificate, and the Judge or Commissioner shall consider any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such condition thereto, as the justice of the case may require: Provided always, that no certificate shall be such discharge, unless such Judge or Commissioner shall, in writing under his hand and seal, certify to the proper Court of Review that such bankrupt has made a full 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, nor unless the bankrupt make oath in writing that such certificate was obtained fairly and without fraud, nor unless the allowance of such certificate shall, after such oath, be confirmed by the Court of Review, against which confirmation any of the creditors of the bankrupt may be heard before such Court.

Meeting for allowance of certificate.

Creditors opposing its being granted.

Proviso—  
Conditions on which the certificate shall operate as a discharge.

**LXII.** And be it enacted, that any contract or security made or given by any bankrupt or other person, unto or in trust for any creditor, or for the securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to forbear opposing, or to consent to the allowance or confirmation of such certificate, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable.

Contracts made for bribing not to oppose the certificate, to be void.

**LXIII.** And be it enacted, that if any creditor of a bankrupt shall obtain any sum of money, or any goods, chattels, or security for money, from any person as an inducement for forbearing to oppose, or for consenting to the allowance or confirmation

Penalty on creditor obtaining money, &c. for fraudulently conniving at the obtaining a certificate.



firmation of the certificate of such bankrupt, every creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money, goods, chattels or security, so obtained, as the case may be.

Discharge of the bankrupt who shall be such, &c. on any debt contracted before the Commission, provided for.

**LXIV.** And be it enacted, that any bankrupt who shall, after his certificate shall have been confirmed, be arrested, or have any action brought against him for any debt, claim or demand, proveable under the commission against such bankrupt, shall be discharged on entering common bail or common appearance, and may plead in general that the cause of action accrued before he became bankrupt, and may give this Act and the special matter in evidence; and such bankrupt's certificate, and the confirmation thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate; and if any such bankrupt shall be taken in execution, or detained in prison for such debt, claim or demand, when judgment has been obtained before the confirmation of his certificate, it shall be lawful for any Judge of the Court, wherein judgment has been so obtained, on such bankrupt's producing his certificate, to order any officer who shall have such bankrupt in custody by virtue of such execution, to discharge such bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing.

Promise to pay any debt from which the bankrupt is discharged by certificate, invalid, unless in writing.

**LXV.** And be it enacted, that no bankrupt, after his certificate shall have been confirmed under any commission of bankruptcy, shall be liable to pay or satisfy any debt, claim or demand from which he shall have been discharged by virtue of his certificate, or any part of such debt, claim or demand, upon any contract, promise or agreement, made or to be made after the date of the commission, unless such promise, contract or agreement, be made in writing, signed by the bankrupt, or by some person thereto lawfully authorized in writing by such bankrupt.

Meeting of creditors to be called by the assignees.

**LXVI.** And be it enacted, that the assignees shall, at such time as shall be appointed by the Judge or Commissioner, within six months from their appointment, call a meeting of all the creditors of the bankrupt, by a notice to be published in such manner as the Judge or Commissioner shall direct, at which meeting the creditors, who have not before proved their debts, shall be allowed to prove the same; and the assignees shall produce to the Judge or Commissioner and the creditors then present, fair and just accounts of all their receipts and payments, touching the estate of the bankrupt, and shall, if required by the Judge or Commissioner, be examined on oath as to the truth of such accounts, and the Judge or Commissioner shall thereupon make an order in writing under his hand for a dividend of the said estate and effects, or of such parts thereof as he shall think fit, among such of the creditors of the said bankrupt as shall have proved their debts, in proportion to their respective debts, which order shall be recorded with the other proceedings

Account of assignees.

Dividend.

proceedings in the case : Provided always, that all debts due by the bankrupt to Her Majesty, or to any person who, by the laws of any part of this Province, are, or may be entitled to a priority or preference with respect to such debts out of the estate of the bankrupt, shall have the benefit of such priority or preference in like manner as if this Act had not been passed : and if, at the time of ordering such dividend, it shall appear to the Judge or Commissioner probable that there are just claims against the estate, which, by reason of the distant residence of the creditors, or for other sufficient reasons, have not been proved, but, nevertheless may be, the Judge or Commissioner shall, in ordering such dividend, leave in the hands of the assignees a sum sufficient to pay to every such creditor a proportion equal to what shall be then paid to other creditors, which sum shall remain thus unappropriated in the hands of the assignees until the final dividend shall be declared, or until the Judge or Commissioner shall order its distribution.

Proviso, debts to the crown, privileged debts, and debts to absent creditors who have not proved.

LXVII. And be it enacted, that the said assignees shall, at such time as shall be appointed by the Judge or Commissioner, within eighteen months after the appointment of the assignees, make a second dividend of the said estate, in case the same was not wholly distributed upon the first dividend, and shall give notice of a meeting for that purpose of all the creditors of the bankrupt, in such manner as the Judge or Commissioner shall direct ; at which meeting the creditors, who have not before proved their debts, shall be allowed to prove the same, and the accounts of the assignees shall then be produced and examined, as provided in the preceding section, and shall be settled by the Judge or Commissioner, and what, upon the balance thereof, shall appear to be in their hands, shall, by a like order of the Judge or Commissioner, be divided among all the creditors who shall then have proved their debts, in proportion to their respective debts, subject to the provision hereinafter contained respecting any allowance to bankrupts : Provided, that no creditor, whose debt shall be proved at the second, or any after dividend, shall be allowed to disturb any prior dividend, but he shall be paid so far only as the funds remaining unappropriated in the hands of the assignees shall be sufficient therefor ; and if, at the time of appointing the meeting for the said second dividend, there shall remain in the hands of the assignees any outstanding debts, or other property, due or belonging to the estate, which cannot, in the opinion of the Judge or Commissioner, be collected and received by the assignees without unreasonable or inconvenient delay, the assignees may, under the direction of the Judge or Commissioner, sell and assign such debts or other property in such manner as the Judge or Commissioner shall direct ; and such second dividend shall be final, unless any suit relating to the estate be then depending, or any part of the estate be outstanding, or unless some other estate or effects of the said bankrupt shall afterwards come to the hands of the assignees, in which cases another dividend shall be made, by order of the Judge or Commissioner, in man-

Second dividend.

Proviso—  
'Subsequent dividends not to disturb former ones.

Second dividend to be final.

ner

ner hereinbefore provided, and further dividends shall be made in like manner as often as occasion shall require; and at every regular meeting of the creditors those who have not before proved their debts shall be allowed to prove the same, and if, after payment of all debts proved as aforesaid, any surplus shall remain in the hands of the assignees, the same shall be paid or re-conveyed to, or revest in the bankrupt or his legal representatives.

Exception.  
Debts may be proved at any regular meeting.

Courts of Review constituted.

**LXVIII.** And be it enacted, that the Court of Chancery in and for that part of the Province formerly Upper Canada, and the several Courts of King's Bench in and for the Districts of Quebec, Montreal, Three Rivers and Saint Francis, shall be, each within their respective jurisdictions, Courts of Review in cases and matters of bankruptcy, and may, from time to time, and at all times within such their jurisdictions, make general rules and orders for regulating the forms of proceedings and the practice to be observed and the costs to be allowed when not otherwise provided for by this Act in all cases of bankruptcy, and shall also have full power and authority to entertain, hear and determine, and make all necessary orders in all appeals from the several Judges of the District Courts, and from the Commissioners aforesaid, in matters of bankruptcy, in cases arising, pending or determined within the respective jurisdictions of the said Court of Chancery, and the said several Courts of King's Bench, and to allow such costs of appeal as to them shall seem fit, and that appeals as aforesaid shall respectively lie from the said Judges and Commissioners, and their judgments, adjudications and orders, at the instance of any creditor or of the assignees of any bankrupt, and the decision of such Court of Review shall be final.

Their powers.

Decision of such Courts shall be final.

Before whom affidavits required under this Act may be sworn.

**LXIX.** And be it enacted, that all affidavits to be made or used in matters of bankruptcy or under this Act, shall and may be sworn before any Judge of a Court of Record in this Province, or any Clerk or Officer of such Court otherwise authorized to administer oaths, or before any Commissioner appointed for taking affidavits in any of such Courts, or before any Master or Master Extraordinary in Chancery, or before any Commissioner of Bankrupts, if such affidavits be sworn by a creditor or other person residing within this Province, or if elsewhere then before any Judge of a Superior Court of Record, or Notary, and attested by the Mayor, or other Chief Magistrate of any City, Town or Place, or a British Minister, Consul or Vice-Consul.

Matters may be sworn to, either *vivâ voce* or by affidavit in writing.

**LXX.** And be it enacted, that the said several Judges of the District Courts, and the Commissioners of Bankruptcy, and the said several Courts of Review, may, in all matters within their respective jurisdiction, have power to take the whole or any part of the evidence in any matter of bankruptcy before them, either *vivâ voce* on oath, or upon affidavits or depositions to be sworn as aforesaid.

**LXXI.**

LXXI. And be it enacted, that the said several Judges and the Commissioners aforesaid, may award in all matters before such Courts, respectively, such costs as to them shall seem fit and just, subject to the power of the Courts of Review hereinbefore contained; and in all cases in which costs shall be so awarded against any person, it shall and may be lawful for such Judge or Commissioner to cause such costs to be recovered from such person, in the same manner as costs awarded by a rule of any of the Superior Courts in this Province may be recovered; and that the like remedies may be had upon an order of such Court for costs, as upon a rule of any of the said Superior Courts for costs.

What costs may be allowed, and how recovered.

LXXII. And be it enacted, that every commission of bankruptcy issued under this Act, and the proceedings thereunder, or any part of such proceedings, or copies, or minutes of every such commission and proceedings, or part thereof, as and in such form and at such time as the Court of Review, having jurisdiction in the particular case, shall by any order from time to time direct, shall be transmitted by the Judge or Commissioner who issued such commission to such Court of Review, to be there filed and kept among the records of that Court.

Commissions of bankruptcy, &c. to be filed of Record in the Courts of Review.

LXXIII. And be it enacted, that a certain Ordinance of the Legislature of Lower Canada concerning bankrupts, passed in the second year of Her Majesty's reign, intituled, *An Ordinance concerning bankrupts, and the administration and distribution of their estates and effects*, shall be, and the same is hereby repealed, upon, from and after the day that this Act shall come into operation: Provided always, that nothing herein contained shall render invalid any proceedings which may have been had under any commission or warrant in bankruptcy now subsisting, or which shall have been issued before this Act shall come into operation or effect, or lessen any right, claim, demand or remedy, which any person now has thereunder, or upon or against any bankrupt against whom such commission or warrant has or shall have issued as aforesaid, but that all such proceedings shall be completed as if this Act had not been passed, except as herein especially provided.

Ordinance L. C. 2<sup>o</sup> Vict. (3) c. 36, repealed.

Proviso.

LXXIV. And be it enacted, that the certificate of discharge obtained by any bankrupt, from any of the Commissioners acting under the Ordinance herein before recited, and by this Act repealed, at any time prior to the passing of this Act, or under any commission or warrant in bankruptcy now subsisting, or which shall have been issued before this Act shall come into operation or effect, shall, from and after the passing of this Act, be deemed valid and effectual as a discharge to such bankrupt throughout this Province, from all debts due by him at the date of such commission, and made proveable under such commission.

Former certificates of discharge to be valid throughout the Province.

LXXV.

What laws  
observed in ca-  
ses otherwise  
unprovided for.

LXXV. And be it enacted, that in all questions not otherwise provided for the laws of Upper Canada and of Lower Canada, respectively, shall be resorted to as the rule of decision in all questions respecting Bankrupts, as the said laws now respectively obtain in each section of the Province, and in cases unprovided for in the existing laws above-mentioned, then resort shall be had to the laws of England, as such rule of decision in that part of this Province heretofore Upper Canada, and that only.

Allowance to  
bankrupts.

Paying 10s in  
the pound.

Paying 12s 6d  
in the pound.

Paying 15s in  
the pound.

Proviso.

Paying less  
than 10s. in the  
pound.

Allowance to  
partners be-  
coming bank-  
rupts.

LXXVI. And be it enacted, that every bankrupt who shall have obtained his certificate and the confirmation thereof, if the net produce of his estate in hand (with or without prior dividend) pay the creditors who, before or at the time of making such order, have proved debts under the commission, ten shillings in the pound, shall be allowed and paid five per centum out of the produce, provided that such allowance shall not exceed two hundred and fifty pounds; and every such bankrupt, if such produce shall (with or without prior dividend) pay such creditors twelve shillings and six pence in the pound, shall be allowed and paid seven pounds and ten shillings per centum, provided such allowance shall not exceed the sum of three hundred and twenty-five pounds; and every such bankrupt, if such produce shall (with or without prior dividend) pay such creditors fifteen shillings in the pound or upwards, shall be allowed and paid as aforesaid ten per centum, provided such allowance shall not exceed four hundred pounds, provided that no such allowance be made without an application to the Judge or Commissioner, and notice given to the assignees; and that such Judge or Commissioner, after hearing both parties, may make such order, not exceeding the foregoing provision, as he shall see fit, subject to the decision of the Court of Review: And provided always, that such allowance shall not be payable to any bankrupt until after the expiration of twelve months from the date of the commission, and such allowance shall then be payable only in the event of the dividends, paid to the creditors who at any time before the expiration of such twelve months shall have proved debts under the commission, being of the requisite amount in that behalf aforesaid; and if, at the expiration of such term, the dividend paid as aforesaid shall not amount to ten shillings in the pound, it shall be lawful for the Judge or Commissioner to allow the bankrupt so much as he and the assignees shall agree upon, not exceeding three per centum, or one hundred and fifty pounds.

LXXVII. And be it enacted, that in all commissions against the joint and separate estates of partners, any partner who shall obtain his certificate as a bankrupt shall, if a sufficient dividend shall have been paid upon the separate estate of such partner, be entitled to his allowance, although his other partner or partners may not be entitled to any allowance.

LXXVIII.

LXXVIII. And be it enacted, that every bankrupt duly appearing, attending and conforming, according to the provisions of this Act, shall receive from the assignees ten shillings per day, for each day's attendance on the Judge, Commissioner or assignees, when required, and shall also be allowed, for the necessary support of himself and his family, a sum not exceeding twenty shillings per week for each member of his family, and for such time, not exceeding two months, as the Judge or Commissioner shall order.

Allowance  
to bankrupt for  
his support.

LXXIX. And be it enacted, that every trader shall, within thirty days after the execution of a contract of marriage, and every person who being already married shall become a trader, shall, within thirty days after he shall have commenced trading, cause his contract of marriage (if any such there be,) to be enregistered in the office of the Register of the County or District (as the case may be,) in which the lands mentioned in or charged by such contract lie ; or if no lands be mentioned in or charged by such contract, then in the office of the Register of the County or District, as the case may be, in which such trader shall reside at the time of the execution of such contract ; in default whereof the same shall be null and void, as against the creditors of such trader becoming bankrupt ; and that free access shall be allowed to all persons to inspect and make extracts from the register, upon payment of the sum of two shillings and six pence for each inspection of the register of such contract of marriage, and no more ; and no trader, or other person aforesaid, who having made such contract of marriage, shall afterwards become bankrupt, shall be entitled to a certificate of discharge under this Act, unless he shew by his books of account regularly kept, or by written proof or otherwise, to the satisfaction of the Judge or Commissioner, that when he executed the said contract of marriage, his estate, real and personal, was equal in value, after the payment of all his just debts, to the sum or sums of money, land or other things, thereby given or secured to or for the use of his wife or future family, out of the property of him the said trader : Provided that nothing herein contained shall make it necessary again to register any contract of marriage which has already been registered under the provisions of the Ordinance of Lower Canada herein-before mentioned, but such registry shall be effectual to all intents and purposes, as if this Act had not been passed.

Contracts of  
marriage of  
persons being  
or becoming  
creditors to be  
registered, or to  
be void.

Cases in  
which certifi-  
cates shall not  
be granted.

Proviso.

LXXX. And be it enacted, that it shall and may be lawful for the Judge or Commissioner to allow to, and permit the assignees to retain out of the monies in their hands belonging to the estate of the bankrupt, at the time of paying each dividend, such sum not exceeding five per centum on the sum divided, as he shall deem a reasonable compensation for their services.

Compensation  
to assignees.

LXXXI. And be it enacted, that for every commission of bankruptcy issued by a Judge under the authority of this Act, there shall be paid out of the estate of the

Fees to be  
paid to any

District Judge acting in cases in bankruptcy.

the bankrupt, by the assignees, the sum of forty shillings, to the Clerk of the District Court over which such Judge presides, and the further sum of ten shillings, for every sitting under such commission which any Judge shall attend, and the sum of one shilling for every oath or affidavit administered by or taken before such Judge, in the particular case, and for every oath or affidavit administered or taken to procure a Summons for a trader debtor, the sum of one shilling, and for every such Summons the sum of one shilling and three pence, to be paid by the creditor at whose instance such oath or affidavit is administered, and such Summons issued; and the said Clerk shall keep a separate account of such fees, and shall render an account to the Receiver General of fees in his District, and shall pay over the amount of such fees to such Receiver General, under the same liabilities, securities and conditions, and to be accounted for in like manner as the present general fee fund of the District.

Like fees to be paid to a Commissioner in like cases.

LXXXII. And be it enacted, that in cases where a Commissioner shall act in place of a Judge, similar fees to those provided for the Judge shall be paid to such Commissioner for the performance of the same services and duties: Provided, that the sum allowed for each day's attendance by such Judge or Commissioner shall be apportioned among the several causes, if there be more than one, in which he may act on the same day.

Fees and allowances to certain officers and to witnesses.

LXXXIII. And be it enacted, that there shall be allowed and paid in like manner to the Clerk or other officer of the Court of Review, the sum of four pence on every paper received and filed by him in any case of bankruptcy; and to the Clerk appointed to each case of bankruptcy, for every day's attendance upon or with the Judge or Commissioner on any business in bankruptcy, a sum not exceeding fifteen shillings per day, to be apportioned in like manner as the allowance for attendance to the Judge or Commissioner is directed to be apportioned, and such further compensation for keeping a record of the proceedings, and for any other services performed by him, as the Judge or Commissioner shall allow; and to the Sheriff such compensation as the Judge or Commissioner shall see fit to allow, according to the circumstances of each case, and not exceeding the scale of allowance to Sheriffs for services of a similar character; and to every witness the same allowance as is or may be usually made to witnesses in the Courts of the Province.

Penalties how recovered and applied.

LXXXIV. And be it enacted, that all sums of money forfeited under this Act, or by virtue of any conviction for perjury committed in any oath hereby directed or authorized, may be sued for by the assignees of the estate and effects of any bankrupt, in any of Her Majesty's Superior Courts of Record in this Province, and the money so recovered (the charges of suit being deducted) shall be divided among the creditors.

LXXXV.

LXXXV. And be it enacted, that the words and expressions hereinafter mentioned, which in their ordinary signification may have a more confined or different meaning, shall in this Act, except when the nature of the provision, or the context of the Act shall exclude such construction, be interpreted as follows, that is to say: the word "Governor" shall mean also and include the Lieutenant Governor or person administering the Government of the Province: the word "month" shall mean a calendar month: the word "oath" shall include affirmation, when by Law such affirmation is required or allowed to be taken in place of an oath; and every word importing the singular number shall extend and be applied to several persons and 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 females, 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 thereby intended.

Interpretation clause.

Governor.

Month. Oath.

Singular number.

Plural number.

Gender.

General rule.

LXXXVI. And be it enacted, that this Act shall be and continue in force for and during the term of two years, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

Limitation of Act.

## SCHEDULES REFERRED TO BY THE ACT.

### SCHEDULE A. No. 1.

*Affidavit for summoning a Trader Debtor. Vide Sec. 3.*

A. B. of \_\_\_\_\_ and C. D. of \_\_\_\_\_ severally make oath and say, and first this deponent A. B. for himself saith, that E. F. is justly and truly indebted to this deponent in the sum of £ \_\_\_\_\_ for (*stating the nature of the debt with certainty and precision*); and this deponent further saith, that the said E. F., as this deponent verily believes, is a trader within the meaning of the Statute of this Province relating to bankrupts, and resides (*or has his usual place of business*) at \_\_\_\_\_, and that an account in writing of the particulars of the demand of the said A. B. amounting to the sum of £ \_\_\_\_\_, with a notice thereunder written in the form prescribed by the Statute in that case made and provided, purporting to require immediate payment of the said debt, is hereunto annexed;



nexed; and this deponent C. D., for himself saith, that he did, on the day of personally serve the said E. F. with a true copy of the said account and notice.

No. 2.

*Particulars of demand, and notice requiring payment. Vide Sec. 3.*

To E. F. of

The following are the particulars of the demand of the undersigned A. B. of against you the said E. F., amounting to the sum of £ (Here copy the account or demand.)

Take notice that I, the said A. B., hereby require immediate payment of the said sum of £ Dated this day of in the year of our Lord

(Signed) A. B.

No. 3.

*Summons of Trader. Vide Sec. 3.*

To E. F. of

These are to will and require you to whom this Summons is directed, to be and appear before me, at in the County of on the day of at o'clock, in the and you are hereby notified, that the purpose for which you are thus summoned before me is to ascertain, in manner and form prescribed by the Statute in that case made and provided, whether or not you admit the demand of A. B. of (who claims of you the sum of £ for a debt,) or any and what part thereof, or whether you verily believe that you have a good defence to the said demand, or to any and what part thereof; and hereof you are not to fail at your peril. Given under my hand, the day of 184

(Signed) J. K.  
Judge or Commissioner, (as the case may be.)  
SCHEDULE.

## SCHEDULE B. No. 1.

*Admission of Debt by Trader Debtor. Vide Sec. 4.*

At \_\_\_\_\_ in the County of \_\_\_\_\_ the  
day of \_\_\_\_\_

Whereas, I, the undersigned E. F., am summoned to appear before  
Esquire, "Judge of the District Court of the District of  
" or "Commissioner of Bankrupts," (*as the case may be,*)  
for the purpose of stating, in manner prescribed by the Statute in that case made  
and provided, whether or not I admit the demand of A. B., of  
who claims of me the sum of £ \_\_\_\_\_ for a debt, or any or what part  
thereof, or whether I verily believe that I have a good defence to the said demand,  
or to any and what part thereof: Be it known that I, the said E. F., hereby con-  
fess that I am indebted to the said A. B., in the said sum of £ \_\_\_\_\_ (*or,*) in  
part of the said sum of £ \_\_\_\_\_ that is to say, the sum of £ \_\_\_\_\_

## No. 2.

*Deposition by Trader Debtor of belief of good answer to Creditor's demand, or some part thereof. Vide Sec. 4.*

At \_\_\_\_\_ in the county of \_\_\_\_\_ E. F. of  
being sworn this \_\_\_\_\_ day of \_\_\_\_\_ at the place above  
mentioned, upon his oath saith, that he verily believes he has a good defence to the  
demand (*or to* £ \_\_\_\_\_ part of the demand) hereinafter mentioned, of A. B.  
who claims of the said E. F. the sum of £ \_\_\_\_\_ for a debt alleged to be due  
and owing from the said E. F. to the said A. B., as stated in the Affidavit of the  
said A. B. made before (*as the case may be*) on the \_\_\_\_\_ day of \_\_\_\_\_

## SCHEDULE C. No. 1.

*Admission of Debt signed by Trader Debtor—signed out of Court. Vide Sec. 10.*

I, the undersigned E. F., of \_\_\_\_\_ do hereby confess that I am indebted  
to A. B., of \_\_\_\_\_ in the sum of £ \_\_\_\_\_  
(Signed) E. F.  
Dated \_\_\_\_\_

Dated this                      day of                      18 .

Witness, G. H., Attorney (or Notary) attending on behalf of the said E. F.,  
and subscribing witness to the execution thereof as such Attorney (or Notary.)

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SCHEDULE D.

*Declaration of Insolvency by Trader. Vide Sec. 15.*

I, the undersigned E. F., of                      do hereby declare that I am unable  
to meet my engagements. Dated this                      day of                      in the  
year of our Lord                      (Signed)                      E. F.

Witness, G. H., Attorney at Law (or Notary.)

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SCHEDULE E.

*Notice of Bankruptcy to be inserted in the Gazette. Vide Sec. 24.*

BANKRUPT.

E. F. of  
Court, of the District of  
*case may be,*) dated the  
Meeting of creditors on

Commission issued by J. K. Judge of the District  
(or Commissioner of Bankrupts, as the  
day of                      184 .  
at

(Signed)                      R. S.  
Sheriff.

---

SCHEDULE F.

*Oath of Bankrupt. Vide Sec. 40.*

I, E. F. of                      do swear, that the account of my creditors con-  
tained in the Schedule made and signed by me, and now in the hands of the as-  
signee chosen by my creditors, is in all respects just and true, according to the  
best

best of my knowledge and belief; and I do further swear, that I have delivered to  
 Sheriff of the District of \_\_\_\_\_, all my estate,  
 except such parts as are by law exempted from attachment, and such as have  
 been necessarily expended for the support of myself and my family; and all my  
 books of account, deeds and papers, relating to my said estate, that were in my  
 possession or power when the same were demanded of me by the said Sheriff;  
 and that I have delivered to the said assignees all such of my said estate, books,  
 deeds and papers, as have since come to my possession: and that if any other  
 estate, effects, or other things which ought to be assigned and delivered to the  
 said assignees, shall hereafter come to my knowledge or possession, I will forth-  
 with disclose or deliver the same to the said assignees: And I do further swear,  
 that there is not any part of my estate or effects concealed, made over, or disposed  
 of in any manner, for the future benefit of myself or my family, or in order to de-  
 fraud my creditors.

Sworn at

this

(Signed)  
day ofE. F.  
184

Before me

(Signed)

J. K.

Judge (or Commissioner.)

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 SCHEDULE G.

*Certificate for the Discharge of Bankrupt. Vide. Sec. 59.*

At \_\_\_\_\_ in the County of \_\_\_\_\_ To all to whom these  
 presents shall come: I, J. K., Judge of the District Court, of the District of  
 (or Commissioner of Bankrupts, as the case may be,) send, greeting:

Whereas it hath been made to appear to me, that E. F. of  
 whose estate hath been assigned for the benefit of his creditors, according to the  
 provisions of an Act passed in the seventh year of the reign of Her Majesty  
 Queen Victoria, intituled, *An Act to repeal an Ordinance of Lower Canada,*  
*intituled, An Ordinance concerning bankrupts, and the administration and distri-*  
*bution of their estates and effects, and to make provision for the same object throughout*  
*the Province of Canada,* has made a full disclosure and delivery of all his estate,  
 as in the said Act is required, and has in all other respects submitted and con-  
 formed himself to the provisions of the said Act. Now, therefore, I, the said J. K.  
 do hereby certify that the said E. F. is absolutely and freely discharged from all  
 debts, claims and demands, of what kind soever, which have been or shall be  
 proved against his estate, assigned as aforesaid, and which are proveable, or by  
 the

the said Act are declared proveable against such his estate, and which were due by him at the date of the commission issued against him, and from all claims and demands made proveable under the said commission, whether on account of any goods or chattels wrongfully obtained, taken or withheld by him, or otherwise, according to the form of the said Act. And I do further certify, that the said E. F. is, by force of the Act aforesaid, for ever discharged and exempted from arrest and imprisonment in any suit, or upon any proceeding for or on account of any debt, claim or demand whatever, which might have been proved against his estate, assigned as aforesaid.

Given under my hand and seal, at  
in the year of our Lord

aforesaid, this                      day of

(Signed)

J. K.

} L. S. }

CAP. XI.

An Act for vesting in the Principal Officers of Her Majesty's Ordnance, the Estates and Property therein described, for granting certain powers to the said Officers, and for other purposes therein mentioned.

[9th December, 1843.]

Preamble.

**W**HEREAS, divers Messuages, Lands, Tenements, Estates and other Hereditaments, and real property, lying within this Province, have been at various times set apart from the Crown Reserves or other Crown Lands and property in this Province, or from the Clergy Reserves therein, and have been placed under the charge and control of the Officers of Her Majesty's Ordnance, or of the Commander of the Forces, for purposes connected with the defence of the Province, and the service of the said Department, or have been used and occupied for like purposes; and whereas other Messuages, Lands, Tenements, Estates and other Hereditaments and real property have been at divers times purchased for like purposes, and conveyed or surrendered to, or in Trust for Her Majesty, or Her Royal Predecessors, or have been taken for like purposes under the authority of some Act or Acts of the Legislature of the late Province of Lower Canada, or of the late Province of Upper Canada, and are by the provisions of such Acts vested in Her Majesty; and the price or compensation of and for the same, hath been paid out of the funds provided for that purpose by the Parliament of the United Kingdom: and whereas it may be expedient that such parts of the said