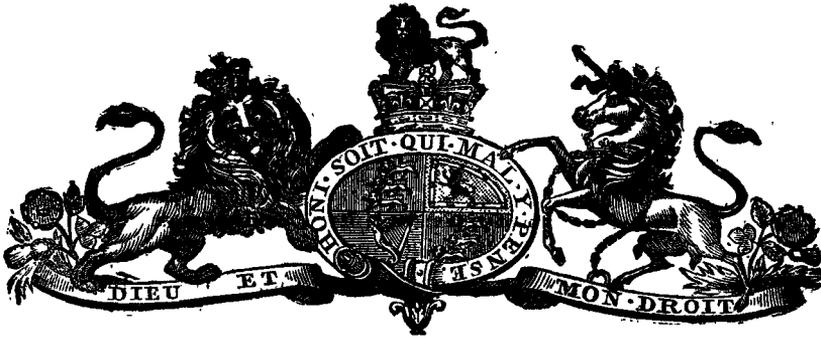


NEW ZEALAND.



TRICESIMO NONO
VICTORIÆ REGINÆ.

No. LXXIX.

ANALYSIS.

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Title.

AN ACT for the Relief of Debtors and for the better Security of Creditors. [18th October, 1875.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. The Short Title of this Act shall be "The Debtors and Creditors Act, 1875."

Commencement of Act.

2. Except as in this Act expressly provided, and except with respect to the defining of districts and making rules, in which respects *this Act shall take effect from its passing, this Act shall take effect from and immediately after the thirty-first day of December, one thousand eight hundred and seventy-five, which time is hereinafter referred to as the commencement of this Act.*

Repeal clause.

3. The Acts described in the Schedule hereto are hereby repealed, but this repeal shall not affect the past operation of any such Act, or the validity or invalidity of anything done or suffered, or any right title or obligation or liability accrued, before the commencement of this Act by or under any such Act; nor shall this Act interfere with the prosecution of or affect the course of proceeding under or in relation to any petition or deed of arrangement executed or filed or order made or thing done under any such Act before the commencement of this Act, or affect any of the incidents or consequences of any such petition deed order or thing, nor shall this Act interfere with the institution or prosecution of any proceeding in respect of any offence committed or any penalty or forfeiture incurred against or under the Acts hereby repealed or any of them; and all estates and persons brought under the operation of the said Acts hereby repealed or any of them before the commencement of this Act shall be subject to the provisions of the said Acts as if the same had not been repealed.

Computation of time.

4. Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of such limited time the same shall be taken as exclusive of the day of such date or of the happening of such event, and as commencing at the beginning of the next following day, and the act or proceeding shall be done or taken at the latest on the last day of such limited time according to such computation, unless such last day is a Sunday or falls upon any one of

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the holidays mentioned in the Rules of Procedure of the Supreme Court for the time being in force, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

Where by this Act any act or proceeding is directed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, such act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being one of the days in this section specified.

5. In this Act if not inconsistent with the context, the terms and expressions following shall have the meanings hereinafter respectively assigned to them, that is to say,—

Interpretation.

“The Court” shall mean the Court having jurisdiction as by this Act provided.

“The Registrar” shall mean and include the Registrar of the Supreme Court or the Clerk of the District Court having jurisdiction as hereinafter provided.

“District” shall mean a district proclaimed for the purposes of this Act.

“Rules” shall mean the rules to be made under this Act, and “prescribed” shall mean prescribed by the rules.

“First meeting” shall mean a meeting called by a debtor or by a creditor or creditors to consider the propriety of having the affairs of the debtor liquidated under this Act.

“Liquidation resolution” shall mean a resolution authorized to be passed in accordance with section twenty-five of this Act.

“Property” shall mean and include money goods things in action land, and every description of property whether real or personal, and every description of estate interest and profit present or future, vested or contingent, arising out of or incident to property as above defined.

“Debtor” shall mean a debtor who shall come under the operation of this Act.

“District Court” shall mean a Court holden by virtue of “The District Courts Act, 1858,” and of any other Acts for the time being in force relating to District Courts established under the said Act.

“*Gazette*” shall mean any newspaper or newspapers to be from time to time appointed by the Governor for each district, and “gazetted” shall mean inserted in the *Gazette* for the time being appointed for the district in which the proceeding or matter is taken or is done with respect to which such term is used.

6. An association or company incorporated or registered under any Act in force for the time being relating to the incorporation or registration of associations or companies shall not be subject to the provisions of this Act.

Incorporated companies excepted from Act.

7. Where in any Statute or Ordinance passed before the commencement of this Act, and not hereby repealed, mention is made of an adjudication of bankruptcy, or of bankruptcy, or of a bankrupt, or assignees or trustees of bankrupts' or insolvents' estates, the same shall be construed not only in like manner as the same was before the passing of this Act, but also with reference to and so as to include and apply to the liquidation resolution or to liquidation debtors and trustees under this Act; and for such purpose the terms “adjudication of bankruptcy” “bankruptcy” and “bankrupt” shall respectively

Construction of Act.

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include "liquidation resolution" "liquidation" and "debtor" under this Act.

Districts may be defined.

8. The Governor may from time to time, as he thinks fit by Proclamation in the *New Zealand Gazette*, constitute any part of New Zealand into a district under this Act, and such districts may be coterminous with a district under "The District Courts Act, 1858," or not, and may abolish any such district or alter the boundaries thereof, and declare by what local name each such district shall be called.

AS TO JURISDICTION OF COURTS AND APPEALS.

Jurisdiction of Courts.

9. The Supreme Court of New Zealand shall have throughout New Zealand, and the District Courts shall also have within their respective districts, jurisdiction for the purposes of this Act.

The Supreme Court and each District Court, in relation to any matter or proceeding for the time being under the cognizance of such District Court, shall, subject to this Act and any rules prescribed, hear determine and make order in any liquidation under this Act as far as the trustee is concerned relating to the disposition of the debtor's estate, or of any property taken under the liquidation or claimed by the trustee for the benefit of the creditors, or relating to any act done or sought to be done by the trustee in his character of trustee by virtue of the liquidation resolution, and also in any matter of liquidation as between the trustee and any creditor or other person; and in any matter where the Court has jurisdiction under this Act the Court shall have full power, subject to the provisions of this Act, to decide all questions, whether of law or fact, arising in any case of liquidation under this Act coming within the cognizance of such Court.

Orders of District Courts.

Orders of District Courts under this Act shall be enforceable as orders of District Courts under their ordinary jurisdiction are enforceable.

Costs.

10. Every Court having jurisdiction under this Act may award such costs as the Court thinks fit, and costs so awarded shall be recoverable as any other costs awarded under the authority of such Courts, and the like remedies shall be available on an order under this Act for costs as under any other order of such Courts.

Affidavits and declarations.

11. Any affidavit or declaration required to be sworn or made in relation to any matter under this Act may be lawfully sworn—

- (1.) In New Zealand, before any Solicitor of the Supreme Court or any Registrar or Resident Magistrate or Justice of the Peace.
- (2.) In any other place under the dominion of Her Majesty, before any Court, Judge, or person lawfully authorized to take affidavits.
- (3.) In any foreign parts out of Her Majesty's dominions, before a Magistrate, the oath being attested before a Notary, or before a British Consul or Vice-Consul.

And all Courts, Judges, Justices, and persons acting judicially shall take judicial notice of the seal or signature (as the case may be) of any such Court, Judge, Magistrate, solicitor, or other person, attached appended or subscribed to such affidavit or declaration.

APPEAL.

Debtor or creditor dissatisfied with resolution may appeal.

12. Any debtor or any creditor, who shall be aggrieved by any resolution passed by the creditors at any meeting, shall be at liberty to appeal within fourteen days from the date of the resolution being passed to the Court in which the liquidation resolution shall have been filed: Provided that the Court may, if it thinks fit, in any case

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allow an appeal to be commenced and prosecuted notwithstanding the expiration of the time hereby fixed for appeal.

13. Where a liquidation resolution has been filed in a District Court, the right of appeal shall be to the Supreme Court, and no further; and where the liquidation resolution has been filed in the Supreme Court, there shall be a right of appeal to the Court of Appeal of New Zealand, and no further. All appeals shall be subject to such provisions as may be proscribed respecting notice of appeal, deposit or other security, procedure, and evidence.

To what Courts appeal may be made.

14. During and until the said appeal shall have been finally determined, the property and rights of action of the debtor by this Act vested in the trustee shall continue to be so vested.

Protection of property during appeal.

15. If upon an appeal against the passing of a liquidation resolution the appeal shall be decided in favour of the debtor, the special resolution of the creditors shall be set aside, and all the property and rights of action of the debtor shall immediately on such decision being given revert in the debtor without any conveyance or deed of any kind.

If proceedings set aside, property to revert in debtor.

16. No act done or dealing with the property by the trustee between the filing of the liquidation resolution and the allowance of the appeal shall be invalidated, or subject the trustee to any action or suit, in consequence of the allowance of the appeal.

Protection to acts of trustee.

RULES.

17. The Governor in Council, with the concurrence of at least three of the Judges of the Supreme Court, may frame rules—

Power to make rules.

For regulating the practice and procedure of the Court, whether as to any original or appellate jurisdiction under this Act, and the fees to be paid therein, and the several forms of proceedings to be used in the said Court in all matters under this Act;

For regulating the proceedings at first and other meetings of creditors, the notice to be given thereof, and the places where the same shall be held, and subject to this Act the mode of voting thereat, and the manner in which proxies may be appointed and vote at such meetings;

For prescribing the forms of notices to be given under this Act, whether before or after a first meeting of creditors, the mode in which the same shall be served, and what shall be deemed sufficient service thereof;

For prescribing the costs and charges of solicitors at meetings held under this Act, and for the taxation and allowance of such costs;

For regulating the transference of proceedings from one district to another, or from an abolished or altered district to another; and

For all such other purposes as in this Act it is provided that rules may be made.

The rules may prescribe regulations as to the proving and amending of proofs of debt, as to valuing of any debts provable under this Act, as to the valuation of securities held by creditors, as to the giving or withholding interest or discount on or in respect of debts or dividends, and as to any other matter or thing, whether similar or not to those above enumerated, in respect to which it may be expedient to make rules for carrying into effect the object of this Act.

Any or all of such rules may be repealed varied or altered as occasion may require; and all rules made under the powers hereby given shall be promulgated by and take effect from a day to be fixed

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in and by such rules ; and all such rules, and any repeal variation or alteration thereof, shall respectively be published in the *New Zealand Gazette*.

Until rules have been made in pursuance of this Act, and so far as such rules do not extend, the principles practice and rules on which the Supreme Court has heretofore acted in dealing with bankruptcy proceedings shall be observed.

AS TO PROCEEDINGS TO OBTAIN A LIQUIDATION.

Debtor may summon meeting of creditors.

18. Subject to the rules prescribed, any person who shall be unable to pay his debts may summon a first meeting of his creditors to consider the propriety of having his affairs liquidated under this Act.

Debtor before summoning a meeting of his creditors shall file statement.

19. Before any debtor shall be entitled to summon a meeting of his creditors, he shall file with the Registrar of the Court in the district in which the liquidation resolution would, under the provisions hereinafter contained, be filed, a statement in the prescribed form, stating that he is unable to meet his engagements with his creditors, and the Registrar shall thereupon issue to the debtor, in the prescribed form, a certificate to the effect that such statement has been filed.

Immediately on the filing of such statement all the real and personal property of the debtor, whatsoever and wheresoever, shall vest absolutely in the Registrar as effectually as if a liquidation resolution had been passed and filed, and as if the Registrar had thereby been appointed trustee of the debtor's estate under the provisions hereinafter contained :

Provided that, whenever it shall appear to the Judge of the Court in which such statement shall be filed that some other person has been appointed trustee, the Judge, on the application of the person so appointed, shall make an order for vesting the estate of the debtor in such other person.

Creditor may summon meeting of creditors.

20. A single creditor or two or more creditors, if the debt due to such single creditor or the aggregate amount of debts due to such several creditors from any debtor amount to a sum not less than fifty pounds, may summon a first meeting of creditors for the purpose of taking into consideration the propriety of having the affairs of the said debtor liquidated under this Act. But no creditor or creditors shall be entitled to avail himself or themselves of the provisions of this section unless the debtor has committed or suffered any of the acts or defaults hereinafter mentioned, whether such act or default has occurred before the commencement of this Act, or partly before and partly after the commencement of this Act, and unless such creditor or creditors has or have obtained from a Court competent to grant the same an order under the provisions hereinafter mentioned, that is to say,—

- (1.) That the debtor has, in New Zealand or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally ; but this provision shall not apply in cases where a debtor has executed a deed of arrangement under the Acts hereby repealed, and which has been or may hereafter be declared completely executed whether before or after the coming into operation of this Act.
- (2.) That the debtor has, in New Zealand or elsewhere, made a conveyance gift transfer or delivery of his property or any part thereof with intent to defeat or delay his creditors, or any fraudulent conveyance gift transfer or delivery of his property or any part thereof.
- (3.) That the debtor with intent to defeat or delay his creditors

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has departed out of New Zealand, or, being out of New Zealand, has remained out of New Zealand, or has departed from his dwelling-house, or absented himself from his usual place of residence or business, or begun to keep house.

- (4.) That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than fifty pounds has been executed by seizure and sale, or that any execution or process, issued on a judgment decree or order obtained in any Court in favour of any creditor, has been returned unsatisfied in whole or in part: Provided that the debtor has been called upon to satisfy such judgment decree or order by the officer or other person charged with the execution thereof, and has failed to do so: Provided further that two or more executions for sums amounting in the aggregate to not less than fifty pounds, not being satisfied as aforesaid, shall be reckoned as one execution for the purposes of this section.
- (5.) Before any creditor shall be entitled to summon a meeting of the creditors of any debtor he shall, in the prescribed manner, make application to any Court having jurisdiction under this Act for a summons calling upon the debtor, within such time as may be prescribed, to show cause why an order should not issue from such Court directing the creditor to call a meeting of the creditors of the debtor, and upon proof of the service of such summons on the debtor in the prescribed manner it shall be lawful for the Court, if it shall appear necessary for the protection of the general body of the creditors, to grant such order on such terms as it may think fit; upon the granting of such order notice thereof shall be gazetted, and the property of the debtor shall vest in the Registrar in like manner as provided by the last preceding clause.

21. Every Registrar who shall by virtue of the provisions hereof be the trustee of any debtor's estate shall have all the powers duties functions and authorities by this Act given to a trustee appointed by the creditors under a liquidation resolution.

Registrar shall have all the powers of a trustee.

Whenever a liquidation resolution shall have been filed under this Act all the estate and property then vested in the Registrar shall, without any conveyance or assignment, vest in the trustee elected by the creditors.

22. Subject to the rules prescribed, a first meeting of creditors shall be summoned by a notice in the *Gazette* stating the purpose for which the meeting is called, and the time and place at which it is to be held.

Mode of summoning creditors.

When a first meeting is called by a debtor he shall forward a copy of the said notice to each of his creditors, to be either left at or addressed by post to the last-known place of abode or business of each creditor. When a first meeting is called by creditors notice of the date time and place of holding such meeting shall be served upon the debtor: Provided that if the debtor shall be absent from the colony with intent to defeat or delay his creditors, and in any other case by the leave of the Court or a Judge thereof first obtained, it shall be lawful for the creditors to proceed with such meeting in the absence of the debtor. Leave to proceed with such meeting may be obtained *ex parte*, and upon such terms as may be prescribed by the rules, or as the Court or a Judge thereof may think sufficient.

The provisions hereinafter contained with respect to general

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meetings shall, subject to this Act and any rules to be made hereunder, extend and apply to first meetings of creditors.

Power to summon meeting of creditors against one partner.

23. Any creditor whose debt is sufficient to entitle him to summon a meeting of creditors of a firm, may summon a meeting of the creditors of any one or more partners of such firm without including the others.

Stay of proceedings.

24. From the date of the *Gazette* in which notice of a first meeting shall appear no creditor to whom the debtor is indebted in respect of any debt provable in the liquidation shall have any remedy against the property of the debtor in respect of such debt except in the manner directed by this Act.

Resolution of creditors.

25. The creditors may at such meeting or at any adjournment thereof, by special resolution, declare that the affairs of the debtor shall be liquidated under this Act, and that a person or persons to be named in the resolution shall be appointed trustee or trustees as hereinafter provided.

The trustee or trustees appointed at any such meeting shall sign in the prescribed form a declaration that he or they accept the office of trustee or trustees.

Should the meeting of creditors determine that the estate shall not be liquidated, and decline to take advantage of the provisions of this Act, then the debtor and his property shall be in the same position as if no action had been taken under this Act.

Debtor to attend meeting.

26. The debtor, unless prevented by sickness or other cause satisfactory to any meeting of creditors, shall attend the several meetings of the creditors and shall answer any inquiries made of him; and he, or if he is so prevented from being present some one on his behalf, shall submit to the meeting a statement duly verified by affidavit showing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due.

Resolution to be forwarded to Registrar.

27. The liquidation resolution, and the declaration of acceptance of office signed by the trustee or trustees, together with the statement of the assets and debts of the debtor, shall be presented to the Registrar of the district within which the debtor shall have been resident or carried on business for the whole or the greater part of the six months immediately preceding the passing of the liquidation resolution; and if it shall appear to the Registrar to meet the requirements of this Act, and of any rules prescribed thereunder, he shall forthwith file the liquidation resolution and declaration of acceptance as aforesaid, and the statement of the assets and debts of the debtor, and such liquidation resolution shall be open for inspection on the prescribed conditions, and the liquidation shall be deemed to have commenced as from the date of the appointment of the trustee.

The Registrar shall insert a notice in the *Gazette* that the liquidation resolution and the declaration of acceptance of office by the trustee or trustees have been filed in the form prescribed; and the cost of such notice shall be defrayed by the trustee out of the debtor's estate.

AS TO GENERAL MEETINGS OF CREDITORS.

Regulations as to meetings of creditors.

28. General meetings of creditors shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum, adjournment of meetings, and all other matters relating to the conduct of the meetings or the proceedings thereat: Provided that—

- (1.) The meeting shall be presided over by such chairman as the meeting may elect.
- (2.) A person shall not be entitled to a vote as a creditor unless at or previously to the meeting he has in the prescribed manner proved a debt provable under the liquidation to be due to him.

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- (3.) A creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.
- (4.) A secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security, and the amount of such balance shall, until the security be realized, be determined in the prescribed manner. He may, however, at or previously to the meeting of creditors, give up the security to the trustee, and thereupon he shall rank as a creditor in respect of the whole sum due to him: Provided that it shall be lawful for the trustee, if he shall think fit, to purchase the security at the price fixed by the secured creditor, who shall thereupon sell and transfer the security to the trustee for the benefit of the creditors upon payment of the sum fixed as aforesaid, and no more.
- (5.) A "secured creditor" shall in this Act mean any creditor holding any mortgage charge or lien on the estate of the debtor or any part thereof as security for a debt due to him.
- (6.) Votes may be given either personally or by proxy, and every proxy shall have the same power of taking part in the proceedings as the creditor whom such proxy represents would have had had he been present.
- (7.) An ordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting and voting on such resolution.
- (8.) A resolution of creditors under this Act shall, unless otherwise provided, mean an ordinary resolution.
- (9.) A special resolution shall be decided by a majority in number and three-fourths in value of the creditors present personally or by proxy at the meeting and voting on such resolution.
- (10.) The trustee may at any time call a general meeting of the creditors, and shall call such meeting when required by one-fourth in value of the creditors who have proved their debts. The minutes of general meetings of creditors, upon proof of the signature of the person presiding at such meeting, shall be *prima facie* evidence in all Courts of Justice of what passed at such meeting.

Provided that at first meetings of creditors the following provisions shall have effect:—

- (1.) A liquidation resolution shall be deemed to be passed if passed in manner herein provided with respect to a special resolution, and if at such meeting one-half of the whole body of the creditors shall have voted thereat.
- (2.) A first meeting shall be held at the prescribed place in the district in which the debtor resides or carries on business.

If the debtor resides or carries on business within a district in which no such place has been prescribed, then such meetings shall be held, and all proceedings in the liquidation shall be had and taken, at such place within the judicial district of the Supreme Court in which the debtor resides or carries on business as the Judge of the Supreme Court in such judicial district shall direct.

Provided always that, where the debtor is absent from New Zealand, the first meeting shall be held, and all proceedings in the liquidation shall be had and taken, at such

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place as the Judge of the Supreme Court in the judicial district within which the debtor last resided for six months, or for the longest time under six months, shall direct.

- (3.) Not less than two and not more than four clear days' notice of every first meeting shall be gazetted.

AS TO TRUSTEES.

Who may be trustee.

29. Any fit person, whether a creditor or not, shall be eligible as trustee. The trustee shall receive such remuneration as the creditors may determine, and it shall be his duty to conform to any directions which the creditors may give by resolution passed in accordance with this Act, or any rules to be prescribed thereunder, as to the manner in which the property is to be administered.

The creditors may, if they think fit, appoint more persons than one to the office of trustee; and where more than one are appointed, they shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of such persons; but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the debtor. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee.

If any vacancy occur in the office of trustee by death, resignation, or otherwise, the creditors in general meeting shall fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing trustee if there be more than one, or on the requisition of any three or more creditors.

The creditors may, by special resolution at a meeting specially called by any three or more creditors for that purpose, of which seven days' notice has been given by advertisement in the *Gazette*, specifying the object of such meeting, remove the trustee and appoint another person to fill his office.

If the estate of a trustee be placed in liquidation he shall cease to be trustee, and if there be no other trustee the creditors shall appoint another trustee in his place.

The property of the debtor shall vest in the trustee for the time being during his or their continuance in office, without any conveyance assignment or transfer whatever.

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

Upon any new appointment of a trustee, notice shall be given to the Registrar of the Court in which the resolution was filed.

Unless where other provision is hereinbefore made, all the powers by this section given to the creditors may be exercised by ordinary resolution to be passed as hereinbefore provided.

AS TO POWERS OVER DEBTOR.

Debtor to attend trustee.

30. The debtor shall attend the trustee on every reasonable notice given to him in writing or left at his usual or last known place of abode, and furnish the trustee with all required information respecting his estate, and assist the trustee in making out the accounts of the estate.

Examination on oath, &c.

31. The trustee, with the permission of the Court, may summon before him and examine on oath the debtor or his wife, or any person

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whatever known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor or any person whom the trustee may deem capable of giving any information respecting the debtor his trade dealings or property, and may require such person to produce any documents in his custody or power relating to the debtor his dealings or property; and if any person so summoned refuses or neglects to come before the trustee at the time appointed, or refuses or neglects to produce such documents, having no lawful impediment, then the Court may, by warrant, cause such person to be apprehended and brought up for examination before the Court.

32. If any person on examination admit he is indebted to the debtor, the Court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of examination.

Court may order payment of debt.

33. The trustee or any person acting under his authority may seize any property of the debtor divisible among his creditors under this Act.

Seizure of property.

34. The Court, upon the application of the trustee, may from time to time order that for such time as the Court thinks fit, not exceeding three months from the filing of the liquidation resolution, post letters, addressed to the debtor at any place or any of the places mentioned in the order, shall be re-directed sent or delivered by the Postmaster-General or the officers acting under him to the trustee or otherwise as the Court directs, and the same shall be done accordingly.

Post letters addressed to debtor.

35. The Court may, by warrant addressed to any constable or officer of the Court, cause a debtor to be arrested, and any books papers moneys goods and chattels in his possession to be seized, and him and them to be safely kept until such time as the Court may order, under the following circumstances:—

Arrest of debtor under certain circumstances.

- (1.) If after the passing of the liquidation resolution it appear to the Court that there is probable reason for believing that the debtor is about to go abroad or to quit his place of residence, with a view of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in liquidation.
- (2.) If after the passing of the liquidation resolution it appear to the Court that there is probable cause for believing that the debtor is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels, or any books documents or writings which might be of use to his creditors in the course of his liquidation.
- (3.) If after the passing of the liquidation resolution the debtor remove any goods or chattels in his possession, above the value of five pounds, without the leave of the trustee, or if, without good cause shown, he fails to attend any examination required by the trustee.

AS TO PROOFS, PREFERENTIAL PAYMENTS, ETC.

36. Every person with whom the debtor has before the passing of the liquidation resolution by the creditors contracted a debt, and every person to whom the debtor has before that time become liable in respect of a demand, may prove the amount of such debt or demand.

Proof of debt.

Debtors and Creditors.

Set-off.

37. Where mutual credit has been given by the debtor and any other person, or where there are mutual debts between the debtor and any other person, or where any person entitled to prove in respect of any debt or demand is indebted or liable to the debtor in respect of any debt or demand, the account between the debtor and such person shall be stated, and one debt or demand may be set against another, and no more than what appears due on either side on the balance of account shall be claimed or paid on either side.

Interest.

38. Where a debt or sum certain on which interest is not reserved or agreed for is due at the time of the passing of the liquidation resolution and is provable, the creditor may prove also for interest at eight pounds per centum per annum to the passing of the liquidation resolution from the time when the debt or sum was payable if it was payable by virtue of a written instrument at a certain time, or if not then from the time when demand of payment was made in writing, with a notice in writing that interest would be claimed from that demand until payment.

Discount.

39. Any creditor of the bankrupt in respect of a debt not payable at the time of the passing of the liquidation resolution, whether on a negotiable instrument or not, may prove the debt as if it was payable presently and receive dividends, allowing out of the dividends discount at eight pounds per centum per annum from the declaration of each dividend until the time when the debt is payable.

Instalments.

40. Where the debtor has before the passing of the liquidation resolution contracted a debt payable by instalments, the creditor may prove for the aggregate amount of the instalments unpaid.

Double proof.

41. Where the debtor is at the time of the passing of the liquidation resolution liable as member of two or more partnerships carrying on distinct trades and having distinct estates, or as a sole trader and also as member of a partnership on a bill of exchange promissory note or other negotiable instrument, or on any contract, the creditor to whom the debtor is so liable may prove against each of the estates on which the liability attaches, notwithstanding that at the time when the liability accrued he had notice of the connection between the partnerships or between the sole trader and the partnership.

Unliquidated damages.

42. Where the debtor is at the time of the passing of the liquidation resolution liable under a contract or promise to a demand in the nature of unliquidated damages, then notwithstanding that such contract or promise has not been broken before the passing of such resolution, the creditors may agree with the person claiming as to the amount to be allowed as assessed damages, and, if the parties do not agree, the Court may direct the damages to be assessed by a jury and may give all necessary directions for that purpose, and in any case the damages assessed may be proved under the liquidation.

Proof for money payable under process of contempt.

43. A person entitled to enforce against the debtor payment of any money costs or expenses by process of contempt issuing out of any Court may prove for the amount payable under the process, subject to such ascertaining of the amount as may be properly had by taxation or otherwise.

Distress not more than for twelve months' rent.

44. Distress for rent levied on the property of the debtor after the passing of the liquidation resolution, whether for rent due before or after the passing of the liquidation resolution, shall not be available for more than twelve months' rent accrued due before the day of such passing, but a person entitled to rent may prove for any rent due for which distress is not so available.

Apportioning of rent.

45. Where the debtor is liable to pay a rent, or to make any other payment falling due at fixed periods, and the passing of the liquidation resolution happens at a time other than one of those periods,

Debtors and Creditors.

the person entitled to the rent or payment may prove for a proportionate part thereof up to the day of the passing of the liquidation resolution as if it grew due from day to day.

46. The obligee in a bottomry or respondentia bond, and the assured in a policy of insurance made on good or valuable consideration, may claim under the liquidation of the estate of the obligor or insurer, and after the loss or contingency has happened may prove and receive dividends as if the loss or contingency had happened before the passing of the liquidation resolution.

Bottomry and respondentia bonds, and insurance policies.

47. Where a policy of insurance on a ship or on goods has been effected with the debtor as a subscriber or underwriter, the person effecting the policy may prove in respect thereof although he was not beneficially interested in the ship or goods, provided the person so interested is not within New Zealand.

Policies of insurance on ships, &c.

48. If the debtor is at the time of the passing of the liquidation resolution liable on a covenant contract or promise to pay premiums on a policy of insurance, or to make any other periodical payment, or to repay to any person or indemnify any person against such payment, the covenantee or other person entitled to the benefit of the covenant contract or promise may prove for the value of the debtor's liability thereunder

Premiums.

49. When the debtor has, before the passing of the liquidation resolution, contracted a debt payable on a contingency which has not happened before the passing of such resolution, the creditor may before the contingency happens prove for the value of the debt and receive dividends.

Contingent debts.

50. Where the debtor has, before the passing of the liquidation resolution, contracted a liability to pay money on a contingency which has not happened before the passing of such resolution, then if the liability is not provable under any other section of this Act the person with whom the liability has been contracted may claim for such sum, and after the contingency has happened and the demand had been ascertained may prove in respect thereof and receive dividends as nearly as may be as if the contingency had happened and the demand had been ascertained before the passing of the liquidation resolution, not disturbing former dividends: Provided that, in case the claim is not wholly or in part converted into a proof within six months from the passing of the liquidation resolution, it may at any time thereafter be expunged wholly or in part.

Contingent debts.

51. An annuity creditor of the debtor by whatever assurance the annuity is secured, whether there were or not any arrears due at the passing of the liquidation resolution, may prove for the value of the annuity, regard being had to its original price, and to the diminution in its value caused by the lapse of time to the filing of the petition.

Annuity creditors.

52. Where any person is at the time of the passing of the liquidation resolution surety or liable for any debt or liability of the debtor, and pays or satisfies the debt or liability or any part of it in discharge of the whole, although he does so after the passing of the liquidation resolution, the following provisions shall have effect:—

Sureties.

- (1.) If the creditor has proved, the surety or person liable may stand in his place in respect of the proof.
- (2.) If the creditor has not proved, the surety or person liable may prove for the payment made by him as a debt, not disturbing former dividends, and may receive dividends.

53. It shall not be lawful for any person entitled to an annuity granted by the debtor to sue any person who is surety for payment thereof until the annuitant has proved under the liquidation

Annuities.

Debtors and Creditors.

for the value of the annuity, and for the arrears thereof, and if the surety after such proof pays the amount proved he shall be thereby discharged from all claims in respect of the annuity, and if the surety does not, before any payment of the annuity subsequent to the passing of the liquidation resolution becomes due, pay the amount proved he may be sued for the accruing payments of the annuity until the annuitant, either by dividends under the liquidation or by payments from the surety, has received the amount proved with interest at eight per centum per annum from the time of notice to the surety of the proof and of the amount thereof, and after such receipt by the annuitant the surety shall stand in his place in respect of such proof for the amount received by the annuitant from the surety, and the debtor's order of discharge shall discharge him from all claims of the annuitant or of the surety in respect of the annuity.

Discharge of debtor when member of a joint stock company.

54. Where the debtor is at the time of the passing of the liquidation resolution a member of a company registered under "The Joint Stock Companies Act, 1860," or any Act for the like purposes, and not in the course of being wound up under that Act, he shall be by virtue of the passing of such resolution absolutely discharged from all liability in respect of such membership, and shall be deemed to have ceased to be a member as from the date of the passing of such resolution, and the company may prove under the liquidation for the amount of calls made before the passing of such resolution in respect of the shares held by the debtor and not paid, and may claim for the value, estimated as the Court directs, of the liability to calls to be made within one year after passing of such resolution in respect of such shares.

Proof for costs.

55. Every person who, under a verdict judgment decree order or rule in or of a Court of Law or Equity or other Court obtained before the passing of the liquidation resolution, would have been entitled to recover costs from the debtor if his estate had not been placed in liquidation, may prove for the amount of such costs when taxed, although the taxation is not had before the passing of such resolution.

Abandonment of action by creditor.

56. A creditor who has brought an action or instituted a suit against a debtor in respect of a debt or demand provable under the liquidation, shall not prove or claim thereunder in respect of that debt or demand without first relinquishing the action or suit, provided always as follows:—

- (1.) Such creditor shall not be liable by reason thereof to pay the costs of the action or suit.
- (2.) Where the action or suit is against the debtor jointly with any other person, the relinquishment thereof as against the debtor shall not affect the action or suit as against such other person.
- (3.) If the resolution is annulled the creditor may proceed in the action or suit as if he had not proved or claimed.

Proof of debt shall be election to come in under liquidation.

57. The proving or claiming of a debt or demand under the liquidation shall be deemed an election by the creditor to take the benefit of the liquidation resolution with respect to that debt or demand, and the Court may, if it thinks fit, accordingly restrain any action suit or proceeding by that creditor in contravention of this section.

How debt proved.

58. Every creditor of the debtor, who has not at or before the first meeting of creditors proved his debt in the prescribed manner, may after the passing of the liquidation resolution prove his debt by delivering or sending through the general post to the trustee a statement of his debt and of the account, if any, between him and the debtor, with a declaration made as prescribed that such statement is a true and complete statement of accounts between him and the debtor, and that the debt thereby appearing to be due from the debtor's estate to the creditor is justly due.

Debtors and Creditors.

59. Companies and other bodies incorporated or authorized to sue may prove by an agent, who shall be deemed the claimant, and who shall in his declaration declare that he is such agent, and that he is authorized to make such proof. Proof by company.

60. If any person wilfully and corruptly makes any declaration for proof of debt under this Act, knowing the same or the statement of account to which it is appended to be untrue in any material particular, he shall be deemed guilty of perjury. False declaration perjury.

61. The trustee of the debtor's estate shall have power to examine on oath or otherwise any person who has tendered or made a proof of a claim against the estate, whether preferential or otherwise, or who has made an affidavit or statement, and may summon any such person or any person capable of giving evidence concerning such proof or the debt sought to be proved, and in case any such person so summoned shall neglect or refuse to attend, or shall neglect or refuse to give evidence, it shall be lawful for the trustee to obtain a Judge's order to bring the person so neglecting or refusing before the Court for examination, and all costs incident to such order and examination shall be paid by the person so neglecting or refusing. Power of trustee to examine creditors.

AS TO CONSEQUENCES OF LIQUIDATION RESOLUTION.

62. The liquidation of the estate of a debtor shall be deemed to commence upon the passing of the liquidation resolution. Commencement of the liquidation.

63. Immediately upon the passing of the liquidation resolution all the property of the debtor, and all property which shall come to him before he obtains his discharge, save as is hereinafter excepted, and all debts due or to be due to him, and all his interest therein, shall become absolutely vested, for such interest as the debtor has therein, in the trustee for the time being, for the benefit of the creditors of the debtor. Vesting of property in trustee.

64. After the passing of the liquidation resolution neither the debtor nor any person claiming through or under him shall have power to recover any property or debt, or to make any release or discharge thereof, nor shall the same be attached for any debt of the debtor by any person, and the trustee for the time being shall have like remedy to recover the same in his own name as the debtor himself might have had if his estate had not been placed in liquidation. Right of action vested in trustee.

65. The property of the debtor divisible among his creditors, and in this Act referred to as the property of the debtor, shall not comprise the following particulars:— Description of property.

- (1.) Property held by the debtor in trust for any other person.
- (2.) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself his wife and children.
- (3.) Goods liable to stoppage *in transitu*, and coming into the possession of the debtor at any time between the summoning of the first meeting of creditors and the passing of the liquidation resolution, or into the possession of the trustee at any time thereafter, shall be held by the debtor until the passing of the liquidation resolution, and by the trustee thereafter as a trustee for the vendor of the said goods, but subject to a lien on behalf of the creditors of the debtor for so much of the purchase money of the said goods as shall have been paid. And in any such case the trustee shall have power, subject to the foregoing provisions, to sell and dispose of such goods as if the same were vested in the trustee as part of the estate of the debtor.

66. Where at the time of the adoption of the liquidation resolution the debtor holds a lease or agreement for a lease with or without an Leases, &c.

Debtors and Creditors.

agreement or covenant to purchase, or holds lands subject to a perpetual yearly rent reserved by the conveyance or agreement for conveyance thereof, the following provisions shall have effect:—

- (1.) The liability of the debtor in respect thereof shall cease on the passing of the liquidation resolution.
- (2.) On or before the first day after the passing of the liquidation resolution on which rent is payable in respect of such lease agreement or conveyance, not being later than six months after such passing, the trustee, by writing signed by him, shall elect whether or not to take the lease agreement or conveyance, and the debtor's estate shall continue liable until such election as if there had been no such resolution.
- (3.) If the trustee elects to take the lease agreement or conveyance, the debtor's estate shall continue liable as if there had been no liquidation resolution.
- (4.) If the trustee does not elect to take the lease agreement or conveyance within the time limited in that behalf, the land comprised therein shall go and remain to and with the person who would then be entitled thereto if the particular lease agreement or conveyance had not been made.

Agreement to purchase.

67. Where before the passing of the liquidation resolution the debtor has entered into an agreement for the purchase of any estate or interest in lands, the vendor thereof or any person claiming under him, if the trustee does not within one calendar month on being required elect to complete or to abandon the agreement, may apply to the Court, and the Court may thereupon order the trustee to deliver up the agreement and the possession of the property to the vendor or person claiming under him, or may make such other order as the Court thinks fit.

Transfer of stock.

68. Where the debtor has any Government stock funds or annuities, or any of the stock of any public company in New Zealand, standing in his name in his own right, all persons whose acts or consents are necessary in this behalf shall transfer such stock funds or annuities into the name of the trustee, and pay all dividends then due or thereafter to accrue due thereon to the trustee.

Property out of New Zealand.

69. Where the debtor has any property of any kind whatsoever or any right title or interest in any property whatsoever anywhere other than in New Zealand of which he may by law dispose, he shall, if ordered by the Court so to do, forthwith execute all necessary assurances for granting and assigning the same to the trustees for the time being, for the benefit of the creditors of the debtor.

Payment of money by agent &c.

70. Any treasurer or other officer of any bank, solicitor or other agent of the debtor, shall pay and deliver over to the trustee all money and securities in his custody possession and power as such officer or agent, which he is not by law entitled to retain as against the debtor or the trustee.

AS TO DEALING WITH PROPERTY OF DEBTOR.

Power of appointment.

71. It shall not be lawful for any debtor after the passing of the liquidation resolution to execute, whether before or after he obtains his discharge, any power of appointment, or any other power vested in him, so as to defeat or destroy any contingent or other estate or interest in any property to which he was at or before his discharge beneficially entitled, in default of appointment or otherwise in case of non-execution of the power.

Powers vested in debtor.

72. Powers vested in the debtor, which he might legally

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execute for his own benefit, may be executed by the trustee for the benefit of the creditors as the debtor might have executed the same.

73. Where the goods of any person have been taken in execution in respect of a judgment or judgments for a sum or sums exceeding in the aggregate fifty pounds, and sold, the Sheriff, or in the case of a sale under the direction of any District Court or any Resident Magistrate's Court the Clerk or other officer of the District Court or Resident Magistrate's Court, shall retain the proceeds of such sale in his hands for a period of seven days, and upon notice being served on him within that period of a general meeting of creditors of such person being called, he shall retain such money until a trustee has been appointed, and shall then pay such proceeds to the trustee; but if no notice of such general meeting shall have been served on him within such period of seven days, he shall pay the proceeds to the judgment creditor.

Proceeds of sale and seizure of goods.

74. Any settlement of property made by a debtor not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the estate of the settlor be placed in liquidation within two years after the date of such settlement, be void as against the trustee of the debtor appointed under this Act, and shall, if the affairs of the settlor be placed in liquidation at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee: Any covenant or contract made by a debtor in consideration of marriage for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, upon his estate being placed in liquidation before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under this Act.

Avoidance of voluntary settlement.

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

75. Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the estate of the person making taking paying or suffering the same be placed in liquidation within three months after the date of making taking paying or suffering the same, be deemed fraudulent and void as against the trustee of the debtor appointed under this Act; but this section shall not affect the rights of a purchaser payee or encumbrancer in good faith and for valuable consideration.

Avoidance of fraudulent preference.

76. If the debtor, at the time of the passing of the liquidation resolution, has in his possession order or disposition, by the consent and permission of the true owner thereof, any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale alteration or disposition as owner, the Court may order the same to be sold disposed of or applied for the benefit of the creditors under the liquidation: Provided that nothing herein shall affect any transfer or

Provisions respecting chattels in order and disposition of debtor.

Protection of certain securities.

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assignment of any ship or any share thereof made as a security for any debt by way of mortgage, duly registered according to the enactments relative to the registration of ships for the time being in force.

Provided also that nothing herein contained shall be construed to prejudice or affect any *bond fide* security held over or in respect of any such goods or chattels, unless the time fixed by such security for taking possession thereof, or for exercising any power of seizure or sale thereof, has matured or elapsed.

Protection to certain transactions of debtor.

77. Nothing in this Act contained shall render invalid—

- (1.) Any payment made in good faith and for value received to any debtor before the date of the passing of the liquidation resolution by a person not having at the time notice of the intention of the debtor to bring his estate under liquidation.
- (2.) Any payment or delivery of money or goods belonging to a debtor, made to such debtor by a depositary of such money or goods before the date of the passing of the liquidation resolution, who had not at the time of such payment or delivery notice of the intention of the debtor to bring his estate under liquidation.
- (3.) Any contract or dealing with any debtor made in good faith and for valuable consideration before the date of passing of the liquidation resolution or notice of first meeting called by a creditor, by a person not having at the time of making such contract or dealing notice of the intention of the debtor to bring his estate under liquidation.

Joint creditor may prove for purposes of voting.

78. If the estate of one partner of a firm be placed in liquidation, any creditor to whom the debtor is indebted jointly with the other partners of the firm or any of them may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat, but shall not receive any dividend out of the separate property of the debtor until all the separate creditors have received the full amount of their respective debts.

AS TO DISTRIBUTION OF ESTATE.

Order of distribution of estate.

79. The trustee of an estate in liquidation shall, subject to the provisions of this Act, pay and apply the proceeds arising from the collection, getting in, and sale or mortgage of the estate in manner following, that is to say,—

- (1.) In payment of all taxes costs charges allowances and expenses properly incurred by or payable by him in the execution of his office of trustee.
- (2.) In payment of the remuneration or commission allowed to him by the creditors under this Act.
- (3.) In payment of all preferential debts and sums of money directed or authorized by this Act to be paid to creditors or others in priority to the general creditors, and if the estate be insufficient to meet such preferential debts and sums of money they shall abate in equal proportions between themselves.
- (4.) In payment to and amongst all other creditors who have proved their debts rateably in proportion to the amounts of their respective proofs.

Provided that the trustee shall not declare any dividend until after the expiration of the prescribed time, or such time as the Court or a Judge may order.

Joint and separate dividends.

80. Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the applica-

Debtors and Creditors.

tion of any person interested, be declared together, and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

81. The following preferential claims shall be allowed before any dividend is declared :—

- Preferential
payments.
- Wages and salaries.
- (1.) When at the time of the passing of the liquidation resolution the debtor was indebted to any servant or clerk for wages or salary, the trustee, on proof thereof, shall pay so much as is due, not exceeding six months' wages or salary, and not exceeding one hundred pounds, to such servant or clerk out of the debtor's estate, and such servant or clerk may prove for any sum exceeding that amount.
 - (2.) When at the time of the passing of the liquidation resolution the debtor was indebted to any artisan labourer or workman, whether skilled or unskilled, of the debtor, in respect of his wages or labour, the trustee, on proof thereof, shall pay so much as is due, not exceeding one month's wages at current rates, to such artisan labourer or workman out of the debtor's estate, and such artisan labourer or workman may prove for any sum exceeding that amount.
 - (3.) When at the time of the passing of the liquidation resolution any person is apprenticed to the debtor, the passing of the resolution shall be a complete discharge of the deed or articles of apprenticeship, and if any money has been paid by or on behalf of such apprentice to the debtor as an apprenticeship fee, the Court, on proof thereof, may, if it thinks fit, order such sum as the Court thinks reasonable to be paid out of the debtor's estate to or for the use of the apprentice, regard being had to the amount paid by him or on his behalf, and to the time during which he resided or served with the debtor under the deed or articles before the passing of the resolution.

82. The creditors shall from time to time, by resolution, make such allowance to the debtor out of his estate until he has obtained his order of discharge as they may consider necessary for the support of the debtor and his family.

Allowance to debtor.

83. The trustee shall from time to time declare a dividend amongst the creditors who have proved to his satisfaction debts provable in liquidation, and shall distribute the same accordingly, and, in the event of his not declaring a dividend for the space of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not declaring the same: Provided always that any creditor whose claim has been disallowed by the trustee may appeal to the Court against such decision. Notice of the time and place where the dividend will be paid shall be inserted in the *Gazette* as prescribed.

When trustee shall
declare dividend.

84. In the calculation and distribution of a dividend, it shall be obligatory on the trustee to make provision for debts provable in liquidation appearing from the debtor's statements or otherwise to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in liquidation being the subject of claims not yet determined.

When creditors
resident abroad.

85. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any moneys for the time being in the hand of the trustee, any dividend or

When creditor
proves debt after
declaration of
dividend.

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dividends he may have failed to receive, before such moneys are made applicable to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

When final dividend to be declared.

86. When the trustee has converted into money all the property of the debtor, or so much thereof as can, in the joint opinion of himself and of the creditors, be realized without needlessly protracting the liquidation, he shall declare a final dividend, and give notice of the time at which it will be distributed.

Debtor to have surplus.

87. The debtor shall be entitled to any surplus remaining after payment of his creditors, and of the costs charges and expenses of the liquidation.

No action against trustee for dividend.

88. No action or suit for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, upon the application of any creditor whose dividend remains unpaid, order the trustee to pay the same, and also to pay out of his own moneys interest thereon for the time that it is withheld and the costs of the application.

Trustee may apply for advice &c. to the Court.

89. A trustee may apply to the Court upon a statement in writing, verified by affidavit, for the opinion advice or direction of the Court on any question respecting the management of the estate, and notice of such application shall be served upon, and the hearing thereof be attended by, all persons interested or such of them as the Court shall think expedient, and the trustee, acting upon the opinion advice or direction of the Court, shall be deemed to have discharged his duty in the subject-matter of the application: Provided that such trustee shall not have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion advice or direction; and the costs of such application shall be in the discretion of the Court.

AS TO CLOSE OF THE LIQUIDATION.

Trustee to summon meeting of creditors, upon passing resolution.

90. When the whole of the property has been realized for the benefit of the creditors, or so much thereof as can in the opinion of the trustee be realized without needlessly protracting the liquidation, the trustee shall call a meeting of the creditors and make a report to them, and the creditors, if satisfied that the whole of the property of the debtor has been realized for the benefit of his creditors, or so much as can be realized without needlessly protracting the liquidation, shall by a special resolution declare that the liquidation has closed, and the liquidation shall be deemed to have been closed at and after the date of such special resolution: Provided that if the creditors, or a sufficient number of creditors, do not attend at such meeting, or at any adjournment thereof, it shall be lawful for the trustee or the debtor to apply to the Court, and such Court may, upon such evidence as to it shall seem sufficient, make order that the liquidation shall be closed. Any order so made shall be as effectual for all purposes as if a special resolution had been passed by the creditors as hereinbefore provided.

Debtor or creditor may summon meeting to review proceedings of trustee.

91. If the debtor or any creditor or creditors shall at any time be dissatisfied with the management of the estate, he or they may require the trustee to call a special meeting of creditors, who shall examine into the cause of complaint.

At such meeting, or any adjournment thereof, the trustee shall, if required by the debtor or any creditor, produce to the meeting a statement showing what property of the debtor has been realized.

If the creditors, after examining such statement and hearing any

Debtors and Creditors.

evidence which the debtor or trustee may adduce, shall be of opinion that the liquidation should be closed, they shall by special resolution declare the liquidation closed, and the liquidation shall be deemed to have been closed from the date of such special resolution.

92. The resolution declaring the liquidation to be closed shall be filed in the Court, and a copy thereof shall be inserted in the *Gazette*, and the production of a copy of such *Gazette* shall be conclusive evidence of such resolution having been made, and of the date and contents thereof.

Resolution to be gazetted.

AS TO ORDER OF DISCHARGE.

93. When the liquidation has by special resolution been declared to be closed, the debtor may apply to the creditors for an order of discharge, and the creditors, if satisfied that the debtor has given up to the trustee all the property which he is required by this Act to give up, and that no prosecution has been commenced or is about to be commenced against him in pursuance of the provisions relating to the punishment of fraudulent debtors contained in "The Fraudulent Debtors Act, 1875," in respect of any offence alleged to have been committed by him against the said Act, shall by special resolution grant to the debtor such order of discharge.

Debtor may apply for order of discharge.

If the creditors shall refuse such order of discharge, then, subject to the right of appeal against such decision as hereinafter provided, it shall be lawful for the debtor at any time or from time to time, and subject to any prescribed rules, to renew such application to the creditors for an order of discharge.

94. If the creditors shall refuse such order of discharge, and the debtor shall be dissatisfied with such refusal, he may within fourteen days after the passing of the special resolution refusing such order of discharge appeal to the Court, and the Court shall be at liberty either to confirm the special resolution of the creditors or reverse the same and decide that the order of discharge be granted.

Appeal upon order refused.

95. A copy of the order of discharge shall be filed in the Court, and notice of its being granted inserted in the *Gazette*.

Order gazetted.

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

Effect of order of discharge.

- (1.) Debts due to the Crown;
- (2.) Debts with which the debtor stands charged at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the Sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence:

And he shall not be discharged from such excepted debts unless the Colonial Treasurer certify in writing his consent to his being discharged therefrom.

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

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

Not to release partner of debtor.

Schedule.

SCHEDULE.

- "The Bankruptcy Act, 1867."
- "The Bankruptcy Act Amendment Act, 1868."
- "The Bankruptcy Acts Amendment Act, 1870."
- "The Bankruptcy Act 1867 Amendment Act, 1874."

WELLINGTON, NEW ZEALAND:

Printed under the authority of the New Zealand Government, by GEORGE DIBSBURY, Government Printer