

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.
Legislative Council,
16th August, 1870.

(Hon. Mr. Sewell.)

Bankruptcy.

ANALYSIS.

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A BILL INTITULED

Title. AN ACT to amend "The Bankruptcy Act, 1867," and
"The Bankruptcy Act Amendment Act, 1868."

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 Bankruptcy Acts
Amendment Act, 1870," and it shall come into operation on the
day of one thousand eight hundred and seventy.

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PART I.

**Interpretation of
certain terms.**

INTERPRETATION AND REPEAL.

2. "The Bankruptcy Act, 1867," is herein referred to as "the
said Act;" "The Bankruptcy Act Amendment Act, 1868," is herein
referred to as "the said Amendment Act," and the said two Acts
are herein referred to as "the said Acts." And this Act as well as
the said Amendment Act shall be read as part of the said Act.

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**"Adjudication"
interpreted.**

3. The term "adjudication," where used in the said Acts or this
Act, shall mean the order adjudging the debtor bankrupt, whether the
same be absolute in the first instance or not, unless there be something
in the context repugnant thereto or inconsistent therewith.

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**Effect of publication
of notice under sec. 8
of Amendment Act.**

4. The publication of the notice provided for in section eight of
the said Amendment Act shall, for the purposes of the said Acts and
this Act, be deemed to have the same effect as if the Trustee had been
chosen by the creditor and an order had been made confirming the
choice.

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Repeal.

5. The fourteenth, forty-sixth, and two hundred and twenty-
first sections of the said Act, and the sections of the said Act
numbered from two hundred and forty-six to two hundred and
eighty-five, both inclusive, and the fifth, ninth, tenth, eleventh, and
twelfth sections of the said Amendment Act, are hereby repealed:

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Saving proviso.

Provided that this repeal shall not affect the past operation of the
said provisions or the validity of anything done or suffered, or any
right title or obligation, or liability accrued before the coming into
operation of this Act by or under such provisions; nor shall the repeal
interfere with the prosecution or affect the course of proceeding under
or in relation to any petition or deed registered or filed, or order made
or thing done, under any such repealed provisions before the coming
into operation of this Act, or affect any of the incidents or conse-
quences of any such petition deed or order.

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PART II.

JURISDICTION AND OFFICERS.

**Judge may sit in
Chambers.**

6. Any Judge of the Supreme Court may sit in Chambers, and
when in Chambers shall have the same jurisdiction and exercise the
same powers as if sitting in open Court; but the last examination
provided for in Part nine of the said Act shall be held in open
Court, and the order for discharge shall be made in open Court.

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**Judge may delegate
powers to Registrar
or Clerk.**

7. The Judge of the Supreme Court to whom any judicial
district is assigned may, subject to any general rules, from time to
time delegate to the Registrar or Deputy Registrar respectively of the
Supreme Court at each place in his district where there is an officer
of such Court, whether a sitting of the Court is usually held at such
place or not, and whether the Judge resides at such place or not,
such of the powers vested in the Court or the Judge thereof by the
said Acts and this Act as it may seem expedient to the Judge to
delegate; and every Judge of a District Court may, subject as afore-
said, from time to time delegate to the Clerk of the Court at each
place in his district where such Court is held, such of the powers
vested in the District Court or the Judge thereof by the said Acts and

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this Act, as it may seem to such Judge expedient to delegate to such person; and such Registrar, Deputy Registrar, or Clerk may, subject as aforesaid, during vacation or during the illness or absence of the Judge from the Town at which such Registrar, Deputy Registrar, or Clerk is appointed to act, exercise such delegated powers.

8. Whereas by the twenty-second section of the said Act, it is provided that whenever it shall be made to appear to the Governor that in any judicial district of the Supreme Court it is expedient that some other person should be appointed to perform the duties of Provisional Trustee in such district instead of the Registrar, Deputy Registrar, and Clerk of the District Courts in such judicial district, it shall be lawful for the Governor to appoint such person as he shall think fit for such judicial district to be Provisional Trustee, who shall be subject to the Supreme Court, and to all District Courts within such judicial district, in relation to any estate in respect of which he is, by order of any of such Courts, directed to act; and whenever any person shall be so appointed for any judicial district, the Registrar, Deputy Registrar, and Clerks of District Courts within such judicial district shall cease to act as Provisional Trustee under the said Act: And whereas it may in some cases be expedient to appoint a person to act as Provisional Trustee at each Supreme Court Office and District Court Office in each such judicial district, instead of one person for all such offices in such judicial district: Therefore the Governor may from time to time appoint such person as he shall think fit for any office of the Supreme Court or District Court to be Provisional Trustee at and for the Court for which he is appointed, and may remove any such person so appointed and appoint another person in his place; and whenever any person shall be so appointed for any such Court, the Registrar, Deputy Registrar, or Clerk of such Court, as the case may be, or the person (if any) appointed under the said recited section for the judicial district in which such Court is, shall cease to act as Provisional Trustee, and immediately on any such appointment being made and published in the General Government *Gazette*, all the estate of the bankrupt vested in the outgoing Provisional Trustee shall, by virtue of such appointment, and without any conveyance or assignment, be transferred to and become vested in the person so appointed.

9. For the purposes of this Act and the said Acts the term "Provisional Trustee" shall include any Registrar or Deputy Registrar of the Supreme Court, or Clerk of a District Court, acting as Provisional Trustee by virtue of his office; also any person appointed to act as such under the twenty-second section of the said Act or the eighth section of this Act.

10. Whenever any Provisional Trustee shall die resign or be removed from, or otherwise cease to hold the office of Provisional Trustee, all estates properties and rights which may have become vested in such Trustee by virtue of his office shall, on his ceasing to be such Trustee and on the notification of the appointment of his successor in the said office of Provisional Trustee in the General Government *Gazette*, be transferred to and vested in the person so appointed as such successor, with the like powers authorities and discretions as his predecessor in the said office.

11. In all cases where a Provisional Trustee has, before the passing of this Act, died resigned or been removed from or ceased to hold the office of Provisional Trustee, except in cases where a new Trustee has been elected by creditors, all estates properties and rights which shall have become vested in such Trustee by virtue of his office shall, from the notification of the appointment of his successor in the said office of Provisional Trustee in the General Government *Gazette*, be or be deemed to have been transferred to and vested in the person so

Section 22 of the said Act recited.

Governor empowered to appoint a person at each Court to be Provisional Trustee.

Term "Provisional Trustee" interpreted.

Provisional Trustee ceasing to hold office, property &c. to vest in successor.

Estates &c. vested in any Provisional Trustee who has heretofore ceased to hold office to be deemed to have vested in successor.

appointed as such successor, with the like powers authorities and discretions as his predecessor in the said office.

Outgoing Provisional Trustee to deliver money to successor.

12. Every outgoing Provisional Trustee, and the executors of any deceased Provisional Trustee, shall within one week, or such other time after the appointment of his successor as the Court shall appoint, pay or deliver over to such successor all moneys and properties whatsoever belonging to the respective estates which may have been vested in such outgoing Trustee by virtue of his said office, and which may or ought to be in his or their possession or control, and shall render full and accurate statements and accounts, in writing, of all moneys received and paid on account of such estates respectively: Provided always that any charges and expenses which any outgoing Trustee shall be entitled to make or charge against any such estate shall be allowed or reimbursed by his successor out of the proceeds of such estates respectively: Provided also that nothing herein contained shall in anywise release or discharge any outgoing Trustee or his estate from liability in respect of acts done or suffered by him during his trusteeship, or from the summary jurisdiction of the Court with reference to his conduct as such Trustee.

PART III.

ACTS OF BANKRUPTCY.

Acts of bankruptcy.

13. The following shall be deemed to be acts of bankruptcy within the meaning of the said Acts and this Act:—

Filing declaration of insolvency.

(1.) If any person files in the Court a declaration of insolvency, in the manner prescribed by the said Acts and this Act, such person shall be deemed thereby to have committed an act of bankruptcy.

Deed of assignment for benefit of creditors generally.

(2.) If any person in New Zealand or elsewhere, after the commencement of this Act, makes or causes to be made a conveyance or assignment of his property to a trustee or trustees for the benefit of creditors generally.

PART IV.

DECLARATION OF INSOLVENCY.

Declaration of insolvency, how to be filed.

14. When any person files a declaration of insolvency he shall deliver therewith to the proper officer of the Court where the declaration is filed, a written notice of the filing thereof, to be gazetted in the manner required by the said Acts, and shall pay to such officer the charges for publishing the same, and such officer shall without delay cause such notice to be gazetted in the manner required by the said Acts. And no such declaration hereafter made shall be deemed to have been filed within the meaning of the said Acts or this Act until such notice has been delivered and such charges paid.

List of property to be filed with declaration.

15. The debtor shall also, at the time of filing any declaration of insolvency, deliver to the proper officer of the Court where the declaration is filed a list signed by him, and verified by affidavit written at the foot of such list, and duly made before a Justice of the Peace or any other person authorized by law to administer an oath, showing all his property and the estimated value thereof, and the place or places where the same is situated or deposited, and the names residences and occupations of his creditors, and he may from time to time add to or amend such list.

Copy to be given to Provisional Trustee.

16. A copy of such list, and of every amendment thereof, shall immediately after the filing of the same be delivered by the debtor to the Provisional Trustee acting in and for the district within which the declaration of insolvency is filed.

By filing declaration, property and person

17. The protection of the debtor's person and property from execution, attachment and other process, under the forty-ninth section

of the said Act, shall continue only for fourteen days after the notice of filing the said declaration has been gazetted, unless the Court shall by order extend the time of protection, and notice of such order shall have been published in the *Gazette*. The Court may from time to time make an order extending the time of protection in each case upon reasonable cause shown.

protected only for fourteen days, unless time extended by Court.

18. The Provisional Trustee shall, immediately on the filing of a declaration of insolvency, take possession of the debtor's estate, and shall retain possession thereof, either personally or by a bailiff or assistant appointed by him, until there shall be a Trustee of the said estate under the said Acts either chosen by the creditors, and confirmation of such choice, or in such other of the modes provided by the said Acts and this Act; but if the Provisional Trustee, or if the Court, on the representation of any creditor, is of opinion that the keeping possession of the debtor's estate is not requisite for the due protection of the creditors, such possession shall not be continued, and until there shall be such Trustee of such estate the Provisional Trustee shall have and perform, and may exercise, all the rights duties and powers by the said Acts vested in and imposed on the Trustee; and all provisions of the said Act and this Act relative to the vesting of the estate of the bankrupt, and to the rights duties and powers of the Trustee, shall accordingly be read as extending and applying to the Provisional Trustee as from the filing of such declaration of insolvency, and by virtue thereof, but the Provisional Trustee shall in all respects act subject and according to the directions of the Court.

Provisional Trustee to take possession of debtor's property immediately after filing of declaration of insolvency.

PART V.

ADJUDICATION.

19. All the unrepealed provisions of the said Act relating to petitions for adjudication filed by creditors on any act of bankruptcy specified in the twenty-seventh section of the said Act shall apply to every petition for adjudication filed by a creditor, when the act of bankruptcy is constituted by filing a declaration of insolvency, and every such petition may be filed forthwith or at any time within two months after the filing of the declaration of insolvency: Provided that if an order of adjudication is made on any such petition, such adjudication shall be absolute in the first instance.

Creditor's petition on act of bankruptcy by filing declaration.

20. If no petition for adjudicating the debtor a bankrupt is filed either by the debtor or a creditor within two months after the filing of a declaration of insolvency, or within the time during which protection is extended under the fifteenth section of this Act, the Provisional Trustee shall give up possession of the property of which he shall have taken possession to the debtor, unless otherwise ordered by the Court.

If no petition presented, property to be given up to debtor.

21. A debtor may petition for adjudication against himself on an act of bankruptcy constituted by filing a declaration of insolvency as by the said Acts and this Act provided, but not on any other act of bankruptcy, and such petition may be filed at the same time as, or at any time within three days after, the filing of the said declaration.

Debtor's petition on act of bankruptcy by filing declaration.

PART VI.

SUPERVISORS.

22. Notwithstanding anything in the said Acts or this Act to the contrary, it shall not be imperative upon or necessary for the creditors in any case to elect Supervisors of the bankrupt's estate.

Supervisors need not be elected.

23. Where no Supervisors have been chosen, the Trustee may act on his own discretion in cases where he would otherwise have been bound to refer to such Supervisors.

Trustee may act on his discretion if no Supervisors chosen.

PART VII.

MEETINGS OF CREDITORS.

24. At any meeting of creditors duly convened and held pursuant to the provisions of the said Acts and of this Act, any resolution passed

Special resolution defined.

by a majority representing two-thirds in number and value of the creditors present, either personally or by proxy, at such meeting, and entitled to vote thereat, shall be deemed to be a special resolution within the provisions of the said Act and of this Act: Provided that any special resolution discharging a bankrupt shall be passed by a majority in numbers representing three-fourths in value of all the creditors present and absent. 5

Regulation in section 106 of the said Act apply to first as well as subsequent meeting.

25. It is declared and enacted that all the provisions contained in the hundred and sixth section of the said Act do and shall apply to first as well as subsequent meetings of creditors in bankruptcy, and such subsequent meetings may be presided over by any person chosen by the creditors assembled at such meeting. 10

PART VIII.

CONSEQUENCE OF ADJUDICATION WITH RESPECT TO PROPERTY.

Relation back of act of bankruptcy.

26. The bankruptcy of a debtor shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being completed on which the order is made adjudging him to be bankrupt, or if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and to commence at the time of the first of the acts of bankruptcy that may be proved to have been committed by the bankrupt within twelve months next preceding the date of the order of adjudication whether absolute in the first instance or not, but the bankruptcy shall not relate to any prior act of bankruptcy unless it be that at the time of committing such prior act the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a creditor's petition for adjudication, and unless such debt or debts are still remaining due at the date of the order of adjudication. 15 20 25

Avoidance of voluntary settlements.

27. Any settlement of property made by any person 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 settlor becomes bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt appointed under the said Acts or this Act, and shall, if the settlor becomes bankrupt at any subsequent time within five 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: Provided always that nothing herein contained shall prejudice or affect the rights or interest of any *bona fide* purchaser without notice of any act of bankruptcy committed by the debtor, who shall have duly acquired by purchase, for valuable consideration, any of the property, whether real or personal, comprised in such settlement, and, as to real estate, who shall claim under any conveyance duly registered before the registration of any memorial of the bankruptcy. 30 35 40 45

Proviso saving rights of *bona fide* purchasers for value.

Certain covenants for future settlements to be avoided.

28. Any covenant or contract made by any person 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 becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under the said Acts or this Act. 50 55

Interpretation of "Settlement."

29. "Settlement" shall, for the purposes of the two preceding sections, include any conveyance or transfer of property.

30. Section 139 of the said Act is hereby repealed.

Section 139 of said Act repealed.
Disclaimer of onerous contracts, &c.

31. When any property of the bankrupt acquired by the Trustee under this Act consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the Trustee, notwithstanding he has endeavoured to sell, or has taken possession of such property or exercised any act of ownership in relation thereto, may, by writing under his hand, disclaim such property.

32. Upon the execution of such disclaimer the property disclaimed shall, if the same is a contract, be deemed to be determined from the date of the order of adjudication, and if the same is a lease be deemed to have been surrendered on the same date, and if the same be shares in any company be deemed to be forfeited from that date, and if any other species of property it shall revert to the person entitled on the determination of the estate or interest of the bankrupt, but if there shall be no person in existence so entitled, then in no case shall any estate or interest therein remain in the bankrupt.

Effect of disclaimer.

33. Any person interested in any disclaimed property may apply to the Court, and the Court may, upon such application, order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just.

Persons injured may apply to Court.

34. Any person injured by the operation of this section shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy.

Persons pecuniarily injured may prove.

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

Trustee not to disclaim in certain cases.

36. When the reversion expectant upon any lease, made either before or after the passing of this Act, of any tenements or hereditaments, of any tenure, shall be deemed to have been surrendered or merge by reason of any disclaimer by the Trustee, the estate which shall for the time being confer as against the tenant under the same lease the next vested right to the same tenements or hereditaments, shall, to the extent and for the purpose of preserving such incidents to, and obligations on, the same reversion, as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on such lease.

Effect of disclaimer of leasehold property.

PART IX.

POSSESSION, COLLECTION, AND MANAGEMENT OF ESTATES.

37. The Trustee shall in the administration of the property of the bankrupt and in the distribution thereof amongst the creditors, have regard to any directions that may be given by resolution of the creditors at any meeting thereof; and any direction so given by the creditors at any meeting shall be deemed to over-ride any directions or consent given by the Supervisors if any.

Trustees to give effect to directions of creditors as to administration of bankrupt's property.

38. Subject to the provisions of the said Acts and this Act and to any such direction as aforesaid, the Trustee shall exercise his own discretion in the management of the estate and its distribution amongst the creditors.

Subject to the provisions of the Acts and directions of creditors, Trustee to act according to his own discretion.

39. The Trustee may from time to time summon meetings of the creditors for the purpose of ascertaining their wishes, and he may

Trustee may summon meetings of creditors.

or apply to Court for direction.

also apply to the Court for directions in relation to any particular matter arising under the bankruptcy.

Court may summon meetings of creditors.

40. The Court may from time to time summon meetings of the creditors for the purpose of ascertaining their wishes, and may, if the Court thinks fit, appoint the Registrar or some other person to preside at such meetings. 5

Trustee to report when whole estate of bankrupt realized.

41. When the whole property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can, in the joint opinion of the Trustee and Supervisors (if any), be realized without needlessly protracting the bankruptcy, or a composition or arrangement has been completed, the Trustee shall make a report accordingly to the Court. 10

Bankruptcy may be closed.

42. The Court if satisfied that the whole of the property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can be realized without needlessly protracting the bankruptcy, or that a composition or arrangement has been completed, shall make an order that the bankruptcy has closed, and the bankruptcy shall be deemed to have closed at and after the date of such order. 15

Order to be published.

43. A copy of the order closing the bankruptcy may be published in the *New Zealand Gazette*, and the production of a copy of such *Gazette* containing a copy of the order shall be conclusive evidence of the order having been made, and of the date and contents thereof. 20

PART X.

ACCOUNTANT, AND CONTROL OF TRUSTEES.

Accountant for each Judicial District may be appointed, instead of one for whole Colony.

44. If it should appear expedient that instead of an Accountant for the whole Colony, an Accountant should be appointed for each Judicial District of the Supreme Court or any part thereof, the Governor may for each such district or any part of any such district from time to time appoint a person to be Accountant in Bankruptcy under the said Acts and this Act in relation to every estate brought under the said Acts and this Act at any office of the Supreme Court or district within the district for which he is appointed, and may remove any such person so appointed; and as to such estate and every Trustee thereof, and the bankrupt whose the estate shall have been, such person so appointed shall have all the powers and duties conferred by the said Acts and this Act on the Accountant in Bankruptcy. 25
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Bankrupt or any person aggrieved may complain to Court under section 233 of the said Act.

45. The bankrupt or any person aggrieved may apply to the Court under section two hundred and thirty-three of the said Act.

PART XI.

LIQUIDATION BY ARRANGEMENT.

Debtor unable to pay debts may summon a meeting of creditors.

46. A debtor unable to pay his debts, whether he has committed an act of bankruptcy or not, may summon a special meeting of his creditors to be held.

At meeting those present may resolve that estate be liquidated by arrangement.

47. Such meeting of creditors may, by special resolution as defined by this Act, declare that the debtor's estate be liquidated by arrangement and not in bankruptcy, and may at that or some subsequent meeting, held at an interval of not more than seven days, appoint a trustee with or without supervisors. 45

Meeting to elect Trustee.

Provisions as to first meetings &c. to apply to meetings under this Part.

48. All the provisions of the said Acts and this Act, relating to a first meeting of creditors and to subsequent meetings of creditors in the case of a bankruptcy, including the description of creditors entitled to vote at such meetings, and the debts in respect of which they are entitled to vote, shall apply respectively to the first meeting of creditors and to subsequent meetings of creditors, for the purposes of this Part, subject to the following modifications:— 55

(a.) That every such meeting shall be presided over by such chairman as the meeting may elect: and

(b.) That no creditor shall be entitled to vote until he has proved by a statutory declaration a debt provable in bankruptcy to be due to him, and the amount of such debt, with any particulars prescribed in the Schedule hereto, or by general rules; and any person wilfully making a false declaration in relation to such debt shall be guilty of a misdemeanour.

49. The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the meetings at which the special resolution is passed, and shall answer any inquiries made of him; and he, or if he is so prevented from being at such meeting, some one on his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due, and such statement shall be verified by a declaration signed and made by the said debtor, and written at the foot thereof, which declaration may be made before and taken by any Justice of the Peace, or by any person authorized to administer an oath in any proceedings in the Supreme Court or in any District Court.

Debtor to attend meetings.

50. The special resolution, together with the statement of the assets and debts of the debtor, and the name of the Trustee appointed, and of the Supervisors, if any, certified respectively under the hand of the Chairman of the meeting at which such resolution was passed, and such Trustee and Supervisors, if any, were elected shall be presented to the Registrar or Clerk of the Court having jurisdiction, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this Part; but if satisfied that it was so passed, and that a Trustee has been appointed with or without Supervisors, he shall forthwith register the resolution and the statement of the assets and debts of the debtor, and such resolution and statement shall be open for inspection on such conditions, if any, as may be prescribed by general rules; and the liquidation by arrangement shall be deemed to have commenced as from the date of the appointment of the Trustee.

Special resolution &c. to be registered if duly passed.

51. All such property of the debtor as would, if he were made bankrupt, be divisible amongst his creditors, shall, from and after the date of the appointment of a Trustee, vest in such Trustee under a liquidation by arrangement, and be divisible amongst the creditors; and all such settlements conveyances transfers charges payments obligations and proceedings as would be void against the Trustee in the case of a bankrupt, shall be void against the Trustee in the case of a liquidation by arrangement.

All property of debtors which would be divisible amongst creditors in case of bankruptcy to be divisible under liquidation.

52. Where no Supervisors are appointed, the Trustee may act on his own discretion in cases where he would otherwise have been bound to refer to such Supervisors.

Where no Supervisor appointed, Trustee may act without.

53. In calculating a majority on a special resolution for the purposes of this Part, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number.

Creditors not exceeding £10 to be calculated in value but not in number.

54. A certificate under the hand of the Registrar or Clerk of the Court, showing that any person has been elected trustee of a debtor under this Act, shall be evidence thereof, and such certificate having indorsed thereon or attached thereto the requisite plans and descriptions, if any, may be registered in the office of any Registrar of Deeds, in the same manner as instruments affecting land.

Certificate of Registrar to be evidence of appointment of Trustee.

55. The Trustee and Supervisors appointed under this Part shall respectively have the same powers, and perform the same duties as a trustee or supervisors under a bankruptcy, and the property of the debtor shall be distributed in the same manner as in a bankruptcy, and, with the modification hereinafter mentioned, all the provisions of the said Acts and of this Act shall, so far as the same are applicable, apply to the case of a liquidation by arrangement in the same manner

Trustee to have powers and perform duties of Trustee under a bankruptcy.

as if the word "bankrupt" included a debtor whose affairs are under liquidation, and the word "bankruptcy" included liquidation by arrangement; and in construing such provisions the appointment of a Trustee under a liquidation shall be deemed to be equivalent to and a substitute for an order of adjudication in bankruptcy. 35

Creditors may appoint bank into which Trustee to pay money.

56. The creditors at their first or any meeting may prescribe the bank into which the Trustee is to pay any moneys received by him, and the sum which he may retain in his hands.

Provisions of the said Act and this Act as to discharge of bankrupt and release of Trustee not to apply to case of debtor unless affairs are under liquidation by arrangement.

57. The provisions of the said Act and of this Act with respect to the discharge of a bankrupt, to the release of the trustee, and to the audit of accounts by the Accountant, shall not apply in the case of a debtor whose affairs are under liquidation by arrangement; but the discharge of the debtor and the release of the Trustee may be granted by a special resolution of the creditors in special meeting, and the accounts may be audited in pursuance of such resolution, at such time and in such manner, and upon such terms and conditions, as the 15 creditors think fit.

Debtor may, on refusal to pass special resolution, apply to Court.

58. In case the creditors shall, on the reasonable application of the debtor, refuse or neglect for the space of two calendar months to pass a special resolution for the discharge of the debtor, as provided by the last preceding section, it shall be lawful for the Supreme Court, on the application of the debtor and upon notice to the trustee, and unless cause be shown to the contrary, to make an order discharging the debtor from his debts, and such order shall be as effectual, to all intents and purposes, as a special resolution granting such discharge. 20

Trustee to report to Registrar the discharge of the debtor. Discharge &c. how granted.

59. The Trustee shall report to the Registrar or Clerk of the Court the discharge of the debtor, and a certificate of such discharge given by the Registrar shall have the same effect as an order of discharge given to a bankrupt under the said Acts, and this Act. 25

Proceedings under this Part how to be taken.

60. Proceedings under this Part shall be taken and conducted in the manner provided in the Rules set forth in the Schedule hereto or 30 general Rules for the time being in force.

PART XII.

COMPOSITION WITH CREDITORS.

Creditors may resolve by extraordinary resolution that a composition be accepted.

61. The creditors of a debtor unable to pay his debts may, without any proceedings in bankruptcy, by an extraordinary resolution, resolve that a composition shall be accepted in satisfaction of the debts due to them from the debtor. 35

How extraordinary resolution to be passed.

62. An extraordinary resolution of creditors shall be a resolution which has been passed by a majority in number and three-fourths in value of the creditors of the debtor, assembled at a special meeting to be held at a time and place of which notice has been given in the manner provided by this Act, and the regulations in the Schedule hereto or for the time being in force, and which has been confirmed by a majority in number and value of the creditors assembled at a subsequent special meeting, of which notice has been given in like manner, and held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed. 40 45

Majority, how to be calculated.

63. In calculating a majority for the purposes of a composition under this Act, the value of the debts of secured creditors shall, as nearly as circumstances admit, be estimated in the same way, and the same description of creditors shall be entitled to vote at such meetings as in bankruptcy. 50

Debtor to attend meetings.

64. The debtor, unless prevented by sickness or other cause satisfactory to such meetings, shall be present at both the meetings at which the extraordinary resolution is passed, and shall answer any inquiries made of him, and he, or if he is so prevented from being at such meetings some one on his behalf, shall produce to the meetings a 55

statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

65. The extraordinary resolution, verified by affidavit together with the statement of the debtor as to his assets and debts, shall be filed in the Court having jurisdiction in bankruptcy, and any creditor of the debtor may inspect such statement at such times, and on payment of such fee, if any, as may be prescribed by general rules.

Extraordinary resolution to be filed in the Court having jurisdiction.

66. The creditors may, by an extraordinary resolution, add to or vary the provisions of any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation; and any such extraordinary resolution shall be filed in the same manner and with the same consequences as the extraordinary resolution by which the composition was accepted in the first instance.

Creditors may by extraordinary resolution vary provisions of composition.

67. The provisions of a composition accepted by an extraordinary resolution in pursuance of this Part shall be binding on all the creditors whose names and addresses, and the amount of the debts due to whom, are shown in the statement of the debtor, produced to the meetings at which the resolution has passed, but shall not affect or prejudice the rights of any other creditors.

Provisions of composition to be binding on creditors whose names and addresses and the amount of whose debts are shown in the debtor's statement, but no others.

68. Where a debt arises on a bill of exchange or promissory note, if the debtor is ignorant of the holder of any bill of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor or person to whom it is payable, and any other particulars within his knowledge respecting the same, and the insertion of such particulars shall be deemed a sufficient description of the creditor of the debtor in respect of such debt, and any mistake made inadvertently by a debtor in the statement of his debts may be corrected after such notice has been given as is prescribed by the Rules in the Schedule or for the time being in force, with the consent of a special meeting of his creditors.

Where debt arises on bill of exchange &c., and debtor does not know who is holder, debtor to give certain particulars.

69. The provisions of any composition made in pursuance of this Part may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed to be a contempt of Court.

Provisions of composition may be enforced by Court.

70. Proceedings under this Part shall be taken and conducted in the manner provided in the rules set forth in the Schedule hereto or for the time being in force.

Proceedings under this Part, how to be taken.

PART XIII.

71. If it appear to the Court on satisfactory evidence that a liquidation by arrangement under Part XI. of this Act, or a composition under Part XII. of this Act, as the case may be, cannot, in consequence of legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may, on the application of any trustee acting under any such liquidation or composition as the case may be, or of any creditor or of the debtor, adjudge the debtor a bankrupt, and proceedings may be had accordingly.

Debtor may be adjudged bankrupt in certain cases.

72. The registration, in manner provided by this Act, of a special resolution of the creditors on the occasion of a liquidation by arrangement under Part XI. of this Act, or of an extraordinary resolution of the creditors on the occasion of a composition under Part XII. of this Act, shall, in the absence of fraud, be conclusive evidence that such resolutions respectively were duly passed and all the requisitions of this Act in respect of such resolutions complied with.

Effect of registration of special resolution.

PART XIV.

Bankrupt not to be discharged unless he pays ten shillings in the pound.

73. No bankrupt shall be discharged, anything in the said Acts to the contrary notwithstanding, unless it is proved to the Court that one of the following conditions has been fulfilled, that is to say, either that a dividend of not less than ten shillings in the pound has been paid out of the property, or might have been paid except through the negligence or fraud of the trustee, or that a special resolution of his creditors has been passed to the effect that his bankruptcy, or the failure to pay ten shillings in the pound, has in their opinion arisen from circumstances for which the bankrupt cannot justly be held responsible, and that they desire that an order of discharge should be granted to him. 5 10

Consequences of not obtaining discharge.

74. Where a person who has been made bankrupt has not obtained his discharge, then, from and after the close of his bankruptcy, the following consequences shall ensue :—

- (1.) No portion of a debt provable under the bankruptcy shall be enforced against the property of the person so made bankrupt until the expiration of three years from the close of the bankruptcy; and during that time, if he pay to his creditors such additional sum as will, with the dividend paid out of his property during the bankruptcy, make up ten shillings in the pound, he shall be entitled to an order of discharge in the same manner as if a dividend of ten shillings in the pound had originally been paid out of his property: 15 20
- (2.) At the expiration of a period of three years from the close of the bankruptcy, if the debtor made bankrupt has not obtained an order of discharge, any balance remaining unpaid in respect of any debt proved in such bankruptcy (but without interest in the meantime) shall be deemed to be a subsisting debt in the nature of a judgment debt, and, subject to the rights of any persons who have become creditors of the debtor since the close of his bankruptcy, may be enforced against any property of the debtor, with the sanction of the Court which adjudicated such debtor a bankrupt, or of the Court having jurisdiction in bankruptcy in the place where the property is situated, but to the extent only, and at the time and in manner directed by such Court, and after giving such notice and doing such acts as may be prescribed in that behalf. 25 30 35

How payment enforced.

75. Where after the expiration of a period of three years from the close of a bankruptcy, in which the bankrupt has not obtained an order of discharge, an application is made to the Court for its sanction to the enforcement by a creditor of the payment of the balance remaining unpaid of a debt proved under the bankruptcy, the creditor shall file a statement, verified by affidavit, showing the dividend paid under the bankruptcy, the balance remaining unpaid, and the property against which he seeks to enforce payment, and that such property is the property of the bankrupt, and the Registrar or other proper officer of the Court shall thereupon appoint a time and place for the hearing of the application, and direct notice of the time and place appointed for the hearing to be served personally on the bankrupt, or at his usual or last known place of residence or business. 40 45 50

At hearing of application to enforce payment, notices to be proved.

76. At the hearing of the application, service of the notice on the bankrupt shall be proved, unless he appears, and the Court if it think fit may refuse the application, or adjourn the hearing to some other day, and in such latter case shall direct the creditor to cause a notice to be gazetted seven days before the day to which the hearing is adjourned. 55

77. At the adjourned hearing the creditor shall produce a copy of the *Gazette* and of the paper in which the notice was published, and the Court may then hear all persons claiming to be creditors of the debtor before or since the close of the bankruptcy, and make such order in the matter as it thinks fit, or adjourn the hearing for further evidence.

Hearing.

PART XV.

78. Whenever any person for the time being holding the office of Justice of the Peace, or Resident Magistrate, or Mayor of any Corporation under the provisions of "The Municipal Corporations Act, 1867," or Trustee of any Savings Bank duly established according to law, shall be adjudicated a bankrupt, or enter into any arrangement for the liquidation of his debts, or for a composition with his creditors within the provisions of this Act, such person shall immediately thereupon cease to hold any such office.

Justices of the Peace and others disqualified on bankruptcy.

79. Any person holding any such office as aforesaid, who after he shall have been adjudicated a bankrupt, or have entered into any arrangement for the liquidation of his debts, or on a composition with his creditors, shall act as a Justice of the Peace, Resident Magistrate, or Trustee of any Savings Bank as aforesaid, shall be guilty of an offence, and shall, on summary conviction thereof before two or more Justices of the Peace, under the provisions of "The Justices of the Peace Act, 1866," be liable to a penalty of fifty pounds, and to the payment of all the costs of the proceedings; such penalty and costs respectively to be paid within such time as shall be mentioned in the conviction.

Persons acting after adjudication guilty of offence.

80. If any penalty or costs respectively imposed under the provisions of the foregoing section be not paid within the time mentioned in that behalf in the conviction, the person convicted shall be imprisoned and kept to hard labour for any period not less than one week nor more than four weeks, to be mentioned in the conviction.

Imprisonment on non-payment of penalty.

81. Nothing in this Act shall prevent any person who shall have ceased to hold any such office as aforesaid under the provisions of this Act from being again appointed or elected, as the case may be, to hold such office, after such person shall have obtained his complete discharge under the provisions of the law for the time being in force in New Zealand relating to bankruptcy.

Persons may be re-appointed.

PART XVI.

MISCELLANEOUS PROVISIONS.

82. The bankrupt shall to the utmost of his power aid in the realization of his property and the distribution of the proceeds amongst his creditors. He shall attend at the first meeting, and produce to the meeting all his books and papers. He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the Trustee, execute such powers of attorney conveyances deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the Trustee or the Registrar or other person appointed by him attending any meeting as provided by the said Acts or this Act, or may be prescribed by general rules or be directed by the Court by any special order made in reference to any particular bankruptcy, or made on the occasion of any special application by the trustee or any creditor.

Bankrupt to assist Trustee in realization and distribution of property.

Bankrupt wilfully failing to perform duties imposed on him by last section to be guilty of contempt of Court.

All books, &c., produced at any meeting of creditors to be given up to Trustee.

Regulations in Schedule to have same force as if in Act, but may be altered by General Rules.

83. If the bankrupt wilfully fail to perform the duties imposed on him by the last section, or if he fail to deliver up possession to the Trustee of any part of his property which is divisible amongst his creditors under the said Acts and this Act, and which may for the time being be in the possession or under the control of such bankrupt, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly. **5**

84. All books and papers, and every inventory produced at any meeting of creditors under the provisions of the last preceding section, shall be given up at the close of such meeting to the trustee or to the Registrar or the person appointed by him attending such meeting. **10**

85. The regulations contained in the Schedule hereto shall have the same force as if contained in the Act; but they may from time to time be repealed or altered by General Rules, and other regulations may be from time to time made by General Rules for the same purposes. **15**

SCHEDULE.

PROCEEDINGS FOR LIQUIDATION BY ARRANGEMENT OR COMPOSITION WITH CREDITORS
UNDER PARTS XI. AND XII. OF THE ACT.

1. Proceedings under these Parts shall be instituted by the debtor by petition and affidavit thereto annexed according to the form given in the Appendix of Forms hereto annexed.

2. The Court having jurisdiction in such proceeding shall be the Court to which a bankruptcy petition could be presented by or against the debtor.

3. The first meeting of creditors shall be summoned, to be held at the place mentioned in the affidavit filed with the petition (subject to such place being changed by order of the Court, as hereinafter provided), and the time of meeting shall be at a stated hour between ten a.m. and five p.m. on a day within one calendar month from the presentation of the petition, unless the Court in any particular case shall otherwise order.

4. The first meeting of creditors shall be summoned by notice according to the form in the Appendix hereto.

5. All first meetings shall be summoned as follows:—A sufficient number of forms of such notice, duly signed addressed and stamped for post, shall be delivered to the Registrar, together with a request and list of creditors according to the forms in the Appendix, and such list may be added to, or additional requests and lists be filed, as circumstances may require. With every request shall be paid a Court fee, calculated at the rate of threepence for each notice required to be sent. The Registrar shall cause the notices to be checked with the list or lists delivered to him, and to be sealed with the seal of the Court, and to be posted to the creditors, and the person posting the same shall forthwith make and file an affidavit, exhibiting a form of notice, and stating that he had posted similar notices to the person mentioned in the lists delivered to the Registrar, and stating also the date and place of posting.

6. The debtor shall also deliver to the Registrar a notice according to the form in the Appendix hereto, to be gazetted ten days, at least, before the meeting is to be held.

7. Notices summoning any first meeting shall be posted at least fourteen days before the day on which the meeting is to be held.

8. Upon sufficient cause, proved to the satisfaction of the Court by the debtor or by any creditor, either *ex parte* or otherwise, the Court may order and direct the place of any meeting to be changed, provided application be made in such time as will allow notice of the change to be given to the creditors, as hereinafter directed. Any order so made by the Court shall be according to the form in the said Appendix, and a copy thereof shall be gazetted forthwith, and notice thereof shall be given by the Registrar by sending by post, on or before the eighth day prior to the meeting, a sealed office copy of the order of the Court addressed to the several creditors and to the debtor. The expense of and incident to such order, and despatching copies thereof to the creditors as aforesaid, shall be borne and paid in such manner as the Court shall direct, and in case of non-compliance the copies of the order shall not be sent, but the meeting shall be held as originally summoned.

9. The Court may, at any time after the presentation of a petition, restrain further proceedings in any action suit execution bankruptcy petition or other legal process against the debtor or his estate in respect of any debt provable; or it may allow such proceedings, whether in progress at the filing of the petition or subsequently commenced, to proceed upon such terms as the Court may think just. The Court may also, at any time after presentation of the petition, appoint a receiver or manager of the property or business of the debtor, or of any part thereof, and may direct immediate possession to be taken of such property or business, or any part thereof.

10. Any receiver or manager so appointed shall enter upon and act in the performance of his office at such time, and in such manner, and to such extent as the Court may from time to time direct.

11. The debtor shall state in his petition the estimated amount of the debts owing by him to his creditors, and where no receiver or manager has been appointed by the Court, a majority in value of such creditors may at any time prior to the passing of the special or extraordinary resolution, as the case may be, nominate and appoint a receiver or manager of the effects or business of the debtor, or any part thereof, according to the form in the Appendix hereto. Where any such receiver or manager has been so appointed, he shall investigate the state of the debtor's affairs, and report thereon to the meeting of creditors. The nomination and appointment of any such receiver shall be confirmed by the Court upon summary application in any case in which the debtor refuses to give possession or control to the receiver or manager so appointed. Any such nomination paper shall be in duplicate, and may be signed by the creditors in their individual or partnership names, or by some person who shall state in his signature that he does so by procuration on the creditor's behalf. The signatures or debts need not be verified further than by the affidavit of one of the three principal creditors signing the nomination paper (or a partner in the firm of one of them) according to the form in the Appendix hereto, and such affidavit shall be filed in Court with one of the nomination papers. If any receiver or manager has been appointed by the Court, the nominee of the creditors shall be forthwith substituted in his place, and the Court shall order accordingly.

12. Where a receiver or manager has been appointed, the Court may at any time

cancel his appointment by consent of the debtor and of the creditor or creditors (if any) upon whose application the appointment was made, and of any creditor or creditors whose proceedings may have been restrained as aforesaid, or if the Court shall see fit.

13. Where a receiver or manager has been appointed, he shall be entitled to the custody of the books and effects of the debtor, and the debtor or any person having the previous custody thereof on his behalf shall forthwith deliver the same to the receiver.

14. The receiver or manager shall at all times permit the debtor or any of his creditors or their agents to have access to and inspect the debtor's books of account.

15. Where proceedings have been instituted for liquidation or composition, the Court may adjudicate the debtor bankrupt if, in the opinion of the Court, the property of the debtor cannot be sufficiently protected by the exercise of the power hereinbefore given to restrain suits and actions, and the appointment of a receiver or manager; but in any such case all proceedings under such order of adjudication shall be stayed immediately upon the making thereof, and until the creditors shall have passed some special or extraordinary resolution in reference to the liquidation or composition, and in the event of any such resolution being duly passed, the adjudication shall be forthwith annulled.

16. In the event of any neglect on the part of the creditors to pass such resolution, the Court may, on the application of any of the creditors, and after notice to the debtor, make an order of adjudication against the debtor, or direct the bankruptcy to be proceeded with, as the case may be.

17. The Chairman of the first meeting of creditors shall be elected by a majority of the persons present thereat claiming to be or to represent creditors. The Chairman of any subsequent meeting shall be elected by a majority in value of the creditors present or represented thereat who have proved their debts.

18. Creditors may prove their debts and appoint proxies, as in bankruptcy.

19. All debts which would have been provable in bankruptcy, had the debtor been adjudicated bankrupt at the date of the institution of the proceedings, shall be provable under any such proceedings.

20. All proofs and proxies intended to be used at any meeting, and not previously filed, shall be handed in to the Chairman of the meeting. Any objection thereto shall be marked thereon by the Chairman, and shall be dealt with by the Registrar on the resolution being presented to him for registration.

21. A secured creditor, unless he shall have realized his security, shall, previously to being allowed to prove or vote, state in his proof the particulars of his security, and the value at which he assesses the same, and he shall be deemed to be a creditor only in respect of the balance due to him after deducting such assessed value of the security. In cases of liquidation by arrangement, any secured creditor so proving shall be bound to pay over to the trustee the amount which his security shall produce beyond the amount of such assessed value, and the trustee shall be entitled, at any time before realization of such security by the creditor, to redeem the same upon payment of such assessed value. The proof of any such creditor shall not be increased in the event of the security realizing a less sum than the value at which he has so assessed the same.

22. Where any creditor shall desire to retire from any meeting, and not to be considered as present, he may withdraw his proof, without prejudice to his again proving his debt on any subsequent occasion.

23. The debtor shall produce to the first meeting, and also, in case there be any, to the second meeting, a statement showing the whole of his debts and assets, and the names and addresses of the creditors to whom such debts respectively are due. The name of each creditor in such statement shall be numbered consecutively, and the list of creditors whose debts do not exceed ten pounds shall be separated from and follow after the list of those creditors whose debts exceed that amount. The debtor's statement of affairs shall be as near as may be in the form used in bankruptcy.

24. The resolution passed at the first meeting (or first and second meetings, as the case may be) shall determine whether the affairs of the debtor are to be liquidated by arrangement, and not in bankruptcy, or whether any and what composition shall be accepted in satisfaction of the debts due to the creditors from the debtor, or it may reject either of such modes of arrangement. The resolution may declare to whom the registration of the resolution and the debtor's statement of affairs shall be intrusted, and, the original resolution and statement shall forthwith be delivered accordingly to the person so appointed; and in the event of no such declaration being made in the resolution, the same shall be registered by the debtor. Only such resolutions as are reduced into writing, and are signed by or on behalf of the statutory majority of the creditors assembled at a meeting, shall be taken cognizance of by the Court, but the signatures of such creditors may be subscribed subsequently to the meeting, but prior to the filing or registration of the resolution.

25. The Chairman shall be bound forthwith to deliver to the person, if any, so appointed, or, in default of such appointment, to the debtor, every declaration or affidavit for proof of debt and proxy paper of what nature or kind soever, and whether in due form or otherwise, which shall have been received at the meeting or meetings, and also the debtor's statement of affairs, and in default thereof may be summoned before the Court, and the Court may make such order in the matter as it shall think fit.

26. In the event of a liquidation by arrangement being resolved upon at any meeting, and no trustee being then appointed, a subsequent meeting may be held at such time and place, at an interval of not more than a week, as shall be appointed by the

resolution, or in default of any such subsequent meeting being so appointed, the same shall be held on the same day in the following week, at the same time and place. No notice of any such subsequent meeting need be given to the creditors.

27. In cases of liquidation by arrangement, the meeting shall by special resolution declare what security, if any, shall be given by the trustee, and what remuneration, if any, the trustee shall receive, or they may resolve to leave his remuneration to a subsequent meeting.

28. Where the creditors at the first meeting duly pass a resolution that a composition shall be accepted in satisfaction of the debts due to them from the debtor, they shall specify in their resolution the amount of the composition and the instalments and dates at which the same shall be payable, and they may name some person as trustee for receipt and distribution of the composition and any negotiable securities which may be given for the same.

29. Instead of specifying by their resolution the security to be given, the creditors may resolve that the composition, or some part or instalment thereof, shall be secured in such manner as may be approved by a creditor or creditors to be named by the resolution.

30. The extraordinary resolution may provide that the terms of the composition be embodied in a deed between such parties and containing such covenants for payment of the composition, and for protecting and releasing the debtor, and such other covenants and provisions for securing the composition either by assignment of property, or by inspection of the debtor's business or otherwise, as the nature of the case may require, and as the resolution may specify in particular or general terms.

31. Where, at the first meeting, a resolution has been passed, resolving that a composition shall be accepted in satisfaction of the debts due to the creditors from the debtor, such resolution shall be filed with the statement of the debtor's affairs, proofs, and proxies within seven days, and another meeting shall be appointed to be held at an interval of not less than seven days nor more than twenty-one days from the date of the meeting at which the resolution was first passed. The second meeting shall be held at the same place as the first meeting, unless the resolution at such first meeting shall have otherwise directed. Notice thereof, according to the form in the Appendix, shall be given to every creditor in manner provided with respect to first meetings, with this addition, that the notice to every creditor who was not present or represented at the first meeting shall be sent by registered post letter. Such notices shall be sent on or before the tenth day prior to the day on which the second meeting is appointed to be held. In the event of notice not being requested to be sent by the debtor or his attorney on the tenth day prior to the second meeting, any creditor may file a similar request, desiring the Registrar to forward the notices summoning the second meeting; and in the event of any meeting being so summoned, it shall be sufficient if the notices are signed by the Registrar and sealed, and are posted on the third day prior to the meeting.

32. At the second meeting of creditors, the creditors assembled may confirm the resolution passed at the first meeting, or they may pass a special resolution that the affairs of the debtor are to be liquidated by arrangement and not in bankruptcy.

33. The person to whom the registration of the special or extraordinary resolution may have been intrusted, or the debtor or his solicitor, as the case may be, shall file the same in Court, together with the debtor's statement of affairs and all proofs and proxies, within seven days after he shall have received the same, or in default thereof shall be summoned before the Court, and some person able to depose thereto shall verify and identify the resolutions statement proofs and proxies so filed as being the whole of the resolutions statement proofs and proxies come to and produced at the meeting or meetings when such special or extraordinary resolutions were passed.

34. In cases of proceedings for liquidation by arrangement or composition, instituted by partners, separate meetings of the different classes of creditors shall be held; thus, if the partnership consists of A. B. and C., a meeting of the joint creditors of A. B. and C. shall be first held, and separate meetings of the separate creditors of A. B. and C. shall be held at a date or time subsequent to the meeting of the partnership creditors. The joint creditors may come to such resolution as they may think fit with regard to the joint estate. The separate creditors may also come to such resolution as they may think fit as regards the liquidation of the estate of their individual debtor, but in the event of their determining upon his bankruptcy, or the liquidation of his estate by arrangement, they shall choose the same trustee, if any, as has been or shall be appointed by the joint or partnership creditors, but they may appoint a committee of inspection from their own body if they think fit, or they may adopt the committee, if any, appointed by the joint or partnership creditors. In the event of the separate creditors of any such debtor agreeing to accept a composition, in cases where the joint creditors have resolved on a liquidation by arrangement, the assets of such separate debtor shall be made available by the trustee for or towards the payment thereof, in such manner as the Court shall direct and approve, and any surplus of such separate estate remaining in the hands of the trustee after payment of or provision for such composition, and all proper costs incurred in connection therewith, shall be deemed partnership assets. If in any such case the separate debtor shall be a member of more than one firm, the surplus of his separate estate shall be applied in such manner as the Court may direct.

35. If the petition be by partners, and any two or more of such partners constitute

a separate and independent firm, the creditors of such firm may likewise come to a separate resolution as regards the liquidation of such minor partnership estate, and where any surplus shall arise upon the liquidation thereof the same shall be carried over to the separate estates of the partners in such minor firm according to their respective rights therein.

36. In cases of proceedings for or towards liquidation by arrangement or composition by an individual debtor, his creditors and debts shall be deemed to be and include not only those creditors to whom or those debts in respect of which he is individually responsible, but also those creditors and debts to whom or in respect of which he is also responsible jointly with any other person or persons; and the statutory majority required for the purpose of any resolution shall be a collective majority of the whole of such joint and separate creditors assembled at any meeting. In any such last-mentioned proceedings the terms of the resolution as regards joint and separate creditors need not be identical, and, if so desired, the resolution may provide for the payment of a composition to the separate creditors, and that the rights of the joint creditors shall not be prejudiced or affected thereby.

37. The creditors assembled at any meeting may include in their resolution a direction that the proceedings be transferred to any Court other than that in which the same were originated; and upon any such resolution being filed, the proceedings shall be forthwith transferred by the Registrar in accordance therewith; and the Court to which the same shall have been transferred shall thereafter act in the matter of the proceedings in like manner as if the same had been properly instituted therein in the first instance.

38. Every creditor in respect of a provable debt shall, in the event of a liquidation by arrangement being resolved upon, be absolutely restrained from commencing or continuing or enforcing any proceedings whatsoever against the debtor or his property, notwithstanding that such creditor has not received notice of the meeting, unless the Court shall be of opinion that such creditor's rights have been prejudicially affected by the resolution, and that the estate would yield a larger dividend if administered in bankruptcy.

39. Where bankruptcy occurs during the continuance of a liquidation by arrangement, the trustee under such liquidation shall pay over and account for to the trustee to be appointed under the bankruptcy any moneys or property of the debtor which have come to his hands; and in the event of a dividend having been paid to some of the creditors, the Court shall make such order for the appropriation thereof as will equalize the distribution of the moneys or property amongst the creditors who would or should have been entitled thereto under the liquidation proceedings.

40. In case of liquidation by arrangement, all proper costs of and incidental to the proceedings prior to the passing of the resolution shall be paid by the trustee out of the estate of the debtor, in like manner and in the like priority as the costs of a petitioning creditor under a bankruptcy petition.

41. Where bankruptcy occurs pending proceedings for or towards liquidation by arrangement or composition with creditors, the proper costs incurred in relation to such proceedings shall be paid by the trustee under the bankruptcy out of the debtor's estate, unless the Court shall otherwise order.

42. Where any resolution is required to be passed or any act to be done by the creditors present or represented at any meeting, the majority required for the purpose shall, in the absence of any enactment to the contrary, be a majority in value of the creditors present or represented thereat.

43. Resolutions duly come to at any meeting shall have full force and effect, notwithstanding that it may also be resolved that for other purposes the meeting shall stand adjourned.

44. Upon presentation of a special or extraordinary resolution for registration the Registrar shall examine the same, and may hear any creditor who shall have given him notice of his desire to be heard thereon. The Registrar being satisfied that the requirements of the Statute and of these rules have been complied with shall register the same, making a memorandum thereon, and on the debtors' statement of affairs, as follows:—

“Registered day of 187 Registrar.”

and shall seal the same with the seal of the Court. The Registrar in cases of liquidation by arrangement shall thereupon deliver to the trustee a certificate according to the form in the Schedule. The registration of any special or extraordinary resolution, or the refusal to register the same by the Registrar, shall be an act that may be appealed from by the debtor or any creditor who was heard before the Registrar on the occasion of such registration or refusal. The Registrar shall, where he refuses to register such resolution, certify the grounds of such refusal by memorandum under his hand, and file it with the proceedings.

45. The resolution and statement so registered shall at all times be open for inspection by any creditor whose name appears on the statement, or by any person on his behalf.

46. If a receiver or manager has been appointed, his duties shall terminate upon the appointment of a trustee in cases of liquidation by arrangement, and upon the passing of the extraordinary resolution in cases of composition, unless such resolution shall otherwise provide.

47. Where a receiver or manager has been appointed and his duties are concluded,

he shall render his account, and pay or deliver over any money or property in his hands to the trustee (in cases of liquidation by arrangement), or to the debtor or his nominee (in cases of composition).

48. The Court shall have the same power and discretion as to the appointment, remuneration, and removal of the receiver or manager, and in the settlement of his accounts, and in directing the appropriation of moneys or property in his hands, as is exercised by the Supreme Court in its ordinary jurisdiction, or as near thereto as may be.

49. Neither the resolutions nor the proofs or proxies of creditors assembled at any meeting shall be objected to or refused by the Registrar by reason of any informality therein, unless he shall be of opinion that such informality is matter of moment, in which event he shall refer the matter to the Judge.

50. The passing of a special resolution (in the case of liquidation by arrangement) shall be deemed and taken as conclusive evidence that the debtor has complied with the provisions of the Statute with regard to the statement of his affairs required to be submitted to the meetings of his creditors. The debtor shall, however, at all times render to the trustee every information in his power with reference to his debts and assets, and shall in default be liable to be summoned and examined before the Court thereon.

51. Where liquidation by arrangement and not in bankruptcy has been resolved on, the creditors may, at the same meeting at which such resolution is passed, resolve whether the debtor's discharge shall be granted either forthwith or at a date to be specified in the resolution, or subject to any and what conditions. In default of any resolution being then come to as to the debtor's discharge, a meeting shall be summoned for the purpose of considering the grant thereof, either when the trustee shall see fit, or when the committee of inspection (if any), or when the debtor, with the concurrence of one-fourth in value of his creditors, who have proved, shall require the trustee to summon the same.

52. The resolution to be come to at any such meeting, and the report thereof to the Registrar, and the debtor's discharge, shall be according to the form in the Appendix hereto.

53. Meetings subsequent to the appointment of a trustee shall be summoned by him by giving seven days' notice by post to each of the creditors who have proved their debts, stating the object of the meeting and the business proposed to be transacted thereat.

54. A meeting may, however, at any time be similarly summoned by any creditor with the concurrence, including himself, of one-fourth in value of the creditors who have proved their debts.

55. Any mistake made inadvertently by a debtor in the statement of his debts may be corrected with the assent of a majority in value of his creditors assembled at a meeting similarly summoned by the debtor.

56. A trustee may be removed by a special resolution of the creditors assembled at a meeting summoned for the purpose, and another trustee may be appointed in his place, by a majority in value of the creditors then present or represented. Where a trustee shall die, or where for any reason there shall be no trustee acting in the liquidation, a meeting may be summoned in manner hereinbefore directed, and another trustee may be appointed by the majority in value of the creditors present or represented thereat.

57. The resolution appointing any such new trustee shall be registered with the Registrar, and the certificate of the Registrar in respect of the appointment of any such new trustee shall be conclusive evidence of his appointment.

58. Any creditor or creditors resident at a distance in the Colony or in foreign parts, the notice to whom could not have been received in sufficient time to enable him or them to attend or be represented at the meeting thereby convened, may show cause to the Court against the resolution being proceeded with, notwithstanding its registration; but the same shall not be disturbed unless the creditor or creditors do show or can prove to the satisfaction of the Court, that had he or they been present and dissented from the resolution, the same could not have been carried by the statutory majority, and unless also the Court is of opinion that it is unjust or inequitable that the resolution should be binding on him or them.

59. Proof of debt by any creditor shall be deemed conclusive evidence that notice of all meetings, prior to and inclusive of that at which such proof is produced, has been duly given to him.

60. All debts must be proved prior to the payment of dividend thereon by the trustee.

61. Fourteen days at least before declaring any dividend under a liquidation by arrangement, notice shall be gazetted by the trustee in the form given in the Appendix hereto, requiring the creditors to send to him their names and addresses, and the particulars of their debts or claims; and on declaring a dividend, a sufficient reserve shall be made by the trustee for such dividend upon all debts or claims notified to him in pursuance of such notice. The trustee shall be also deemed to have notice of the debts of all creditors whose names are inserted in the debtor's statement of affairs, and (except where any such debt has been adjudicated upon prior to the declaration of the dividend) a similar reserve shall be made in respect thereof.

62. Wherever the trustee shall reject the claim or proof of any creditor, he shall

give notice to such creditor by post in the form given in the Appendix; and where the creditor is resident in New Zealand, the trustee shall be entitled to exclude from dividend any such claimant or creditor whose debt he so rejects, unless such creditor shall, within twenty-one days from the time at which the trustee's notice should have been delivered to him in the ordinary course of post, apply to the Court to admit his proof, and proceed with such application with due diligence. Where any such creditor is resident beyond the limits aforesaid, such length of notice shall be given to him as the Court shall order.

63. Except as before mentioned, the trustee shall declare dividends amongst such creditors only as have proved their debts up to the time of such declaration of dividend; and no creditor who has omitted to prove his debt, or to send to the trustee the particulars of his claim, or whose name does not appear in the debtor's statement, shall be entitled to disturb any such dividend, or to make any claim in respect thereof against the trustee; but upon proof of his debt, any such creditor shall be entitled to receive the same prior to the payment of any further dividend to the other creditors.

64. The term "Registrar" in these Rules shall include "Deputy-Registrar," and, in the case of a District Court having jurisdiction, shall include "Clerk of the Court."

APPENDIX TO SCHEDULE.

No. 1.

PETITION UNDER PARTS XI. AND XII. *The Bankruptcy Acts Amendment Act, 1870.*

To the Court
The humble Petition of A.B., of &c.

SHEWETH,—

That your petitioner alleges that he is unable to pay his debts, and is desirous of instituting proceedings for liquidation of his affairs by arrangement or composition with his creditors, and hereby submits to the jurisdiction of this Court in the matter of such proceedings, and that your petitioner estimates the amount of the debts owing by him to his creditors at £

Your petitioner therefore prays that notices convening such general meeting or meetings of his creditors as may be necessary to be given by him during the course of such proceedings may be sent in the prescribed manner, and that such resolution or resolutions as his creditors may lawfully pass in the course of such proceedings, and as may require registration, may be duly registered by the Registrar of the Court.

And your petitioner shall ever pray, &c.

A.B.

Signed by the petitioner, A.B., on the
day of 187, in the
presence of

Registrar or Solicitor.
(Address.)

If the petition be by partners, alter the form accordingly.

No. 2.

AFFIDAVIT IN SUPPORT OF PETITION UNDER PARTS XI. AND XII. *The Bankruptcy Acts Amendment Act, 1870.*

In the Court

I, A.B., of , make oath and say, as follows:—

I AM the petitioner [or one of the petitioners] named in the petition hereunto annexed.
annexed.

I verily believe that it will be most convenient to the creditors whose debts exceed ten pounds, that the meeting of creditors should be held at

Sworn at

A.B.

(Where a Solicitor is employed, add the following Certificate.)

I certify my belief that it will be most convenient to the creditors of the petitioner that the meeting of creditors should be held at [as above].

C.D.,

Solicitor in the matter of the petition.

No. 3.

NOTICE TO CREDITORS OF MEETING. *The Bankruptcy Acts Amendment Act, 1870.*

In the Court

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by A.B., of (description as in petition).

A meeting of the creditors of the above-named person [or persons] is hereby summoned to be held at [Here insert name of town, and street or place] on the day of instant [or next], at o'clock in the noon precisely.

The sections of "The Bankruptcy Act, 1870," under which the proceedings are instituted provide as follows:—

[Here extract from Part XI, 1 and 5, Sections 33 to 38 inclusive and the two first Sections of Part XII.]

A form of proof and proxy will be found on the third side of this notice.

Dated the _____ day of _____ 187

A.B. (Debtor), or
C.D. [adding address],
Solicitor for the said Debtor.

In case of partnership, the notice must be signed by one of the partners in the partnership name, or by all the partners, or by a Solicitor or Solicitors on their behalf.

No. 4.

AFFIDAVIT TO BE ANNEXED TO THE NOTICE SUMMONING FIRST MEETING.
The Bankruptcy Acts Amendment Act, 1870.

In the _____ Court

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by A.B., of, &c.

I, _____ of _____ make oath and say, as follows:—

The said A.B. was at the date of the institution of the said proceedings and still is justly and truly indebted to me in the sum of _____ for [State consideration], for which said sum, or any part thereof, I say that I have not, nor hath any person by my order or to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:—

[Here set out security, or if bills be held, specify them in the Schedule.]

Date.	Drawn.	Acceptor.	Amount.	Due Date.

Sworn at

I appoint C.D., of, &c., my proxy in the above matter.

E.F. [or G.H., of _____ in partnership name.]

No. 5.

REQUEST, WITH LIST OF CREDITORS.

The Bankruptcy Acts Amendment Act, 1870.

In the _____ Court

In the matter of proceedings for liquidation by arrangement at or composition with creditors instituted by [Insert name; the address need not be inserted.]

To the Registrar or Clerk.

I [or we] request that the notices of the meeting of creditors on the _____ day of _____ 187 _____ herewith delivered to you, duly addressed and stamped _____ post, may be sent to the under-scheduled creditors.

Dated this _____ day of _____ 18

[To be signed by the debtor, or one of the debtors, or his or their Solicitor.]

No.	Names of Creditor or Firms of Creditors.	Addresses.	Estimated Amount of Debt.

No. 6.

NOTICE FOR GAZETTE.

The Bankruptcy Acts Amendment Act, 1870.

In the _____ Court

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by A.B., of _____

NOTICE is hereby given that a first [or second, as the case may be] general meeting of the creditors of the above-named person or persons has been summoned to be held at _____ on the _____ day of _____ at _____ o'clock in the _____ noon precisely.

Dated this _____ day of _____ 18

A.B. or
C.D.

(Solicitor for the said A.B.)

The signature to this notice must be verified by affidavit, unless signed by a Solicitor.

No. 7.
ORDER CHANGING PLACE OF MEETING.
The Bankruptcy Acts Amendment Act, 1870.

In the Court
In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by of, &c. [following description as in petition].
UPON sufficient cause this day shown to the satisfaction of the Court, the meeting of creditors in this matter summoned for the the day of is hereby directed to be held at in lieu of the place originally named. And hereof let notice be given forthwith.
Dated this day of 18

Registrar, or Deputy Registrar,
or Clerk.

No. 8.
NOMINATION OF RECEIVER OR MANAGER BY CREDITORS.
The Bankruptcy Acts Amendment Act, 1870.

In the Court
In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by A.B. of, &c.
WE, the undersigned, being a majority in value of the creditors of the said A.B., do hereby nominate and appoint Mr. of to be receiver [or manager] of the trade effects (and business) of the said A.B., pending the resolution to be come to by the creditors under the said proceedings.
Dated this day of 18

Witnesses' Name and Address.	Creditors' Signatures.	Amount of Debt.

No. 9.
LIST OF CREDITORS ASSEMBLED, TO BE USED AT EVERY MEETING OF CREDITORS.
The Bankruptcy Acts Amendment Act, 1870.

In the Court
In the matter of
Meeting of creditors, held at this day of 187

No. of Assents of Creditors whose Debts exceed £10.	Number.	Names of Creditors assembled.	Amount of Assent.	Amount of Proof.
1	1			
	2			
1	3			
1	4			
	5			
1	6			
1	7			
	7	Total number of creditors assembled.		
5	Total number of assents.			
		Totals	£	

No. 10.
FIRST MEETING WHERE LIQUIDATION BY ARRANGEMENT RESOLVED ON.
The Bankruptcy Acts Amendment Act, 1870.

In the Court
In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by
WE, the undersigned, being the statutory majority of creditors, assembled at the meeting of creditors in the above matter duly held at this day of 187, in accordance with the provisions of the said Act, do hereby resolve as follows:—
(1.) That the affairs of the said shall be liquidated by arrangement and not in bankruptcy.
(2.) That be and he is hereby appointed trustee.
(3.) That be and they are hereby appointed a committee of inspection. (or in lieu of 2 and 3, the following:—That a subsequent meeting be held at on at o'clock a.m. [or p.m.] precisely, for the appointment of a trustee with or without a committee of inspection).
(4.) That be intrusted with the registration of this special resolution.
[Here follow signatures of creditors.]

F.K., Chairman.

No. 15.

FORM OF AFFIDAVIT TO BE USED UPON REGISTRATION OF A SPECIAL OR
EXTRAORDINARY RESOLUTION.

In the Court.

In the matter of proceedings for liquidation by arrangement or composition
with creditors instituted by A.B., of, &c.I, the above-named A.B. [or C.D. of, &c., as the case may be] make oath and
say as follows:—

1. That I verily believe that the resolutions, statement of affairs, proofs, and
proxies filed in this matter are the whole of the resolutions, statement, proofs, and
proxies come to and produced at the meeting (or meetings) of creditors held in this matter
on the day of (and the day of).

2. (In cases of composition.) That I verily believe that the gross amount of com-
position payable to my creditors [or to the creditors of the said A.B. does not exceed
£

Sworn, &c.

No. 16.

CERTIFICATE OF TRUSTEE'S APPOINTMENT.
The Bankruptcy Acts Amendment Act, 1870.

In the Court

In the matter of a special resolution for liquidation by arrangement of the affairs
of A.B. of, &c.THIS is to certify that C.D. of, &c., has been appointed, and is hereby declared to be
trustee under this liquidation by arrangement.Given under my hand and the Seal of the Court this day of 18
Registrar.

No. 17.

RESOLUTION FOR DEBTOR'S DISCHARGE.
The Bankruptcy Acts Amendment Act, 1870.

In the Court

In the matter of a special resolution for liquidation by arrangement of the affairs
of A.B. of, &c.

WE, the undersigned, being the statutory majority of the creditors assembled at the
meeting of creditors in the above matter duly held at this day
of 18, in accordance with the provisions of the said Act, do resolve—

That the discharge of the said A.B. be and the same is hereby granted.

[or That the discharge of the said A.B. be granted to him on the day of
18, or That the discharge of the said A.B. be granted to him on [Here
state the conditions on which the same is granted].

That the close of this liquidation shall take place on and from the day
of 18.

That G.H., the trustee, be released on and from the day of 18.

No. 18.

REPORT OF TRUSTEE AS TO DEBTOR'S DISCHARGE.
The Bankruptcy Acts Amendment Act, 1870.

In the Court

In the matter of a special resolution for liquidation by arrangement of the affairs
of A.B. of, &c.

I, BEING the trustee under the above liquidation, do hereby certify and report that a
general meeting of the creditors of the said A.B. was held at on the
day of and that the discharge of the debtor was then granted by a special
resolution of the creditors then assembled.

Dated this day of 18

Trustee.

To the Registrar.

No. 19.

DEBTOR'S DISCHARGE.
The Bankruptcy Acts Amendment Act, 1870.

In the Court

In the matter of a special resolution for liquidation by arrangement of the affairs
of A.B. of, &c.

Whereas the trustee under the said liquidation has certified and reported to me
that [Here follow certificate of trustee].

I do therefore hereby certify such discharge in pursuance of the Statute in that
behalf.

Given under my hand and the Seal of the Court this day of 187
Registrar.

No. 20.

NOTICE TO CREDITORS TO COME IN AND PROVE THEIR DEBTS.
The Bankruptcy Acts Amendment Act, 1870.

In the Court
 In the matter of, &c.

THE creditors of the above-named A.B., who have not already proved their debts are required on or before the day of to send their names and addresses, and the particulars of their debts or claims to me, the undersigned of, the trustee under the liquidation, or in default thereof they will be excluded from the benefit of the dividend proposed to be declared.

Dated this day of 187 .

Trustee.

No. 21.

NOTICE TO CLAIMANT OF TRUSTEE'S REJECTION OF HIS CLAIM.
The Bankruptcy Acts Amendment Act, 1870.

In the Court
 In the matter of, &c.

TAKE notice, that I, the undersigned, trustee under this liquidation, do hereby reject your claim against the estate [or to the extent of £ , part of your claim], and that I intend to exclude you from the dividend in respect thereof. And further take notice, that such exclusion will be final, unless within days you apply to the Court to prove your debt, and proceed with such application with due diligence.

Dated this day of 187 .

Yours, &c.,

Trustee.

To Name
 Address.

No. 22.

AFFIDAVIT OF COMPUTED AMOUNT OF ESTIMATED ASSETS OR COMPOSITION.
The Bankruptcy Acts Amendment Act, 1870.

In the Court

In the matter of a special resolution for liquidation by arrangement of the affairs of A.B. of &c. [or a composition arrangement between A.B. of &c. and his creditors].

I, A.B., the above-named debtor [or the trustee or some person able to depose thereto] make oath and say as follows :—

That I verily believe [where a person other than the debtor deposes, add, after inquiry made by me, and to the best of my knowledge, information, and belief],

That the amount of the assets [or composition] in this matter does not exceed £

Sworn at, &c.