



**Isle of Man**

*Ellan Vannin*

**AT 1 of 1892**

**THE BANKRUPTCY CODE 1892**





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## THE BANKRUPTCY CODE 1892

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**Isle of Man***Ellan Vannin*

## THE BANKRUPTCY CODE 1892

*Received Royal Assent:* 28 June 1892  
*Promulgated:* 5 July 1892  
*Commenced:* 5 January 1893

**AN ACT** to amend the Law of Bankruptcy and Insolvency.

### GENERAL NOTES

1. References to the High Court of Justice or any Division thereof are to be construed in accordance with the *High Court Act 1991* Sch 4.
2. References to the Rolls Office or office for registry of deeds are to be construed in accordance with the *General Registry Act 1965*.
3. References to hard labour are to be construed in accordance with the *Custody Act 1995* Sch 3 para 1.
4. See SD352/09 Rules of the High Court of Justice 2009 Sch 15.1 para 2 reproduced below:

**“2 In any statutory provision a reference (however expressed) to —**

- (a) the superior jurisdiction or summary jurisdiction of the court or of the Common Law Division, or
- (b) the court or the Common Law Division exercising superior jurisdiction or summary jurisdiction,

shall be construed as a reference to the Civil Division.”

### PREAMBLE

Whereas, it is advisable to make general provisions applicable to the administration of the law in bankruptcy and insolvency, and to amend such law.

*Preliminary***1 Short title**

This Act may be cited as “The Bankruptcy Code 1892”.

**2 Commencement of Act**

This Act shall, except as therein otherwise provided, commence and come into operation on the expiration of six months after the promulgation thereof.

**3 [Repealed]<sup>1</sup>****4 Interpretation**

In this Act, and the general rules to be made under the authority thereof, unless the context otherwise requires —

“**The High Court**” means the High Court of Justice:

“**The Court**” means the Court for the time being having jurisdiction in bankruptcy:

“**The Appellate Court**” means the Staff of Government Division of the High Court:

“**Treasury**” means the Commissioners of Her Majesty’s Treasury:

“**Affidavit**” includes statutory declarations and affirmations:

“**The Bank**” means the bank for the time being having the custody of moneys paid into the High Court under or subject to the rules or orders of such Court:

“**Bankrupt**” means a person who may be adjudged a bankrupt, and also any debtor, by or against whom a bankruptcy petition having been presented, in respect of whose estate a receiving order under this Act may be made, or who has pursuant to this Act made a composition with his creditors in satisfaction of the debts due to them by such debtor, or a scheme of arrangement of his affairs:

“**Bankruptcy**” includes insolvency, and also any such composition and scheme of arrangement:

“**Available Act of Bankruptcy**” means any act of bankruptcy available for a bankruptcy petition, at the date of the presentation of the bankruptcy petition:

“**Bankruptcy petition**” means a petition praying that a debtor may be adjudged a bankrupt:

“**Order of adjudication**” means an order by which a debtor is adjudged a bankrupt, whether made by the Court, or by the Appellate Court:

“**Debt provable in bankruptcy**” or “**provable debt**” includes any debt or liability by this Act made provable in bankruptcy:

“**Creditor**” includes any person who is for the time being entitled to enforce a judgment for the payment of money, and also the personal representative of a deceased creditor:

“**Deed of arrangement**” means a deed or instrument made in respect of the affairs of a debtor for the benefit of the creditors generally as described in Part VII of this Act:

“**Goods**” include all chattels personal:

“**Property**” includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in this Isle or elsewhere; also, obligations, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property, as herein defined:

“**Secured creditor**” means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor:

“**Trustee**” means the trustee in bankruptcy of a debtor’s estate, and includes an official trustee and a receiver, or manager of the estate, pending the appointment of a trustee:

“**Coroner**” includes lockman and any officer charged with the enforcement of any execution, or with the execution of any process:

“**Indictment**” includes information:

“**Prescribed**” means prescribed by general rules to be made as in this Act provided; but where no such rules apply, as may be prescribed by order of the Court.

## PART I

### ACTS OF BANKRUPTCY AND PROCEEDINGS CONSEQUENT ON ADJUDICATION

#### *Acts of bankruptcy*

#### 5 **Acts of bankruptcy**

[P1914/59/1(g), 2 and 5(4)]

A debtor commits an act of bankruptcy in each of the following cases: —

- (a) If, in this Isle or elsewhere, he makes a deed of arrangement:

- (b) If, in this Isle or elsewhere, he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof, or if he fraudulently creates a charge upon his property:
- (c) If, in this Isle or elsewhere, he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt:
- (d) If, with intent to defeat or delay his creditors, he does any of the following things, namely, departs out of this Isle, or, being out of this Isle, remains out of the same, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house, or evades the process of any of the Courts thereof:
- (e) If, under execution issued against him, his goods have been seized, and have been either sold or held by the Coroner for fourteen days, without any proceeding having been taken to rehear the cause or appeal from the judgment in respect of which such execution was issued:
- (ee) If a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in the Isle of Man, or, by leave of the Court, elsewhere, a notice under section 5A of this Act, and he does not within 14 days after service of the notice, in case the service is effected in the Isle of Man, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counterclaim, set-off or cross-demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained.

For the purposes of this paragraph and of section 5A of this Act, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order.<sup>2</sup>

- (f) If, being a prisoner for debt, he presents a petition to any Court having jurisdiction in the matter seeking to be discharged from imprisonment, by reason of his inability to maintain himself or pay the debt:
- (g) If he presents a petition to the Court to have himself adjudged a bankrupt, or files in the Court a declaration of his inability to pay his debts:
- (h) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts:
- (i) If the debtor be adjudged bankrupt in the United Kingdom.

**5A Notice under s 5(ee)<sup>3</sup>**

- (1) A notice under section 5(ee) of this Act shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the Court, and shall state the consequences of non-compliance with the notice.
- (2) [Repealed]<sup>4</sup>
- (3) A notice under section 5(ee) of this Act —
  - (a) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor,
  - (b) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but, if the debtor does not give such notice, he shall be deemed to have complied with the notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

**6 Bankruptcy proceedings to commence by petition**

Proceedings in bankruptcy shall, except where otherwise directed by this Act, be commenced by petition, in this Act referred to as a “bankruptcy petition”.

*Adjudication of Bankruptcy***7 Property of a bankrupt to vest in a trustee**

- (1) Where the debtor is adjudged bankrupt, the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee, to be appointed by the Court; but, until a trustee is appointed, an official trustee shall be nominated by the Court to act as the trustee for the purposes of the bankruptcy.

A person shall be deemed not fit to act as trustee where he has been previously removed from the office of trustee of a bankrupt for misconduct or neglect of duty.
- (2) The property of the bankrupt shall pass from trustee to trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.
- (3) An office copy of the appointment of the trustee shall, as to the law for the time being in force as to registration or recording of conveyances or

assignments of property, be deemed to be a conveyance or assignment of property, and may be registered and recorded accordingly.

## **8 Receiving order**

The Court may, if it be shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before an order of adjudication be made, by order (in this Act referred to as a receiving order), appoint an official trustee to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof, or of any part thereof.

## **9 Stay of proceedings against a debtor on presentation of a bankruptcy petition**

- (1) On the making of an order of adjudication, no creditor to whom the debtor is indebted in respect of any debt provable shall have any remedy against the person or property of the debtor in respect of the debt, or shall commence any action or other legal proceedings with respect to the debt, unless with the leave of the Court, and on such terms as the Court may impose.
- (2) The court may, at any time after the presentation of a bankruptcy petition, and before an order of adjudication be made, stay any action, judgment, execution, or other legal process against the person or property of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings, or allow them to continue on such terms as it may think just:
- (3) But this section shall not affect the power of any secured creditor to realise, or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

## **10 No priority under execution after presentation of a bankruptcy petition<sup>5</sup>**

From the time of the presentation of a bankruptcy petition no creditor shall thereafter, so long as the bankruptcy proceedings under such petition be pending, gain any priority by reason of his execution having been in the hands of the coroner or lockman to be executed; and in case the petition be dismissed, the interval of time between the presentation and dismissal of such petition shall not be included in the twenty-one days for the purposes of section four of an Act of Tynwald promulgated upon the 1st day of November 1820, and intituled "An Act for the better enforcing of common judgments and executions, and for altering and amending the law relative to bail to actions of debt or damage, and for the relief of insolvent debtors in the said Island".

*Discharge of Bankrupt***11 Discharge of bankrupt**

- (1) A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appointed a day for hearing the application. The application shall be heard in open Court.
- (2) On the hearing of the application the Court shall take into consideration the bankrupt's conduct and affairs, and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property, or grant an order limited to the release of the bankrupt from imprisonment and liability to imprisonment for any debt provable in bankruptcy, save any debt or liability from with the bankrupt is not released by an order of discharge under the provisions in this Act contained: Provided that the Court shall refuse the discharge in all cases where the bankrupt has committed any felony or misdemeanour connected with his bankruptcy under this Act, or any Act for the punishment of fraudulent debtors for the time being in force; and shall, on proof of any of the facts hereinafter mentioned, either —
  - (i) Refuse the discharge; or
  - (ii) Suspend the discharge for a period of not less than two years; or
  - (iii) Suspend the discharge until a dividend of not less than 50p in the pound has been paid to the creditors; or<sup>6</sup>
  - (iv) Require the bankrupt, as a condition of his discharge, to consent to a judgment being entered against him by the trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt, in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, such leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts:

Provided, that if at any time after the expiration of two years from the date of any order made under this section, the bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

- (3) The facts hereinbefore referred to are —
- (a) That the bankrupt's assets are not of a value equal to 50p in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to 50p in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible:<sup>7</sup>
  - (b) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy:
  - (c) That the bankrupt has continued to trade after knowing himself to be insolvent:
  - (d) That the bankrupt has contracted any debt provable in the bankruptcy, without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it:
  - (e) That the bankrupt has failed to account satisfactorily for any loss of assets, or for any deficiency of assets to meet his liabilities:
  - (f) That the bankrupt has brought on or contributed to his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs:
  - (g) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him:
  - (h) That the bankrupt has, within three months preceding the date of the receiving order, or order of adjudication, incurred unjustifiable expense by bringing a frivolous or vexatious action:
  - (i) That the bankrupt has, within three months preceding the date of the receiving order, or order of adjudication, when unable to pay his debts as they become due, given an undue preference to any of his creditors:
  - (j) That the bankrupt has, within three months preceding the date of the receiving order, or order of adjudication, incurred liabilities with the view of making his assets equal to 50p in the pound on the amount of his unsecured liabilities:<sup>8</sup>
  - (k) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors:
  - (l) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.



- (4) For the purpose of this section, a bankrupt's assets shall be deemed of a value equal to 50p in the pound on the amount of his unsecured liabilities, when the Court is satisfied that the property of the bankrupt has realized, or is likely to realize, or with due care in realization might have realized, an amount equal to 50p in the pound of his unsecured liabilities.<sup>9</sup>
- (5) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.
- (6) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of Court, and for such contempt, on the application of the trustee, shall be liable to imprisonment for a term not exceeding three months; and, in addition thereto, the Court may, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

## 12 Fraudulent settlements

In either of the following cases (that is to say): —

- (1) In the case of a settlement made before and in consideration of marriage or the formation of a civil partnership where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or<sup>10</sup>
- (2) In the case of any covenant or contract made in consideration of marriage or the formation of a civil partnership for the future settlement on or for the settlor's spouse, civil partner or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his or her spouse or civil partner);<sup>11</sup>

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

## 13 Effect of order of discharge

- (1) An order of discharge shall not release the bankrupt from any debt on a bond or a recognizance to, or to a person on behalf of, or in trust for, the Crown, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute

relating to any branch of the public revenue; and he shall not be discharged from such excepted debts unless the Treasury certify in writing their consent to his being discharged therefrom; neither shall an order of discharge release the bankrupt from any liability under a judgment against him in an action for seduction, or under an affiliation order. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

- (1A) Subsection (1) of this section shall have effect as if amounts payable under confiscation orders made under Part 2 of the *Proceeds of Crime Act 2008* were debts excepted under the first sentence of that subsection.<sup>12</sup>
- (2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.
- (3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.
- (4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

#### **14 Discharge may be annulled if obtained by fraud**

If, at any time after the discharge of a debtor, it appears to the Court, on the application of any person interested, that the discharge was obtained by fraud, the Court may by order annul such discharge.

#### *Composition or Scheme of Arrangement*

#### **15 Composition or scheme of arrangement in substitution of bankruptcy**

- (1) If the debtor, at any time after a receiving order or order of adjudication has been made, submit to the Court a proposal for a composition in satisfaction of the debts due to the creditors from the debtor, or a proposal for a scheme of arrangement of the debtor's affairs, the Court may, if it think fit, direct the trustee to summon, in such manner as the Court may direct, a meeting of the creditors to consider such proposal.
- (2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed by creditors representing three-

fourths in value of all those who have proved their claims, nor unless it be approved by the Court.

Any creditor who has proved his claim may assent or dissent from such composition or scheme by a letter addressed to the trustee in the prescribed form, and attested by a witness, so as to be received by the trustee not later than the day preceding such meeting, and such creditor shall be taken as being present and voting thereat.

- (3) If the composition or scheme of arrangement is accepted by the creditors at such meeting, or any adjournment thereof (such acceptance being embodied in a resolution of the meeting, verified by the trustee), the trustee or the debtor may apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given in the prescribed manner, or, if no manner be prescribed, as the Court may direct.
- (4) The Court shall, before approving a composition or scheme, consider the terms thereof, and the conduct of the debtor, and also any objections which may be made by and on behalf of any creditor.
- (5) If the Court is of opinion that the terms of the composition or scheme are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required under this Act where the debtor is adjudged bankrupt to refuse his discharge, the Court shall, or if any such facts are proved as would under this Act justify the Court in refusing, qualifying, or suspending the debtor's discharge, the Court may, in its discretion, refuse to approve the composition or scheme.
- (6) If the Court approve the composition or scheme, the approval shall be testified by an order of the Court, and, if the debtor has been previously adjudged bankrupt, the Court may make an order annulling the bankruptcy, and vesting the property in the debtor, or such other person as the Court may appoint, on such terms and subject to such conditions, if any, as the Court may declare.
- (7) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in the bankruptcy.
- (8) The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on such application shall be deemed a contempt of court, and shall be punishable, on further application by such person, with imprisonment for any period not exceeding three months.
- (9) If default is made in the payment of any sum of money, or instalment, due in pursuance of the composition or scheme, or if it appears to the Court on satisfactory evidence that the composition or scheme cannot, in

consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection any debt provable in other respects, which has been contracted before the date of the adjudication, shall be provable in the bankruptcy.

- (10) If under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, Part IV of this Act shall apply to the trustee as if he were a trustee in the bankruptcy, and as if the terms "bankruptcy", "bankrupt," and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme.
- (11) Part III of this Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee", " bankruptcy", "bankrupt", and "order of adjudication", as in the last preceding sub-section.
- (12) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.
- (13) Notwithstanding the acceptance and approval of a composition or scheme such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.
- (14) The order of the Court approving of a composition or scheme shall be conclusive evidence of the meeting of the creditors having been duly held, and of the resolution of such meeting having been duly carried and passed thereat.

## PART II

### DISQUALIFICATIONS OF BANKRUPT

#### 16 Disqualification of bankrupts

- (1) Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified for —
  - (a) [Repealed]<sup>13</sup>

- (b) Being appointed, or acting, as a justice of the peace;
  - (c) [Repealed]<sup>14</sup>
  - (d) [Repealed]<sup>15</sup>
- (2) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when —
- (a) the adjudication of bankruptcy against him is annulled; or
  - (b) he obtains from the Court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part; or
  - (c) on the expiration of five years from the date of his discharge.

The Court may grant or withhold a certificate under this section as it thinks fit, but any refusal of such certificate shall be subject to appeal.

## **17 and 18 [Repealed]<sup>16</sup>**

## **19 Power for Court to annul adjudication in certain cases**

- (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested, by order annul the adjudication.
- (2) When an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the trustee, or other person acting under his authority, or by the Court, shall be valid; but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate, or interest therein, on such terms and subject to such conditions, if any, as the Court may declare by order.

## **20 Meaning of payment of debts in full**

For the purposes of the last preceding section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be identified shall be considered as paid in full if paid into Court.

## PART III

### ADMINISTRATION OF PROPERTY

#### *Proof of Debts*

#### 21 Description of debts provable in bankruptcy

- (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, shall not be provable in bankruptcy.
- (2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.
- (3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the order of adjudication, or to which he may become subject before his discharge, by reason of any obligation incurred before the date of such order, shall be deemed to be debts provable in bankruptcy.
- (4) An estimate shall be made by the trustee, or as the Court may direct, of the value of any debt or liability provable as aforesaid which, by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.
- (5) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.
- (6) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself, without the intervention of a jury, and may give all necessary directions for this purpose and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.
- (7) “**Liability**” shall, for the purposes of this Act, include any compensation for work or labour done, any obligation, or possibility of an obligation, to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur, or capable of occurring, before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money, or money’s worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency, or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or as matter of opinion.

## 22 Mutual credit and set-off

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

## 23 Partners and supplementary provisions

- (1) [Repealed]<sup>17</sup>
- (2) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.
- (3) Where a debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration, shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.
- (4) If there is any surplus after payment of the debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per centum per annum on all debts proved in the bankruptcy.

## 24 Preferential claim in case of apprenticeship

- (1) Where, at the time of the presentation of the bankruptcy petition, any person is apprenticed or is an articed clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some other person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of

the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

- (2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articed clerk to the bankrupt, or any person acting on behalf of such apprentice or articed clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

## **25 Power to landlord to distrain for rent**

Nothing in this Act contained, nor any disclaimer under the 39th section of this Act, shall affect the right of any landlord under the provisions of the Act intituled "An Act to indemnify Landlords in their Rents," promulgated in 1753, to arrest goods and effects for rent, or his right of preference to payment of the whole of the current year's rent.

### *Property available for Payment of Debts*

## **26 Relation back of trustee's title**

The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which an order of adjudication is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, the bankruptcy shall be deemed to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

## **27 Description of bankrupt's property divisible amongst creditors**

The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars —

- (1) Such wearing apparel, furniture, bedding and household equipment of the bankrupt as appear to the trustee to be essential for the domestic purposes of the bankrupt, his spouse, his civil partner and his dependents residing with him, or any of them:<sup>18</sup>



- (2) The tools and implements of the bankrupt's trade to the value of £100, or of such greater amount as may be prescribed in enforcement rules made under Part II of the *Administration of Justice Act 1981*:<sup>19</sup>
- (3) Any property held by the bankrupt in trust for, or on behalf of, any other person or body:<sup>20</sup>

But it shall comprise the following particulars: —

- (i) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and
- (ii) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and
- (iii) All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: Provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.

#### *Effect of Bankruptcy on Antecedent Transactions*

### **28 and 29    Restriction of rights of creditors under execution**

- (a) Where a creditor has obtained execution which can be enforced against the property of a debtor, he shall not be entitled to retain the benefit of the execution against the trustee unless the execution has been completed by seizure and sale, or by the receipt or recovery by the coroner or lockman of the full amount of the levy, and unless such execution has obtained priority in law before the date of the order of adjudication and before notice of the presentation of any bankruptcy petition by or against the debtor or of the commission of any available act of bankruptcy by the debtor.
- (b) Where any property of a debtor is taken in execution, and before such execution has been completed by the sale of such property, or by the receipt or recovery of the full amount of the levy, or when, before such execution has obtained priority in law, notice is served on the coroner or lockman holding the execution that an order of adjudication has been made against the debtor, or a

bankruptcy petition presented by or against the debtor, such coroner or lockman shall, on request, deliver to the trustee the property seized, or any money received in part satisfaction of the execution; but the costs of enforcing the execution shall be a first charge on the property seized or money delivered, and the trustee may sell the property, or an adequate part thereof, for the purpose of satisfying the charge.

- (c) Where, under an execution in respect of a judgment for a sum exceeding twenty pounds, the property of a debtor is sold or money is paid in order to avoid sale, the coroner or lockman shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and an order of adjudication is made against the debtor thereon, or on any other petition of which such coroner or lockman has notice, such coroner or lockman shall pay the balance to the trustee, who shall be entitled to retain the same as against the execution creditor.
- (d) An execution levied by seizure and sale on the property of a debtor shall not be invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the coroner or lockman shall in all cases acquire a good title to them against the trustee in bankruptcy.
- (e) In paragraphs (a) to (d) above —
  - (a) “execution” shall have the meaning assigned to “execution order” in section 26(1) of the *Administration of Justice Act 1981*; and
  - (b) references to seizure and sale shall be construed as references to arrest and sale pursuant to Part II of, and Schedules 1 and 2 to, that Act.<sup>21</sup>

*Duties of Coroner as to property taken in execution*

### **30 Avoidance of voluntary settlements**

- (1) Any settlement of property, not being a settlement made before and in consideration of marriage or the formation of a civil partnership, or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, or a settlement made on or for the spouse or civil partner and children of the settlor of property which has accrued to the settlor after marriage or the formation of a civil partnership in right of his spouse or civil partner, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee unless

the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.<sup>22</sup>

- (2) Any covenant or contract made in consideration of marriage or the formation of a civil partnership, for the future settlement on or for the settlor's spouse or civil partner or children, of any money or property wherein he had not at the date of his marriage or civil partnership any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his spouse or civil partner, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee.<sup>23</sup>
- (3) "Settlement" shall, for the purposes of this section, include any conveyance or transfer of property.

### **31 Avoidance of preferences in certain cases**

- (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition, presented within four months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee; and, for the purposes of this section, any such conveyance, transfer, or charge, shall be deemed to have been made on the day of the actual delivery thereof to the creditor, or a person in trust for him; or on the day of the same being recorded, if there has been no previous actual delivery, it being hereby declared that, as against the trustee, no such conveyance, transfer, or charge shall be valid by reason only of it being stated in the attesting clause that such conveyance, transfer, or charge had been delivered, or of the same having been captioned, or of constructive delivery merely.
- (2) This section shall not affect the rights of a purchaser, payee, or incumbrancer, or any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

### **32 Protection of bona fide transactions without notice**

Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution, and with respect to the avoidance of certain

settlements and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy –

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

Provided that both the following conditions are complied with, namely –

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

### *Realisation of Property*

## **33 Possession of property by trustee**

- (1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.
- (2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the High Court; and the Court may, on his application, enforce such acquisition or retention accordingly.
- (3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.
- (4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.
- (5) Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in

his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not he shall be guilty of a contempt of Court, and may be punished, on the application of the trustee, with imprisonment for any period not exceeding three months.

### **34 Seizure of property of bankrupt**

Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and, with a view to such seizure, may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court, who may execute it according to its tenor.

### **35 Sequestration of ecclesiastical benefice**

- (1) Where a bankrupt is a beneficed clergyman, the trustee may apply for a sequestration of the profits of the benefice, and an office copy of the appointment of the trustee shall be sufficient authority for the granting of sequestration without any writ or other proceeding, and the same shall accordingly be issued as if founded on a judgment against the bankrupt, and shall have priority over any other sequestration issued after the commencement of the bankruptcy in respect of a debt provable in the bankruptcy, except a sequestration issued before the date of the receiving order by or on behalf of a person who, at the time of the issue thereof, had not notice of an act of bankruptcy committed by the bankrupt, and available for grounding a receiving order against him.
- (2) The Bishop may, if he think fit, appoint to the bankrupt such or the like stipend as he might by law have appointed to a curate duly licensed to serve the benefice during a vacancy thereof, and the sequestrator shall pay the sum so appointed out of the profits of the benefice to the bankrupt, by quarterly instalments, while he performs the duties of the benefice.
- (3) The sequestrator shall also pay, out of the profits of the benefice, the salary payable to any duly licensed curate of the church of the benefice, in respect of duties performed by him, as such, during four months before the date of the receiving order, not exceeding fifty pounds.
- (4) Nothing in this section shall prejudice any mortgage or charge duly created under any Act of Tynwald before the commencement of the bankruptcy on the profits of the benefice.<sup>24</sup>

**36 Appropriation of portion of pay or salary**

- (1) Where a bankrupt is an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this sub-section the Court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of such payment.
- (2) Where a bankrupt is in the receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the Crown, the Court, on the application of the trustee, may, from time to time, make such order as it thinks just for the payment of any part of the salary, income, half-pay, pension, or compensation to the trustee, to be applied by him in such manner as the Court may direct.<sup>25</sup>
- (3) Nothing in this section shall take away or abridge any power vested in any authority to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited.

**37 Actions by trustee and bankrupt's partners**

Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates, unless given bona fide and before such authority was given by the Court, shall be void; but notice of the application for authority to commence the action shall be given to such partner, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

**38 Actions on joint contracts**

Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

**39 Proceedings in partnership name**

Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application

by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise, as the Court may direct.

#### **40 Disclaimer of onerous property**

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

Provided that where any such property shall not have come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within three months after he first became aware thereof.

- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.
- (3) A trustee shall not be entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed by general rules, and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, such tenant's improvements, and other matters, arising out of the tenancy, as the Court thinks just.
- (4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has, for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the trustee, after such application as aforesaid, does not, within the said period or extended period, disclaim the contract, he shall be deemed to have adopted it.

- (5) The Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.
- (6) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly, in the person therein named in that behalf, without any conveyance or assignment for the purpose.

Provided always, that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, or the Court may, if it thinks fit, modify such terms so as to make the person in whose favour the vesting order is made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date of the presentation of the bankruptcy petition; and (if the case so required) as if the lease had comprised only the property in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in security upon the property, and if there shall be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt.

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



**41 Powers of trustee to deal with property**

Subject to the provisions of this Act, the trustee may do all or any of the following things: —

- (1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or (with the consent of the Court) by private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:
- (2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof:
- (3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt:
- (4) Exercise any powers the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act.

**42 Powers exercisable by trustee with permission of Court**

The trustee may, with the permission of the Court, do all or any of the following things —

- (1) Carry on the business of the bankrupt, as far as may be necessary, for the beneficial winding up of the same:
- (2) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt:
- (3) Employ an advocate, solicitor, or other agent to take any proceedings or do any business which may be sanctioned by the Court:
- (4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations, as to security and otherwise, as the Court thinks fit:
- (5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts:
- (6) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms, as may be agreed on:
- (7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy:

- (8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person:
- (9) Divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases; and the permission given by this section for the employment of an advocate, solicitor, or other agent must be permission obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the permission.

### *Distribution of Property*

#### **43 Declaration and distribution of dividends**

- (1) After making provision for such sum as may be necessary for the costs of administration or otherwise, the Court shall, on the application of the trustee, make an order declaring that a dividend shall be paid to such creditors who have proved their debts, and in pursuance of any such order the distribution shall be made, as nearly as may be, according to the practice in the Civil Division of the High Court in matters of distribution of estates.<sup>26</sup>
- (2) The first dividend, if any, shall be declared and distributed within four months after the date of the order of adjudication, unless the trustee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.
- (3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be, on the application of the trustee, declared and distributed at intervals of not more than six months.
- (4) Before applying for a distribution the trustee shall cause notice of his intention to do so to be advertised in the manner the Court may direct, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.
- (5) When a dividend has been declared the trustee shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

**44 Joint and separate dividends**

- (1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.
- (2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

**45 Provisions for creditors residing at a distance, etc**

In the calculation and distribution of a dividend provision shall be made for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places beyond this Isle, that, in the ordinary course of communication, they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined. Provision shall also be made for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, all money in hand should be distributed.

**46 Right of creditor who has not proved debt before declaration of dividend**

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

**47 Final dividend**

When the trustee has realised all the property of the bankrupt, or as much thereof as can, in the opinion of the Court, be realised without needlessly protracting the trusteeship, he shall apply to the Court for a final dividend to be declared, but before so doing he shall give notice in such manner as the Court may direct to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will

apply to have a final dividend made without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then, on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

#### **48 No action for dividend**

Where money is paid out of Court to the trustee for the payment of dividends, no action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay, out of his own money, interest thereon for the time that it is withheld, and the costs of the application. Such order shall be enforced by execution.

#### **49 Power to allow bankrupt to manage property**

Allowance to bankrupt for maintenance or service

- (1) The trustee, with the permission of the Court, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.
- (2) The trustee may, from time to time, with the permission of the Court, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate.

#### **50 Right of bankrupt to surplus**

The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

#### **51 Trustee to furnish list of creditors**

The trustee shall, whenever required by any creditor to do so, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

The trustees shall be entitled to charge for such list the sum of 1p per page of seventy-two words, together with the cost of the postage thereof.<sup>27</sup>

#### **52 Statement of accounts to be furnished if required**

Any creditor, with the concurrence of one-sixth in number of the creditors (including himself) may at any time call upon the trustee to furnish and

transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of accounts. Provided that the person at whose instance the accounts are furnished shall deposit with the trustees a sum sufficient to pay the costs of furnishing and transmitting the accounts, such sum to be repaid him out of the estate if the Court so direct.

## PART IV

### *Trustees in Bankruptcy*

#### **53 Clerk of the Rolls to appoint official trustees**

- (1) The Clerk of the Rolls shall, at any time before the commencement of this Act, and from time to time, appoint such persons as he may think fit to be official trustees of debtors' estates, and may remove any person so appointed from such office. Any appointment or removal hereunder shall be in writing, and shall be filed in the Rolls Office.<sup>28</sup>
- (2) The official trustees shall be officers of the Court, and shall act under its directions.
- (3) Any official trustee may be appointed as official receiver, or manager, or trustee in any bankruptcy, and he shall give such security to the Crown as the Court may direct.

#### **54 Deputy for official receiver**

The Court may, from time to time, by order, direct that any official trustee shall be capable of discharging the duties of trustee during any temporary vacancy in the office, or during the temporary absence of any official trustee through illness or otherwise.

#### **55 Duties of official trustee as regards the debtor's conduct**

As regards the debtor and his estate, it shall be the duty of the trustee —

- (1) To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any offence under this or any Act for the punishment of fraudulent debtors for the time being in force, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge:
- (2) To make such other reports concerning the conduct of the debtor as the Court may direct:
- (3) To take such part, and give such assistance, in relation to the prosecution of any fraudulent debtor as the Court may direct:

- (4) For the purpose of his duties as interim receiver or manager, the official receiver shall have the same powers as if he were a receiver or manager appointed by the High Court, and shall not, unless the Court otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods:
- (5) Provided that, when the debtor cannot, in the opinion of the Court, himself prepare a proper statement of affairs, the official receiver may, under the direction of the Court, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs:
- (6) Every official receiver shall account to the Court and pay over all moneys and deal with all securities in such manner as the Court from time to time direct.

### *Remuneration of Trustee*

#### **56 Remuneration of trustee**

- (1) The remuneration of a trustee in bankruptcy shall be fixed by the Court by order, and shall be payable out of the amount realised after deducting any sums paid to secured creditors out of the proceeds of their securities.
- (2) The order shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.
- (3) A trustee shall not, under any circumstances whatever, make any arrangements for or accept from the bankrupt, or any advocate, solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the Court and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee either to the bankrupt, or any solicitor, or other person that may be employed about a bankruptcy.
- (4) Where a trustee acts without remuneration he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the Court may approve.

### *Costs*

#### **57 Allowance and taxation of costs**

- (1) Where a trustee or manager receives remuneration for his services as such no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are

required by statute or rules, or what in the opinion of the Court ought to be performed by himself.

- (2) Where the trustee is an advocate he may arrange with the Court that the remuneration for his services as trustee shall include all professional services, and such arrangement shall be set out in the order of the Court.
- (3) All bills and charges of advocates shall be taxed in like manner as bills of costs of advocates are now taxed, and those of trustees, managers, accountants, auctioneers, brokers, and other persons shall be taxed by the Court, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made.

The Court shall satisfy itself before passing such bills and charges that the employment of such advocates and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned; and, in the case of bills and charges of advocates to be taxed as aforesaid, the Court shall in each case certify that such bills are referred for taxation, and whether as costs of a superior or summary Court, and whether as between attorney and client or party and party.<sup>29</sup>

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

*Receipts, Payments, Accounts, Audit*

## **58 Payment of money into bank**

- (1) Every trustee in bankruptcy shall, in such manner and at such times as may be prescribed or as the Court may direct, pay, with the privity of a judge of the Court, the money received by him into the bank to the credit of an account to be called "The Bankruptcy Account of ", inserting the name of the bankrupt.
- (2) If a trustee at any time retains for more than ten days a sum exceeding twenty pounds, or such other amount as the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

- (3) The accounts of moneys paid into Court shall be kept at the Rolls Office, in like manner as in the case of other moneys paid into the High Court; but as to the payment of money into Court in bankruptcy proceedings, a certificate of the judge of the Court shall be substituted for that of the Clerk of the Rolls, a duplicate of such certificate being in each case forwarded by the Court to the Rolls Office, and a payment of money under any such certificate into the bank, shall be deemed to be a payment made with the privity of the judge.

### **59 Trustee not to pay into private account**

No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay sums received by him as trustee into his private banking account.

### **60 Accounts of trustee to be filed and audited**

- (1) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, return to the Court an account of his receipts and payments as such trustee.
- (2) The accounts shall be in a prescribed form, and shall be verified by a statutory declaration in the prescribed form.
- (3) The Court may cause the accounts so sent to be audited, and for the purposes of the audit the trustee shall furnish the Court with such vouchers and information as the Court may require, and the Court may, at any time, require the production of and inspect any books or accounts kept by the trustee.

### **61 The trustee to furnish list of creditors**

The trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

### **62 Books to be kept by trustees**

The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent inspect any such books.

### **63 Annual statement of proceedings**

- (1) Every trustee in a bankruptcy shall, from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Court a statement showing the



proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

- (2) The Court may cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.
- (3) All expenses connected with the audit and examination under this section and section 60 shall be paid out of the bankrupt's estate.

#### *Release of Trustee*

### **64 Release of trustee**

- (1) When the trustee has realised all the property of the bankrupt, or as much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Court shall, on his application, and after such notice to creditors, or any of them, as the Court may direct, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Court, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly.
- (2) Where the release of a trustee is withheld the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.
- (3) Any order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

#### *Official Name*

### **65 Official name of trustee**

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

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

*Control over Trustee*

**66 Discretionary powers of trustee and control thereof**

- (1) Subject to the provisions of this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by the Court.
- (2) The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.
- (3) Subject to the provisions of this Act the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

**67 Appeal to Court against trustee**

If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

**68 Court may remove a trustee**

The Court shall have power, on the application of any creditor, and on cause shown, to remove a trustee of a bankruptcy estate, and to appoint another trustee in his place.

*Appeals, etc.*

**69 Appeals in bankruptcy**

- (1) The Court may review, rescind, or vary any order made by it under its bankruptcy jurisdiction.
- (2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows: —
  - (a) An appeal shall lie from the order of the Court to the Appellate Court:
  - (b) An appeal shall, with the leave of the Appellate Court, but not otherwise, lie from the order of that Court to Her Majesty in Council:

- (c) No appeal shall be entertained except in conformity with such general rules as may be for the time being in force in relation to appeals.

## PART V

### *General Rules, Etc.*

#### **70 General rules to be made**

- (1) Subject to the provisions of this Act, the Deemsters may, from time to time, make, revoke, or alter general rules for carrying into effect the purposes of this Act, for regulating the practice and proceedings of the Court in bankruptcy.<sup>30</sup>
- (2) Part III of the *High Court Act 1991*, shall be applicable to the general rules to be made under this Act.<sup>31</sup>

#### **70A Fees and commissions**

- (1) The Treasury shall by order prescribe the fees and percentages to be charged for or in respect of proceedings in bankruptcy.
- (2) An order under this section shall not have effect unless it is approved by Tynwald.<sup>32</sup>

### *Formal Defects*

#### **71 Formal defect not to invalidate proceedings**

- (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court.
- (2) No defect or irregularity in the appointment of the trustee shall vitiate any act done by him in good faith.

### *The Crown*

#### **72 Certain proceedings to bind the Crown**

Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown; but otherwise

nothing in this Act contained shall affect the rights of the Crown, save as they are by this Act expressly affected.

*Transitory Provisions*

**73 Transfer of estates on vacancy of office of trustee in liquidation under the Bankruptcy Act, 1872**

[Spent.]

**74 Transfer of outstanding property on close of bankruptcy or liquidation**

[Spent.]

**75 Transfer of estates from registrars of Court to official receiver**

[Spent.]

**76 Proceedings under Bankruptcy Act, 1872, ss 95 and 96**

[Spent.]

**PART VI**

*Relief of Imprisoned Debtors*

**77 An imprisoned debtor may be discharged on accounting for and surrendering his property**

Any imprisoned debtor may, without taking proceedings in bankruptcy, by petition to the Court, seek to be discharged from imprisonment under any order by reason of his inability to pay or secure the debt for which he may be imprisoned, which petition shall be heard in the usual way with all convenient speed; and, on the hearing of such petition, or after due notice to the creditors at whose instance the orders have been made in case they do not appear at such hearing, the Court may, on being satisfied that the debtor has fully accounted for all his property of every description, and if the Court so require, on the debtor executing to the satisfaction of the Court such deed or deeds of assignment of all property to which he may be entitled in possession or otherwise in favour of any trustee or trustees to be approved by the Court in trust for the benefit of the creditors of the debtor according to their respective rights, order the debtor's discharge from such his imprisonment.

Provided always —

- (1) That on the hearing of any such petition the Court may, on consideration of the circumstances of the debtor, instead of ordering his absolute

discharge from imprisonment under any order, suspend the enforcement of such order on condition that the debtor pay periodically, and in such manner as the Court may direct, such instalments of the debt as may be agreed upon by the parties, or fixed by the Court. In case the debtor fail to pay any such instalment, it shall be lawful again from time to time to enforce such order, if for a judgment debt, for the amount or balance due under such order, or where judgment has not been obtained for the debt, and the order be still in force, to enforce such order for the amount claimed or for which the debtor might be liable to imprisonment thereunder had he not been discharged. Where judgment for the debt has not been obtained, the said instalments shall be paid or secured in such manner as may be agreed upon by the parties, or as the Court may direct:

- (2) That a general assignment of the debtor's property, without specification thereof, made under this section shall be sufficient in law to vest in the trustee or trustees of such assignment all property of the debtor capable of being sold or transferred by him:
- (3) That, notwithstanding any such assignment, the future property of the debtor shall, at all times thereafter, be liable to be taken under execution then or thereafter to be granted for the debt for which he may have been imprisoned, or for so much as may remain unsatisfied; but, except as hereinbefore mentioned, he shall not be again liable to imprisonment for the same debt:
- (4) That nothing in this section contained shall prejudice or affect the proceedings which may be taken by or against a debtor under the law for the time being in force in relation to bankruptcy or insolvency, or the right of a debtor to obtain under any such law an absolute discharge of his future property from liability to his debts; but no assignment of a debtor's property under this section shall be in anywise affected or rendered void or voidable by reason of bankruptcy proceedings being taken subsequently against the debtor, or of the debtor being subsequently adjudicated a bankrupt:
- (5) That in any case of a debtor seeking relief under this section in respect of a judgment debt for which execution has not been awarded, the said Court shall, as heretofore accustomed, on the hearing of the petition award execution for the amount of the debt and costs, but in this case the judgment debtor shall not be liable to imprisonment again for the same debt by reason of the judgment creditor obtaining a return of no effects to discharge the execution which may be so awarded:
- (6) That for the purposes of this section, "debt" shall include damages and costs whether payable under judgment or claimed in a suit, and also the amount for which security may be required in an action of arrest in the High Court against the putative father of a bastard child to obtain security for unascertained or unliquidated expenses, past or future, in

connection with the birth, maintenance, clothing, education, or death of such child; “debtor” shall include the defendant in an action or suit for debt, and any person imprisoned for debt, and although judgment for the debt has not been given; “order” shall mean and include an order of imprisonment, a writ of contempt for non-payment of a debt under a judgment, and mesne process of arrest for debt; and “execution” shall mean an order or process under which the property of a debtor is liable to be attached and sold.

But provided also, that a person imprisoned for —

- (a) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract, or of any sum of money for non-payment whereof a fixed term of imprisonment is awarded:
- (b) default by such person as a trustee or acting in a fiduciary capacity, and ordered to pay any sum in his possession or under his control:
- (c) default by such person as an advocate or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered by a Court in his character of an advocate or solicitor:
- (d) default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorised to make an order:

shall not be deemed a debtor for the purposes of this section.

## PART VII

### DEED OF ARRANGEMENT

#### 78 Deed of arrangement to which Act applies

A deed of arrangement shall include any of the following instruments, made by, for, or in respect of the affairs of a debtor for the benefit of the creditors generally, otherwise than in pursuance of the provisions of this Act relating to bankruptcy or any other Act for the time being in force relating to bankruptcy (that is to say) —

- (a) Assignment of property;
- (b) A deed of or agreement for a composition;

and in cases where creditors of a debtor obtain any control over his property or business —

- (c) A deed of inspectorship entered into for the purpose of carrying on or winding up a business;

- (d) A letter of licence authorising the debtor or any other person to arrange, carry on, realise, or dispose of a business, with a view to the payment of debts; and
- (e) Any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise, or dispose of the debtor's business, with a view to the payment of his debts.

## **79 Registration of deed of arrangement**

A deed of arrangement shall be void unless the same shall have been registered in the office for registry of deeds within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of this Isle within seven clear days after the time at which it would, in the opinion of the registrar, in the ordinary course of post, arrive in this Isle, if posted one week after the execution thereof; and in the latter case there shall be added to the certificate or memorandum of registration by the registrar a statement that in his opinion the deed has been duly registered pursuant to this Act.

## **80 Extension of time for registration**

The Court, upon being satisfied that the omission to register a deed of assignment within the time required by this Act was accidental, or due to inadvertence, or to some cause beyond the control of the debtor, may, on the application of any person interested, and on such terms as are just and expedient, extend the time for such registration.

## **81 Time for registration**

When the time for registering a deed of arrangement expires on a Sunday, or other day on which the registration office is closed, the registration shall be valid if made on the next following day on which the office is open.

## **82 Deed of arrangement to be confirmed by the Court**

The trustees appointed by a deed of arrangement shall cease to be trustees unless their appointment is confirmed by the Court on an application by petition for such confirmation, to be presented within three days after the registration of the deed, and on the hearing of such petition the Court shall have power to appoint trustees other than those named in the deed. Notice of the hearing of such petition shall be given to the debtor and trustees, if not petitioners, and to some of the principal creditors, and otherwise if the Court see fit. If it appear to the Court, on the hearing of the petition, that, in consequence of difficulties as to the appointment of trustees, or for any sufficient cause, the deed of arrangement cannot, without injustice or undue

delay to the creditors or to the debtor, be carried into effect, the Court may adjudge the debtor a bankrupt, and proceedings may be had accordingly.

### **83 Jurisdiction of Court as to deed of arrangement**

The Court shall have the like jurisdiction with respect to a deed of arrangement and the trustees thereof, as the High Court has with respect to the execution of trusts under any deed or will, and the administration of trust property; and the Court shall have power summarily, on the application of any trustee of a deed of arrangement, or of any creditor of the debtor, or of any person interested in the trust property under such deed, in order to ensure a fair and just distribution of such property amongst the creditors according to their respective priorities and rights, to vary, amend, or set aside any of the provisions of a deed of arrangement which it may deem inequitable or unjust; also to remove trustees, and to fill up vacancies in the trust; also, if the Court think it advisable, to order the proceeds of the trust property to be paid into Court for distribution.

### **84 Provisions as to trustee in Part IV to be applicable to trustees of deeds of arrangement**

Part IV of this Act shall apply to the trustee of a deed of arrangement as if he were a trustee in bankruptcy, and as if the term “bankruptcy” and “bankrupt” included respectively a deed of arrangement, and the debtor to whose affairs such deed relates.

### **85 Part III as to administration of property to apply to property administered under a deed of arrangement**

Part III of this Act shall, so far as the nature of the case and the terms of the deed of arrangement admit, apply thereto, the same interpretation being given to the words “trustee”, “bankruptcy”, and “bankrupt”, as in the last preceding section.

## **PART VIII**

### **FRAUDULENT DEBTORS**

### **86 Offences by debtors**

A bankrupt shall in each of the cases following be deemed guilty of a misdemeanour, and, on conviction thereof, shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour (that is to say): —

If, with intent to defraud —

- (1) He does not, to the best of his knowledge and belief, fully and truly discover to the trustee all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part



thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family:

- (2) He does not deliver up to the trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up:
- (3) He does not deliver up to the trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs:
- (4) After the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him:
- (5) After the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he fraudulently removes any part of his property of the value of ten pounds or upwards:
- (6) He makes any material omission in any statement relating to his affairs:
- (7) Knowing or believing that a false debt has been proved by any person under his bankruptcy, he fails for the period of a month to inform such trustee as aforesaid thereof:
- (8) After the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing, affecting or relating to his property or affairs:
- (9) After the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs:
- (10) After the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs:
- (11) After the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs:
- (12) After the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within four months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses:
- (13 and 14) [Repealed]<sup>33</sup>

- (15) Within four months next before the presentation of a bankruptcy petition by or against him, he pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for:
- (16) He is guilty of any false representation, or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs or his bankruptcy:
- (17) After the presentation of a bankruptcy petition by or against him, or within four months before such presentation, he quits this Isle and takes with him, or attempts or makes preparations for quitting this Isle, and for taking with him, any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided amongst his creditors.

### **87 Undischarged bankrupt obtaining credit to extent of £20 to be guilty of misdemeanour**

Where an undischarged bankrupt who has been adjudged bankrupt obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour.

### **88 Penalty for fraudulently obtaining credit, etc**

Any person shall, in each of the cases following be deemed guilty of misdemeanour, and on conviction thereof shall be liable to be imprisoned for any period not exceeding one year, with or without hard labour (that is to say) —

- (1) [Repealed]<sup>34</sup>
- (2) If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of, or any charge on, his property;
- (3) If he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

### **89 [Repealed]<sup>35</sup>**

### **90 Debts incurred by fraud**

Where a debtor makes any arrangement or composition with his creditors, he shall remain liable for the unpaid balance of any debt which he incurred or

increased, or whereof before the date of the arrangement or composition he obtained forbearance from a creditor by any fraud.

### **91 Criminal liability after discharge or composition**

Where a debtor has been guilty of any criminal offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

### **92 Form of indictment**

In an indictment for an offence under this Act, it shall be sufficient to set forth the substance of the offence charged in the words of this Act, specifying or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading adjudication, or any proceeding in, or order, warrant, or document, of any Court; and it shall be sufficient in any indictment under this Act, where it shall be necessary to allege an intent to defraud, to allege that the party accused did the act charged with intent to defraud, without alleging an intent to defraud any particular person; and on the trial of the indictment it shall not be necessary to prove an intent to defraud any particular person; but it shall be sufficient to prove that the party accused did the act with an intent to defraud.

### **93 A magistrate before whom a person is charged may consider evidence as to guilty intent**

When any person is charged with any offence under this Act before any high-bailiff or justice of the peace, such high-bailiff or justice shall take into consideration any evidence adduced before him to show that the act charged was not committed with a guilty intent.

### **94 Power for Court to commit for trial**

Where there is, in the opinion of the Court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by statute made a misdemeanour in cases of bankruptcy, the Court may commit the bankrupt or such other person for trial, or may direct that such bankrupt or other person be taken into custody and brought before a high-bailiff or a justice of the peace, who shall inquire into the offence charged in like manner as in the case of other indictable offences.

### **95 Punishments under this Act cumulative**

Where any person is liable under any other Act of Tynwald to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act of Tynwald, or under this Act, so that he be not punished twice for the same offence.



**Schedule<sup>36</sup>**



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

<sup>1</sup> S 3 repealed by Statute Law Revision Act 1983 Sch 2.

<sup>2</sup> Para (ee) inserted by Bankruptcy Act 1988 s 2.

<sup>3</sup> S 5A inserted by Bankruptcy Act 1988 s 2.

<sup>4</sup> Subs (2) repealed by Interpretation Act 2015 s 105.

<sup>5</sup> S 10 substituted by Bankruptcy Code Amendment Act 1903 s 15. The reference to the Act of Tynwald is to the Debtors Act 1820.

<sup>6</sup> Para (iii) amended by Decimal Currency (Isle of Man) Act 1970 s 9.

<sup>7</sup> Para (a) amended by Decimal Currency (Isle of Man) Act 1970 s 9.

<sup>8</sup> Para (j) amended by Decimal Currency (Isle of Man) Act 1970 s 9.

<sup>9</sup> Subs (4) amended by Decimal Currency (Isle of Man) Act 1970 s 9.

<sup>10</sup> Para (1) amended by Civil Partnership Act 2011 Sch 14.

<sup>11</sup> Para (2) amended by Civil Partnership Act 2011 Sch 14.

<sup>12</sup> Subs (1A) inserted by Criminal Justice Act 1990 Sch 2 and amended by the Proceeds of Crime Act 2008 Sch 7.

<sup>13</sup> Para (a) repealed by Representation of the People Act 1995 Sch 8.

<sup>14</sup> Para (c) repealed by Local Elections Act 1986 Sch 4.

<sup>15</sup> Para (d) repealed by Representation of the People Act 1995 Sch 8.

<sup>16</sup> Ss 17 and 18 repealed by Representation of the People Act 1995 Sch 8.

<sup>17</sup> Subs (1) repealed by Preferential Payments Act 1908 Sch.

<sup>18</sup> Para (1) substituted by Bankruptcy Act 1988 s 3 and amended by Civil Partnership Act 2011 Sch 14.

<sup>19</sup> Para (2) substituted by Bankruptcy Act 1988 s 3.

<sup>20</sup> Para (3) inserted by Bankruptcy Act 1988 s 3.

- <sup>21</sup> Paras (a) to (d) substituted for ss 28 and 29 by Bankruptcy Code Amendment Act 1903 s 16. Para (e) added to 1903 Act by Administration of Justice Act 1981 Sch 5.
- <sup>22</sup> Subs (1) amended by Civil Partnership Act 2011 Sch 14.
- <sup>23</sup> Subs (2) amended by Civil Partnership Act 2011 Sch 14.
- <sup>24</sup> Subs (4) amended by SD2015/0236.
- <sup>25</sup> Subs (2) amended by Bankruptcy Code Amendment Act 1903 s 18.
- <sup>26</sup> Subs (1) substituted by Bankruptcy Code Amendment Act 1903 s 17 and amended by SD352/09.
- <sup>27</sup> S 51 amended by Decimal Currency (Isle of Man) Act 1970 s 9.
- <sup>28</sup> Subs (1) amended by Governor's General Functions (Transfer) Act 1980 Sch 1.
- <sup>29</sup> See General Note 4.
- <sup>30</sup> Subs (1) amended by Governor's Financial and Judicial Functions (Transfer) Act 1976 Sch 2 and by Transfer of Deemsters' Functions Act 2003 Sch.
- <sup>31</sup> Subs (2) amended by High Court Act 1991 Sch 3.
- <sup>32</sup> S 70A inserted by Transfer of Deemsters' Functions Act 2003 s 1.
- <sup>33</sup> Paras 13 and 14 repealed by Theft Act 1981 Sch 2.
- <sup>34</sup> Para (1) repealed by Theft Act 1981 Sch 2.
- <sup>35</sup> S 89 repealed by Theft Act 1981 Sch 2.
- <sup>36</sup> Sch repealed by Statute Law Revision Act 1983 Sch 2.