## CAP. LIII.

### An Act to amend the Laws relating to Bankruptcy in *Scotland*.

[4th *August* 1853.]

2 & 3 Vict. c. 41.

'WHEREAS an Act was passed in the Session of Parliament holden in the Second and Third Years of the Reign of Her present Majesty, intituled *An Act for regulating the Sequestration of the Estates of Bankrupts in* Scotland; and it is expedient that the said Act be in some respects altered and amended, and that further Provision be made for the due Management and more speedy Distribution of the Estates of Bankrupts under Sequestration in *Scotland*:' Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Interim Factor to be named by the Lord Ordinary, and to take immediate Possession of Bankrupt's Estate.

I. The Interim Factor, in place of being elected, as at present, shall be appointed by the Lord Ordinary by whom Sequestration shall be awarded, or by the Sheriff of the County, upon a Remit to that Effect by the Lord Ordinary; and such Interim Factor shall as soon as may be after his Appointment take possession of the Bankrupt's Estate and Effects, and of his Title Deeds, Books, Bills, Vouchers, and other Papers and Documents, and also make up an Inventory of such Estate and Effects, and a Valuation showing the estimated Value and the annual Rental or Revenue thereof; and every such Interim Factor shall find Caution for his Intromissions to such Amount as the Lord Ordinary, or the Sheriff, where such Factor shall be appointed by the Sheriff, shall fix; and on such Caution being so found and received such Interim Factor shall be entitled to act, and a certified Copy of the Interlocutor containing his Appointment shall be equivalent to a formal Extract thereof; and such Interim Factor shall be entitled to make such Arrangements for the carrying on of the Trade of the Bankrupt as he may think beneficial for the Estate.

Deliverance awarding Sequestration to appoint Meeting to elect Trustee.

II. The Deliverance awarding Sequestration shall appoint a Meeting of the Creditors, to be held at a specified Hour on a specified Day, being not earlier than Twelve nor later than Twenty-one Days from the Date of such Deliverance, to elect a Trustee or Trustees in succession, and Commissioners, and to do the other Acts provided by the said recited Act to be done at the Meeting for electing a Trustee.

Not to be imperative on Lord Ordinary to grant personal Protection.

III. It shall not be imperative upon the Lord Ordinary, when awarding Sequestration, to grant to the Debtor or Partners of the Company against whom or which Sequestration is awarded a Warrant of Protection against Arrest or Imprisonment for Civil Debt until the Meeting of the Creditors for the Election of Trustee, but the Lord Ordinary may, while awarding Sequestration, refuse to grant such Warrant of Protection; and every such Warrant of Protection which may be granted in any Sequestration that shall not be advertised in the *London* and *Edinburgh* Gazettes in Terms of the said recited Act within One Week after the Date of such Sequestration shall be ineffectual, and incapable of being pleaded in Bar of personal Diligence: Provided always, that, notwithstanding the Lord Ordinary shall refuse to grant Interim Warrant of Protection as aforesaid, it shall be competent to the Creditors, on the Occasion of their meeting to elect a Trustee, or at the Meeting after the Examination of the Bankrupt, or at any meeting called for the Purpose of receiving an Offer of Composition, to resolve that personal Protection ought to be granted to the Bankrupt for such Time as they may think fit, and the Trustee shall thereupon apply to the Sheriff, who shall grant the Protection.

Deliverance of Sheriff as to the Election of Trustee, final.

IV. The Deliverance of the Sheriff or Sheriff Substitute, declaring the Person or Persons elected to be Trustee or Trustees in succession, shall be final, and in no Case subject to Review in any Court or in any Manner whatever.

Trustee to send Circular to Creditors mentioned in Bankrupt's State of Affairs.

V. It shall be the Duty of the Trustee, immediately after the Examination of the Bankrupt, to notify, by circular Letter transmitted through the Post Office to every Creditor mentioned in the State of Affairs which by the said recited Act is directed to be made up by the Bankrupt, the Period within which Claims should be lodged.

VI. All

VI. All Provisions of the said recited Act requiring any Creditor to specify separately in his Oath or Claim for his Debt the Amount of any Interest due thereon, or of any Interest deducted therefrom, or to specify any accumulated Sum of Principal and Interest, are hereby repealed. Provisions as to separate Specification of Interest, &c. repealed.

VII. Where it shall appear to the Sheriff or to the Trustee that the Oath and Claim of any Person, produced with a view to voting or to ranking and drawing a Dividend on the Sequestration, is not framed in the Manner required by the said recited Act, the Sheriff or the Trustee, as the Case may be, shall call upon such Person, or his Procurator or Mandatory, to rectify his Oath and Claim, pointing out to him wherein it is defective; and unless such Person shall thereupon make such Alteration upon his Oath and Claim as may be necessary in order to rectify the same, the Sheriff or Trustee, as the Case may be, shall disallow or reject such Oath and Claim: Provided always, that where the Failure to comply with the Provisions of the said recited Act shall appear to have been made for some improper or fraudulent Purpose, or where Injury can be qualified by the other Creditors or any of them in respect thereof, it shall not be incumbent upon the Sheriff or Trustee to give such Person an Opportunity to rectify his Oath and Claim as aforesaid. Errors in framing Oath and Claim may be corrected.

VIII. The Day to be fixed by the Sheriff for the Examination of the Bankrupt shall be not sooner than Seven Days nor later than Fourteen Days from the Date of the Sheriff's Warrant for such Examination; and the Meeting of Creditors appointed by the said recited Act to be held after the Examination of the Bankrupt shall be held on a Day not sooner than Seven Days nor later than Fourteen Days from the Day appointed for such Examination. Time for Examination of Bankrupt, and for the Meeting of Creditors thereafter.

IX. Wherever it is by the said recited Act or by this Act directed that a Meeting of Creditors shall or may be called or held, a Notice of the Day, Hour, Place, and Purpose of the Meeting shall be advertised in the *Edinburgh Gazette* Seven Days at least before the Day of the Meeting, in place of Fourteen Days, as at present; and such Meeting may be adjourned till the following Day. Notice on which Meetings may be called, shortened.

X. In place of the Times appointed by the said recited Act for Payment of Dividends, the Periods for Payment of Dividends shall be as follows; that is to say, where there are sufficient Funds realized, the First Dividend shall be payable on the First lawful Day after the Expiration of Six Months from the Date of Sequestration, and a Dividend shall always be payable on the First lawful Day after the Expiration of Three Months from the Date of the Payment of the immediately preceding Dividend, until the whole Funds of the Bankrupt be distributed, subject always to the Provisions in the said recited Act and in this Act contained: Provided always, that after the Second Dividend is made, a Majority of the Creditors, at any General Meeting called for the Purpose, may determine that future Dividends shall be made after shorter Intervals, and the Affairs of the Estate brought to a more speedy Close; and even before the Period assigned for the First Dividend as aforesaid, it shall be competent to Three Fourths in Number and Value of the Creditors present at the Meeting after the Bankrupt's Examination, or at any after Meeting called for the Purpose, to direct the Trustee to apply to the Lord Ordinary or the Sheriff for Authority to make the First Dividend at an earlier Period than the Expiration of Six Months from the Date of the Sequestration, but not earlier than Four Months from such Date, if upon Cause shown it shall be found expedient so to do, and also to accelerate the Time for making the Second and other Dividends; and where the Lord Ordinary or the Sheriff shall, upon such Application, accelerate the First or any subsequent Dividend, he shall also make the requisite Provision for the Acceleration of any other Matters which he may find it necessary to accelerate in consequence thereof. Provision for Payment and Acceleration of Dividends.

XI. To entitle any Creditor to Payment of the First Dividend, he shall produce, as directed by the said first-recited Act, his Oath and Grounds of Debt at least Two Months before the Time fixed for Payment of the First Dividend where such Time of Payment shall not have been accelerated, or One Month before the Time fixed for Payment of the First Dividend where such Time shall have been accelerated; and to entitle any Creditor to Payment of any of the subsequent Dividends, he shall produce, as aforesaid, his Oath and Grounds of Debt at least One Month before the Time fixed for Payment of the Dividend which he means to claim. Time for lodging Oaths and Grounds of Debt in order to Dividend.

XII. The

Time for making up State of Bankrupt's Affairs, and of the Trustee's Intromissions, &c.

XII. The State of the whole Estate of the Bankrupt, of the Funds recovered and outstanding, and of the Trustee's Intromissions and Management, directed by the said recited Act to be made up, shall be so made up immediately on the Expiration of Four Months from the Date of the Sequestration, in place of Six Months, as at present; and all Things directed by the said recited Act to be done by the Trustee, or Commissioners, or any other Person, within Fourteen Days after the Expiration of the said Six Months from the Date of the Sequestration, or within any Period calculated from the Expiration of the said Fourteen Days, shall be done within Fourteen Days after the Expiration of the said Four Months from the Date of the Sequestration, and within the like Period calculated from the Expiration of the said last-mentioned Fourteen Days respectively; and the Notice which by the said recited Act is directed to be given in the *Edinburgh Gazette* published next after the Expiration of the said first-mentioned Fourteen Days shall in lieu thereof be given in the *Edinburgh Gazette* published next after the Expiration of the said last-mentioned Fourteen Days.

Time for making up Scheme of Division by the Trustee, and State of Affairs, &c., in order to Second Dividend.

XIII. The Scheme of Division directed by the said recited Act to be made up by the Trustee before the Expiration of Eight Months from the Date of the Sequestration shall be made up before the Expiration of Six Months from the said Date, and the State directed by the said recited Act to be made up by the Trustee on the Expiration of Ten Months from the Date of the Sequestration shall be made up on the Expiration of Seven Months from the said Date; and the Trustee shall, within Fourteen Days after the Expiration of the said Seven Months, exhibit the said State to the Commissioners, and thereupon such Procedure shall take place with reference to the said State, and to the Second Dividend, as is provided by the said recited Act.

Like Procedure to be followed on Occasion of subsequent Dividends.

XIV. The like Procedure shall be followed out as to subsequent Dividends at similar Intervals of Time thereafter, in order that a Dividend may be made on the First lawful Day after the Expiration of every Three Months from the Day of the Payment of the immediately preceding Dividend, until the whole Funds of the Bankrupt shall be divided.

Where Foreign Creditor lodges Oath and Grounds of Debt at any Time previous to Dividend, though not in Time to participate in it, Fund to be laid aside.

XV. Where any Creditor not resident within *Great Britain* or *Ireland* at the Date of the Deliverance awarding Sequestration, or at any Time within Four Months thereafter, shall lodge his Oath and Grounds of Debt Fourteen Days previous to any Time fixed for Payment of a Dividend, though not in Time to entitle such Creditor to participate in such Dividend, the Trustee shall make such Deduction from the divisible Fund as shall be equal to the Dividend which would have been payable to such Foreign Creditor had his Oath and Grounds of Debt been timeously lodged and his Claim been sustained; and the Sum so deducted shall form Part of the Fund for Division on the Occasion of Payment of the next Dividend.

Proceedings in Petition for Bankrupt's Discharge.

XVI. The Bankrupt may, on the Expiration of Six Months from the Date of the Sequestration, in place of Eight Months, as at present, present a Petition to the Lord Ordinary or the Sheriff, to be finally discharged of all Debts contracted by him before the Date of the Sequestration, provided a Majority in Number and Four Fifths in Value of the Creditors who have produced Oaths concur in the Petition; and the Bankrupt may also present such Petition on the Expiration of Twelve Months from the Date of the Sequestration, provided a Majority in Number and Two Thirds in Value of the said Creditors concur in the Petition; and the Bankrupt may also present such Petition on the Expiration of Eighteen Months from the Date of the Sequestration, provided a Majority in Number and Value of the said Creditors concur in the Petition; and the Bankrupt may also present such Petition on the Expiration of Two Years from the Date of the Sequestration, without any Consents of Creditors; and the Lord Ordinary or the Sheriff, as the Case may be, shall, in each of the Cases aforesaid, order the Petition to be intimated in the *Edinburgh Gazette;* and if, at the Distance of not less than Twenty-one Days from the Publication of such Intimation, and on Evidence being produced of Concurrence as aforesaid, there be no Appearance to oppose the same, the Lord Ordinary or the Sheriff, as the Case may be, shall pronounce a Deliverance finding the Bankrupt entitled to a Discharge; but if Appearance be made by any of the Creditors, or by the Trustee, the Lord Ordinary or the Sheriff, as the Case may be, shall judge of any Objections against granting the Discharge, and shall either find the Bankrupt entitled to his Discharge, or refuse the Discharge, or defer the Consideration of the same for such Period as he may think

think proper, and may annex such Conditions thereto as the Justice of the Case may require: Provided always, that it shall not be competent for the Bankrupt to present a Petition for his Discharge, or to obtain any Consent of any Creditor to such Discharge, until the Trustee shall have prepared a Report with regard to the Conduct of the Bankrupt, and as to how far he has complied with the Provisions of the Statute, and in particular whether the Bankrupt has made a fair Discovery and Surrender of his Estate, and whether he has attended the Diets of Examination, and whether he has been guilty of any Collusion, and whether his Bankruptcy has arisen from innocent Misfortunes or Losses in Business, or from culpable or undue Conduct; and such Report shall be prepared by the Trustee, upon the Requisition of the Bankrupt, at any Time after the Expiration of Five Months from the Date of the Sequestration; and such Report shall be produced in the Proceedings for the Bankrupt's Discharge, and shall be referred to by its Date or by other distinct Reference in any Consent to his Discharge.

Accounts for Law Business under Sequestration to be taxed.

XVII. All Accounts for Law Business incurred by the Trustee shall, before Payment thereof by the Trustee, be submitted for Taxation to the Auditor of the Court of Session, or to the Auditor of the Sheriff Court of the County in which the Bankrupt carried on his Business, as may be directed by a General Meeting of the Creditors.

Interpretation of Terms.

XVIII. All Words and Expressions used in the said recited Act and in this Act shall, in construing this Act, be held to include the Meanings which they respectively include when used in the said recited Act.

## CAP. LIV.

### An Act to alter certain Duties of Customs. [4th *August* 1853.]

'WHEREAS it is expedient to alter the Duties of Customs imposed by any Act or Acts in force relating to the Customs upon the several Articles herein mentioned, and to allow certain Articles to be imported into the United Kingdom without Payment of Duty:' Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

Duties now chargeable on under-mentioned Articles to cease, and following Duties to be charged.

I. The Duties of Customs now chargeable on the Articles under-mentioned imported into *Scotland* and *Ireland* shall cease and determine, and in lieu thereof the following Duties shall be charged from and after the Twenty-first Day of *April* One thousand eight hundred and fifty-three; *viz.*

| | £ | s. | d. |
|---|---|---|---|
| Spirits or Strong Waters, for every Gallon of such Spirits or Strong Waters, of any Strength not exceeding the Strength of Proof by *Sykes's* Hydrometer, and so in proportion for any greater or less Strength than the Strength of Proof, and for any greater or less Quantity than a Gallon, *viz.*: | | | |
| ——— Spirits or Strong Waters, the Produce of any *British* Possession in *America*, not being sweetened Spirits or Spirits mixed with any Article, so that the Degree of Strength thereof cannot be exactly ascertained by such Hydrometer: | | | |
| If imported into *Scotland* - - - the Gallon | 0 | 5 | 0 |
| ——— *Ireland* - - - the Gallon | 0 | 3 | 8 |
| ——— Rum, the Produce of any *British* Possession within the Limits of the *East India* Company's Charter, not being sweetened Spirits or Spirits so mixed as aforesaid, in regard to which the Conditions of the Act, 4 *Victoria*, Chapter 8., have or shall have been fulfilled: | | | |
| If imported into *Scotland* - - - the Gallon | 0 | 5 | 0 |
| ——— *Ireland* - - - the Gallon | 0 | 3 | 8 |
| ——— Rum Shrub, however sweetened, the Produce of and imported from such Possessions, in regard to which the Conditions of the Act, | | | |