burden on the ratepayers which would properly have been incurred by the authority in meeting such cost had no alteration of boundaries or other change taken place ;

(*b*) The length of time during which the increase of burden may be expected to continue :

Provided that no alteration of income in consequence of an apportionment under Part I. of the schedule shall be taken into account.

(2) The sum payable to any authority in respect of the increase of burden shall not exceed, or, if payable by instalments or by way of annuity, the capitalised value of the instalments or annuity shall not exceed, the average annual increase of burden multiplied by fifteen.

(3) Any sum payable in respect of the cost of the maintenance of main roads shall be payable by way of annuity.

CHAPTER 20.

An Act to consolidate and amend the Laws relating to Bankruptcy in Scotland. [15th August 1913.]

BE it enacted by the King'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 :

Short title.

1. This Act may be cited as the Bankruptcy (Scotland) Act, 1913.

Construction and meaning of certain expressions.

2. In this Act, unless a contrary intention appears, "Lord Ordinary" shall mean the Lord Ordinary officiating on the Bills in the Court of Session ; "deliverance" shall include any order, warrant, judgment, decision, interlocutor, or decree ; "clerk or "officer of the Court of Session" shall include the keeper of the registers of inhibitions and adjudications ; "accountant" shall mean the accountant of court appointed under the Judicial Factors (Scotland) Act, 1889 ; "Gazette" shall mean the Edinburgh Gazette ; "commissioners" shall mean a majority of the commissioners elected under the provisions of this Act ; "property" and "estate" shall, when not expressly restricted, include every kind of property, heritable or moveable, wherever situated, and all rights, powers, and interests therein capable of legal or voluntary alienation, or of being affected by diligence or attached for debt, and any non-vested contingent right of succession or interest in property conceived in favour of the bankrupt under the will or settlement of any person deceased, or under marriage contract, or under any other deed, instrument, or writing of an irrevocable nature ; "moveable" shall include personal ; and "heritable" shall include real ; "security" shall include securities, heritable or moveable, and rights of lien, retention, or preference, and conveyances thereof and any part thereof ; "successors" shall include all persons who have succeeded to any property which was vested in a party deceased at the time of his death, whether as heirs, heirs apparent, trustees under voluntary conveyances, representatives by deed

52 & 53 Vict. c. 39.

or otherwise, executors, administrators, or nearest of kin, or as assignees, or legatees, and shall also include singular successors where they have acquired the right; "vote" shall include a consent to any offer of composition, deed of arrangement, recall of sequestration, or private sale of heritage, and to a discharge of the debtor, and also a dissent from such offer, deed of arrangement, recall, private sale, or discharge; "company" shall include bodies corporate, politic, or collegiate, and partnerships; "partner of a company" shall include the members of such bodies; "debtor," "bankrupt," and "creditor" shall apply to companies as well as individuals, and shall include aliens; "undischarged bankrupt" shall include a person whose estate has been sequestrated and who has not received his discharge from a competent court in Scotland; "summary sequestration" shall mean a sequestration to which the provisions of sections one hundred and seventy-four, one hundred and seventy-five and one hundred and seventy-six of this Act apply.

Reckoning of time.

3. Periods of time in this Act shall be reckoned exclusive of the day from which such period is directed to run.

Dates of deeds.

4. The date of a deed under this Act, or under the Act passed in the Parliament of Scotland held in the year one thousand six hundred and ninety-six, chapter five, shall be the date of the registration of the deed, or of delivery, or of intimation, or of such other proceeding as shall, in the particular case, be requisite for rendering such deed completely effectual.

CONSTITUTION AND EFFECTS OF NOTOUR BANKRUPTCY.

Notour bankruptcy of individuals.

5. Notour bankruptcy shall be constituted by the following circumstances:—

1st. By sequestration, or by the issuing of an adjudication of bankruptcy or the granting of a receiving order in England or Ireland; or

2nd. By insolvency, concurring—

(A)—(1) With a duly executed charge for payment, where a charge is necessary, followed by the expiry of the days of charge without payment;

(2) Where a charge is not necessary, with the lapse without payment of the days which must elapse before poinding or imprisonment can follow on a decree or warrant for payment of a sum of money;

(3) With a poinding or seizure of any of the debtor's moveables for non-payment of rates or taxes;

(4) With a decree of adjudication of any part of his heritable estate for payment or in security; or

(B) With sale of any effects belonging to the debtor under a sequestration for rent.

Of a company.

6. Notour bankruptcy of a company shall be constituted either in any of the foregoing ways or by any of the partners being rendered notour bankrupt for a company debt.

Commencement of notour bankruptcy.

7. Notour bankruptcy shall be held to commence from the time when its several requisites concur, and when it has once been constituted shall continue, in case of a sequestration, till the debtor shall obtain his discharge, and in other cases until insolvency cease, without prejudice to notour bankruptcy being anew constituted within such period or after the expiry thereof and any second or subsequent constitution of notour bankruptcy shall be available for all the purposes of section ten of this Act as well as for the purpose of applying for sequestration of a debtor's estates.

Deeds made void by this Act, and alienations of property voidable, may be set aside by way of action, &c.

8. Deeds made void by this Act, and all alienations of property by a party insolvent or notour bankrupt, which are voidable by statute or at common law, may be set aside either by way of action or exception, and a decree setting aside the deed by exception shall have the like effect, as to the party objecting to the deed, as if such decree were given in an action at his instance: and this section shall apply as well in the sheriff court as in the Court of Session.

May be by trustee.

9. The trustee on a sequestrated estate, whether representing prior creditors or not, shall, under this Act, be entitled to set aside any such deed or alienation for behoof of the whole body of creditors, and in so doing shall be entitled to the benefit of any presumption which would have been competent to any creditor.

PARI PASSU RANKING OF DILIGENCE.

Arrestments and poindings.

10. Arrestments and poindings which shall have been used within sixty days prior to the constitution of notour bankruptcy, or within four months thereafter, shall be ranked pari passu as if they had all been used of the same date; provided that, if such arrestments are used on the dependence of an action, they be followed up without undue delay; provided further that any creditor judicially producing in a process relative to the subject of such arrestment or poinding liquid grounds of debt or decree of payment within such period shall be entitled to rank as if he had executed an arrestment or a poinding; and in case the first or any subsequent arrester shall, in the meantime, obtain a decree of forthcoming and preference, and thereupon shall recover payment, or a poinding creditor shall carry through a sale, he shall be accountable for the sum recovered to those who, by virtue of this Act, may be eventually found to have a right to a ranking pari passu thereon, and shall be liable to an action at their instance for payment to them proportionally, after allowing out of the fund the expense of recovering the same; and if any arrestments be used for attaching the same effects after the period of four months

subsequent to the bankruptcy, such arrestments shall not compete with those used within the said periods prior or subsequent thereto, but may rank with each other on any reversion of the fund attached, according to law and practice.

SEQUESTRATION, WHEN COMPETENT.

Sequestration may be awarded in cases herein enumerated.

11. Sequestration may be awarded of the estate of any person in the following cases:—

1st. In the case of a living debtor subject to the jurisdiction of the supreme courts of Scotland:

(A) On his own petition, with the concurrence of a creditor or creditors, qualified as herein-after mentioned;

(B) On the petition of a creditor or creditors, qualified as hereinafter mentioned, provided the debtor be notour bankrupt, and have within a year before the date of the presentation of the petition resided or had a dwelling house or place of business in Scotland; or otherwise, in the case of a company being notour bankrupt, as hereinbefore provided, if it have within such time carried on business in Scotland, and any partner have so resided or had a dwelling house or if the company have had a place of business in Scotland:

Sequestration of deceased debtor.

2nd. In the case of a deceased debtor who at the date of his death was subject to the jurisdiction of the supreme courts of Scotland:

(A) On the petition of a mandatory to whom he had granted a mandate to apply for sequestration;

(B) On the petition of a creditor or creditors qualified as hereinafter mentioned.

Qualification of creditors, petitioning or concurring.

12. Petitions for sequestration may be at the instance or with the concurrence of any one or more creditors whose debt or debts together amount to not less than fifty pounds, whether such debts are liquid or illiquid, provided they are not contingent.

Within what date petitions may be presented.

13. Petitions for sequestration, presented without the concurrence of the debtor, he being in life, shall be competent only within four months of the date of the debtor's notour bankruptcy; and petitions for sequestration of the estates of a deceased debtor at the instance of a creditor may be presented at any time after the debtor's death, but no sequestration shall be awarded until the expiration of six months from the debtor's death, unless he was at the time of his death notour bankrupt, or unless his successors shall concur in the petition or renounce the succession, in which several cases sequestration shall forthwith be awarded; and in all other cases falling under this Act a petition for sequestration shall be competent at any time, and sequestration may follow thereon in manner hereinafter directed.

INTERIM PRESERVATION OF ESTATE.

Court may take measures to preserve estate before sequestration.

14. It shall be competent for the court to which a petition for sequestration is presented, whether sequestration can forthwith be awarded or not, on special application by a creditor, either in such petition or by a separate petition, with or without citation to other parties interested, as the said court may deem necessary, or without such special application if the court think proper, to take immediate measures for the preservation of the estate, either by the appointment of a judicial factor, who shall find such caution as may be deemed necessary, with the powers necessary for such preservation, including the power to recover debts, or by such other proceedings as may be requisite; and such interim appointments or proceedings shall be carried into immediate effect; but, if the same have been made or ordered by the sheriff, they may be recalled by the Court of Session, on appeal taken, in manner hereinafter directed.

After sequestration bankrupt's papers may be sealed up.

15. The sheriff shall have power, upon cause shown by any creditor, or without any application, if he shall think fit: (1) at any time after the sequestration and before the election of a trustee, to cause to be sealed up and put under safe custody the books and papers of the bankrupt, and to lock up his shop, warehouse, or other repositories, and to keep the keys thereof till a trustee is elected and confirmed: (2) At any time after the presentation of a petition for sequestration, to grant warrant to take possession of and put under safe custody any bank notes, money, bonds, bills, cheques or drafts, or other moveable property belonging to or in the possession of the debtor; and, if necessary for that purpose, to open lock-fast places, and to search the dwelling-house, shop, counting-house, warehouse, or other premises, and the person of the debtor.

FORUM.

Courts for awarding sequestration.

16. Sequestration may be awarded in the case of a debtor in life or of a deceased debtor either by the Court of Session or by the sheriff of any county in which the debtor has resided or carried on business for the year preceding the date of the petition, or in the case of a deceased debtor for the year preceding the date of his death: Provided (1) that no sequestration shall be awarded by any court after production of evidence that a sequestration has already been awarded in another court, and is still undischarged; (2) that, where a prior petition for sequestration is in dependence before any court, the court to which a subsequent petition has been presented may remit such subsequent petition to the court in which the prior petition is in dependence.

Later sequestrations to be remitted to the first in date.

17. When sequestration has been awarded against a debtor by the sheriffs of two or more counties, the later sequestration or sequestrations shall, on production of a certificate by the sheriff clerk of the county in which the sequestration first in date was

awarded, setting forth the date of such sequestration, be remitted to the sheriff of such county and a notice of such remit shall be inserted in the Gazette within four days after a copy of the deliverance of such remit could be received in course of post in Edinburgh. Where all the sequestrations are of the same date, any one may be brought by appeal at any time before either division of the Court of Session or Lord Ordinary; and on such appeal, or when a sequestration has been awarded by the Court of Session alone, or by the Court of Session and also by one or more sheriff courts, the Court of Session or Lord Ordinary shall remit the sequestration to such sheriff court as in the whole circumstances they or he shall deem expedient; and a notice of such remit shall be inserted in the Gazette within four days after such remit shall have been made: Provided always that, in any case in which the sheriff has refused to sequestrate, it shall be competent to present a petition for sequestration to the Court of Session notwithstanding such judgment of refusal.

No proceeding under order of sheriff to be effectual after appeal, except for preservation of estate.

18. It shall be competent in such case for each sheriff awarding sequestration to take such measures in the meantime as may be necessary for preserving the debtor's estate and effects within his jurisdiction, under the provisions of this Act; but no other orders given by any sheriff on or after awarding sequestration, and no proceedings of creditors or others in pursuance thereof, excepting orders given by the sheriff before whom the sequestration comes to depend, shall be of any force or effect from and after the date of such appeal, or of sequestration by the Court of Session.

Transfer of sequestration.

19. After a sequestration has been awarded it shall be competent at any time to bring such sequestration before the Court of Session or the Lord Ordinary by Appeal, and the Court or the Lord Ordinary may thereupon transfer such sequestration from the sheriff court to which it has been remitted or before which it depends to any other sheriff court.

FORM OF PETITION, AND PRODUCTIONS THEREWITH.

Form of petition.

20. Petitions for sequestration in the Court of Session shall be made to the Lord Ordinary, and be signed by the petitioner or his counsel or agent, and the division of the court to which the sequestration is appropriated shall be marked thereon, and in the sheriff court shall be signed by the petitioner or his agent, and in either court, in petitions at the instance of the debtor, but not signed by him, there shall be produced therewith a mandate authorising the same, signed by him, or in the case of a company signed by a party entitled to act for the company; and in all cases the petitioning or concurring creditor shall produce with such petition an oath to the effect hereinafter specified, and also the account and vouchers of the debt as hereinafter provided; failing which production the petition shall be dismissed.

Oath to be produced.

Oath to be to verity of debt and extent of securities.

21. Such oath, in the case of a creditor residing within the kingdom of Great Britain and Ireland, shall be taken by him before a judge ordinary, magistrate, justice of the peace, a notary public, or a commissioner competent to administer oaths in the High Court of Justice in England or Ireland, to the verity of the debt claimed by him; and he shall in such oath state what other persons, if any, are, besides the bankrupt, liable for the debt or any part thereof, and specify any security which he holds over the estate of the bankrupt or of other obligants, and depone that he holds no other obligants or securities than those specified; and, where he holds no other person than the bankrupt so bound, and no security, he shall depone to that effect.

How taken, when creditor out of Great Britain or Ireland.

22. Such oath, in the case of a creditor who is out of the kingdom of Great Britain and Ireland, shall be taken by him to the verity of the debt in the manner above provided before a magistrate or justice of the peace, or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid, by a British minister or British consul, or by a notary public), or his known agent or mandatory in Great Britain or Ireland shall make an oath of credulity in the manner and to the effect before provided.

Oath to specify further particulars in certain cases.

23. When a petition is presented for sequestration of the estates of a deceased debtor, the petitioning creditor shall, in his oath, or in a separate oath, specify the place where the debtor resided or had a dwelling house or carried on business in Scotland at the time of his death, and whether he was then owner of estates in Scotland.

Claims of companies and creditors who are minors or incapable.

24. When the creditor is a corporation, an oath of verity made as aforesaid by the secretary, manager, cashier, clerk, or other principal officer of such corporation shall be sufficient, although the person making the same be not a member of such corporation, or in case of other companies an oath by a partner shall be sufficient; and where any creditor shall be under age or incapable to make oath, an oath of credulity as aforesaid by his authorised agent, factor, guardian, or manager shall be sufficient.

CITATION ON PETITION.

When citation of parties necessary.

25. When a petition for sequestration is presented without the consent of the debtor, or for the sequestration of the estate of a debtor who is dead, without the consent of the successor, the Lord Ordinary or sheriff to whom it is presented shall grant warrant to cite the debtor, or, if dead, his successor, to appear within a specified period, if he be within Scotland, by delivering to him personally, or by posting in a registered letter addressed to him at his dwelling house or place of business, or the dwelling house or place of business last occupied by him, a copy of the petition and warrant, and, if the debtor or his successor be furth

of Scotland, to cite him to appear within a specified period by leaving such copy at the office of edictal citations and at the dwelling house or place of business last occupied by him, to show cause why sequestration should not be awarded; and the Lord Ordinary or the sheriff shall, if desired, grant diligence to recover evidence of the notour bankruptcy or other facts necessary to be established.

In sequestration of a company.

26. When the debtor is a company, it shall be a sufficient citation that a copy of the petition and warrant be left at the place where the business of the company is or was last carried on, provided a partner or a clerk or a servant of the company be there, and failing thereof at the dwelling house of any of the acting partners, and, if the house of such partner cannot be found, by leaving a copy at the office of edictal citations; and sequestration may be awarded either on the application of the company itself, or on the application of a creditor or creditors to the amount aforesaid, without the consent of the company, of the estates of the company and partners jointly, or of their respective estates separately.

Induciæ of citation.

27. The induciæ of citation, when made personally or at a dwelling house or place of business, shall be not less than six nor more than fourteen days, and when made edictally shall be fourteen days; and the Lord Ordinary or the sheriff at the same time shall direct intimation of the warrant, and of the diet of appearance on such induciæ, to be made in the Gazette: Provided that, where citation is made edictally and the address of the debtor in England or Ireland is known, a copy of the petition shall be sent to him at that address by registered letter posted on the day upon which the induciæ of citation begin to run.

PROCEDURE ON PETITION.

Sequestration to be forthwith awarded on petition by debtor.

28. When a petition is presented in manner aforesaid to the Lord Ordinary, or to the sheriff, for sequestration, the Lord Ordinary or the sheriff shall forthwith, if the same is presented by or with the concurrence of the debtor, or, if dead, of his successor, or if the successor shall renounce the succession, issue a deliverance by which he shall award sequestration of the estates which then belong or shall thereafter belong to the debtor before the date of the discharge, and declare the estates to belong to the creditors for the purposes of this Act, and, if the debtor is dead, shall ordain any successor who has made up a title to or is in possession of any part of his property to convey the same to the trustee to be appointed as hereinafter mentioned.

Sequestration to be awarded after citation and hearing parties when petition not by debtor.

29. Where the petition is not by or with the concurrence of the debtor, or, if dead, of his successor, and if the debtor, or if dead, his successor, do not appear at the diet of appearance, either in person or by his counsel or agent, and show cause why the sequestration cannot be competently awarded, or if the

debtor so appearing do not instantly pay the debt or debts in respect of which he was made bankrupt, or produce written evidence of the same being paid or satisfied, and also pay or satisfy, or produce written evidence of the payment or satisfaction of the debt or debts due to the petitioner or to any other creditor appearing and concurring in the petition, the Lord Ordinary or sheriff, on production of evidence of the citation and of the foresaid requisites for sequestration, shall award sequestration in manner and to the effect before mentioned; and it shall not be competent for any creditor, after the date of the first deliverance on the petition for sequestration, to be confirmed executor creditor, or to raise or insist in any adjudication against the estate of the deceased debtor.

Recall of sequestration within forty days.

30. The deliverance awarding sequestration shall not be subject to review; but any debtor whose estate has been sequestrated without his consent, or the successors who have not renounced the succession of any deceased debtor whose estate has been sequestrated without their consent, unless on the application of a mandatory authorised by the deceased debtor, or any creditor, whether the sequestration has been awarded by the Lord Ordinary or by the sheriff, may, within forty days after the date of such deliverance, present a petition to the Lord Ordinary, setting forth the grounds for recall, and praying for recall; and when sequestration has been awarded of the estate of a deceased debtor, when his successor was edictally cited, it shall be competent for his successor, or any person having interest, to apply by petition as aforesaid at any time before the publication of the advertisement for payment of the first dividend hereinafter mentioned; and the Lord Ordinary shall, in these several cases, order a copy of the petition for recall and of his deliverance to be served on the parties who petitioned or concurred in the petition for sequestration, or on their respective known agents, and on the trustee, if appointed, and shall require them to answer within a specified short time, and order a notice of the presentation of the petition for recall to be published in the Gazette, and on the expiration of the time so fixed he shall proceed to pronounce judgment; and, if he shall recall the sequestration, the recall shall be entered in the register of sequestrations, and an abbreviate extract thereof in the form of Schedule E, No. 5, hereto annexed, shall be recorded in the registers of inhibitions and adjudications.

Recall of sequestration at a future time.

31. No petition for recall of the sequestration, excepting as hereinafter provided, shall be competent after the expiration of the said forty days, or after the advertisement for payment of the first dividend; provided that nine-tenths in number and value of the creditors ranked on the estate as herein directed may at any time apply for recall by petition to the Lord Ordinary, who shall order notice of his deliverance to be published in the Gazette, requiring all concerned to appear within fourteen days from the date of publication to show cause why

the sequestration should not be recalled, and on expiration of the said time he shall proceed to pronounce judgment.

Proceedings not to be stayed.

32. Pending any petition for recall, and until the sequestration be finally recalled, the proceedings in the sequestration shall go on as if no such petition had been presented.

Sisting of one party for another.

33. If a creditor who has petitioned for sequestration, or concurred in such petition, or who has petitioned for recall of a sequestration, or appeared to oppose a petition for sequestration or recall, or lodged an objection, shall withdraw, or become bankrupt, or die, any other creditor may be sisted in his place and follow out the proceedings; and, if the debtor shall die after the petition for sequestration is presented, the proceedings shall notwithstanding be followed out in terms of this Act, so far as circumstances will permit.

Majority of creditors may resolve that estate be wound up.

34. At the meeting for the election of the trustee or at any subsequent meeting to be called for the purpose, a majority in number and three-fourths in value of the creditors present or represented at such meeting may resolve that the estate ought to be wound up under a deed of arrangement, and that an application should be presented to the Lord Ordinary or the sheriff to sist procedure in the sequestration for a period not exceeding two months, and on such resolution being carried it shall not be necessary to elect a trustee. The provisions of this Act relative to deeds of arrangement shall extend to and include settlements or arrangements by way of composition.

Bankrupt to report resolution to the Lord Ordinary.

35. It shall be lawful for the bankrupt, or any person appointed by the meeting, to report such resolution to the Lord Ordinary or the sheriff, within four days of the date of such resolution, and to apply for a sist of the sequestration in terms thereof; and the Lord Ordinary or the sheriff may hear any party having interest, and, if he shall find that such resolution was duly carried, and that the application is reasonable, may grant the same.

Lord Ordinary to make arrangement for interim management of estate.

36. In the event of such application being granted, the Lord Ordinary or the sheriff may, on the application of any creditor, make such arrangement for the interim management of the estate as he shall think reasonable, if any shall appear to be necessary.

If sequestration be sisted, creditors may produce to the Lord Ordinary a deed of arrangement.

37. If the sequestration shall be sisted, the creditors may, at any time within the period of such sist, produce to the Lord Ordinary or the sheriff a deed of arrangement, subscribed by or by authority of a majority in number and three-fourths in value of the creditors of the bankrupt; and the Lord Ordinary or the sheriff may consider the same, and make such intimation thereof as he may think proper, and hear parties having interest, and make any inquiry he may think necessary; and, if he shall be satisfied that such deed of arrangement has been duly entered into and executed and is reasonable, he shall

approve thereof, and declare the sequestration at an end; and such deed shall thereafter be as binding on all the creditors as if they had all acceded thereto: Provided always that the sequestration shall receive full effect in so far as may be necessary for the purpose of preventing, challenging, or setting aside preferences over the estate.

If resolution not reported the sequestration to proceed.

38. If such resolution shall not be duly reported, or if a sist be refused, or if such deed of arrangement shall not be duly produced, or if it shall not be approved of, the sequestration shall proceed, and the period of time subsequent to such resolution shall not be reckoned in calculating periods of time prescribed in this Act; and the Lord Ordinary or the sheriff may make all necessary orders, by appointing meetings of creditors and otherwise, for resuming the necessary procedure in the sequestration.

If sequestration declared at an end, judgment to be recorded.

39. If the sequestration be declared at an end, the judgment declaring the same shall be recorded in the same manner as if the sequestration had been recalled as hereinbefore provided.

Payment of expenses of petitioning or concurring creditor.

40. The petitioning or concurring creditor shall be entitled to payment by the trustee, when he shall be appointed, out of the first of the funds which shall come into his hands, of the expenses incurred by such creditor in obtaining the sequestration and doing the other acts hereby required prior to the election of the trustee, as the same shall be taxed.

Commencement of sequestration.

41. In all questions under this Act or preceding Acts regarding sequestration of the estates of debtors, the sequestration shall be held to commence and take effect on and from the date of the first deliverance on any petition for sequestration, which shall be held to be the date of the sequestration, although the sequestration be not actually awarded until a later date.

Clerks to sequestration.

42. In sequestrations awarded in the Court of Session and remitted to the sheriff the process of sequestration shall be held to be in the Bill Chamber of the Court of Session, and the clerks of the Bill Chamber shall be clerks to such sequestrations; and the sheriff clerk of any county shall be clerk to the sequestrations awarded by the sheriff of that county; and no process of sequestration, either in the Court of Session or sheriff court, shall fall asleep; and, on a remit of a sequestration awarded in the Court of Session being made to the sheriff, a copy of the petition for sequestration and of the first deliverance, and also (where it is different) of the deliverance awarding sequestration, certified by one of the clerks of the Bill Chamber, shall, with the productions, be transmitted by the petitioner to the sheriff clerk of the county to the sheriff of which the sequestration is remitted; and in all sequestrations the sheriff clerk and messengers-at-arms and officers of the sheriff court shall have power to act in their respective offices under this Act.

Sequestration not to fall asleep.

Recall of sequestration on special grounds.

43. If, in any case where sequestration has been or shall be awarded in Scotland, it shall appear to the Court of Session or to the Lord Ordinary, upon a summary petition by the accountant or any creditor or other person having interest presented to either division of the said court or to the Lord Ordinary at any time within three months after the date of the sequestration that a majority of the creditors in number and value reside in England or in Ireland, and that from the situation of the property of the bankrupt or other causes his estate and effects ought to be distributed among the creditors under the bankrupt or insolvent laws of England or Ireland, the said court in either division thereof or the Lord Ordinary, after such inquiry as to them shall seem fit, may recall the sequestration: Provided that any interlocutor of the Lord Ordinary to that effect shall be subject to review.

REGISTRATION OF SEQUESTRATIONS.

Recording abbreviate of sequestration.

44. The party applying for sequestration shall present, before the expiration of the second lawful day after the first deliverance if given by the Lord Ordinary, or present or transmit by post before the expiration of the second lawful day after the said deliverance if given by the sheriff, an abbreviate of the petition and deliverance, signed by him or his agent, in the form of Schedule (A. No. 1) hereunto annexed, to the keeper of the registers of inhibitions and adjudications at Edinburgh, who shall forthwith record the said abbreviate in the said registers, and write and subscribe a certificate thereof on the said abbreviate in the form also specified in the said Schedule (A. No. 2), and shall, on the request of the party transmitting such abbreviate, and on payment by him of the fees of such registration, and of the postage, re-transmit the said abbreviate by post to the said party; and the abbreviate so recorded shall from the date of the said deliverance have the effect of an inhibition and of a citation in an adjudication of the estate of the debtor at the instance of the creditors afterwards ranked on the estate; and it shall not be competent to stop such effect, or the effect of the sequestration after it is awarded, by paying the debt or debts in respect of which it was applied for or awarded: Provided that such effect shall expire on the lapse of a period of five years from the date of the abbreviate being so recorded, but that it shall be competent and unless the trustee has been discharged he is hereby required before the lapse of such period to record a memorandum in the form of the said Schedule (A. No. 4), which memorandum when so recorded shall have the same effect as the recorded abbreviate and shall expire in like manner; and that it shall be competent and unless the trustee has been discharged he is hereby required to record a memorandum as aforesaid before the lapse of every subsequent period of five years with the like effect and expiring in the like manner, and, if the said abbreviate or memorandum be not so recorded, it shall have no effect as an inhibition or citation as aforesaid.

The party applying for sequestration shall, within four days from the date of the deliverance awarding the sequestration (if awarded in the Court of Session), or, if it is awarded by the sheriff, within four days after a copy of the said deliverance could be received in course of post in Edinburgh, insert a notice in the form of Schedule (B.) hereunto annexed in the Gazette, and also one notice in the same terms within six days from the said date in the London Gazette.

RANKING OF CLAIMS.

1. *General Rules as to Voting and Ranking for Payment of Dividends.*

Creditor claiming must produce oath.

45. To entitle a creditor to vote or draw a dividend, he shall be bound to produce at the meeting, or in the hands of the trustee, an oath to the effect and taken in manner hereinbefore appointed in the case of creditors petitioning for sequestration, and the account and vouchers necessary to prove the debt referred to in such oaths.

Oath in cases where accounts and vouchers are not in creditor's possession.

46. If the creditor be not in possession of such accounts and vouchers previously to the period hereinafter assigned for lodging claims with a view to a share in any dividend, he shall state, in his oath, the cause of the said accounts and vouchers not being produced, and in whose hands, to the best of his knowledge, the same are; which oath shall entitle him to have a dividend set apart till a reasonable time be afforded for production thereof, or for otherwise establishing his debt according to law; but he shall not be entitled to act or vote till such production be made, or the debt established as aforesaid; and the trustee shall, on production of the oaths and grounds of debt, mark the same with his initials, and make an entry thereof in the sederunt book, and of the date when the same were produced, and, if required, he shall return to the creditor the grounds of debt.

Provision for correction of oath.

47. When it shall appear to the sheriff or to the trustee that the oath or claim of any person produced with a view to voting or ranking, and drawing a dividend on the sequestration, is not framed in the manner required by this Act, the sheriff or trustee, as the case may be, shall call upon such person, or his agent or mandatory, to rectify his oath and claim, pointing out to him wherein it is defective; and, unless such person or his agent or mandatory 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, when the failure to comply with the provisions of this Act shall appear to have been made for some improper or fraudulent purposes, 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.

Creditors may vote and rank for principal and interest to date of sequestration only.

48. A creditor who has a claim or a debt due shall be entitled to vote and rank for the accumulated sum of principal and interest to the date of the sequestration, but not for any interest accruing after the date of the sequestration, and, if the debt is not payable till after the date of the sequestration, he shall be entitled to vote and rank for it only after deduction of the interest from that date, and he shall also be liable to deduction of any discount beyond legal interest to which his claim is liable by the usage of trade applicable to it, or by the contract or course of dealing between the creditor and the bankrupt, but he shall not be bound to specify separately in his oath or claim for his debt the amount of any interest due thereon or of any interest or discount deducted therefrom, or to specify therein any accumulated sum of principal and interest, and, if there be any residue of the estate after discharging the debts ranked, he shall be entitled to claim out of such residue the full amount of the interest on his debt in terms of law.

Valuation of claim depending on a contingency.

49. When the claim of a creditor depends upon a contingency which is unascertained at the date of lodging his claim, he shall not be entitled to vote nor to draw a dividend in respect of such contingent debt, but he may apply to the sheriff, if the trustee has not been elected, or, if elected, to the trustee, to put a value on such debt, and the sheriff or trustee (as the case may be) shall put a value thereon as at the date of such valuation; and on such value being fixed such creditor shall be entitled to vote and draw dividends in respect of such value, and no more: Provided that, if such contingency have taken place before the debt has been valued, such creditor may vote and draw dividends in respect of the amount of the debt, but the same shall not disturb any former dividends allotted to other creditors; and, when such application is made to the sheriff, notice thereof shall be given to the bankrupt and petitioning or concurring creditor; and the judgment of the sheriff or trustee shall be subject to review, and any creditor who has claimed on the estate may appeal, or appear and be heard on any appeal.

Valuation of claim on annuity.

50. No creditor in respect of an annuity granted by the bankrupt shall be entitled to vote and draw a dividend until such annuity shall be valued, but he may, if the trustee has not been elected, apply to the sheriff, or, if elected, to the trustee, to put a value on such annuity; and the sheriff or trustee, as the case may be, shall put a value on the annuity, regard being had to the original price given for the annuity, deducting therefrom such diminution in the value of the annuity as shall have been caused by the lapse of time since the grant thereof to the date of the sequestration; and such creditor shall be entitled to vote and draw dividends in respect of such value, and no more: Provided always that, when such application is made to the sheriff, notice thereof shall be given to the bankrupt and the petitioning or concurring creditor; and the judgment of the sheriff or trustee shall be subject to review, and any creditor

who has claimed on the estate may appeal, or appear and be heard on any appeal.

Creditor not to sue cautioner after the date of sequestration.

51. When any person is bound as cautioner for payment of such annuity, it shall not be lawful for the creditor therein to sue or charge such cautioner after the date of the sequestration, except for the value fixed as aforesaid, and the arrears of annuity and interest thereon; and, on such cautioner making payment of such value and arrears to the creditor and the lawful interest thereon, he shall be discharged of all liability for such annuity, and he may thereupon enter a claim in the sequestration for the sum so paid, and vote and draw dividends thereon; provided that, if such cautioner shall not pay the sum so fixed and arrears and interest as aforesaid, before any payment of the annuity subsequent to the fixing thereof becomes due, he shall be bound to make payment of the said annuity, and all subsequent annuities, until he shall make payment of the sum so fixed, arrears of annuity and interest as aforesaid, deducting always such dividends as the creditor shall have received before full payment as aforesaid.

Obligant not freed from liability for debt, in respect of any vote given or dividend drawn by the creditor.

52. When a creditor has an obligant bound to him along with the bankrupt for the whole or part of the debt, such obligant shall not be freed from his liability for such debt in respect of any vote given or dividend drawn by the creditor, or of his assenting to the discharge of the bankrupt, or to any composition or deed of arrangement; but such obligant may require and obtain, at his own expense, from such creditor, an assignation to the debt, on payment of the amount thereof, and in virtue thereof enter a claim on the said estate, and vote and draw dividends, if otherwise legally entitled to do so.

Liability of creditors for expenses.

53. No person shall, by merely lodging an oath and claim, or being ranked or receiving payment of a dividend, or appearing or voting at a meeting in a sequestration as a creditor, be liable for any claim by the agent or other person employed by the trustee for money advanced, or expense incurred, or remuneration in relation to the affairs of the estate, reserving to the agent or other person so employed right to payment out of the estate and from the trustee by whom he may have been employed, in so far as the same may be competent to him; and no trustee shall have relief in respect of such payment against such creditor, reserving to such trustee relief against the estate, and against those creditors or others who may on other grounds be liable in relief.

Oaths not to supersede other evidence.

54. In no case shall oaths of verity or credulity supersede production of legal evidence, when required, in any discussion before the Court of Session, the Lord Ordinary, the sheriff, or the trustee.

2. Special Rules as to Voting.

Valuation of securities for voting.

55. If a creditor hold a security for his debt over any part of the estate of the bankrupt, he shall, before voting, make an

oath, in which he shall put a specified value on such security, and, deduct such value from his debt, and specify the balance, and, if the estate over which the security extends be sold, he shall specify in his oath the free proceeds which he has received or shall be entitled to receive therefrom, and specify the balance due after deduction thereof, and he shall be entitled in any case to vote in respect of the balance, and no more, without prejudice to the amount of his debt in other respects; and in questions as to the disposal or management of the estate subject to his security he shall be entitled to vote as a creditor for the full amount of his debt, without making any such deduction: Provided that, if a creditor hold more than one such security, he shall value each separately.

Valuation of obligations of co-obligants with bankrupt.

56. When a creditor has an obligant bound with but liable in relief to the bankrupt, or holds any security from an obligant liable in relief to the bankrupt, or any security from which the bankrupt has a right of relief, such creditor shall, before voting, make an oath, in which he shall put a specified value on the obligation of such obligant, and on such security to the extent to which the bankrupt is entitled to relief, and he shall deduct such value from his debt, and specify the balance, and he shall be entitled to vote in respect of such balance, and no more, without prejudice to the amount of his debt in other respects: Provided that, when a creditor has more than one such obligant, or holds more than one such security, he shall put a specified value on the obligation of each such obligant and on each such security.

Valuation of claims against a company and partners.

57. A creditor on the estate of a company shall not be bound, for the purpose of voting on the company's estate, to deduct from his claim the value which he may be entitled to draw from the estates of the partners; but, if he claim on the estate of a partner, he shall, before voting, in his oath put a specified value on his claim against the estate of the company, and also against the other partners thereof, in so far as they are liable to relieve such partner, and deduct such value from his debt, and specify the balance, and he shall be entitled to vote as a creditor for the said balance, and no more, without prejudice to the amount of his debt in other respects.

Trustee may require a conveyance of security by creditor on 20 per cent. addition to his own valuation.

58. It shall be competent to the trustee, with consent of the commissioners, within two months after an oath, specifying the value of a security or securities, or obligation or obligations, or claim in the several cases before mentioned, has been made use of in voting at any meeting or in assenting to or dissenting from the bankrupt's composition or discharge, and it shall also be competent to the majority of the creditors (excluding the creditor making such oath) assembled at any meeting, and during such meeting, to require from the creditor making such oath a conveyance or assignation in favour of the trustee of such security or securities, obligation or obligations, or claim, on payment of the specified value or values, with twenty per

centum in addition to such value or values; and the creditor shall be bound to grant such conveyance or assignation, at the expense of the estate: Provided that, where a creditor has put a value on such security or obligation or each of such securities or obligations, he may, at any time after the lapse of twenty-one days from the date on which the claim has been voted on and before he has been required to convey and assign as aforesaid, correct such valuation by a new oath, and deduct such new value from his debt.

Creditor may correct valuation by new oath.

Mandatories for creditors may vote.

59. The mandatory of any person entitled to vote as a creditor may vote in the absence of such creditor, provided he exhibit a mandate; and the vote of such mandatory shall, within his mandate, be held as the vote of the creditor himself.

Persons acquiring debts after sequestration not to vote.

60. Any person who shall acquire after the date of the sequestration, otherwise than by succession or marriage, a debt due by the bankrupt, and the wife of the bankrupt and any trustee for her shall not be entitled to vote in the election of trustee or commissioners, but in all other respects such person may be ranked as a creditor.

3. Special Rules as to ranking for payment of Dividends.

Valuation of securities with a view to a dividend.

61. To entitle any creditor who holds a security or securities over any part of the estate of the bankrupt to be ranked in order to draw a dividend, he shall on oath put a specified value on such security, or, if required by the trustee, on each such security, and deduct such value or values from his debt, and specify the balance; and the trustee, with consent of the commissioners, shall be entitled to a conveyance or assignation of such security or securities, at the expense of the estate, on payment of the value or values so specified out of the first of the common fund, or to reserve to such creditor the full benefit of such security or securities; and in either case the creditor shall be ranked for and receive a dividend on the said balance, and no more, without prejudice to the amount of his debt in other respects: Provided that, if a co-obligant with or cautioner for the bankrupt is liable to the creditor and holds a security over any part of the estate of the bankrupt, such co-obligant or cautioner shall account for the security to the trustee as if he had paid the debt to the creditor and thereafter ranked on the sequestrated estate under deduction of the value of such security.

Value of claim against a company to be deducted from claim against partners.

62. When a creditor claims on the estate of the partner of a company in respect of a debt due by such company, the trustee on the estate of such partner shall, before ranking such creditor, put a valuation on the estate of the company, and deduct from the claim of such creditor such estimated value, and rank and pay to him a dividend only on the balance.

ELECTION AND REMOVAL OR RESIGNATION OF TRUSTEE.

Appointment of meeting to elect a trustee.

63. The Lord Ordinary or the sheriff, by the deliverance which awards the sequestration, shall appoint a meeting of the creditors, to be held at a specified hour on a specified day, being not earlier than six nor later than twelve days from the date of the appearance in the Gazette of the notice of the award of sequestration, at a convenient place within the county of the sheriff awarding sequestration, or to whom the sequestration is remitted, to elect a trustee or trustees in succession, and do the other acts hereinafter provided.

Procedure of meeting for election of trustee.

64. Creditors or their mandatories, qualified as aforesaid, shall assemble at the time and place fixed for the election of trustee, with power to adjourn for such reasonable time as may seem fit, provided such adjournment do not postpone the meeting for the election of trustee beyond the limit of the period within which that meeting is by this Act appointed to be held; and if two or more creditors shall give notice to the sheriff of the county, such sheriff shall attend the meeting and adjourned meetings, and preside; and the sheriff clerk or his depute shall also attend, and mark the oaths and productions with his initials, and write the minutes in the presence of the meeting, and enter therein the names and designations of the creditors present, or of the mandatories of creditors, and the amount for which they claim, and any other circumstances which the presiding sheriff shall judge fit, which minutes the presiding sheriff shall sign; and the clerk shall retain the oaths of the several claimants, subject to the exhibition thereof in his hands, till the election shall be determined, when he shall deliver the same to the trustee; and when the sheriff is not present the creditors shall elect a preses and (if the sheriff clerk or a depute be not present) a clerk; and the preses shall mark the oaths and productions with his initials, and sign the minutes; and the clerk shall, in the presence of the meeting, write the minutes, and enter therein the names and designations of the creditors or mandatories, and the amount for which they claim, and any other circumstances relating to the said meeting which the preses shall judge fit, which minutes the preses shall sign; and the creditors or their mandatories who have produced their oaths and documents of debt, and who have been entered in the minutes, shall then and there elect a fit person to be trustee, or two or more trustees, to act in succession, in case of non-acceptance, death, resignation, removal, or disqualification, and, in the case of the sequestration of the estates of a company and of the partners, one trustee for all the estates, or separate trustees on the estates of the company and on the estates of all or each of the individual partners or trustees in succession as aforesaid; and it shall not be lawful to elect as trustee the bankrupt, or any person conjunct or confident with the bankrupt, or who hold an interest opposed to the general interest of the creditors,

or whose residence is not within the jurisdiction of the court of session.

Judgment of sheriff as to trustee.

65. If the sheriff be present at the election of trustee, and there be no competition for the office, or objection stated to the candidate or candidates, he shall, by a deliverance on the minutes, declare the person chosen by the creditors to be trustee, and, if there be competition or objections to the candidate or candidates, such objections to the votes or candidates shall be stated at the meeting, and the sheriff may either forthwith decide thereon, or make avizandum, and he shall, if necessary, make a short note of the objections and of the answers, on which he shall, within four days after the meeting, hear parties vivâ voce, and declare the person or persons trustee or trustees in succession whom he shall find to have been duly elected, and state the grounds of his decision in a note, and the same, as well as such short note, shall form part of the process.

When sheriff not present.

66. When the preses has been elected by the creditors, such preses (whether there be any competition or objection or not) shall forthwith report the proceedings to the sheriff; and the oaths of the several claimants shall, if the sheriff clerk or his depute be present, remain in his possession, or, if he be not present, shall be transmitted to the sheriff clerk by the preses, to be retained by him till the trustee shall be finally appointed, when he shall deliver the same to the trustee; and, if there be no competition or objection, the sheriff shall declare the person or persons elected trustee or trustees in succession; and, if there be competition or objection, the parties shall, within four days from the date of the said meeting, lodge in the hands of the sheriff clerk short notes of objections, and the sheriff shall forthwith hear parties thereon vivâ voce, and give his decision, and state the grounds thereof in a note, which note, as well as such short notes, shall form part of the process.

Judgment of sheriff as to trustee final.

67. The judgment of the sheriff declaring the person or persons elected to be trustee or trustees in succession, shall be given with the least possible delay; and such judgment shall be final, and in no case subject to review in any court or in any manner whatever.

Expenses of competition for office of trustee.

68. No part of the expense of any competition for the office of trustee shall be paid out of the estate, but all such expense shall be paid by the unsuccessful to the successful party.

Caution to be found by trustee.

69. The creditors shall, at the meeting for election of a trustee, fix a sum for which the trustee shall find security for his intromissions and performance of the duties and rules hereby enacted, and shall also decide on the sufficiency of the caution offered; and the person declared to be trustee shall, within seven days of the date of the deliverance declaring his election, lodge with the sheriff clerk a bond of caution, signed by the trustee and his cautioner, in the form of the Schedule C.

hereunto annexed, which bond shall be furnished to him by the sheriff clerk: Provided that nothing hereinbefore contained shall be held or construed to prevent the creditors accepting the bond of a guarantee society in lieu of the bond of caution aforesaid: Provided also that, where such bond is so accepted, the premium payable thereon shall form a charge on the sequestrated estate.

Act and warrant in favour of trustee.

70. On the decision of the sheriff being given, declaring the person elected trustee, and on a bond by the trustee and his cautioner being duly lodged as aforesaid, the sheriff shall confirm his election as trustee, which confirmation shall be final, and not subject to review in any court or in any manner whatever; and the sheriff clerk shall issue an act and warrant in the form of Schedule D. hereunto annexed to the trustee, and shall, within three days thereafter, transmit a copy thereof to the accountant, who shall make an entry of the name and designation of the trustee in the register of sequestrations, and such act and warrant shall be an effectual title to the trustee to perform the duties hereby imposed on him, and shall be evidence of his right and title to the sequestrated estate, for the purposes of this Act; and a copy of such act and warrant in favour of the trustee, purporting to be certified by the sheriff clerk, and to be authenticated by one of the judges of the court of session, shall be received in all courts and places within England, Ireland, and His Majesty's other dominions as primâ facie evidence of the title of the trustee, without proof of the authenticity of the signatures or of the official character of the persons signing, and shall entitle the trustee to recover any property belonging or debt due to the bankrupt, and to maintain actions, in the same way as the bankrupt might have done if his estate had not been sequestrated.

To be a complete title to him.

Removal or resignation of trustee.

71. A majority in number and value of the creditors, present at any meeting duly called for the purpose, may remove the trustee, or accept of his resignation; and one fourth of the creditors in value may at any time apply by petition to the Lord Ordinary or to the sheriff for removal of the trustee, and the Lord Ordinary or the sheriff shall order such petition to be served on the trustee, and intimated in the Gazette; and, if the Lord Ordinary or the sheriff shall be satisfied that sufficient reason has been shown, he shall remove the trustee, and appoint a meeting of the creditors to be held for devolving the estate on the trustee next in succession, or electing a new trustee; and, if the trustee shall have been discharged, die, resign, or be removed, or remain at any one time for three months furth of Scotland, any commissioner, or any creditor ranked or claiming and entitled to be ranked on the estate, may apply to the Lord Ordinary or the sheriff for an order to hold a meeting for devolving the estate on the trustee next in succession, or electing a new trustee; and the Lord Ordinary or the sheriff shall grant warrant to hold such meeting at a certain time

Election of a new trustee.

and place, which shall be advertised in the Gazette by the commissioner or creditor so applying, and at the time and place so appointed the creditors at such meeting may devolve the estate on the trustee next in succession, or elect a new trustee; and, when the estate is devolved on such trustee, the creditors shall fix the amount for which he shall find security, and on a bond being lodged the sheriff shall confirm him, and an act and warrant shall be issued and recorded in the same way and to the same effect as in the first election of a trustee; and in all cases of a new election of a trustee the procedure shall take place in the like manner as is hereinbefore provided in the case of the first election; and the succeeding or new trustee shall be vested with the powers and perform the duties and be subject to the same rules as are hereinbefore provided, and shall call to account the former trustee, or his heirs or representatives.

ELECTION AND REMOVAL OF COMMISSIONERS.

Election of commissioners.

72. At the meeting for election of a trustee the creditors present or their mandatories shall, after the election of the trustee, elect three commissioners (if there be so many creditors who have claimed), who shall be either creditors or mandatories of creditors, and the like proceedings shall take place in regard to their election as is provided in regard to the election of trustee (except that they shall not be bound to find security); and the sheriff shall decide who are the persons duly elected, and declare their election by a deliverance in the sederunt book, which decision shall be final, and shall entitle them to act without further confirmation, and a majority of them shall be a quorum: Provided that no person shall be eligible as a commissioner who is disqualified to be a trustee; and any mandatory who has been elected a commissioner shall lose that office, upon written intimation being sent by his constituent to the trustee that he has recalled the mandate, and the trustee shall immediately record the intimation in the sederunt book; and the trustee shall, in all cases where a commissioner has declined to act, died, resigned, or become incapacitated, call a meeting of creditors for the purpose of electing a new commissioner, and such commissioner shall be elected in manner hereinbefore provided.

Removal of commissioners.

73. A majority of the creditors assembled at any meeting duly called for that purpose may remove a commissioner, and may elect another in his place, in manner before directed.

ALLOWANCE TO BANKRUPT.

Allowance to bankrupt.

74. At the meeting for election of a trustee, or at the meeting held after the examination of the bankrupt, or at any meeting called for the purpose, four-fifths in value of the creditors present may authorise payment from time to time to

the bankrupt, or to the partners of a company (if the sequestration be of a company estate) of such sum out of the estate as they shall think proper for sustenance, until the period assigned for payment of the second dividend, but such allowance shall not exceed three pounds three shillings per week to the bankrupt, or to each individual partner of a company, from the date of sequestration to the period aforesaid, and no allowance shall be given if the bankrupt shall not have complied with the provisions of this Act: Provided always that, if it shall at any time be the opinion of a majority of the creditors present at a regular meeting that it is for the interest of the estate that a special allowance should be further made to the bankrupt, and if the accountant shall report in its favour, it shall be competent for the Lord Ordinary or the sheriff, on application by the trustee, with the said concurrence of creditors, and report by the accountant, to award such allowance, which shall then be payable out of the estate.

DUTIES OF TRUSTEE AND COMMISSIONERS.

Record of abbreviate of his confirmation.

75. The trustee, within ten days after his election is confirmed, shall present an abbreviate, signed by him or his agent, in the form of Schedule E. No. 1, hereunto annexed, to the keeper of the registers of inhibitions and adjudications, who shall forthwith record the same, and write and subscribe a certificate on the said abbreviate in the form specified in the said Schedule E. No. 2; and the like proceeding shall take place within ten days after the election of each new trustee shall be confirmed.

Trustee to take possession of estate and books, and make up inventory.

76. The trustee 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 revenue thereof, and shall forthwith transmit copies of such inventory and valuation to the accountant.

Bankrupt to make up state of his affairs;

77. The bankrupt shall make up, and at the meeting appointed for the election of a trustee, deliver to the clerk of such meeting a state of his affairs, specifying his whole property, wherever situated, the property in expectancy or to which he may have an eventual right, the names and designations of his creditors and debtors, and the debts due by and to him, and a rental of his heritable property, which state and rental shall be subscribed by the bankrupt, and shall then be delivered to the trustee, and the same shall be engrossed in a sederunt book to be kept by the trustee; and the bankrupt shall at all times give every information and assistance necessary to enable the trustee to execute his duty; and, if the bankrupt fail to do so, or to grant any deed which may be requisite for the recovery or disposal of his estate, the trustee may apply to the sheriff to compel him to give such information and assistance, and to

and to give information and grant deeds.

grant such deeds, under the penalty of imprisonment and of forfeiture of the benefit of this Act, and, unless cause be shown to the contrary, the sheriff shall issue a warrant of imprisonment accordingly.

Trustee to recover funds.

78. The trustee shall manage, realise, and recover the estate belonging to the bankrupt, wherever situated, and convert the same into money, according to the directions given by the creditors at any meeting, and, if no such directions are given, he shall do so with the advice of the commissioners: Provided that, in order to the realisation of the interest of the bankrupt in any non-vested, contingent right or interest which under this Act is vested in the trustee, it shall be competent for the trustee to effect an insurance or insurances on the life of the bankrupt, and with that object in view to require the bankrupt to submit himself to a medical examination or examinations, and, if the bankrupt fail to do so, the trustee may apply to the sheriff to compel him so to submit himself as provided in the immediately preceding section; and the trustee shall lodge all money which he shall receive in the course of such management, realisation, and recovery, in such bank as the majority of the creditors in number and value at any general meeting shall appoint, and failing such appointment in any joint stock bank of issue in Scotland (provided that the bank be not one in which the trustee shall be an acting partner, manager, agent, or cashier); and the money shall be lodged in the name of the trustee, in his official character under this Act; and such bank shall, once yearly at least, balance such account.

Secs. 1 and 2.

Penalty on trustee retaining funds.

79. If the trustee shall keep in his hands any sum exceeding fifty pounds belonging to the estate for more than ten days, he shall pay interest to the creditors at the rate of twenty pounds per centum per annum on the excess of such sum above fifty pounds for such time as the same shall be in his hands beyond ten days; and, unless the money has been so kept from innocent causes, the trustee shall be dismissed from his office, upon petition to the Lord Ordinary or sheriff by any creditor, and have no claim to remuneration, and shall be liable in expenses.

Trustee to keep a sederunt book, and send copy of accounts to accountant.

80. The trustee shall keep a sederunt book, in which he shall record all minutes of creditors and of commissioners, states of accounts, reports, and all the proceedings necessary to give a correct view of the management of the estate, and he shall also keep regular accounts of the affairs of the estate, and transmit to the accountant, before each of the periods herein assigned for payment of a dividend, a copy, certified by himself, of such accounts, in so far as not previously transmitted, and such copies shall be preserved in the office of the accountant; the trustees shall also transmit to the accountant copies of all circulars issued by him; the sederunt book and accounts shall be patent to the commissioners and to the creditors or their agents, at all times: Provided always that, when any document

is of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors on the estate), the trustee shall not be bound to insert it in the sederunt book, or to exhibit it to any other person than the commissioners or the accountant.

Duties of commissioners.

81. The commissioners shall superintend the proceedings of the trustee, concur with him in submissions and transactions, give their advice and assistance relative to the management of the estate, decide as to paying or postponing payment of a dividend, and may assemble at any time to ascertain the situation of the bankrupt estate, and any one of them may make such report as he may think proper to a general meeting of the creditors.

Judicial factor, trustee, and commissioners amenable to Lord Ordinary and sheriff.

82. The judicial factor, the trustee, and commissioners shall be amenable to the Lord Ordinary and to the sheriff, although resident beyond the territory of the sheriff, at the instance of any party interested, to account for their intromissions and management, by petition served on them; and, in case it shall appear that such application ought not to have been made, the party complained of shall be entitled to his full expenses, to be either retained out of the funds, or recovered from the party complaining, as the Lord Ordinary or the sheriff shall direct.

EXAMINATION OF BANKRUPT.

Sheriff to name a day for bankrupt's examination.

83. The trustee shall, within eight days after the date of the act and warrant confirming him, apply to the sheriff to name a day for the public examination of the bankrupt, and the sheriff shall issue his warrant for the bankrupt to attend for such examination within the sheriff courthouse on a specified day and at a specified hour, being not sooner than seven days nor later than fourteen days from the date of the sheriff's warrant; and on the sheriff granting such warrant the trustee shall publish an advertisement, in terms of Schedule F hereunto annexed, in the Gazette, and send by post or otherwise special notice to every creditor who has lodged a claim, or who may be named in the bankrupt's state of affairs, intimating his name and designation, his election as trustee, the day, hour, and place fixed for the examination of the bankrupt, and also a specified day, being not sooner than seven days nor later than fourteen days after the day appointed for the examination of the bankrupt, and in the sequestration of the estates of a deceased debtor a meeting of creditors shall be called by the trustee by public advertisement and notice to each creditor, to be held not later than fourteen days after the date of such advertisement, and also the hour and place for holding a second meeting of the creditors, and shall also in the same notice intimate the period within which claims should be lodged.

Sheriff may grant warrant to bring bankrupt for examination.

84. It shall be competent for the sheriff to grant a warrant to apprehend the bankrupt, and bring him before the sheriff for examination; and, if the bankrupt be imprisoned for a debt or other civil obligation within Scotland, the sheriff may grant warrant to magistrates and gaolers, on receiving a duplicate of such warrant, and an acknowledgment for the person of the bankrupt, to deliver him to the officer presenting the same and they shall do so accordingly; which warrant shall be sufficient authority, either within or beyond the territory of the sheriff in Scotland, to messengers-at-arms, and to the officers of the sheriff, to apprehend, transmit, detain, and imprison, and to gaolers to deliver up, receive, and detain, the bankrupt, until his examination is concluded, and also for his re-transmission after examination to the gaol from which he was delivered up, and re-imprisonment therein; and, if the bankrupt cannot be brought from gaol, or cannot be examined by the sheriff there, or is by a lawful cause prevented from attending at the time and place appointed, or is in custody on a criminal charge, or is abroad, the sheriff may grant commission to take the examination; and the sheriff or commissioner may, if he see cause, adjourn the examination of the bankrupt to an early day, to be then fixed; and the sheriff may, on the application of the trustee, order the bankrupt to be examined as often as he shall see fit.

Apprehension and transmission of the bankrupt when out of Scotland.

85. If the bankrupt be in any part of Great Britain and Ireland other than Scotland, the Lord Ordinary may, on petition by the trustee, grant warrant to all judges, magistrates, justices of the peace, and officers of the law, to apprehend and transmit him to the place of his examination, and to enforce the same, which they are hereby required to do; and, if the bankrupt be in prison or in custody, the Lord Ordinary may grant warrant as aforesaid to magistrates and gaolers, upon receiving a duplicate of such warrant and an acknowledgment for the person of the bankrupt, to deliver him to the messenger or officer presenting such warrant, which they shall do accordingly; and such warrant shall be sufficient authority for the apprehension, transmission, detention, and imprisonment of the bankrupt (when necessary for his safe custody), and for his re-transmission after examination to and re-imprisonment in the prison or custody from which he was delivered up.

Examination of bankrupt's wife and others.

86. The sheriff may, at any time, on the application of the trustee, order an examination of the bankrupt's wife and family, clerks, servants, factors, law agents, and others, who can give information relative to his estate, on oath, and issue his warrant requiring such persons to appear; and, if they refuse or neglect to appear, when duly summoned, the sheriff may issue another warrant to apprehend the person so failing to appear: Provided that, when such person is not the bankrupt, nor his wife, nor one of his family, nor his clerk or servant, no warrant for apprehension shall be issued until the expiration of eight days from the

service of the first warrant, unless the trustee shall, on oath, specify a reasonable cause of belief that such person intends to leave the country to avoid the examination, in which case the sheriff may forthwith issue such warrant; which several warrants shall be sufficient to authorise messengers-at-arms, or the officers of the sheriff, to execute the same, either within or without the territory of the sheriff in Scotland as aforesaid; and, if any person liable to be examined cannot attend, the sheriff may grant commission to take his examination; and such examination, whether by the sheriff or by a commissioner, may be adjourned, if it shall seem fit, to an early date, to be then fixed: Provided that persons, other than the bankrupt, summoned to attend for examination shall be entitled to such allowances as witnesses are in other cases entitled to, and the amount of which, if disputed, shall be fixed by the sheriff.

Bankrupt and others must answer lawful questions, and produce documents.

87. The bankrupt and such other persons shall answer all lawful questions relating to the affairs of the bankrupt; and the sheriff may order such persons to produce for inspection any books of account, papers, deeds, writings, or other documents in their custody relative to the bankrupt's affairs, and cause the same, or copies thereof, to be delivered to the trustee.

Mode of examination.

88. The examination of the bankrupt, and of such other persons, shall be taken upon oath, and shall, except in the cases already specified, wherein a commission is allowed to be granted, take place before the sheriff; and such examination shall be taken down in the manner prescribed by the Sheriff Courts (Scotland) Act, 1907, and Rule 65 of the First Schedule to that Act shall apply accordingly; provided that the examination of the bankrupt shall in every case be authenticated in the ordinary way as a regular deposition, but that the examination of such other persons shall only be so authenticated if, in the opinion of the sheriff, such authentication is necessary: Provided also that, if the trustee shall make application to that effect, the examination of the bankrupt and such other persons shall take place in open court.

7 Edw. 7. c. 51.

Penalty on refusal to answer, &c.

89. If the bankrupt or any of such other persons shall refuse to be sworn, or to answer, to the satisfaction of the sheriff, any lawful question put to him by the sheriff or trustee, or by any creditor with the sanction of the sheriff, or without lawful cause shall refuse to sign his examination, or to produce books, deeds, or other documents in his custody or power relating to the estate, the sheriff may grant warrant to commit him to prison, there to remain until he comply with the order, which warrant shall specify the question and answer, book, deed, document, or the refusal to swear or to sign the examination; and such warrant shall not be subject to the review of the Court of Session, but the bankrupt or person imprisoned may apply by written petition (without argument) to the Lord Ordinary for a recall of the warrant, and the Lord Ordinary shall order the

petition to be served on the trustee or the creditor and shall thereafter hear parties vivâ voce, and pronounce judgment.

Penalty on latent partner of bankrupt company not coming forward.

90. If any latent partner of a company whose estates have been sequestrated shall not, by intimation to the trustee, acknowledge that he is a partner, on or before the day appointed for the examination of the known partners, he shall not be entitled to the benefits or privileges of this Act, unless in an application for the same he shall satisfy the Lord Ordinary or the sheriff that the omission proceeded from innocent mistake, or ignorance of the proceedings, or reasonable misconception as to his liability as a partner, and unless he shall then follow out all necessary steps for remedying as far as possible the loss and inconvenience thence arising.

Bankrupt may correct his state, and then must take oath inserted in this Act.

91. The bankrupt, before the close of his examination, may make such additions to or alterations upon the state of his affairs as may have occurred to him to be necessary to give a full view of his affairs, which state, with the additions and alterations, shall be subscribed by the sheriff and the bankrupt; and the bankrupt shall then take the following oath, which shall be engrossed in the sederunt book, and subscribed as aforesaid, as relative to such state; and when the bankrupt is a partner with others, and examined respecting the affairs of the partnership, the words of the oath shall so far be varied as to make it applicable to the case:

Oath.

"I DO, in the presence of Almighty God, and as I shall "answer to God at the great Day of Judgment, solemnly "swear, that the state of my affairs subscribed by me as relative "hereto contains a full and true account, to the best of my "knowledge and belief, of all the debts, of whatever nature, "due to me, and of all my estate and effects, heritable and "moveable, real and personal, wherever situated (the necessary "wearing apparel of myself, my wife, and family, only excepted), "as well as of all claims which I am entitled to make against "any person or persons whatsoever, and of all estate in "expectancy, or means, of whatever kind, to which I have an "eventual right by contract of marriage, trust deed, settlement, "deed of entail, or otherwise; and that the said state likewise "contains a full and true account of all debts due by me or "demands upon me; and that I have delivered up the whole "books, documents, accounts, title deeds, and papers of every "kind belonging to me which in any way relate to my affairs, "and which were or are in my possession or under my power; "and that I have made a full disclosure of every particular "relating to my affairs: And, further, I promise and swear, that "I will forthwith reveal all and every other circumstance or "particular relative to my affairs which may hereafter come to "my knowledge, and which may tend to increase or diminish "the estate in which my creditors may be interested, directly "or indirectly."

POWERS OF SECOND AND SUBSEQUENT MEETINGS OF CREDITORS.

Report by trustee after bankrupt's examination.

92. Prior to the meeting of creditors after the examination of the bankrupt, or, in the case of a deceased debtor, prior to the first meeting after the election of the trustee, the trustee shall prepare a report setting forth the state of the bankrupt's affairs, and an estimate of what the estate may produce, which report he shall exhibit at the meeting of creditors, and give all explanations relative thereto; and the creditors assembled at such meeting may receive an offer of composition, as hereinafter provided, and may, either at this or any other meeting, give directions for the recovery, management, and disposal of the estate; and, when any part of the estate consists of land or other heritable property, it shall be optional to the creditors to determine whether the trustee is to bring such property to judicial sale, or to dispose thereof by voluntary public sale, or by private sale, as hereinafter provided.

Powers of creditors over estate.

CALLING OF AND PROCEDURE AT MEETINGS.

When meetings to be called.

93. The trustee, or any commissioner with notice to the trustee, may at any time call a meeting of the creditors, and the trustee shall call such meeting, when required by one-fourth in value of the creditors ranked on the estate, or by the accountant.

Notice of meetings.

94. Notice of the day, hour, place, and purpose of all meetings of creditors under this Act shall be advertised in the Gazette seven days at least before the day of the meeting, and such meeting may be adjourned to the following day.

No notice to be sent in certain cases.

95. It shall not in any case be necessary to send any notification of the day or place of meetings by post to any creditor whose debt shall be under twenty pounds, unless such creditor shall have given directions in writing that such notification shall be sent; and no notification shall be sent to any creditor who has directed that none shall be sent.

Rules as to computing majorities.

96. All questions at any meeting of creditors shall be determined by the majority in value of those present and entitled to vote, unless in the cases herein otherwise provided for; and when, for the purpose of voting, assenting or dissenting, the creditors are required to be counted in number, no creditor whose debt is under twenty pounds shall be reckoned in number, but his debt shall be computed in value.

EXTENT OF TRUSTEE'S RIGHT.

Vesting of estate in trustee.

97. The act and warrant of confirmation in favour of the trustee shall ipso jure transfer to and vest in him or any succeeding trustee, for behoof of the creditors, absolutely and irredeemably, as at the date of the sequestration, with all right, title, and interest, the whole property of the debtor, to the effect following:—

Vesting of moveable estate.

(1) The moveable estate and effects of the bankrupt, wherever situated, so far as attachable for debt, or

capable of voluntary alienation by the bankrupt, to the same effect as if actual delivery or possession had been obtained, or intimation made at that date, subject always to such preferable securities as existed at the date of the sequestration, and are not null or reducible:

Vesting of heritable estate in Scotland.

(2) The whole heritable estate belonging to the bankrupt in Scotland, to the same effect as if a decree of adjudication in implement of sale, as well as a decree of adjudication for payment and in security of debt, subject to no legal reversion, had been pronounced in favour of the trustee, and recorded at the date of the sequestration, and as if a poinding of the ground had then been executed, subject always to such preferable securities as existed at the date of the sequestration, and are not null and reducible, and the creditors' right to poind the ground, as hereinafter provided; and the right of the trustee shall not be challengeable on the ground of any prior inhibition (saving the effect which such inhibition may be entitled to in the ranking of the creditors): Provided always that such transfer and vesting of the heritable estate shall have no effect upon the rights of the superior, nor upon any question of succession between the heir and executor of any creditor claiming on the sequestrated estate, nor upon the rights of the creditors of the ancestor (except that the act and warrant of confirmation shall operate in their favour as complete diligence); and, if any part of the bankrupt's estate be held under an entail or by a title otherwise limited, the right vested in the trustee shall be effectual only to the extent of the interest in the estate which the bankrupt might legally convey, or the creditors attach:

Vesting of real estates in England, Ireland, and other British dominions.

(3) All real estate situated in England, Ireland, or in any of His Majesty's dominions, belonging to the bankrupt, and all interest in or regarding such real estate, which the bankrupt held, or to which he was entitled, to the same extent as would have happened if the bankrupt had been adjudicated bankrupt in England or Ireland, or in any of His Majesty's dominions respectively: Provided always that as regards all freehold, copyhold, and leasehold estate in England, Ireland, or any of His Majesty's dominions (except Scotland), the Act and warrant of confirmation shall be registered in the chief court of bankruptcy for the country in which the property is situated, in the like manner as an adjudication of bankruptcy or other similar process ought to be registered according to the law of that country, either in a separate book,

or in the general book, as the court of bankruptcy shall order, to the intent that all persons concerned may have the same means of ascertaining whether any person has been adjudged a bankrupt according to the law of Scotland as they have or shall have of ascertaining whether any person has been adjudged a bankrupt according to the law for the time being of the country in which the property is situated; and no purchaser for valuable consideration of any freehold, copyhold, or leasehold estate (except in Scotland) shall be affected by any such bankruptcy until the act and warrant of confirmation shall have been so registered as aforesaid: Provided also that, where, according to the laws of England, Ireland, or other His Majesty's dominions, any deed or conveyance would require registration, enrolment, or recording, the act and warrant of confirmation shall be so registered, enrolled, or recorded according to the laws of England, Ireland, or other His Majesty's dominions; and, if any purchase is made by any person for valuable consideration, and without notice of the sequestration, prior to the registration, enrolment, or recording of the said act and warrant of confirmation, such purchase shall not be invalidated by the existence of such act and warrant, or the subsequent registration, enrolment, or recording thereof:

(4) Any non-vested contingent right of succession or interest in property conceived in favour of the bankrupt under the will or settlement of any person deceased, or under marriage contract, or under any other deed, instrument, or writing of an irrevocable nature, to the same effect as if an assignation of such right or interest had been executed by the bankrupt and intimation thereof made at the date of the sequestration, subject always to such preferable securities as existed at that date and are not null or reducible.

Acquisition of bankrupt after the sequestration to belong to the creditors. Alimentary provisions.

98.—(1) If any estate, wherever situated, shall, after the date of the sequestration, and before the bankrupt has obtained his discharge, be acquired by him, or descend or revert or come to him, the same shall ipso jure fall under the sequestration, and the full right and interest accruing thereon to the bankrupt shall be held as transferred to and vested in the trustee, as at the date of the acquisition thereof or succession, for the purposes of this Act; and the trustee shall, on coming to the knowledge of the fact, present a petition setting forth the circumstance to the Lord Ordinary or the sheriff, who shall appoint intimation, to be made in the Gazette, and require all concerned to appear within a certain time for their interest; and after the expiration of such time, and no cause being shown

to the contrary, the Lord Ordinary or the sheriff shall declare all right and interest in such estate which belongs to the bankrupt to be vested in the trustee, as at the date of the acquisition thereof or succession thereto, to the same effect as is hereinbefore enacted in regard to the other estates; and the proceeds thereof, when sold, shall be divided in terms of this Act; and, if the bankrupt do not immediately notify to the trustee that such estate has been acquired, or has come to him as aforesaid, he shall forfeit all the benefits of this Act, and it shall be competent to the trustee to examine him as aforesaid in relation thereto: Provided always that the rights of the creditors of the person from whom such estate shall come or descend to the bankrupt shall be reserved entire.

(2) Where the bankrupt is in right of an alimentary provision, it shall be competent to the Lord Ordinary, or the sheriff, upon a petition by the trustee, to determine whether the amount of such provision is in excess of a suitable aliment to the bankrupt, in view of his existing circumstances, and, if he shall determine that it is, to fix the amount of the excess, and to order the same to be paid to the trustee as part of the property of the bankrupt falling under the sequestration: Provided that it shall be competent to the Lord Ordinary or the sheriff, respectively, at any time thereafter, on the application of the trustee or of the bankrupt, to reconsider and to alter such order as he may deem fitting in the event of any change of circumstances which may make such alteration proper.

Subjects improperly included in sequestration may be struck out.

99. Any person claiming right to any estate included in the sequestration may present a petition to the Lord Ordinary, or to the sheriff, praying to have such estate taken out of the sequestration, and the Lord Ordinary, or the sheriff, shall order the trustee to answer within a certain time, and on expiration of such time he shall proceed to dispose of the application.

Trustee may complete feudal titles or grant such rights as bankrupt could do.

100. The bankrupt shall, if required, grant all deeds necessary for recovering his property and feudally vesting his heritable estate in the trustee for the purposes of this Act; and, if the bankrupt's title to any estate has not been completed, the trustee may complete titles in his own person, whom failing, in favour of any trustee who may succeed him, for behoof of the creditors, or in the person of the bankrupt: Provided that such completion of title in the person of the bankrupt shall not have the effect of validating accretione unperfected rights in favour of any person other than the trustee in any such estate flowing from the bankrupt, and the trustee may, without making up a feudal title in his person, and without concurrence of the bankrupt, grant such conveyances of the heritable estate belonging to the bankrupt as the bankrupt might competently have granted, which conveyances shall be as effectual to the purchaser as if they had been granted by the bankrupt with concurrence of the trustee, and shall not be affected by any

inhibition against the bankrupt, reserving the effect of such inhibition in the ranking.

Trustee may get property transferred to him, although the heir of the bankrupt has made up titles.

101. When sequestration is awarded against the estate of a person after his death, and his successor has made up a title to his heritable estate, the trustee may apply by petition to the Lord Ordinary or the sheriff, praying that such estate shall be transferred to and vested in him, and the Lord Ordinary or the sheriff shall order the petition to be served upon such successor, and require him to answer the same within fourteen days; and an abbreviate of such petition and deliverance, in terms of the Schedule A. No. 3 hereunto annexed, being recorded in the registers of inhibitions and adjudications, shall have the effect of an inhibition and of a citation in an adjudication of the estate, and the keeper of the registers shall write on the said abbreviate a certificate in terms of the said Schedule A. No. 2; and, if on expiration of that period no cause is shown to the contrary, the Lord Ordinary or the sheriff shall declare such estate to be transferred to and vested in the trustee, as at the date of the sequestration, to the same effect as is hereinbefore provided in regard to the act and warrant of confirmation; and the trustee shall, within eight days thereafter, cause an abbreviate of such petition and deliverance to be recorded in the registers of inhibitions and adjudications, in terms of the Schedule E. No. 3 hereunto annexed, and the keeper of the said register shall write on such abbreviate a certificate in terms of the said Schedule E. No. 2.

Decree to be recorded in the register of adjudications.

Trustees' powers in relation to copyright.

102. Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorise the sale of any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he without the consent of the author or of the court be entitled to assign the right, or transfer the interest, or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of profits at a rate not less than that which the bankrupt was liable to pay.

EFFECT OF SEQUESTRATION ON RANKING OF CREDITORS.

Sequestration equivalent to an adjudication in competition.

103. The sequestration shall, as at the date thereof, be equivalent to a decree of adjudication of the heritable estates of the bankrupt for payment of the whole debts of the bankrupt, principal and interest, accumulated at the said date, and, when the sequestration is dated within year and day of any effectual adjudication, the estate shall be disposed of under the sequestration according to the provisions of this Act: Provided that

nothing herein contained shall affect the rights of any heritable creditor holding a power of sale preferable to the powers of the trustee.

And to arrestment and poinding. Diligence on or after sixtieth day before sequestration, or after it, ineffectual. Expenses of diligence.

104. The sequestration shall, at the date thereof, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding executed of the funds or effects of the bankrupt on or after the sixtieth day prior to the sequestration shall be effectual; and such funds or effects, or the proceeds of such effects, if sold, shall be made forthcoming to the trustee: Provided that any arrester or poinder before the date of the sequestration who shall be thus deprived of the benefit of his diligence shall have preference out of such funds or effects for the expense bonâ fide incurred by him in procuring the warrant for and executing such diligence.

Interruption of prescription.

105. The presenting of or concurring in a petition for sequestration, or the lodging a claim in the hands of the trustee, or the sheriff, or preses at any meeting of creditors, shall interrupt prescription of the debt of the creditor so petitioning, concurring, or claiming, and in regard to such debt shall bar the effect of any statute of limitations in England or Ireland, or other His Majesty's dominions, and although this sequestration shall be recalled, such interruption or bar shall, notwithstanding, be effectual.

Preferences in case of a deceased debtor.

106. When the sequestration of the estates of a deceased debtor is dated within seven months after his death, any preference or security for any prior debt acquired by legal diligence on or after the sixtieth day before his death, or subsequent to his death, and any preference or security acquired for a prior debt by any act or deed of the debtor which has not been lawfully completed for a period of more than sixty days before his death, and any confirmation as executor-creditor after the debtor's death, shall, in these several cases, be of no effect in competition with the trustee; and the estates and effects over which such preferences or securities shall have been obtained, or of which confirmation shall have been expede, shall belong to the trustee: Provided that the creditor who is so deprived of the benefit of his diligence or confirmation shall have preference for payment out of the said estates or effects of the expenses bonâ fide incurred by him in such diligence or confirmation.

Acts and payments by bankrupt after sequestration null, except in certain cases.

107. All payments and preferences or securities obtained by or granted to prior creditors, and all acts done or deeds granted by the bankrupt after the date of the sequestration and before his discharge out of or in relation to the estate (unless with the consent of the trustee), shall, in the event of sequestration being awarded, be null and void; and the trustee shall be entitled to such preference or security, and to any money so paid, deducting any expense bonâ fide incurred; but if a bonâ fide purchaser is in possession of moveable effects received from the bankrupt

after sequestration, but in ignorance thereof, and when ignorant thereof for a price paid, or which he is ready to pay, he shall not be obliged to restore the effects; and if a debtor, in ignorance of the sequestration, have paid his debt bonâ fide to the bankrupt, he shall not be obliged to pay it a second time to the trustee; and if the possessor of any bill or promissory note, which is payable by the bankrupt, with recourse on other parties, or of a security for a debt due by the bankrupt, shall have received payment of his debt from the bankrupt in ignorance of the sequestration, and given up such bill, promissory note, or security to the bankrupt, such person shall not be liable to repay to the trustee the amount so received, unless the trustee shall replace him in the situation in which he stood, or reimburse him for any loss or damage.

REALISATION OF HERITABLE ESTATE.

Sale of heritable estate by creditor.

108. A creditor holding a security over the heritable estate of the bankrupt, preferable to the right of the trustee, with a power to sell, may sell, in terms of his security, notwithstanding the sequestration, and it shall be competent to the trustee to concur therein in order to fortify the title; and the trustee or any posterior heritable creditor preferable to him may, by petition to the Lord Ordinary or to the sheriff, compel the said creditor and the purchaser to account for any reversion of the price.

Sale by trustee with concurrence of heritable creditors.

Discharge of burdens on sale.

109. If a creditor holding an heritable security, with a power to sell, concur with the trustee in bringing the estate to sale, the trustee shall sell the same in his own name, and the articles of roup and conveyance to the purchaser shall be executed by the trustee, with consent of such creditor and the commissioners; and the price shall be paid by the purchaser to the parties legally entitled thereto, and, in so far as not paid at the time of the delivery of the conveyance, it shall be consigned in the bank in which the money of the sequestrated estate is deposited; which payment or consignation of the price shall free and discharge the estate sold and the purchaser from the security of the consenting creditor, whether the debt in such security be satisfied or not, and from all securities postponed to the security of such creditor.

Sale by trustee alone.

110. If the creditors, at the meeting held after the examination of the bankrupt, or at any other meeting called for the purpose, resolve that the trustee shall dispose of the heritable estate by public sale or bring it to judicial sale, and if such resolution has been made before an heritable creditor having a power of sale shall have commenced proceedings for sale, or if such proceedings, after being commenced prior to the date of such resolution, have thereafter been unduly delayed, such creditor shall not be entitled to interfere with the sale by the trustee; and, if a public sale of the heritable estate be resolved on, such sale shall be made by auction at the upset price and in

the manner which shall be fixed by the trustee, with consent of the Commissioners: Provided always that the estate shall not be sold for less than the upset price, and that such upset price shall not be less than sufficient to pay the debt, principal, interest, and expenses of the heritable creditor.

Trustee may with approval of accountant sell by private bargain.

111. It shall be competent for the trustee, with concurrence of a majority of the creditors in number and value, and of the heritable creditors, if any, and of the accountant, to sell the heritable estate by private bargain, on such terms and conditions regarding price and otherwise, as the trustee with concurrence of those parties, may fix; and the concurrence of the accountant shall be conclusive evidence that the concurrence of the requisite majority of creditors has been obtained.

Trustee to make up a scheme of ranking and division of price.

112. It shall be the duty of the trustee to make up a scheme of ranking and division of the claims of the heritable creditors and other creditors on the price of the heritable estate sold; and such scheme of ranking and division shall be reported by him to the Lord Ordinary or the sheriff, and the judgment thereon shall be a warrant for payment out of the price against the purchaser of the heritable estate.

Court may grant interim warrant for payment out of price.

113. It shall be competent for the Lord Ordinary or the sheriff, on application by the trustee or any creditor interested, with a report thereon by the accountant, and on cause shown, to grant an interim warrant for payment of preferable claims out of the price of the estate, or to authorise an interim scheme of division out of the price, which scheme of division shall be disposed of as the scheme of division already provided for.

Heritable creditor's right to poind the ground limited.

114. No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date of the sequestration, shall (except to the extent herein-after provided) be available in any question with the trustee; and this section shall apply to all poindings of the ground by which moveables forming part of or belonging to a bankrupt estate, whether administered in Scotland or furth thereof, are sought to be attached or affected, and that whether the debts or securities in respect of which such poindings of the ground shall be brought shall have been constituted or granted by the bankrupt, or by any ancestor or predecessor of the bankrupt, or by any other person: Provided that no creditor who holds a security over the heritable estate preferable to the right of the trustee shall be prevented from executing a poinding of the ground after the sequestration, but such poinding shall, in competition with the trustee, be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of such term.

Landlord's hypothec saved.

115. Nothing in this Act contained shall affect the landlord's right of hypothec.

Creditors may purchase.

116. When any estate is sold publicly by virtue of this Act, it shall be lawful for any creditor to purchase the same; but the trustee or commissioners, or any law agent employed by the trustee in connection with the sequestration, or any partner of such law agent shall not be entitled to purchase.

PAYMENT OF DIVIDENDS.

Realised estate to be a fund of division.

117. The whole estate, when reduced into money, shall, unless otherwise provided in this Act, after paying all necessary charges and a commission to the trustee, be divided among those who were creditors of the bankrupt at the date of the sequestration, ranked according to their several rights and interests.

Preferential payments.

118.—(1) In the division of a bankrupt's estate under the provisions of this Act the following shall be paid in priority to all other debts:—

(*a*) All poor or other local rates due by the bankrupt at the date herein-after mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the bankrupt up to the fifth day of April next before the said date, and not exceeding in the whole one year's assessment;

(*b*) All wages or salary of any clerk or servant in respect of service rendered to the bankrupt during four months before the said date not exceeding fifty pounds to any one clerk or servant;

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds to any one workman or labourer, whether payable for time or for piece work, in respect of services rendered to the bankrupt during two months before the said date. Provided that, where any labourer in husbandry has entered into a contract for the payment to him of a portion of his wages in a lump sum, the priority under this section shall extend to the whole of such sum or a part thereof as the court may decide to be due under the contract proportionate to the time of service up to the said date;

(*d*) All sums (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the said date, subject nevertheless to the provisions of section five of that Act; and 6 Edw. 7. c. 58.

(*e*) All contributions payable under the National Insurance Act, 1911, by the bankrupt in respect of employed contributors or workmen in an insured trade during the four months before the said date. 1 & 2 Geo. 5. c. 55.

(2) The foregoing debts shall rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

(3) The trustee may, with the consent of the commissioners, dispense with the necessity for lodging oaths relative to the foregoing debts, and with the like consent may pay such debts before the period for payment of the first dividend.

(4) The date hereinbefore referred to in this section is the date of the award of sequestration, and, in the case of the sequestration of the estates of a deceased debtor, the date of his death, and, where sequestration has not been awarded, the date of the concourse of diligence for distribution of the estate of a party being notour bankrupt.

(5) Nothing in this section shall affect the provisions of the Friendly Societies Act, 1896, or the preference attaching at common law to death-bed and funeral expenses.

59 & 60 Vict. c. 25.

(6) The Preferential Payments in Bankruptcy Act, 1888, shall not apply to Scotland, and references to the said Act, or to section three of the Bankruptcy (Scotland) Act, 1875, in any Act of Parliament, as regards Scotland shall be read and construed as references to this section.

51 & 52 Vict. c. 62.

38 & 39 Vict. c. 26.

Creditor to produce oath, &c. two months before payment of first dividend, and one month before subsequent dividends.

119. To entitle any creditor to payment of the first dividend, he shall produce as is herein-before directed his oath and grounds of debt at least two months before the time fixed for payment of the first dividend, when 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 two months before the time fixed for payment of the dividend which he means to claim; provided that, if a creditor has not produced his oath and grounds of debt in time to share in the first dividend, but has done so in time to share in the second dividend, he shall be entitled, on occasion of payment of the second dividend, to receive out of the first of the fund (if there be sufficient for that purpose) an equalising dividend corresponding to the dividend he would have drawn if he had claimed in time for the first dividend; and the same rule shall apply as to all subsequent dividends.

Creditors resident abroad may lodge oath at later periods.

120. When any creditor not resident within Great Britain or Ireland at the date of the deliverance awarding sequestration, or at any time within five 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 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.

Trustee to make up and exhibit to commissioners state of funds.

121. Immediately on the expiration of four months from the date of the deliverance actually awarding sequestration, unless the dividend is accelerated as herein-after provided, the trustee shall proceed to make up a state of the whole estate of the bankrupt, of the funds recovered by him, and of the property outstanding (specifying the cause why it has not been recovered), and also an account of his intromissions, and generally of his management; and within fourteen days after the expiration of the said four months the commissioners shall meet and examine such state and account and ascertain whether the trustee has lodged the moneys recovered by him in bank or not, and, if he has failed to do so, they shall debit him with the sum at the rate of twenty pounds per annum on every hundred pounds not so lodged, and so after that rate on any larger or smaller sum, being not less than fifty pounds; and they shall audit his accounts, and settle the amount of his commission or fee, and authorise him to take credit for such commission or fee in his accounts with the estate; and they shall certify, by a writing under their hands engrossed or copied in the sederunt book, the balance due to or by the trustee in his account with the estate as at the expiration of the said four months; and they shall declare whether any and what part of the net produce of the estate, after making a reasonable deduction for future contingencies, shall be divided among the creditors.

Commissioners to resolve as to payment of dividend, &c.

Trustee's commission to have approval of accountant.

122. Every trustee appointed under this Act shall intimate by circular to every creditor upon the estates under his charge, and also to the bankrupt, the deliverance of the commissioners fixing a commission or fee to be allowed to such trustee, and every such trustee, and also every creditor and the bankrupt, shall be entitled to appeal to the accountant against any such deliverance within ten days of the issue of such circular by addressing a note to the accountant stating his objections to such deliverance, and the trustee shall thereupon lay the deliverance of the commissioners and the account to which such deliverance applies before the accountant and such commission or fee shall not be paid to the trustee or entered in his account until the accountant has intimated his approval of the commission or other payments sanctioned by the commissioners. In the event of the accountant not concurring with the commissioners, he shall intimate his objections and the grounds thereof to the trustee or bankrupt or creditor appealing and shall indicate the sum he would suggest, and, in the event of the trustee or bankrupt or creditor or the commissioners not acquiescing in this suggestion, the matter shall be reported forthwith by the accountant to the Lord Ordinary or to the sheriff, whose decision shall be final and, in the event of such appeal, the procedure enacted under sections one hundred and twenty-four, one hundred and twenty-seven, one hundred and twenty-eight, and one

hundred and twenty-nine of this Act shall, in cases to which such sections apply, be postponed till the decision is given in the appeal, and, where the deliverance of the commissioners is altered, the trustee shall give effect to the alteration in his accounts, and the commissioners shall, in such cases, reconsider and declare within eight days after the date of the decision the amount to be divided among the creditors in terms of sections one hundred and twenty-one, one hundred and twenty-seven, one hundred and twenty-eight, and one hundred and twenty-nine of this Act after taking such alteration into account, and the trustee shall, within four days thereafter, and in cases where no alteration is made in the deliverance of the commissioners within eight days from the date of the decision, give the notice in the Gazette and give the notifications to creditors directed by sections one hundred and twenty-four, one hundred and twenty-seven, and one hundred and twenty-nine of this Act.

Trustee to examine and reject or admit claims, and make up list of creditors entitled to payment of dividend;

123. The trustee may, at any time after a claim has been lodged, require further evidence in support thereof, for which purpose he may examine the bankrupt, any creditor, or any other party on oath relative thereto, and, where a dividend is to be paid, he shall, within the fourteen days mentioned in section one hundred and twenty-one of this Act, examine the oaths and grounds of debt, and in writing reject or admit them, or require further evidence in support thereof; and, in case he shall reject any claim, he shall in his deliverance state the grounds of such rejection; and he shall complete the list of the creditors entitled to draw a dividend, specifying the amount of their debts, with interest thereon to the date of the sequestration, and distinguishing whether they are ordinary creditors or preferable or contingent, and he shall make up a separate list of any creditors whose claims he has rejected in whole or in part.

and to publish and send notices of payment of dividend.

124. The trustee shall, within eight days after the expiration of such fourteen days, give notice in the Gazette of the time and place of the payment of the dividend, and also notify the same by letters put into the Post Office on or before the first lawful day after the said fourteen days, addressed to each creditor, in which he shall specify the amount of the claim and proposed dividend thereon, and when he has rejected any claim he shall notify the same to the claimant by letter as aforesaid, which letter shall also contain a copy of his deliverance, and specify the amount of the claim; and a certificate by the trustee or an execution by a messenger or sheriff officer that such letters have been put into the post office shall be sufficient evidence thereof; and, if any creditor be dissatisfied with the decision of the trustee, he may appeal by a short written note to the Lord Ordinary or to the sheriff; but, if no such note be lodged with and marked by the Bill chamber or sheriff clerk (as the case may be) before the expiration of fourteen days from the date of the publication in the Gazette of the said notice, the decision of the trustee shall be final and conclusive

Creditors may appeal within a limited period.

so far as regards that dividend; and, in case the claim have been rejected in whole or in part, such decision shall be without prejudice to any new claim being afterwards made in reference to future dividends, but which new claim shall not disturb prior dividends.

Trustee to make up a scheme of division.

125. The trustee shall, before the expiration of six months from the date of the deliverance actually awarding sequestration, make up a scheme of division of the fund directed by the commissioners to be divided, and apportion the same, according to their respective rights, among those creditors whose claims have been sustained by him or by the Lord Ordinary or sheriff, or who shall have appealed against his decision, and which scheme shall be patent to all concerned, and shall send notice to each creditor of the amount of the dividend to which he may be entitled.

Dividends to be paid, and those disputed or claimed by contingent creditors to be lodged in bank.

126. On the first lawful day after the expiration of six months from the date of the deliverance actually awarding sequestration, and at the place appointed, the trustee shall pay to the creditors the dividends allotted to them respectively in terms of the said scheme; and he shall lodge the dividends apportioned to those claims which are under appeal, but not finally determined, and the dividends effeiring to contingent creditors or other claimants, not then entitled to uplift the same, in the bank appointed by the creditors, or failing such appointment, in any joint stock bank of issue in Scotland in a separate account, or if the money be deposited in the bank, he shall transfer it to a separate account in name of himself and the commissioners, to remain therein until the said appeals be disposed of or the dividends become payable.

Second Dividend.

Trustee to make up state, &c., and commissioners to resolve as in case of first dividend.

127. On the expiration of eight months from the date of the deliverance actually awarding sequestration, the trustee shall again make up a state as hereinbefore provided, which he shall within fourteen days after the expiration of the said eight months exhibit to the commissioners, who shall meet and examine and audit the same, and perform the other acts and duties incumbent on them, in manner before specified, and direct a second dividend to be paid, if there shall be funds to pay the same; and, if the commissioners shall direct a dividend to be paid, the trustee shall also make up lists of the creditors who are entitled and who are not entitled to payment of the dividend, and frame a scheme of division, and notify in the Gazette and by letters, and any creditor may appeal, all as is hereinbefore provided with respect to the first dividend; provided that no appeal by a creditor shall be competent, unless the note of appeal be lodged within fourteen days of the date of notification in the Gazette.

Dividend to be paid.

128. On the first lawful day after the expiration of ten months from the date of the deliverance actually awarding sequestration, the trustee shall make payment of the second

dividend to those creditors who are entitled thereto, and shall lodge the dividend disputed or not then payable, all as hereinbefore provided with respect to the first dividend.

Subsequent Dividend.

Same proceedings as in prior dividends.

129. The procedure hereinbefore prescribed in reference to a second dividend shall be applicable in reference to subsequent dividends so that a dividend may be made on the first lawful day after the expiration of every three months from the day of payment of the immediately preceding dividend, until the whole funds of the bankrupt shall be divided.

Dividends may be accelerated in certain cases.

130. The trustee and commissioners, with the consent of the accountant, may accelerate the payment of any dividend, if it shall be found expedient to do so, provided that the date for payment of the first dividend be not earlier than four months from the date of the deliverance actually awarding sequestration; and, when any such acceleration is made, the trustee and commissioners, with the consent of the accountant, are hereby authorised to make the requisite provision for the acceleration of any other matters which it may be necessary to accelerate in consequence thereof.

Proceedings when commissioners postpone the dividend.

131. If it shall appear to the commissioners that a dividend ought to be postponed, they may do so till the recurrence of another stated period for making a dividend, and they may, if they think fit, authorise the trustee to give a notice to that effect in the next Gazette.

Where estate is chiefly land periods of payment may be altered.

132. In cases where the sequestrated estate consists chiefly of land, and in any other cases where it may be necessary, it shall be competent for the Court of Session or the Lord Ordinary or sheriff, on a special application by the trustee and commissioners, to authorise such alteration in the periods above mentioned for payment of dividends as shall be found most suitable to the circumstances of the case.

Winding up of estate.

133. If on the lapse of twelve months from the date of the deliverance actually awarding sequestration it shall appear to the trustee and commissioners expedient to sell the heritable or moveable estates not disposed of, and any interest which the creditors have in the outstanding debts and consigned dividends, they shall fix a day for holding a meeting of the creditors to take the same into consideration; and the trustee, besides advertising the same in the Gazette, shall, fourteen days before the day appointed, send by post to each creditor claiming on the estate a notice of the time and place of the meeting, with a valuation of the estates and of the outstanding debts and the consigned dividends; and, if three fourths in value of the creditors assembled at the meeting shall decide in favour of a sale, in whole or in lots, the trustee shall cause the estates, debts, and dividends to be sold by auction, after notice thereof published at least one month previous to the sale, once in the

Gazette, and in such other newspapers as the creditors at the meeting shall appoint.

DISCHARGE OF BANKRUPT.

1. *On Composition.*

Offer of composition may be made at the meeting for election of trustee.

134. At the meeting for election of trustee, the bankrupt or his friends, or, in case of his decease, his successors, and, in case of a company, one or more of the partners thereof, may offer a composition to the creditors on the whole debts, with security for payment of the same; and, if the majority of the creditors in number and three fourths in value present at such meeting shall resolve that the offer and security shall be entertained for consideration, the trustee shall forthwith advertise in the Gazette a notice that an offer of composition has been so made and entertained, and that it will be decided upon at the meeting to be held after the examination of the bankrupt, and shall specify the hour, day, and place, and also transmit by post letters to each of the creditors claiming on the estate, or mentioned in the bankrupt's state of affairs, containing a notice of such resolution, and of the day and hour at which, and the place where, such meeting is to be held, and specifying the offer and security proposed, and giving an abstract of the state of the affairs and of the valuation of the estate, so far as the same can be done, to enable the creditors to judge of such offer and security.

Offer, if entertained, to be disposed of at the meeting after the bankrupt's examination.

135. If at the meeting held after the examination of the bankrupt a majority in number and three fourths in value of the creditors there assembled shall accept such offer and security, a bond of caution for payment of the composition, executed by the bankrupt or his successors, or the partners of a company (as the case may be), and the proposed cautioner, shall be forthwith lodged in the hands of the trustee; and the trustee shall thereupon subscribe and transmit a report of the resolution of the meeting, with the said bond, to the Bill chamber clerk or sheriff clerk, in order that the approval of the Lord Ordinary or sheriff (whichever may be selected by the trustee) may be obtained thereto; and, if the Lord Ordinary or the sheriff, after hearing any objections by creditors, shall find that the offer, with the security, has been duly made, and is reasonable, and has been assented to by a majority in number and three fourths in value of all the creditors assembled at the said meeting, he shall pronounce a deliverance approving thereof; provided that he shall hear any objection by opposing creditors, and, if he shall refuse to sustain the offer or reject the vote of any creditor, he shall specify the grounds of refusal or rejection.

Lord Ordinary or sheriff to approve.

Offer of composition may also be made

136. In like manner, at the meeting held after the examination of the bankrupt, or at any subsequent meeting called for

at meeting after bankrupt's examination.

the purpose by the trustee, with the consent of the commissioners, the bankrupt, or his friends, or, in case of his decease, his successors, or any of them, and, in the case of a company, one or more of the partners thereof, may offer a composition to the creditors on the whole debts, with security for payment of the same; and, if a majority in number and three fourths in value of the creditors present shall resolve that the offer and security shall be entertained for consideration, the trustee shall call another meeting to be held at a specified hour on a specified day, being not less than twenty-one days thereafter, and at a specified place, and shall, seven days at least before such other meeting, send by post letters addressed to each of the creditors who have claimed on the estate or are mentioned in the bankrupt's state of affairs, which letter shall contain a notice of such resolution, and of the hour, day, and place, and purpose of the meeting, and specify the offer and security proposed, and give an abstract of the state of the affairs and valuation of the estate, so far as can be done, to enable the creditors to judge of such offer; and, if at the meeting so called a majority in number and three fourths in value of the creditors present shall accept the said offer and security, a bond of caution shall be lodged and a report made, and a deliverance pronounced, all in the same manner and to the same effect as is hereinbefore provided.

Bankrupt on making declaration or oath to obtain his discharge.

137. On such deliverance being pronounced, approving of the composition in either of the cases above specified, the bankrupt, or, if deceased, his successor or other party offering the composition, shall make a declaration, or, if required by the trustee or any creditor, an oath, before the Lord Ordinary or the sheriff (as the case may be), that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction, to obtain the concurrence of any creditor to such offer and security; and, if the bankrupt shall be at the time beyond the jurisdiction of the Lord Ordinary or sheriff, or is by a lawful cause prevented from appearing before the Lord Ordinary or sheriff, commission may be granted to any fit person to take such declaration or oath; and the Lord Ordinary or the sheriff (as the case may be), on being satisfied with such oath or declaration, shall pronounce a deliverance discharging the bankrupt of all debts and obligations contracted by him, or for which he was liable at the date of the sequestration, and shall declare the sequestration to be at an end, and the bankrupt reinvested in his estate (reserving always the claims of the creditors for the said composition against him and the cautioner); and the bond of caution shall be recorded in the books of the Court of Session, or, when such deliverance is pronounced by the sheriff, in the books of the sheriff court; and the clerk of the Bills or the sheriff clerk, shall forthwith transmit a signed extract of such deliverance to the accountant, who shall preserve the same, with the copy of the proceedings in the sequestration transmitted to him, as herein

provided; and such deliverance of the Lord Ordinary or of the sheriff shall operate as a complete discharge and acquittance to the bankrupt in terms thereof, and shall receive effect within Great Britain and Ireland and throughout His Majesty's other dominions, and an entry thereof shall be made by the accountant in the register of sequestrations.

Trustee's accounts to be audited before the composition be approved of.

138. Before the Lord Ordinary or the sheriff shall pronounce the deliverance approving of the composition, the commissioners shall audit the accounts of the trustee, and ascertain the balance due to or by him, and fix the remuneration for his trouble, subject to the review of the Lord Ordinary or the sheriff, if complained of by the trustee, the bankrupt, or any of the creditors; and the expense attending the sequestration and such remuneration shall be paid or provided for to the satisfaction of the trustee and commissioners before such deliverance is pronounced.

Sequestration to go on, notwithstanding offer of composition.

139. Notwithstanding such offer of composition and proceeding consequent thereon, the sequestration shall continue, and the trustee shall proceed in the execution of his duty as if no such offer had been made, until the deliverance by the Lord Ordinary or the sheriff be pronounced, when the sequestration shall cease and be at an end, and the trustee be exonered and discharged: Provided, nevertheless, that the trustee and his cautioner shall be liable, on petition to the Lord Ordinary or sheriff by the bankrupt or his cautioner for the composition, to account for his intromissions and other acts as trustee.

Bankrupt and cautioner not to be entitled to object to certain debts.

140. Neither the bankrupt nor, in case of his decease, his successor, offering the composition, nor the cautioner for the composition, shall be entitled to object to any debt which the bankrupt has given up in the state of his affairs as due by him, or admitted without question to be reckoned in the acceptance of the offer of composition, nor to object to any security held by any creditor, unless in the offer of composition such debt or security shall be stated as objected to, and notice in writing given to the creditor in right thereof.

Claims against cautioner limited in certain cases to two years.

141. No person who has not produced an oath as a creditor before the date of the deliverance approving of the composition shall be entitled to make any demand against the cautioner after the space of two years from the date of such deliverance, reserving to such creditor his claim for the composition against the bankrupt and his estate.

If offer of composition rejected, no other to be entertained unless nine tenths of creditors ranked shall agree.

142. If an offer of composition have been made and rejected, or have become ineffectual, no other offer of composition shall be entertained unless nine tenths in number and value of all the creditors ranked or entitled to be ranked on the estate shall assent in writing to such offer, which offer shall state the amount of composition and the terms of payment, and be subscribed by the cautioner proposed, in which case a

meeting shall be called in manner before directed by the trustee for finally disposing of the same; and, if at the meeting so called a majority in number and nine tenths in value of the creditors present shall accept such offer and security, and the same shall be assented to by nine tenths in value of all the creditors who have produced oaths as aforesaid, a bond of caution shall be lodged and a report made, and deliverances pronounced, and the other proceedings shall take place and have effect in the same manner as is hereinbefore provided for other offers of composition.

2. Without Composition.

Proceedings for this purpose.

May be discharged with consent of creditors.

143. The bankrupt may, at any time after the meeting held after his examination, petition the Lord Ordinary or the sheriff to be finally discharged of all debts contracted by him before the date of the sequestration, provided that every creditor who has produced his oath as aforesaid shall concur in the petition; and the bankrupt may also present such petition on the expiration of six months from the date of the deliverance actually awarding 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 deliverance actually awarding sequestration, provided a majority in number and two thirds in value of the creditors concur in the petition; and the bankrupt may also present such petition on the expiration of eighteen months from the date of the deliverance actually awarding sequestration, provided a majority in number and value concur in the petition; and the bankrupt may also present such petition on the expiration of two years from the date of the deliverance actually awarding 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 Gazette and to each creditor; 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, where such concurrence is required, 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 proper, and may annex such conditions thereto as the justice of the case may require: Provided 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

After two years may be discharged without consent.

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 this Act, 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 as soon as may be after the bankrupt's examination, but shall not be demandable from the trustee till the expiration of five months from the date of the deliverance actually awarding 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 direct reference, in any consent to his discharge; and the trustee shall forthwith engross, in the sederunt book of the estate, a copy of his said report.

Bankrupt to make a declaration or oath before obtaining discharge.

144. If the bankrupt shall be found entitled to his discharge he shall make a declaration, or, if required by the trustee or any creditor, an oath, before the Lord Ordinary or sheriff, that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, nor made or promised any payment, nor entered into any secret or collusive agreement or transaction, to obtain the concurrence of any creditor to his discharge; and, if the bankrupt shall be at the time beyond the jurisdiction of the Lord Ordinary or sheriff, or is by lawful cause prevented from coming before the Lord Ordinary or sheriff, commission may be granted to any fit person to take such declaration or oath; and the Lord Ordinary or the sheriff, as the case may be, on being satisfied with such declaration or oath, shall pronounce a deliverance discharging the bankrupt of all debts and obligations contracted by him or for which he was liable at the date of the sequestration; and, when the deliverance discharging the bankrupt is pronounced by the Lord Ordinary or sheriff, the clerk of the Bills or the sheriff clerk shall forthwith transmit a signed extract thereof to the accountant, who shall preserve the same with the copy of the proceedings in the sequestration transmitted to him, and, such deliverance by the Lord Ordinary or the sheriff shall operate as a complete discharge and acquittance to the bankrupt in terms thereof, and shall receive effect within Great Britain and Ireland and all His Majesty's other dominions; and an entry thereof shall be made by the accountant in the register of sequestrations.

Abbreviate of discharge of bankrupt.

145. An abbreviate of the deliverance of discharge of the bankrupt, whether following on a composition or not, shall be issued by the clerk of the Bills or the sheriff clerk, in the form of Schedule E. No. 4 hereto annexed, and the abbreviate shall be recorded in the registers of inhibitions and adjudications, and

the keeper of such registers shall, if required, write and subscribe a certificate on the said abbreviate in the form specified in Schedule E. No. 2 hereto annexed.

Restriction of right to discharge.

146. Notwithstanding anything herein contained—

(1) A bankrupt shall not at any time be entitled to be discharged of his debts, unless it is proved to the Lord Ordinary or the sheriff, as the case may be, that one of the following conditions has been fulfilled:—

(*a*) That a dividend or composition of not less than five shillings in the pound has been paid out of the estate of the bankrupt, or that security for payment thereof has been found to the satisfaction of the creditors; or

(*b*) That the failure to pay five shillings in the pound, as aforesaid, has, in the opinion of the Lord Ordinary or the sheriff, as the case may be, arisen from circumstances for which the bankrupt cannot justly be held responsible:

(2) In order to determine whether either of the aforesaid conditions has been fulfilled, the Lord Ordinary or the sheriff, as the case may be, shall have power to require the bankrupt to submit such evidence as he may think necessary, in addition to the declarations or oaths, as the case may be, made by the bankrupt under sections one hundred and thirty-seven and one hundred and forty-four of this Act, and the report made by the trustee under section one hundred and forty-three of this Act, and to allow any objecting creditor or creditors such proof as he may think right:

(3) Any deliverance of the Lord Ordinary or sheriff, as the case may be, under this section, shall be subject to appeal in the manner provided in sections one hundred and sixty-seven and one hundred and sixty-six of this Act: Provided always that the judgment of the Inner House of the Court of Session on any such appeal shall be final and not subject to review:

(4) In the event of a discharge being refused under the provisions of this section, the bankrupt shall, at any time, if his estate shall yield or he shall pay to his creditors such additional sum as will, with the dividend or composition previously paid out of his estate during the sequestration, make up five shillings in the pound, be entitled to apply for and obtain his discharge in the same manner as if a dividend of five shillings in the pound had originally been paid out of his estate.

This Act not to extend to discharge Crown debtors, &c. unless Treasury give consent.

147. This Act shall not extend to discharge any person with respect to any debt due to His Majesty, or to any debt or penalty with which he shall stand charged at the suit of the Crown or any person for any offence committed against any Act or Acts relative to any branch of the public revenue, or at the suit of any sheriff or other public officer upon any bail bond entered into for the appearance of any person prosecuted for any such offence, unless the Treasury shall consent to such discharge.

Pay, half pay, and pensions of bankrupts to be applicable for the benefit of creditors.

148. The Lord Ordinary or sheriff may order such portion of the pay, half pay, salary, emolument, or pension of any bankrupt as on communication from the Lord Ordinary or sheriff to the Treasury, the Secretary of War, or the Admiralty, or the Commissioners of Customs and Excise, or the chief officers of the department to which such bankrupt may belong, or may have belonged, or under which such pay, half pay, salary, emolument, or pension may be enjoyed by such bankrupt, or to the Secretary of State for India, they respectively may, under their hands, or under the hand of their respective chief secretary, or other chief officer for the time being, consent to in writing, to be paid to the trustee in order that the same may be applied in payment of the debts of such bankrupt; and such order and consent being lodged in the office of His Majesty's Paymaster General, or of any other officer or persons appointed to pay or paying any such half pay, salary, emolument, or pension, such portion of the said pay, half pay, salary, emolument, or pension as shall be specified in such order and consent shall be paid to such trustee until the Lord Ordinary or sheriff shall make order to the contrary.

Refusal of application for discharge by Court of Session, &c.

149. Notwithstanding anything hereinbefore contained, the Lord Ordinary or the sheriff may refuse the application for the discharge of any bankrupt, although two years have elapsed from the date of the sequestration, and although no appearance or opposition shall be made by or on the part of any of the creditors, if it shall appear from the report of the accountant or other sufficient evidence that the bankrupt has fraudulently concealed any part of his estate or effects, or has wilfully failed to comply with any of the provisions of this Act.

PREFERENCES AND COLLUSIONS FOR PROCURING DISCHARGE TO BE VOID.

Preferences, payments, and collusive agreements for discharge to be void.

150. All preferences, gratuities, securities, payments, or other consideration not sanctioned by this Act, granted, made, or promised, and all secret or collusive agreements and transactions, for concurring in, facilitating, or obtaining the bankrupt's discharge, either on or without an offer of composition, and whether the offer be accepted or not, or the discharge granted or not, shall be null and void; and, if during the sequestration any creditor shall have obtained any such preference, gratuity,

security, payment, or other consideration or promise thereof, or entered into such secret or collusive consideration or agreement or transaction, the trustee shall be entitled to retain his dividend, and he or any creditor ranked on the estate may present a petition to the Lord Ordinary or to the sheriff, praying that such creditor shall be found to have forfeited his debt, and be ordained to pay to the trustee double the amount of the preference, gratuity, security, payment, or other consideration given, made, or promised, and, if no cause be shown to the contrary, decree shall be pronounced accordingly; and the sums which in such case may be recovered shall, under deduction of the expenses of recovering the same, be distributed by the trustee among the other creditors under the sequestration; and, if the sequestration shall have been closed, it shall be competent to any creditor who shall not have received full payment of his debt to raise a multiplepoinding in name of the person who has obtained such preference, gratuity, security, payment, or other consideration or promise as aforesaid, and on the value of the preference, gratuity, or security, or amount of the sum paid or consideration obtained, being ascertained, double such value or amount, together with the amount of the dividend of the colluding creditor, shall be ordered to be consigned by him, and shall be divided among the creditors who were ranked or were entitled to be ranked in the sequestration, and have not received full payment of their debts, and who shall lodge claims in such multiplepoinding, according to their respective rights and interests; and such multiplepoinding shall be executed in terms of law against the colluding creditor, and notice thereof at the same time be inserted in the Gazette; and in the event of there being any surplus, after paying the full debts of the creditors, and defraying the expenses of the sequestration or other proceeding, the same shall be paid into the account of unclaimed dividends, as hereinafter provided.

Bankrupt to forfeit privileges, if participant in giving such preferences, &c.

151. If the bankrupt shall have been personally concerned in or cognizant of the granting, giving, or promising any preference, gratuity, security, payment, or other consideration, or in any secret or collusive agreement or transaction as aforesaid, he shall forfeit all right to a discharge and all benefits under this Act, and such discharge, if granted, either on or without an offer of composition, shall be annulled; and the trustee or any one or more of the creditors may apply by petition to the Lord Ordinary to have such discharge annulled accordingly.

TRUSTEE'S DISCHARGE.

Proceedings for this purpose.

152. After a final division of the funds, the trustee shall call a meeting of the creditors, by an advertisement in the Gazette, to be held not sooner than fourteen days after such publication, specifying the time, place, and purpose of holding the meeting, and by letters addressed by post to every creditor who has produced an oath as aforesaid, to consider as to an

application for his discharge, and at such meeting he shall lay before the creditors the sederunt book and accounts, with a list of unclaimed dividends, and the creditors may then declare their opinion of his conduct as trustee, and he may thereafter apply to the Lord Ordinary or the sheriff, who, on advising the petition, with the minutes of the meeting, and hearing any creditor may pronounce or refuse decree of exoneration, and the clerk of the Bills or the sheriff clerk shall forthwith transmit to the accountant a signed extract of such decree, which shall be entered in the register of sequestrations, and the bond of caution for the trustee delivered up.

Trustees to lodge unclaimed dividends, &c. in bank.

153.—(1) Every trustee in any sequestration shall, before his discharge, transmit the sederunt book to the accountant, who shall thereupon direct the trustee to deposit the unclaimed dividends and any unapplied balances in the same bank in which money received by him was lodged under the provisions of this Act; and the trustee shall forthwith transfer the whole dividends not then claimed and any unapplied balances to such bank, and transmit the deposit receipts therefor to the accountant; and the unclaimed dividends shall be entered by such bank in an account to be kept under the title of "Account of Unclaimed Dividends"; and a book or books shall be kept in the office of the accountant, to be entitled "The Register of Unclaimed Dividends," containing a list, with the names arranged alphabetically, of all the creditors entitled to such unclaimed dividends, and specifying the bank in which each such unclaimed dividend is deposited, which shall be patent to all persons; provided that it shall not be necessary for the accountant to enter in detail in the said register the names of those creditors whose unclaimed dividends do not respectively exceed one pound sterling.

Claimants showing right to apply to account for authority to receive dividends.

(2) After the discharge of the trustee, it shall be competent to any person, producing evidence of his right, to apply to the accountant for authority to receive any such dividend which has been deposited in terms of this section within seven years immediately preceding the date of such application and for which the deposit receipt is still in the custody of the accountant; and, on the accountant being satisfied of the claimant's right, a warrant shall be granted by him for payment of such dividend, whereof he shall make an entry in the said register, and upon such warrant the bank shall pay the same with any interest which may have accrued thereon.

Transfer of unclaimed dividends, &c., to Remembrancer.

(3) The accountant shall, at the expiry of seven years from the date of deposit of any unclaimed dividend or unapplied balance deposited in terms of this section, hand over the deposit receipt or other voucher therefor to the King's and Lord Treasurer's Remembrancer, who shall thereupon obtain payment in the manner and on the conditions specified in the Court of Session Consignations (Scotland) Act, 1895, of the amount due, principal and interest, from the bank in which the deposit was

58 & 59 Vict. c. 19.

made, and the keeping of an interest account of unclaimed dividends shall be discontinued, and each bank shall, on this Act coming into operation, pay over to the said Remembrancer the whole amounts standing at the credit of that account in the books of the bank; and a receipt under the hand of the said Remembrancer shall be a sufficient discharge to the accountant for the duties imposed on him by this section and to the said banks for the payments so made by them.

Law accounts to be taxed.

154. 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 sequestration was carried on, as may be directed by a general meeting of the creditors.

Surplus to be paid to bankrupt.

155. Any surplus of the bankrupt's estate and effects that may remain after payment of his debts, with interest, and the charges of recovering and distributing the estate, shall be paid to the bankrupt, or to his successors or assignees.

The Accountant.

Accountant to keep register of sequestrations.

156. The accountant shall keep a book, entitled "The Register of Sequestrations," in the general form of Schedule G. hereunto annexed, but with such additional heads as he may find necessary, which book shall be patent to all concerned, and he shall regularly enter therein the division of the court to which any sequestration awarded in the Court of Session is appropriated, or the sheriff awarding sequestration and the sheriff to whom the sequestration is remitted, the date of the first deliverance on every petition of sequestration, whether in the Court of Session or sheriff court, the name and designation of the debtor, the place and county of his residence, dwelling-house, or place of business, and the name and designation of the petitioning or concurring creditor, the date of awarding or recalling sequestration, the time and place appointed for the election of the trustee and commissioners, the name and designation of the trustee and commissioners, the bankrupt's discharge on composition or otherwise, and the trustee's discharge, for which purpose the clerks of the Bill chamber and the sheriff clerk of each county shall transmit forthwith to the accountant a certified copy of the first deliverance in sequestrations awarded in the Court of Session and sheriff courts respectively, and the sheriff clerk of each county shall, every six months, transmit to the accountant the particulars necessary to enable him to make such entries, and the trustee shall be bound when required to furnish such particulars to the sheriff clerk.

Trustee to make an annual return to sheriff clerk.

157. Each trustee shall, within fourteen days after the thirty-first day of December in each year, or on the first lawful day after expiry of the said fourteen days, deliver, free of

expense, to the sheriff clerk of the county, a return in the form of the Schedule H. hereunto annexed, of every sequestration in which he is trustee; and the sheriff clerk shall, within fourteen days thereafter, transmit, in the form of the said schedule, to the accountant, a return of all the sequestrations depending in the sheriffdom whereof he is clerk; and the accountant shall cause the returns so made to be regularly bound up and preserved, according to the alphabetical order of counties, in a volume to be kept at all times in his office, with an index thereto, framed by him, and which volume shall be patent to all concerned; and any trustee who shall fail to make such return shall be removable from his office at the instance of any one creditor, or of the accountant, or subject to such censure as the Lord Ordinary or the sheriff may think suitable, and be found liable in expenses. and the sheriff clerk to the accountant.

158. The accountant shall take cognizance of the conduct of trustees and commissioners in all sequestrations, and, in the event of their not faithfully performing their duties and duly observing all rules and regulations imposed on them by statute, act of sederunt, or otherwise relative to the performance of those duties, or in the event of any complaint being made to him by any creditor in regard thereto, he shall inquire into the same, and, if not satisfied with the explanation given, he shall report thereon to the Lord Ordinary or the sheriff, who, after hearing such trustees or commissioners thereon, and investigating the whole matter, shall decide, and shall have power to censure such trustees or commissioners, or remove them from their office, or otherwise to deal with them as the justice of the case may require. Accountant to take cognizance of the conduct of trustees and commissioners.

159. The accountant shall superintend the annual returns required by this Act from trustees, and frame an annual report to the Court of Session, showing the state of each depending sequestration returned to him, which report may be published in the Gazette, or otherwise as the court shall direct; and the accountant shall have power, on the application of one or more of the creditors, or of his own accord, to require exhibition of the sederunt book in any sequestration, and of any vouchers or documents which he may think necessary, and to direct that a meeting of the creditors shall be called to take any measures under consideration which he may judge requisite for the preservation or due management of the estate or more speedy realisation and division of the funds or winding up of the estate. On the expiry of five years from the date of the last proceeding in any sequestration, such sequestration shall cease to be a depending sequestration within the meaning of this section. To superintend annual returns.

160. The accountant shall, at all times when requisite, report to the Lord Ordinary or the sheriff any disobedience by the trustee or commissioners of any requisition or order by him, and generally any matter which he may deem it necessary for To report disobedience.

the due discharge of his office to bring before the Lord Ordinary or the sheriff, and it shall be competent for the Lord Ordinary or the sheriff to deal summarily with the matter reported, as accords of law.

To give information to Lord Advocate.

161. If the accountant shall possess information that shall lead him, on reasonable grounds, to suspect fraudulent conduct by the bankrupt, or malversation or misconduct on the part of the trustee or commissioners, such as may infer punishment, he shall be entitled to give information to the Lord Advocate, who shall direct such inquiry and take such proceedings therein as he shall think proper.

In case of illness, &c. of accountant, Lord President to appoint a deputy.

162. In case of the illness or temporary absence of the accountant, the Lord President of the Court of Session may authorise any one of the accountant's clerks or other qualified person to discharge the duties of the office for the time.

JUDICIAL POWER FOR WINDING UP THE ESTATES OF PARTIES DECEASED.

Application for judicial factor on estates of persons deceased.

163. It shall be competent to one or more creditors of parties deceased, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting, to apply by summary petition to either division of the Court of Session or, where the assets of the deceased are estimated not to exceed five hundred pounds, to the sheriff of the sheriffdom within which the deceased resided or carried on business during the year immediately preceding the date of the petition, or within which heritage belonging to the deceased at the time of his death is situated, for the appointment of a judicial factor, and after such intimation of the petition to the creditors of the deceased, and other persons interested, as may be considered necessary, and after hearing parties, the Lord Ordinary or sheriff may appoint such factor, who shall administer the estate subject to the supervision of the accountant in accordance with the Judicial Factors (Scotland) Acts, 1880 and 1889, and relative acts of sederunt, and in case of an insolvent estate shall divide the same among the creditors thereof in accordance with the rules as to ranking obtaining in sequestrations in virtue of the provisions of this Act.

43 & 44 Vict. c. 4.
52 & 53 Vict. c. 39.

Judicial factor's duties to be regulated by act of sederunt.

164. The court shall have full power to regulate by act of sederunt the caution to be found by such factor, the mode in which he shall proceed in realising and dividing the funds, and otherwise in the discharge of his duties, and any other matter which they may deem necessary.

JUDICIAL PROCEEDINGS.

Appeals, &c. against resolutions of creditors.

165. It shall be competent to appeal against the resolutions of the creditors at meetings either to the Lord Ordinary or the

sheriff, provided a note of appeal shall be lodged with and marked by one of the clerks of the Bill chamber within fourteen days after the date of the meeting at which the resolution objected to has been passed, or (as the case may be) in the hands of and marked by the sheriff clerk within the like period; and it shall in like manner be competent to appeal against any deliverance of the trustee or commissioners to the Lord Ordinary or the sheriff, provided the note of appeal shall be lodged and marked as aforesaid within fourteen days from the date of the deliverance; and, where any such appeal is made, or where any petition or complaint is presented against the trustee or commissioners, or against any of the creditors, the Lord Ordinary or the sheriff (as the case may be) shall appoint a copy thereof, and of his deliverance thereon, to be served on the respondent, or his mandatory or known agent, and appoint the respondent to appear at a specified diet within such period as may be reasonable; and the Lord Ordinary or the sheriff (as the case may be) shall at such diet hear parties vivâ voce, and the Lord Ordinary shall proceed to dispose of the case, with or without a record, as he shall consider best; and the sheriff, without a record, may decide, provided he shall specify the facts, and assign the grounds of his judgment; but, if he shall see cause, he may order minutes to be lodged by the parties, containing their averments in fact and pleas in law, without argument, and may hold the same as a closed record, and proceed in a summary way, and in pronouncing his judgment he shall assign his reasons; and it shall be competent to the Lord Ordinary or the sheriff, if they shall think fit, where any resolution of a meeting of the creditors is appealed against, to order a new meeting to be held, in order to reconsider the resolution.

tors and deliverances of trustees to the Lord Ordinary or sheriff.

166. It shall be competent to bring under the review of the inner house of the Court of Session, or before the Lord Ordinary in time of vacation, any deliverance of the sheriff, after the sequestration has been awarded (except where the same is declared not to be subject to review), provided a note of appeal be lodged with and marked by the sheriff clerk, within eight days from the date of such deliverance, failing which, the same shall be final; and such note, together with the process, shall forthwith be transmitted by the sheriff clerk to the clerk of the Bill chamber; and the Lord Ordinary's decision shall, when not expressly made final by this Act, be subject to review of the inner house; and it shall be competent to the inner house or the Lord Ordinary to remit to the sheriff, with instructions.

Review of sheriff's judgments.

167. Where any judgment of the Lord Ordinary is to be brought under review of the inner house, the same shall be done by a reclaiming note in common form presented within fourteen days from the date of the judgment; and such reclaiming note shall be disposed of by the inner house as speedily as the forms of court will allow.

Review of Lord Ordinary's judgments.

Regulation by sheriff of interim possession.

168. During the dependence of appeals or petitions and complaints, it shall be competent to the sheriff to give such orders as may be necessary to regulate the interim possession and administration of the estate.

Appeals to House of Lords.

169. If any appeal shall be made to the House of Lords, the sequestration shall, in all respects not inconsistent with or injurious to the interests which may be affected by the appeal, proceed without interruption, and the Lord Ordinary shall make such orders as may be necessary to regulate the interim possession and management of the estate, and which orders shall not be subject to appeal.

Deliverances, extracts, and copies, shall form evidence.

170. All deliverances under this Act purporting to be signed by the Lord Ordinary or by any of the judges of the Court of Session, or by the sheriff, as well as all extracts or copies thereof or from the books of the Court of Session or the sheriff court purporting to be signed or certified by any clerk of court, or sheriff clerk, or extracts from or copies of registers purporting to be made by the keeper thereof, or extractor, shall be judicially noticed by all courts and judges in England, Ireland, and His Majesty's other dominions, and shall be received as primâ facie evidence, without the necessity of proving their authenticity or correctness, or the signatures appended, or the official character of the persons signing, and shall be sufficient warrants for all diligence and execution by law competent.

Deliverances, &c. may be printed.

Service of citations. 45 & 46 Vict. c. 77.

171. All deliverances, bonds, schedules, and executions under this Act may be either printed or in writing, or partly both; and service or citation may be made by a competent officer without witnesses, or as directed in the Citation Amendment (Scotland) Act, 1882.

Trustees and commissioners may compound and transact.

172. The trustee may, with consent of the commissioners, compound and transact or refer to arbitration any questions which may arise in the course of the sequestration regarding the estate, or any demand or claim made thereon, and the compromise, transaction, or decree arbitral shall be binding on the creditors and the bankrupt.

Agents in Court of Session may be agents in causes under this Act before sheriff.

173. It shall be lawful for all agents, duly qualified to practise before the Court of Session, to practise in all sheriff courts, in so far as relates to any of the proceedings authorised by this Act to be carried on before the sheriff; provided that they shall not be entitled to payment of any higher fees than those legally exigible in such courts.

SUMMARY SEQUESTRATIONS.

Summary sequestrations.

174. Where a debtor's assets of every description do not in the aggregate exceed three hundred pounds in value, his estate may be wound up under a summary sequestration as provided in the two following sections of this Act, and, subject to the

provisions of the said two sections, all the other provisions of this Act shall apply to summary sequestrations.

Petition for summary sequestration.

175.—(1) Subject to the provisions of subsection (2) of this section, every petition for summary sequestration shall be presented to the sheriff of any sheriffdom within which the debtor has resided or carried on business during the year immediately preceding the date of the petition, and may be at the instance of the debtor, without the concurrence of any creditor, or, where the debtor is notour bankrupt, and within four months after the constitution of notour bankruptcy, at the instance of one creditor, whose claim amounts to ten pounds or upwards, or of two or more creditors whose claims in the aggregate amount to ten pounds or upwards.

(2) Where the petition is at the instance of one or more creditors, who do not know within which sheriffdom the debtor resided or carried on business during the year immediately preceding the date of the petition, or if the debtor be furth of Scotland, then the petition may be presented to the Court of Session in the Bill chamber.

(3) With every petition for summary sequestration at the instance of the debtor he shall lodge in the hands of the sheriff clerk a short state of his affairs, subscribed by himself, which state of affairs shall specify the particulars required by section seventy-seven of this Act.

(4) The first deliverance on every petition for summary sequestration at the instance of one or more creditors shall, in addition to a warrant to cite, contain an order on the debtor, ordaining him, within six days after the service of the said order, to lodge in the hands of the sheriff clerk, or clerk of the bills, as the case may be, a short state of his affairs, subscribed by himself, which state of affairs shall specify the particulars required by section seventy-seven of this Act.

(5) The judge to whom a petition for summary sequestration is presented may refuse the petition, with or without expenses, or may award sequestration: Provided that, if he award sequestration, such sequestration may be recalled in accordance with the provisions of this Act.

(6) Where the judge, to whom a petition for summary sequestration is presented, awards sequestration, he may either order that the sequestration shall proceed as a summary sequestration or (if from the fact that the state of affairs lodged by the bankrupt shows that the assets exceed three hundred pounds in value, or for some other reason, he be of opinion that it is not expedient that the sequestration so proceed) he may make no such order, and in the latter case the provisions of this section and of sections one hundred and seventy-four and one hundred and seventy-six of this Act shall no longer apply. The decision of the judge under this subsection shall be final on the question whether the sequestration is or is not to proceed as a summary sequestration, without prejudice to the

sequestration being recalled in accordance with the provisions of this Act.

Procedure in summary sequestrations.

176. The procedure enacted in this Act with regard to sequestration shall, in its application to summary sequestrations, be modified to the extent and effect following (that is to say):—

(1) The trustee, within seven days after the date of deliverance declaring his election, shall apply orally to the sheriff to fix a diet for the examination of the bankrupt, and the sheriff shall by deliverance ordain the bankrupt to appear for public examination within the sheriff court house on a specified day and at a specified hour, and at the diet so appointed the bankrupt shall appear in public court, in presence of the sheriff for examination:

(2) As soon as the trustee obtains his act and warrant, he shall take possession of all the property of the bankrupt and also of all his books and papers:

(3) Not less than seven days prior to the diet fixed for the public examination of the bankrupt, the trustee shall give notice to the bankrupt requiring him to attend the said diet and shall also give notice in the Gazette, and he shall also post to each creditor, who has lodged a claim, or who is mentioned in the bankrupt's state of affairs, or is otherwise known to the trustee, a circular, which notice and circular shall intimate the trustee's name and designation, his appointment as trustee, the day, hour, and place fixed for the examination of the bankrupt, the period within which claims should be lodged, and also a specified day, hour, and place for holding a second meeting of creditors:

(4) Creditors shall transmit their oaths and claims and grounds of debt to the trustee, not less than twenty-one days before the said second meeting:

(5) Where a dividend is to be made, the trustee shall, not less than fourteen days prior to the said second meeting, adjudicate upon the claims of the creditors, admitting or rejecting them in whole or in part, and he shall prepare a list thereof, with his deliverance thereon, which list, with the claims, vouchers, and whole process, shall be open to inspection by the bankrupt, and by the creditors, and, where the trustee shall reject in whole or in part any claim, he shall post notice thereof to the creditor ten days at least before the said second meeting of creditors:

(6)—(*a*) (1) Where the bankrupt or any creditor intends to object to any deliverance by the trustee, admitting in whole or in part any claim, or (2) where any creditor intends to object to any deliverance, ranking any

other creditor, or (3) where a creditor intends to object to a deliverance, rejecting in whole or in part his claim, the bankrupt or the objecting creditor respectively shall, in the first or second case, give notice to the trustee and to any creditor whose claim is objected to, and in the third case to the trustee, of his intention and of the nature and particulars of the objection, by registered letter, posted three days at least before the said second meeting, and there shall be produced a copy of the letter of notice and the post office receipt for the letter at the said meeting:

(*b*) Where such notice has been given, the trustee shall apply orally to the sheriff to fix a diet for the summary disposal of such objections, and, upon the diet being fixed, the sheriff clerk shall issue to the bankrupt, the trustee, or to any creditor desiring to lead evidence, a diligence to cite witnesses and havers for that and any adjourned diet. The sheriff may, when necessary, grant second diligence:

(*c*) At the diet so fixed for hearing objections the sheriff shall hear parties vivâ voce, and after such proof, if any, as he may allow (which proof shall be recorded if desired by any of the parties), shall dispose of the objections summarily, and settle the ranking of the creditors so objected to. The sheriff may adjourn consideration of any of the matters mentioned in this subsection to another diet or diets:

(*d*) In his interlocutor disposing of the objections, the sheriff shall issue findings in fact and in law on which his judgment proceeds.

Where the proof has not been recorded, the sheriff's findings in fact shall be final, and any party dissatisfied with the sheriff's judgment may appeal against his findings in law in the manner provided in section one hundred and sixty-six of this Act, and, where the proof has been recorded, any creditor may appeal against the sheriff's findings in fact and in law in the manner provided in section one hundred and sixty-six of this Act:

(7) At the second meeting of creditors the trustee shall attend, and the creditors may also attend by themselves or their mandatories, and the trustee and commissioners may fix a date for payment of the first or final dividend, or may postpone payment of a dividend to a date not later than three months after the date of the said second meeting:

(8) If, at the second meeting, it is apparent to the trustee and commissioners—

(1) that, in consequence of appeals against any deliverance by the trustee, it is inexpedient to fix

a time for declaring a dividend, the trustee and commissioners may determine to declare a dividend as soon after the objections have been disposed of as in their opinion it is expedient to do so; or

(2) that there will be no funds for division among the creditors, the creditors shall direct the trustee to report orally to the sheriff, and, failing such direction, the trustee may then, or at any subsequent period, orally report to the sheriff that there will be no funds for division, who may thereupon, in writing, dispense with any further procedure in the summary sequestration:

(9) Ten days at least, prior to the date fixed for the payment of a dividend, the trustee's accounts, with relative vouchers, shall be submitted to the commissioners for audit, and shall be approved of or modified and adjusted by the commissioners, who shall fix the trustee's remuneration, subject to review by the accountant at the instance of the trustee or the bankrupt or any creditor, provided that, if the trustee or any creditor intends to appeal against the deliverance of the commissioners, the appellant must intimate his appeal to the accountant within six days after the date of the deliverance appealed against, and the accountant may hear parties vivâ voce, and shall, as soon as convenient, issue his deliverance, which shall be final, and he may find any of the parties liable in expenses; the amount of which expenses (if any) he shall fix in his deliverance. The law agent's account shall be taxed by the auditor of the sheriff court previous to the meeting of commissioners and shall be produced thereto:

(10) If at any time subsequent to the payment of the first or any subsequent dividend the trustee shall have in hand funds, or shall be about to come into possession of funds which will admit of a dividend to the creditors, it shall be the duty of the trustee and commissioners to fix a date for payment of the second or any subsequent dividend; but, before making up a state of ranking for any such second or subsequent dividend, the trustee shall insert a notice in the Gazette not less than thirty days prior to the date fixed for the payment of the said second or subsequent dividend, and specifying a date not less than fourteen and not more than twenty-one days before the date fixed for payment of a second or subsequent dividend, as the last date for lodging claims in order to participate in the second or subsequent dividend; the trustee shall also send notice to any creditor mentioned in the debtor's state of affairs, or known to him, who has previously failed to lodge his claim,

intimating the proposed dividend and stating the last day for lodging claims, and, if new claims be lodged, the trustee shall adjudicate thereon subject to an appeal as provided by subsection (6) of this section, and, if in consequence of the said new claims, or from any other cause, the state of ranking shall require to be remodelled, the trustee shall remodel the same in accordance with the provisions of subsection (5) of this section, and any additional accounts of the trustee or law agents shall be previously taxed and adjusted, all as hereinbefore provided: Provided that, in the application of the provisions of subsections (5) and (6) of this section to claims for second or subsequent dividends and deliverances and appeals relative thereto, the date for payment of the dividend shall be substituted for the second meeting: Provided further that the trustee and commissioners may, in the event of an appeal in terms of this subsection, postpone the payment of the dividend until after such appeal is finally determined:

(11) Any creditor who may have failed to lodge his claim in time to participate in any previous dividend or dividends shall, if he lodges his claim in time, be entitled to an equalising dividend as well as to the new dividend upon the amount of the claim which may be sustained:

(12) The trustee, or any creditor with the consent of the trustee and commissioners, or with the consent of the commissioners alone, may, at any time, call a meeting of creditors to consider and dispose of any matters to be specified in the notice calling such meeting:

(13) In every summary sequestration, unless the trustee shall have previously been discharged, he shall, within ten days after the expiry of six months after the date of his act and warrant, transmit to the accountant a report in duplicate of the state of such summary sequestration, specifying (1) the amount of the funds recovered, (2) the amount of the dividend or dividends paid, (3) the amount and nature of the assets not realised, (4) the reason or reasons which have prevented him from realising the said assets, and (5) an estimate of the time when, in his opinion, these assets will be realised, and the accountant may call on the trustee for any written or oral explanations the accountant may wish to obtain, and the accountant shall engross on each of the said duplicates a docquet expressing approval or disapproval of the reasons given by the trustee for failing to realise the said assets. One duplicate the accountant shall retain, and he shall deliver the other to the trustee, who shall

engross the said report and docquet in the sederunt book of the estate, and the trustee shall likewise within ten days after the expiry of three months after the date of his first or any subsequent report under this subsection, transmit to the accountant an additional report specifying the particulars set forth in this subsection, which additional report shall be dealt with in the same manner as is provided with regard to the first report:

(14) After the final division of the funds, or in any case where the sheriff has, in writing, dispensed with further procedure in a summary sequestration, the trustee may apply to the accountant for a certificate that he is entitled to his discharge, and he shall deliver to the accountant the sederunt book and accounts, with a list of unclaimed dividends, if any, and the accountant may, if he be satisfied that the trustee has complied with the one hundred and fifty-third section of this Act, and with the provisions of this Act applicable to summary sequestrations, and is otherwise entitled to be discharged, and upon deposit in bank of any unclaimed dividends and unapplied balances as directed by section one hundred and fifty-three of this Act, grant to the trustee a certificate under his hand setting forth that the trustee is entitled to obtain his discharge:

(15) On obtaining the said certificate, the trustee shall orally report the fact to the sheriff, who shall fix a diet for hearing any objections which may be made to the trustee obtaining his discharge, and the trustee shall publish in the Gazette seven days at least prior to the diet so fixed for hearing objections, a notice intimating the same, and, if the bankrupt or any creditor shall appear at the diet so fixed, parties shall be heard vivâ voce, or if the sheriff thinks it expedient he may make a note of any objection, and of the trustee's answer thereto, and after such proof, if any, as he may allow, he may dispose of the objections summarily by granting or refusing the trustee his discharge. The sheriff may adjourn consideration of any matters mentioned in this subsection to any other diet or diets, and he may grant warrant to cite witnesses and havers, and, in the event of the discharge being granted, the sheriff's judgment shall be final, and he shall issue an interlocutor exonerating and discharging the trustee of all his actings and intromissions, and shall order his bond of caution to be cancelled and delivered up, and the sheriff clerk shall forthwith transmit to the accountant a signed extract of the discharge:

(16) If the sheriff refuses to grant the trustee his discharge, the trustee may appeal against his judgment in the manner provided by section one hundred and sixty-six of this Act:

(17) Where the sheriff has in writing dispensed with further procedure in a summary sequestration, the bankrupt may at any time petition the sheriff for his discharge, and the provisions of this Act relating to the discharge of a bankrupt (except the provisions as to the periods at which the bankrupt may so petition and as to the consent of creditors) shall apply.

Summary procedure not to apply to existing sequestrations.

177. The provisions of the three immediately preceding sections of this Act shall not apply to any sequestration awarded before the commencement of this Act.

PUNISHMENT OF FRAUDULENT DEBTORS.

Punishment of fraudulent debtors.

178. The debtor, in a process of sequestration, shall be deemed guilty of a crime and offence, and on conviction before the court of justiciary, or before the sheriff and a jury, shall be liable to be imprisoned for any time not exceeding two years, or by the sheriff summarily for any time not exceeding six months, with or without hard labour:—

(A) In each of the cases following, unless he proves to the satisfaction of the court that he had no intent to defraud, that is to say—

(1) If he does not, to the best of his knowledge and belief, fully and truly disclose the state of his affairs in terms of this Act:

(2) If he does not deliver up to the trustee all his property, and all books, documents, papers, and writings relating to his property or affairs which are in his custody or under his control, and which he is required by law to deliver up, or if he does not deal with and dispose of the same according to the directions of the trustee:

(3) If, after the presentation of the petition for sequestration, or within four months next before such presentation, he conceals any part of his property, or conceals, destroys, or mutilates, or is privy to the concealment, destruction, or mutilation of any book, document, paper, or writing relating to his property or affairs:

(4) If after, or within, the time above specified, he makes or is privy to the making of any false entry in, or otherwise falsifying any book, document, paper, or writing affecting or relating to his property or affairs:

(5) If within four months next before the presentation of the petition for sequestration he pawns,

pledges, or disposes of otherwise than in the ordinary way of trade, any property which he has obtained on credit and has not paid for:

(6) If, being indebted to an amount exceeding two hundred pounds at the date of the presentation of the petition for sequestration, he has not for three years next before such date, if he has been three years in business, and if he has been less than three years in business then from the time he commenced business, kept such books or accounts as are necessary to exhibit or explain his transactions.

(B) In each of the cases following—

(1) If, knowing or believing that a false claim has been made by any person under the sequestration, he fails for the period of a month from the time of his acquiring such knowledge or belief to inform the trustee thereof:

(2) If, after the presentation of the petition for sequestration, 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:

(3) If, within four months next before the presentation of the petition for sequestration, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same:

(4) If, after the date of awarding sequestration, or within four months prior thereto, he absconds from Scotland, or makes preparations to abscond for the purpose of avoiding examination or other proceedings at the instance of his creditors, or taking with him property which ought by law to be divided amongst his creditors to the amount of twenty pounds or upwards, or if he fails, having no reasonable excuse (after receiving due notice), to attend the public examination appointed by the sheriff, or to submit himself for examination in terms of this Act:

(5) If, being insolvent, and with intent to defraud his creditors, or any of them, he makes or causes to be made any gift, delivery, or transfer of, or any charge on or affecting his property:

(6) If he fails without reasonable excuse to deliver or lodge in process in obedience to any order lawfully served upon him, a state of his affairs subscribed by him, giving the particulars specified in the said order.

False claim a crime and offence.

179 If any creditor under any petition for sequestration wilfully, and with intent to defraud, makes any false claim, or makes or tenders any proof, affidavit, declaration, or statement of account which is untrue in any material particular, he shall be deemed guilty of a crime and offence, and may be dealt with and punished as if he had been guilty of a crime and offence under section one hundred and seventy-eight, subsection (B), of this Act, and that section shall apply accordingly.

Trustee to report to Lord Advocate.

180. It shall be the duty of the trustee in any process of sequestration, if he has reasonable grounds to suspect that the bankrupt has been guilty of any offences under this Act, to report the same to the Lord Advocate, who shall direct such inquiry and take such proceedings as he shall think fit.

Offences punishable otherwise.

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

Undischarged bankrupt obtaining credit.

182. Where an undischarged bankrupt obtains credit to the extent of ten pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a crime and offence, and may be dealt with and punished as if he had been guilty of a crime and offence under section one hundred and seventy-eight subsection (B) of this Act, and that section shall apply accordingly.

FRAUDS AND DISABILITIES.

Application of s. 32 of Bankruptcy Act, 1883, to Scotland.

183. In the application of section thirty-two of the Bankruptcy Act, 1883, to Scotland, the following provisions shall have effect:—

(1) The expression "adjudged bankrupt" shall include the case of a person whose estate has been sequestrated by a competent court in Scotland:

(2) A person adjudged bankrupt shall be disqualified from being elected to or holding or exercising the office of dean of guild, deacon-convener of trades, or member of a town, county, or parish council or school board, or of any local authority under any Act for the time being in force (whether passed before or after the commencement of this Act) relating to local government in Scotland:

(3) The disqualifications to which a person adjudged bankrupt is subject under the said section as amended by this Act shall be removed and cease if and when—

(*a*) The sequestration of his estate is recalled or reduced; or

(*b*) He obtains his discharge from a competent court.

Application of ss. 33 and 34 of said Act to Scotland.

184. Sections thirty-three and thirty-four of the Bankruptcy Act, 1883, shall apply to Scotland, subject to the following provisions:—

(1) In each of the said sections the expression "adjudged bankrupt" shall have the meaning assigned to it in the immediately preceding section of this Act:

(2) In the said section thirty-three the expression "order" shall include "deliverance or decree," and the expression "court" shall include the court in Scotland pronouncing the deliverance or decree:

(3) The said section thirty-four shall be deemed to apply to any person whilst holding the office of dean of guild, deacon-convener of trades, or member of a town, county, or parish council or school board, or of any local authority under any Act for the time being in force (whether passed before or after the commencement of this Act) relating to local government in Scotland.

VOLUNTARY TRUST DEEDS FOR BEHOOF OF CREDITORS.

Audit of trustee's accounts.

185. In the case of every voluntary trust deed granted after the commencement of this Act by an insolvent for behoof of his creditors generally, where there is no provision made in gremio of the trust deed for the audit of the trustee's accounts, and the fixing of his remuneration by a committee of the creditors, or where such committee is not appointed or does not act, the trustee, before making a final division of the estate among the creditors, shall submit his accounts to the accountant, who shall audit the same and fix the amount of the trustee's remuneration; and the accountant may, and is hereby authorised to make such regulations as he may deem expedient for giving effect to the requirements of this section. Any trustee who shall fail to observe the provisions of this section, or of the regulations, if any, made by the accountant, shall forfeit all claim to commission or other remuneration in respect of his acting as trustee.

MISCELLANEOUS PROVISIONS.

Punishment of wilful falsehood.

186. If any person shall be guilty of wilful falsehood in any oath made in pursuance of this Act, he shall be liable to a prosecution, either at the instance of the Lord Advocate, or at the instance of the trustee, with the concurrence of the Lord Advocate; provided that, in the latter case, the prosecution shall be authorised by a majority of the creditors present at a meeting to be called for the purpose; and such person shall, on conviction, besides the awarded punishment, forfeit to the trustee, for behoof of the creditors, his whole right, claim, and interest in or upon the sequestrated estate, and the same shall be distributed, either under the sequestration, or, if it be closed, under a process of multiplepoinding, as is hereinbefore provided.

Trustee may be authorised to receive and open post letters.

187. The Lord Ordinary or sheriff, on cause shown, may order that for a period not exceeding three months from the date of the order all letters addressed to the bankrupt shall be delivered by the Postmaster-General, or the officers acting under him, to the sheriff clerk or trustee, to be opened in presence of the sheriff, after written notice to the bankrupt to attend, if within Scotland; and, in case the letters shall relate in whole or in part to the estate, they shall be placed in such custody as the sheriff may direct; and the Lord Ordinary or sheriff may, on cause shown, renew such order for a like period as often as shall be necessary.

Gazette keeper to furnish copies of Gazette.

188. The keeper of the Gazette shall, on each day of publication, furnish a copy thereof to the keeper of edictal citations and to the Bill chamber clerks, and to the accountant, who shall keep the same regularly filed, and make the said Gazettes on all occasions patent to the lieges at office hours.

Conveyances, deeds, &c. relating to estates of bankrupts, not liable to stamp or other duties.

189. All conveyances, assignations, instruments, discharges, writings, or deeds relating solely to the estate belonging to any bankrupt against whom sequestration has been or may be awarded, either under this or any former Act, and which estate, after the execution of such conveyances, assignations, instruments, discharges, writings, or deeds, shall be and remain the property of such bankrupt, for the benefit of his creditors, or the trustees appointed or chosen under or by virtue of such sequestration, and all discharges to such bankrupt, and all deeds, assignations, instruments, or writings for reinvesting such bankrupt in the estate, and all powers of attorney, commissions, factories, oaths, affidavits, articles of roup or sale, submissions, decrees arbitral, and all other instruments and writings whatsoever, relating solely to the estate of such bankrupt, and all other deeds or writings forming a part of the proceedings ordered under such sequestration, shall be exempt from all stamp duties or other Government duty.

Power to Court of Session, by act of sederunt, to apportion duties and regulate procedure in relation to this Act.

190. It shall be lawful for the judges of the Court of Session, either during session or vacation, by an act or acts of sederunt, from time to time to apportion the duties to be performed by the officers in the Bill chamber, or in the said court, or in the sheriff courts, and to regulate procedure in relation to this Act, in so far as consistent therewith, and to make regulations with regard to the finding of caution by trustees, and to alter, amend, or add to the provisions of this Act regulating procedure in summary sequestrations and the forms contained in the schedules hereto, and to establish a table of fees to be allowed to agents, both in the Court of Session and sheriff courts, for conducting the proceedings, and to prescribe, with the sanction of the Treasury, a scale of fees and percentages to be paid to the accountant for and in respect of proceedings under this Act, and to amend or alter such act or acts from time to time.

Repeal.

191.—(1) The Acts mentioned in the Schedule I. to this Act are hereby repealed to the extent and effect shown in the third column of that schedule.

(2) Notwithstanding the provisions of this section, every process of cessio bonorum initiated before the commencement of this Act shall proceed in the same manner and with the same incidents as if this Act had not passed, and for the purpose of every such process the Act or Acts under which the process was initiated shall be deemed to remain in full force.

Commencement.

192. This Act shall come into operation on the first day of January nineteen hundred and fourteen, and all proceedings subsequent to that date in every sequestration initiated prior thereto, shall, subject to the provisions of section one hundred and seventy-seven of this Act, be regulated by the provisions of this Act: Provided that this Act shall not operate—

(1) So as to transfer to or vest in the trustee in any sequestration so initiated any property, right, title, or interest of the debtor which has not already been so transferred or vested, and would not have been so transferred or vested if this Act had not passed; or

(2) So as to oblige or compel the bankrupt in any sequestration so initiated to grant any deed for the recovery or disposal of his estate, which he could not have been obliged or compelled to grant if this Act had not passed.

Sections 44, 101.

The SCHEDULES referred to in this Act.

SCHEDULE A.

No. 1.

Abbreviate for the Registers of Inhibitions and Adjudications.

Petition for sequestration of *A.B.* [*name and designation*].

Date of first deliverance day of .

(Signed) *C.D.* [*if an agent, state so.*]

Date .

No. 2.

Certificate by the Keeper.

This abbreviate was presented by [*or* received by post from] [*name and design the presenter or party transmitting by post*] and recorded on [*date*] in the Registers of Inhibitions and Adjudications.

(Signed) *E.F.*, Keeper.

No. 3.

Abbreviate.

Petition for transferring, in terms of the Bankruptcy (Scotland) Act, 1913, from *A.B.* [*name and designation*], as heir of *C.D.* [*name and designation*], the estates of *C.D.*, date of deliverance day of .

(Signed) *G.H.* [*if an agent, state so.*]

Date .

No. 4.

Memorandum.

Renew abbreviate in sequestration of *A.B.* [*name and designation*], [*insert date of recording of abbreviate*], day of .

(Signed) *C.D.* [*if an agent, state so.*]

Date .

SCHEDULE B.

Section 44

NOTICE TO THE GAZETTES.

The estates of *A.B.* [*name and designation*] were sequestrated on [*date, month, and year*] by the [Court of Session *or* sheriff of].

The first deliverance is dated the [*date*].

The meeting to elect the trustee and commissioners is to be held at [*hour*] o'clock on [*day of the week*] the [*date, month, and year*], within [*specify particular place*] in [*town*]. A composition may be offered at this meeting; and to entitle creditors to the first dividend their oaths and grounds of debt must be lodged on or before the [*insert date*].

All future advertisements relating to this sequestration will be published in the Edinburgh Gazette alone.

(Signed) *P.Q.*, agent [*specify place of business*].

SCHEDULE C.

Section 69.

FORM OF BOND OF CAUTION FOR TRUSTEE.

I *A.B.* [*name and designation*], having been appointed trustee on the sequestrated estate of *C.D.* [*name and designation*], and I *E.F.* [*designation*] as cautioner, surety, and full debtor for and with the said *A.B.*, hereby bind and oblige ourselves, conjunctly and severally, our heirs and executors, that I the said *A.B.* shall faithfully discharge all the duties which by law attach to the said office of trustee, and fully account for my whole intromissions with the said estate, and make payment of any balance due by me to the creditors on the said estate, or trustee elected by them to succeed me; declaring that this bond shall not be in any way affected, nor shall I the said *E.F.* be liberated, by any omission, negligence, or want of diligence on the part of the creditors or commissioners on the said estate. [*In case the caution has been*

limited by the creditors, the following clause will be here inserted: And declaring further, that this bond, so far as concerns me the said *E.F.*, shall not bind me or my foresaids to a greater extent than the sum of [*here insert sum in writing*], to which my obligation before written is hereby limited.] In witness whereof this bond (so far as not printed), written and filled up by [*here shall be inserted in writing a testing clause in legal form*].

(Signed) *A.B.*
E.F.

O.T., witness.
L.F., witness.

Section 70.

SCHEDULE D.

ACT AND WARRANT ON CONFIRMATION OF THE TRUSTEE.

[*Place and date.*]

The sheriff of the county of [*insert county*] has confirmed and hereby confirms *A.B.* [*name and designation*] trustee on the sequestrated estate of *C.D.* [*name and designation*]; and the whole of the estates and effects, heritable and moveable, and real and personal, wherever situated, of the said *C.D.*, are transferred and belong to *A.B.* as trustee for behoof of the creditors of the said *C.D.*, in terms of the Bankruptcy (Scotland) Act, 1913; and the said *A.B.* has, as trustee aforesaid, in terms of the said Act, full right and power to sue for and recover all estates, effects, debts, and money belonging or due to the said *C.D.*

(Signed) *C.D.*, sheriff clerk.

Sections 75, 101, 145.

SCHEDULE E.

No. 1.

Abbreviate for the Registers of Inhibitions and Adjudications.

The whole estates and effects, heritable and moveable, and real and personal, wherever situated, of *A.B.* [*name and designation*], are transferred and belong to *E.F.* [*name and designation*], as trustee on his sequestrated estate, conform to act and warrant of confirmation dated the day of , issued in terms of the Bankruptcy (Scotland) Act, 1913.

[*Signed by the trustee or his agent.*]

No. 2.

Certificate by the Keeper.

This abbreviate was presented by [*name and designation*] and recorded on [*date*] in the registers of inhibitions and adjudications.

(Signed) *E.F.*, keeper.

No. 3.

Abbreviate of Adjudication.

The estates vested in *A.B.* [*name and designation*] as heir of *C.D.* [*name and designation*] are transferred and belong to *E.F.* [*name and designation*], as trustee on the sequestrated estate of the said *C.D.*, conform to deliverance by the Lord Ordinary [*or* the sheriff], dated the day of , and in terms of the Bankruptcy (Scotland) Act, 1913.

[*Signed by the trustee or his agent.*]

No. 4.

Abbreviate of Deliverance of Discharge.

A.B. [*name and designation*] has been discharged of all debts and obligations contracted or for which he was liable at the date of the sequestration of his estates [*if upon composition add as follows :*—" the " said sequestration declared at an end and the said *A.B.* reinvested in " his estates on composition of [*insert amount*] "] conform to deliverance by the Lord Ordinary [*or* the sheriff] dated the day of , and in the terms of the Bankruptcy (Scotland) Act, 1913.

[*Signed by the bill chamber clerk or sheriff clerk.*]

[*Date.*]

No. 5.

Abbreviate Extract of Deliverance Recalling a Sequestration or Declaring a Sequestration at an End.

The sequestration of the estates of *A.B.* [*name and designation*], the first deliverance in which is dated [*insert date*], has been recalled [*or* declared at an end], conform to deliverance by the Lord Ordinary [*or as the case may be*] dated [*insert date*], in terms of the Bankruptcy (Scotland) Act, 1913.

Extracted day of

D.E., clerk of bills
[*or* sheriff clerk].

SCHEDULE F.

Section 83.

FOR THE GAZETTE.

Sequestration of *C.D.* [*Designation*].

A.B. [*name and designation*] has been elected trustee on the estate, and *E.F.* and *G.* [*names and designations*] have been elected commissioners. The examination of the bankrupt will take place in the sheriff court house [*or other place*] on [*day of week*] the [*date*] of [*month*] next, at [*hour*]. The creditors will meet in [*specify the place, day, date, month, and hour*] o'clock. [*If any offer of composition has been entertained at the meeting for election of trustee, intimate this as provided by the Act.*]

[*Signed by the trustee.*]

[*Date.*]

Section 156.

SCHEDULE G.

REGISTER OF SEQUESTRATIONS.

Name and Designation of Bankrupt.	Place and County of Bankrupt's Residence or Business.	Name and Designation of Petitioning or Concurring Creditor.	Whether Sequestration awarded by Sheriff (*state the County*) or by Court of Session.	Division of the Court, if by Court of Session.	To what Sheriff remitted.	Date of first Deliverance.	Date of awarding. (If recalled, Entry to be in this Column.)	Time and Place for electing Trustee.	Trustee's Name and Designation.	Commissioners' Names and Designations.	Date of Bankrupt's Discharge.	Bankrupt's Discharge on or without Composition.	Date of Trustee's Discharge.

SCHEDULE H.

ANNUAL RETURN BY EACH TRUSTEE WITHIN FOURTEEN DAYS AFTER THE THIRTY-FIRST DAY OF DECEMBER, AND BY EACH SHERIFF CLERK WITHIN FOURTEEN DAYS THEREAFTER.

Name and Designation of Bankrupt.	County and Place.	By whom Sequestration awarded.	Name and Designation of Trustee.	Names and Designations of Commissioners.	Amount of Funds as in the Bankrupt's State.	Amount of Funds realised.	Amount of Debts.	Allowance to Bankrupt.	Discharge on Composition or without Composition.	Amount of Composition, and when payable, and Names and Designations of Cautioners.	Dividend—Amount paid or unpaid.	AMOUNT OF EXPENSES.		
												Trustee's Commission.	Law Expenses.	Miscellaneous.

Signed by trustee and by sheriff clerk.

Section 191.

SCHEDULE I.

Year and Chapter.	Short Title.	Extent of Repeal.
6 & 7 Will. IV. c. 56.	The Cessio (Scotland) Act, 1836	The whole Act.
19 & 20 Vict. c. 79.	The Bankruptcy (Scotland) Act, 1856.	The whole Act.
20 & 21 Vict. c. 19.	The Bankruptcy and Real Securities (Scotland) Act, 1857.	The whole Act.
23 & 24 Vict. c. 33.	The Bankruptcy (Scotland) Amendment Act, 1860.	The whole Act.
38 & 39 Vict. c. 26.	The Bankruptcy (Scotland) Act, 1875.	The whole Act.
39 & 40 Vict. c. 70.	The Sheriff Courts (Scotland) Act, 1876.	Section 26.
42 & 43 Vict. c. 40.	The Conveyancing (Scotland) Act, 1874, Amendment Act, 1879.	The whole Act.
43 & 44 Vict. c. 34.	The Debtors (Scotland) Act, 1880.	The whole Act except section 4.
44 & 45 Vict. c. 22.	The Bankruptcy and Cessio (Scotland) Act, 1881.	The whole Act.
47 & 48 Vict. c. 16.	The Bankruptcy, Frauds and Disabilities (Scotland) Act, 1884.	The whole Act.
50 & 51 Vict. c. 69.	The Conveyancing (Scotland) Acts, 1874 and 1879, Amendment Act, 1887.	Section 2.
52 & 53 Vict. c. 39.	The Judicial Factors (Scotland) Act, 1889.	Section 17.
58 & 59 Vict. c. 19.	The Court of Session Consignations (Scotland) Act, 1895.	Sections 10 and 11. Section 16, so far as relating to any sums received by the accountant or deposited in bank in terms of this Act.