CHAPTER 34.

An Act to abolish Imprisonment for Debt, and to provide for the better Punishment of Fraudulent Debtors in Scotland; and for other purposes.

[7th September 1880.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Debtors (Scotland) Act, 1880.

Extent of Act.

2. This Act shall extend to Scotland only.

Commencement of Act.

3. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-one, which day is herein-after referred to as the commencement of this Act.

Abolition of Imprisonment for Debt.

Abolition of imprisonment for debt, with certain exceptions.

4. With the exceptions herein-after mentioned, no person shall, after the commencement of this Act, be apprehended or imprisoned on account of any civil debt.

There shall be excepted from the operation of the above enactment,—

1. Taxes, fines, or penalties due to Her Majesty, and rates and assessments lawfully imposed or to be imposed:
2. Sums decerned for aliment:

Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than twelve months.

Nothing contained in this Act shall affect or prevent the apprehension or imprisonment of any person under a warrant granted against him as being in meditatione fugæ, or under any decree or obligation ad factum præstandum.

Discharge of persons in custody at the commencement of this Act.

5. Where any person is, at the commencement of this Act, in custody under a warrant of imprisonment, or other process in any case in which he would not be liable to be apprehended or imprisoned after the commencement of this Act, such person shall, at the commencement of this Act, be discharged from such custody; but his apprehension, imprisonment, or discharge shall not affect the other rights or remedies of any creditor for enforcing the payment of any money due to him.

Notour Bankruptcy.

New mode of constituting notour bankruptcy.

6. In any case in which, under the provisions of this Act, imprisonment is rendered incompetent, notour bankruptcy shall be constituted by insolvency concurring with a duly executed charge for payment followed by the expiry of the days of charge without payment, or, where a charge is not necessary or not competent, by insolvency concurring with an extracted decree for payment followed by the lapse of the days intervening prior to execution without payment having been made.

19 & 20 Vict. c. 79.

Nothing in this section contained shall affect the provisions of section seven of the Bankruptcy (Scotland) Act, 1856.

Cessio bonorum.

Debtor who is notour bankrupt, may apply for cessio.
19 & 20 Vict. c. 79.
6 & 7 Will. 4. c. 56.
39 & 40 Vict. c. 70. s. 26.

7. Any debtor who is notour bankrupt within the meaning of the Bankruptcy (Scotland) Act, 1856, or of this Act, may present a petition for decree of cessio bonorum, in the same manner and subject to the same provisions and conditions, as nearly as may be, in and subject to which a person now entitled to apply for decree of cessio bonorum may do so under the Acts of Parliament enumerated in the schedule hereto annexed, herein-after called the Cessio Acts; and the provisions of the Cessio Acts shall apply, as nearly as may be, to such petition and the procedure thereunder, subject to the provisions herein-after contained.

Cessio at instance of creditor.
19 & 20 Vict. c. 79.

8. Any creditor of a debtor who is notour bankrupt within the meaning of the Bankruptcy (Scotland) Act, 1856, or of this Act, may present a petition to the sheriff of

the county in which such debtor has his ordinary domicile, setting forth that he (the debtor) is unable to pay his debts, and praying that he may be decerned to execute a disposition omnium bonorum for behoof of his creditors, and that a trustee be appointed who shall take the management and disposal of his estate for such behoof, and such process shall be taken and deemed to be a process of cessio. In the petition there shall be inserted a list of all the creditors of the debtor, specifying their names, designations, and places of residence, so far as known to the petitioner, and with the petition shall be produced evidence that the debtor is notour bankrupt.

9. On such petition being presented the following provisions shall have effect:

Procedure in cessio at instance of creditor.

1. The sheriff, if he is satisfied that there is primâ facie evidence of notour bankruptcy, shall issue a warrant appointing the petitioner to publish a notice in the "Edinburgh Gazette," intimating that such petition has been presented, and requiring all the creditors to appear in court on a certain day, being not less than thirty days from the date of the "Gazette" notice, the petitioner being bound, within five days after the date of such notice, to send letters to all the creditors specified in the petition, containing a copy of the said notice, and the sheriff shall further ordain the debtor to appear on the day so appointed for the compearance of the creditors in the presence of the sheriff for public examination; and the debtor shall, on or before the sixth lawful day prior to the day so appointed, lodge, to be patent to all concerned, a state of his affairs subscribed by himself, and all his books, papers, and documents relating to his affairs, in the hands of the sheriff clerk; and the petitioner shall, on or before the same date, lodge in the hands of the sheriff clerk a copy of the said "Gazette," and a certificate subscribed by his agent, or by a messenger-at-arms, or sheriff officer, and a witness, stating the date and the place where the letters to the creditors were put into the post office, and that they were severally addressed as specified in the petition.

2. On the day appointed for the compearance of the creditors the debtors shall appear in public court in presence of the sheriff for examination as to his affairs, and the sheriff shall have power to put him on oath or affirmation, as the case may be, and the debtor shall be bound to answer all pertinent questions put to him by the sheriff, or by any creditor with the approbation of the sheriff, and it shall be competent for the sheriff to adjourn the examination for such time as to him shall appear fit and reasonable; and the provisions of section ninety-three of the Bankruptcy (Scotland) Act, 1856, shall, as nearly as may be, apply to the examination of debtors, and the production of books, deeds, or other documents by them, under this Act. 19 & 20 Vict. c. 79.

3. The sheriff shall, on such examination being taken, allow a proof to the parties, if it shall appear necessary, and hear parties vivâ voce, and either grant decree decerning the debtor to execute a disposition omnium bonorum to a trustee for behoof of his creditors, or refuse the same in hoc statu, or make such other order as the justice of the case requires. The trustee shall be nominated by the sheriff on the suggestion of the creditors represented at the meeting for examination, and if they do not agree on a person, the sheriff shall make his own selection.

4. Any judgment or interlocutor, or decree, pronounced in such petition may be reviewed on appeal in the same form and subject to the like provisions, restrictions, and conditions as are by law provided in regard to appeals against any judgment or interlocutor, or decree, pronounced in any other process of cessio bonorum.

5. Until the debtor shall execute a disposition omnium bonorum for behoof of his creditors, any decree decerning him to do so shall operate as an assignation of his moveables in favour of any trustee mentioned in the decree for behoof of such creditors.

6. The expense of obtaining the decree and of the disposition omnium bonorum shall be paid out of the readiest of the funds thereby conveyed.

Miscellaneous.

Periodical report by governor as to civil prisoners. Sheriff's powers thereon.

10. At least once in every four weeks it shall the duty of the governor or principal officer in charge of every prison in Scotland to make a report to the sheriff of the county within which such prison is situated, setting forth the name and designation of every civil prisoner detained in such prison, the ground of and warrant for his imprisonment, and the period for which he has been so detained; and it shall be lawful for the sheriff to direct any civil prisoner to be brought before him, and, if he shall think fit, the sheriff may determine that the assistance of one of the procurators for the poor shall be afforded to such prisoner in raising a process of cessio bonorum.

No court fees, stamp duties, or Government payments exigible.

11. No fee fund or other dues of court shall be exigible in respect of any proceedings under the Cessio Acts or this Act; nor shall any stamp duty or other Government duty be exigible in respect of any disposition which the debtor shall be required or decerned to execute in terms thereof, any law or statute to the contrary notwithstanding.

Bank notes, money, &c. in possession of a bankrupt may be seized under warrant from sheriff. 19 & 20 Vict. c. 79.

12. The sheriff shall have power, upon cause shown by any creditor, or without any application if he shall think fit, at any time after the presentation of a petition for sequestration under the Bankruptcy Act, 1856, or for cessio, 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 lockfast places, and to search the dwelling-house and person of the debtor.

Punishment of Fraudulent Debtors.

Punishment of fraudulent debtors in certain specified cases.

13. The debtor in a process of sequestration or cessio 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 without a jury for any time not exceeding sixty days, 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 the Bankruptcy (Scotland) Act, 1856, or the Cessio Acts, as the case may be:

19 & 20 Vict. c. 79.

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 cessio, 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 or cessio 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 or cessio, as the case may be, he has not, for three years next before such date, kept such books or accounts as, according to the usual course of any trade or business in which he may have been engaged, 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 cessio, 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 or cessio 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 granting sequestration or cessio, 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 lord ordinary or the sheriff, or to submit himself for examination in terms of the statutes:

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.

False claim, &c. a crime and offence.

14. If any creditor under any petition for sequestration or cessio, or disposition omnium bonorum, 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 on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour.

Power to give information to Lord Advocate.

15. It shall be the duty of the trustee in any process of sequestration or cessio to report all offences under this Act to the presiding judge, who shall, on such representation or of his own motion, direct information in all such cases as he thinks ought to be prosecuted, to be laid before the Lord Advocate, who shall direct such inquiry and take such proceedings as he shall think fit.

As to punishments under this Act for offences punishable otherwise.

16. 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.

SCHEDULE.

6 & 7 Will. 4. c. 56.
39 & 40 Vict. c. 70. s. 26.