ANNO TRICESIMO TERTIO

Georgii III. Regis.

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CAP. LXXIV.

An Act for rendering the Payment of Creditors more equal and expeditious in that Part of *Great Britain* called *Scotland*.

[17th *June* 1793.]

WHEREAS the Regulations introduced by the Acts, made in the Twenty-third and Thirtieth Years of the Reign of his present Majesty, for rendering the Payment of Creditors more equal and expeditious in that Part of *Great Britain* called *Scotland*, having in general been found useful and beneficial to the Publick, it is proper that they should, with such Variations and Amendments as Experience hath suggested, be continued, and that other and farther Regulations should be made for attaining the same salutary Ends; may it therefore Preamble. 23 *Geo.* III, Cap. 18; and 30 *Geo.* III, Cap. 5, recited.

therefore please Your Majesty that it may be enacted; and 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, That all Sequestrations already awarded, or that shall at any Time prior to the Commencement of this Act be awarded under the Authority of the said Two Acts, or either of them, shall be carried on to a Conclusion, and the Estates thereby sequestrated shall be managed and divided in the Manner, and according to the Rules prescribed by the said Acts, unless the Court of Session, upon Cause shewn, shall order the Sequestration to be renewed under this present Act, which shall commence from and immediately after the passing thereof.

Sequestrations awarded under the recited Acts to be followed out, unless renewed under this Act.

II. And be it enacted by the Authority aforesaid, That in all Actions and Questions arising upon the Construction and Effect of an Act of the Parliament of Scotland, made in the Year One thousand six hundred and ninety-six, Chapter Five, intituled, An Act for declaring Notour Bankrupts, when the Debtor is out of Scotland, or not liable to be imprisoned by reason of Privilege, or Personal Protection, a Charge of Horning executed against him, together with either an Arrestment of any of his Effects not loosed or discharged within Fifteen Days, or a Poinding executed of any of his Moveables, or a Decree of Adjudication of any Part of his Estate, for Payment or Security of Debt, shall, when joined with Insolvency, be sufficient Proof of Notour Bankruptcy, and from and after the last Step of such Diligence, the said Debtor, if insolvent, shall be holden and deemed a Notour Bankrupt; and every Person, whether he be out of Scotland or not, whose Estate shall be sequestrated under the Authority of this present Act, shall also be holden and deemed a Notour Bankrupt in all Questions upon the said Act of One thousand six hundred and ninety-six, from and after the Date of the First Deliverance on the Petition to the Court of Session for awarding the Sequestration.

Act of *Scotland* of 1696 extended to Persons abroad, &c.

III. And be it enacted by the Authority aforesaid, That when a Debtor is made Notour Bankrupt in Terms of the said Act made in the Year One thousand six hundred and ninety-six, as now extended, all Arrestments which shall have been used for attaching any Effects of such Bankrupt within Sixty Days prior to the Bankruptcy, or within Four Calendar Months thereafter, shall be ranked, pari passu, in the same Manner as if such Arrestments had been of the same Date; and that in Time coming, Letters or Precepts of Arrestment bearing to be upon a depending Action may be granted summarily, upon Production of the libelled Summons, and it shall be no Objection to the pari passu Preference hereby established, that the Summons upon which any Arrestment proceeds was not executed, or that the Debt upon which it is founded was not liquidated at the Date of the Arrestment: Providing always, That these and all other necessary Steps are afterwards taken without any undue Delay; and in case the First or any subsequent Arrester shall in the meantime have obtained a Decree of Forthcoming or Preference, and thereupon have recovered Payment, he shall nevertheless be accountable for the Sum recovered to those who, by virtue of this Act, may be eventually found to have a pari passu Preference thereon, and shall be liable to an Action at their Instance, for Payment to them proportionally, after allowing out of the Fund the Expence of making it effectual; and further providing, that if there be any Arrestments used for attaching the same Effects after the Period of Four Months subsequent to the Bankruptcy, such Arrestments shall not compete with those used prior to the Period aforesaid, but may rank with one another, according to the former Law and Practice.

Pari passu Preference of Arrestments in certain Cases.

IV. And be it enacted by the Authority aforesaid, That an Arrestment executed at the Market Cross of Edinburgh, and Pier and Shore of Leith, to attach the Effects of the Debtor, as in the Hands of a Person out of Scotland, shall not be held to have interpelled such Person from paying to the original Creditor, unless Proof be made that he or those having Authority to act for him were

Arrestments at Market Cross, &c. no sufficient Interpellation.

were previously in the Knowledge of such Arrestment having been so used.

Pointed Goods to be sold by Roup.

V. And be it enacted by the Authority aforesaid, That in future the Messenger or other Officer employed in executing a Poinding for Debt, shall leave in the Hands of the Debtor a Schedule of the pointed Goods, and Note of the apprised Values (One Apprisement being in every Case sufficient), and shall forthwith report his Execution of Poinding to the Sheriff, or other Judge Ordinary, who shall give Directions for selling the Goods pointed by publick Roup, after such Publication, and at such Time and Place as Circumstances may require, any Person who intromits with or carries off the Goods in the meantime, in order to disappoint the Poinding, being liable in Double the apprised Value thereof; and the nett Sum arising from the Sale, after Deduction of all Charges, or the Goods, in case no Offerers appear, shall be delivered over to the pointing Creditor, a Note or Minute of the Transaction being kept by the Clerk, to be made patent to all concerned, for a Fee of One Shilling.

Pari passu Preference of Poindings in certain Circumstances.

VI. And be it enacted by the Authority aforesaid, That when a Person has been rendered Notour Bankrupt as aforesaid, no Poinding of the Moveables belonging to such Bankrupt used within Sixty Days before the Bankruptcy, or within Four Calendar Months thereafter, shall give a Preference to such Poinder, but that every other Creditor of the Bankrupt, having liquidated Grounds of Debt, or Decrees for Payment, and summoning such Poinder before the said Four Months are elapsed, shall be entitled to a proportional Share of the Price of the Goods so pointed, effeiring to his Debt, deducting always the Expence of such Poinding, together with Ten per Centum more on the said Price or apprised Value, which the Poinder shall retain to Account of his Debt, in Preference to the other Creditors, the said Debt being thereby so far diminished in the Competition with them: And providing also, that all Poindings after the Four Months shall have such Preference as they were entitled to by former Law and Practice, saving always the Landlord's

lord's Right of Hypothec for Rents, or any other Hypothec known in Law, which shall be nowise hurt or impaired by any Thing contained in this Act: And provided also, that in the Case of a Sequestration under this Act, the pari passu Preference of Arrestments and Poindings shall be regulated as herein-after directed.

Acts of *Scotland* of 1681 and 1695, in Part recited,

VII. And whereas an Act of the Parliament of Scotland, in the Year One thousand six hundred and eighty-one, Chapter Seventeen, intituled, An Act concerning the Sale of Bankrupt's Lands, required certain Forms of Publication and Citation, which in Practice have been found to be expensive and inconvenient; and another Act of the Parliament of Scotland, in the Year One thousand six hundred and ninety-five, Chapter Six, intituled, Act regulating the Sale and Payment of Bankrupt's Estate, made it lawful for Purchasers of such Estates to consign the Price after a certain Time, in the Hands of the Magistrates and Town Council of Edinburgh, which Method has been found inconvenient, and has seldom been practised; and by an Article in the Regulations of the Session established in the same Year, One thousand six hundred and ninety-five, Section Twenty-six, it was provided, that the ranking of the Creditors should proceed and be concluded by Decree before the Sale of the Lands, which Regulation has generally been prejudicial to the Creditors; be it enacted, That the said in Part recited Acts shall be, and the same are hereby in so far repealed; and the Court of Session shall have full Power to make Acts of Sederunt for abridging the Forms of Publication and Citation, and regulating the Proceedings in Processes of Sale, Ranking, and Division, whether at the Instance of Creditors or of apparent Heirs; and in every Case of a Sale under the Authority of the Court of Session, it shall be lawful to the Purchaser at any Term of Whitsunday or Martinmas subsequent to the Term of Payment of the Price, to lodge the Price, with the Interest due upon it, in the Royal Bank or Bank of Scotland, at such Interest as can be procured for it, by doing which, and by giving Notice thereof to the Agent who carried on the Sale, he shall be discharged

and repealed.

Judicial Sales of Estates.

Purchasers may lodge Prices in the Bank, &c.

of the said Price; and further, the Court of Session, upon the Application of any of the Creditors, shall be impowered to make an Order on the Purchaser to lodge the Price and Interest at any of the said Terms, subsequent to the Term of Payment, in One or other of the said Banks, sufficient Intimation being always previously given both to the Purchaser and to the common Agent for the Creditors, that such Application is made, in order that all Parties may have an Opportunity to object; and in all Cases of judicial Sales, the Lands or other heritable Subjects may be brought to actual Sale so soon as the necessary previous Steps are taken, whether the Ranking be concluded or not, unless the Court, upon Application of any Party concerned, shall find sufficient Cause to delay the Sale.

Sales may precede ranking.

What Proof of Insolvency necessary for Sales.

VIII. And whereas Doubts have arisen upon the Construction of an Act, made in the Year One thousand six hundred and ninety, Chapter Twenty, intituled, Act anent the Sale of Bankrupt's Lands, in so far as it requires that the common Debtor be found Bankrupt, and utterly insolvent; be it enacted, That a judicial Sale, at the Instance of Creditors, may in all Cases proceed where the Interest of the Debts and the other Annual Burdens exceed the yearly Income of the Subjects under Sale, or where a Sequestration shall have taken Place under this or any former Statute, without other Proof of Bankruptcy or Insolvency.

Adjudications on Charges to enter Heir.

IX. And whereas by an Act of the Parliament of Scotland, in the Year One thousand five hundred and forty, Chapter One hundred and six, concerning Charges to enter Heir, and another Act in the Year One thousand six hundred and twenty-one, Chapter Twenty-seven, concerning Apprisings against Heirs, it was ordained, that Charges against Heirs unentered, which were to be the Foundation of apprising against their Predecessors Lands, might proceed at the Instance of Creditors commanding them to enter within Forty Days after the Charge, but it has been doubted whether the same or a longer Term is required when the Person charged is out of Scotland, and it is inexpedient that such Inducie

should be of long Duration; be it enacted by the Authority aforesaid, That the Inducíæ of a Charge to enter Heir shall in no Case exceed Forty Days, whether the Person charged be within the Kingdom or out of it, and that after One such Charge, whether General or Special, has been given at the Instance of any Creditor, every subsequent Charge, at the Instance of the same, or of any other Creditor, may be upon the Inducíæ of Twenty Days only, any Law or Practice to the contrary notwithstanding.

Different Creditors may be joined in One Adjudication.

X. And, in order to lessen the Number of Adjudications for Debt, and consequently the Expence to all Parties, and to facilitate the pari passu Preference of Creditors in similar Circumstances; be it enacted, That the Lord Ordinary officiating in the Court of Session, before whom the First Process of Adjudication against any Estate, for Payment or Security of Debt is called, shall ordain Intimation thereof to be made in the Minute Book, and on the Wall, in order that any other Creditors of the common Debtor, who at the next calling of the Cause can shew, that although they have not executed their Summonses of Adjudication, they are in other Respects by the Nature of their Grounds of Debt, and Steps taken by them, in Condition to proceed in adjudging their Debtor's Estate, may produce the Instructions of their Debts, with Summonses of Adjudication, libelled and signeted, for the Purpose of their being conjoined in the Decree of Adjudication, Twenty Sederunt Days being allowed for such Intimation, before the Cause can be called a Second Time; and if any of these Forms shall happen to be omitted, the said Adjudication shall be null and void, without Prejudice to the Validity and Order of ranking of posterior Adjudications, according to the Rules of Law; and further, that when the Estate of a Debtor is brought into the Court of Session by a Process of judicial Sale and Ranking, and where no Sequestration under this Act, as herein-after mentioned, shall have taken Place, the Court shall have Power, by Regulations, to establish a Mode of adjudging, in Name of the common Agent or Factor, once or oftener, as Occa-

Agent or Factor may adjudge for Creditors pending a judicial Sale.

tion may require, for Behoof of the Creditors whose Grounds of Debt or Interest are produced, and in the mean Time to stop Adjudications at the Instance of individual Creditors, unless the same be necessary in order to come within Year and Day of the First effectual Adjudication, or be found proper on any other Account, it being always understood that the whole Creditors conjoined in the same Decree of Adjudication shall be pari passu with one another, and that each Creditor shall have the same Benefit thereby as if he had adjudged for himself; and it shall be lawful for him to extract that Part of the Decree which concerns his own Debt, upon Payment of the ordinary Dues, without any Necessity of extracting the Whole.

What Diligence necessary to make effectual Adjudications.

XI. And, in order to fix more clearly in Time coming what Diligence is necessary to make an Adjudication effectual; be it enacted, That the presenting a Signature in Exchequer, when the holding is of the Crown, or the executing a general Charge of horning against Superiors, at the Market Cross of Edinburgh, and Pier and Shore of Leith, when the holding is of a Subject, and recording an Abstract of the said Signature or the said Charge in the Register of Abbreviates of Adjudications, shall be held in all Time coming as the proper Diligence for the Purpose aforesaid.

Part of the Act 1696 repealed, and Securities for Cash Accounts or Credits may be granted.

XII. And whereas by an Act of the Parliament of Scotland in the Year One thousand six hundred and ninety-six, Chapter Five, intituled, Act for declaring Nottour Bankrupts, it is inter alia declared, That any Dispositions or other Rights that shall be granted for hereafter for Relief or Security of Debts to be contracted for the future, shall be of no Force as to any such Debts that shall be found to be contracted after the Seisine or Infeftment following on the said Disposition or Rights: And whereas Cash Accounts or Credits granted by Banks or Bankers were not at that Time in Use, but have since proved very beneficial to Commerce: And whereas it would tend not only to the further Benefit of Commerce, but also of Agriculture and Manufactures, if Part of the before-recited Act were repealed, so far as to make it lawful for Persons possessed

of

of Lands and other heritable Property to grant Security thereon by Infeftment for the Payment of Cash Accounts or Credits to be granted to them: Therefore be it enacted by the Authority aforesaid, That it shall and may be lawful for any Person or Persons possessed of Lands, or other heritable Subjects, and desiring to pledge the same in Security of Cash Accounts or Credits, to grant Securities upon their said Lands or other heritable Estate, containing Procuratory of Resignation and Precept of Seisine for infefting any Bank or Bankers, or other Persons, who shall agree to give them such Cash Accounts or Credits, provided the Principal and Interest, which may become due upon the said Cash Accounts or Credits, shall be limited to a certain definite Sum, to be specified in the Security: And it is hereby declared, That it shall and may be lawful to the Person to whom the said Cash Account or Credit is granted, to operate upon the same, by drawing out and paying in such Sums from Time to Time as the Parties shall settle between themselves, and that the Seisines or Infeftments taken upon the said heritable Securities shall be equally valid and effectual as if the whole Sums advanced upon the said Credit had been paid prior to the Date of the Saisine or Infeftment taken thereon, and that any such heritable Security shall remain and subsist to the Extent of the Sum limited, or any lesser Sum, until the Cash Account or Credit is finally closed, and the Balance paid up and discharged, and the Saisine or Infeftment renounced, and such Part of the foresaid in Part recited Act of the Scots Parliament One thousand six hundred and ninety-six, in so far as it is derogatory hereto, is hereby repealed.

Estates of Merchants, Manufacturers, &c. if Bankrupt, may be sequestrated,

XIII. And whereas it is for the Interest of Commerce, that the Estates of those concerned in Trade and Manufactures, when they are unable to answer the Demands upon them, should be disposed of and distributed among their Creditors in the most expeditious Manner, without abiding the ordinary Forms of Law; be it enacted by the Authority aforesaid, That if any Person in that Part of Great Britain called Scotland, being a Merchant or

Trader in Gross or by Retail, or a Banker, Broker, or Underwriter, or a Manufacturer, Artificer, or Mechanic, and in general any Person who either for himself, or as Agent or Factor for others, seeks his Living by buying and selling, or by the Workmanship of Goods or Commodities, or by any other of the foregoing Occupations, or holds a Share in any such Undertaking (excepting always Holders of India Stock, or Stock in any of the Banks established by publick Authority, or in the Friendly Insurance Company at Edinburgh against Fire, the Forth and Clyde Navigation, or other inland Navigation Companies, or the British Fisheries, common Labourers or Workmen for Hire, Landholders and Tenants of Land, or Husbandmen, if such Persons be not otherwise, bona fide, under one or other of the foregoing Descriptions), shall be under Diligence by Horning and Caption for Debt, and shall either, in virtue thereof, be imprisoned, or retire to a Sanctuary, or fly or abscond for his personal Safety, or defend his Person by Force, or being out of Scotland, or not liable to be imprisoned by reason of Privilege or personal Protection, shall be under Diligence by Charge of Horning attended with Arrestment not loosed or discharged within Fifteen Days, or Poinding of any Part of his Moveables, or Decree of Adjudication of any Part of his Estate for Payment or Security of Debt at the Instance of any Creditor, it shall be lawful to any Creditor of the said Person, whose Debt shall amount to the Sum of One hundred Pounds Sterling, or any Two Creditors whose Debts shall amount to the Sum of One hundred and fifty Pounds Sterling, or any Three or more Creditors, whose Debts amount to the Sum of Two hundred Pounds Sterling or upwards, whether such Debts are liquidated by formal Vouchers, or stand upon open Account, at any Time within Four Calendar Months of the last Step of the said Diligence, to apply, by summary Petition, to the Court of Session for a Sequestration of the said Debtor's Estate, heritable and moveable, real and personal, and upon Production of the Grounds of Debt, or a certified Copy of the Account, and a Deposition by the Creditor

if certain Diligence be done,

upon Petition for Creditors whose Debts are of a certain Extent, and Production of Oaths.

ditor or Creditors, at whose Instance the Application is made, taken by any Judge Ordinary, or Justice of the Peace, to the Verity of the Debt or Debts, and also that they believe the Party against whom the Application is made to be a Merchant, or otherwise within one or other of the Descriptions, and not within the Exceptions aforesaid, the Court shall grant Warrant for citing the said Debtor, by delivering to him personally, or by leaving at his Dwelling House, a Copy of the said Petition, or, if the said Debtor is out of Scotland, by affixing Copies upon the Market Cross of Edinburgh, Pier and Shore of Leith, and also leaving a Copy at the Dwelling House, or House of Business in Scotland last occupied by such Debtor, to appear in Court within the Time specified in the Warrant of Citation, not being less than Six nor more than Forty Days from the Date of the Citation, to shew Cause why Sequestration should not be awarded; and at the Time of granting such Warrant of Citation, the Court shall likewise, if desired, grant the usual Authority, at the Instance of the Petitioners, for recovering written Evidence of the said Diligence, and upon Production of such Evidence at the Diet of Appearance, if the Debtor shall not appear either in Person or by his Counsel or Agent, or so appearing shall not instantly pay or produce written Evidence of the Debt or Debts being satisfied upon which the Diligence proceeded, and also pay or satisfy the Debt or Debts due to the Petitioner or Petitioners, or shew other reasonable Cause why further Proceedings should not be had, the Court shall immediately award Sequestration of the said Debtor's whole Estate and Effects, heritable and moveable, real and personal, for the Benefit of his whole just and lawful Creditors.

Debtor to be cited.

XIV. And be it enacted by the Authority aforesaid, That the Court shall, by the same Deliverance which awards the Sequestration, make an Order upon the Creditors to meet upon a certain Day and Hour, being not more than Three Weeks from that Date, and as much sooner as Circumstances may permit, in order to name an Interim Factor, if they think fit to appoint

Court to fix Meetings for Choice of Factor and Trustee;

One, or failing their doing so, to devolve the interim Care and Custody of the Effects upon the Sheriff Clerk; and the Court shall, by the same Deliverance, make an Order upon the Creditors to meet upon a certain Day and Hour, being not more than Six Weeks and not less than Four Weeks from that Date, for the Purpose of naming a Trustee, in whose Person the said Estate shall be vested, as herein-after mentioned, the said Meetings to be at a convenient Place, either where the Bankrupt resides, or where his Business is or was last carried on, or as near it as possible, the Place being also specified, which Deliverance the petitioning Creditor or Creditors shall forthwith cause to be advertised in a Paper to be called The Edinburgh Gazette, to be printed and published by such Person or Persons as His Majesty, under His Royal Sign Manual, shall from Time to Time think fit to appoint, and on such Day or Days as the Court of Session shall by an Act of Sederunt direct and judge most proper for the more effectually carrying this Act into Execution, (which Gazette shall, besides Advertisements or Notices, publish only such Articles of News or other Articles of Intelligence as may appear from Time to Time in the London Gazette, together with the Corn and Sugar Returns), otherwise the whole Proceedings to be null and void; and the Court shall at the same Time grant Commission to any resident Magistrate of the Burgh, or to the Sheriff Depute or Substitute of the County where the Meeting is to be held, or, failing them, any Justice of the Peace of the County, to attend the said First Meeting of Creditors, and to receive their Grounds of Debt, with the Oaths of Verity thereon, after-mentioned, and to sign the Minutes of the Creditors, along with the Peers chosen by them; and all Questions at this Meeting shall be determined by a Majority of the Creditors in Value or Extent of Debt appearing at the said Meeting by themselves or others authorized by them, and whose Grounds of Debt and Oaths thereon are so produced; and it shall be in the Power of the Sheriff Depute or Substitute, upon Cause shewn by any of the Creditors,

which are to be advertised, otherwise void.

Court to grant Commission to a Magistrate to attend First Meeting.

Questions there, how to be determined.

Sheriff may lock up Shop, &c. after Sequestration.

Creditors, at any Time after the Sequestration, and before the Meeting for the Choice of the Factor, to seal up and cause to be put under safe Custody the Books and Papers of the Bankrupt, and to lock up his or her Shop, Warehouse, or other Repositories, and to keep the Keys thereof till a Factor is named, or the Custody and Care devolved upon the Sheriff Clerk, subject in the mean Time to such Orders and Directions as either the Court of Session or the Sheriff may think proper to give, on the Application of any Party concerned, for Preservation of the Effects.

Powers and Duty of Factor, &c.

XV. And be it enacted by the Authority aforesaid, That the said Factor or Sheriff Clerk, chosen as Interim Manager, shall be entitled to take Possession of the Bankrupt's whole Estate and Effects, and of the Bills, Notes, and whole other Vouchers, Title Deeds, and Instructions of his Estate, and also of his Books and Papers, and the Bankrupt shall, if required by him, or by the Creditors at said Meeting, grant Powers of Attorney, or other Deeds, which may be deemed necessary or proper for the Recovery of the Estate and Effects situated in Foreign Parts, under the Pain of fraudulent Bankruptcy, and of being deprived of all Benefit from this Statute; and the Factor, if required, shall find Security for his Intromissions to such Extent as the said Majority shall think reasonable, he, or failing him the Sheriff Clerk, being always entitled to a Gratification for Trouble, to be fixed by a Majority of the Creditors in Value assembled at any General Meeting, subject to the Modification of the Court of Session; and the said Factor or Sheriff Clerk shall engross the Minutes of the Meeting at which he is appointed in a Book of Sederunt properly authenticated, which shall be kept by him as his Warrant for acting; and the principal Minutes of the said Meeting, being signed by the Commissioner, by the Preses of the Meeting, and by the said Interim Manager, shall be transmitted by the Commissioner to the Clerk of the Sequestration, to be kept among the Records of the Court of Session.

XVI. And

A Merchant, &c. may apply for Sequestration, with Consent of Creditors to a certain Extent.

XVI. And be it enacted by the Authority aforesaid, That if any Merchant or other Person described as above, and not within the Exceptions, whether Diligence has been executed against him or not, shall make a joint Application to the Court of Session along with any Creditor whose Debt shall amount to the Sum of One hundred Pounds Sterling, or any Two Creditors whose Debts shall amount to the Sum of One hundred and fifty Pounds Sterling, or any Three or more Creditors whose Debts shall amount to the Sum of Two hundred Pounds Sterling, or upwards, whether such Debts be liquidated or stand upon open Account, and Oath being made as above to the Verity of these Debts, and the Parties or their Agent also making Oath, to their Knowledge or Belief, of the Debtor's being within One or other of the Descriptions, and not within the Exceptions aforesaid, the Court is hereby authorized and required to award Sequestration of the Debtor's Estate, heretable and moveable, real and personal, and the Procedure shall go on as before directed.

No Sequestration against a Non-resident in *Scotland* without his Concurrence.

XVII. And be it enacted by the Authority aforesaid, That no Sequestration shall be awarded against any Person having an Estate or Effects in Scotland, who at the Time of the Application does not either reside, or has a Dwelling House or House of Business, there, or at least had such Residence or Dwelling House or House of Business, within a Year previous to the Application, unless the Debtor himself, or those acting for him, concur in the Application.

Estates of Partnerships may be sequestrated.

XVIII. And be it enacted by the Authority aforesaid, That the Estates of all Copartnerships carrying on Business under any of the Denominations or Descriptions above set forth, and not within the Exceptions, may be sequestrated upon the Application either of those entitled to act for them, with Consent of any Creditor of such Partnership whose Debt amounts to the Sum of One hundred Pounds Sterling, or any Two Creditors whose Debts amount to the Sum of One hundred and fifty Pounds Sterling, or any Three or more Creditors whose Debts amount to the Sum of Two hundred Pounds Sterling or upwards,

or at the Application of such Creditor or Creditors themselves, whose Debts are to the Amount already mentioned, in which last Case it must appear that Diligence has been done against One or more of the Partners for Payment of a Partnership Debt in the same Way and Manner as is before required to found an Application against Individuals, and in either Case the Procedure hereby directed with regard to individual Debtors shall be followed out, and it shall be sufficient to cite the Partnership, by leaving a Copy at the House or Shop where their Business is or was carried on, or where any of their acting Partners reside; and if the said Houses and Shop be shut up or deserted by them, a Copy shall also be affixed at the Market Cross of Edinburgh, and Pier and Shore of Leith.

Petition for Sequestration to be registered as an Inhibition, otherwise Proceedings void.

XIX. And be it enacted by the Authority aforesaid, That the Party applying for the Sequestration, whether the Creditor or Creditors alone, or the Bankrupt, with Concurrence of a Creditor or Creditors, shall cause the Petition of Sequestration, and the first Deliverance thereon, to be recorded in the general Register of Inhibitions, within Fifteen Days after the said Deliverance is pronounced, and the same shall, from the Date of the Deliverance, be held equivalent to an Inhibition against the Debtor for Behoof of the whole Creditors, in case the Sequestration is finally awarded, but the Proceedings shall be of no Effect if such Registration be omitted; and it shall not be in the Power of the Bankrupt, after Sequestration is awarded, to stop Proceedings by paying off the Debt on which the Diligence and Petition did proceed; and in case of any undue Conduct or Neglect in these Particulars, or with Regard to publishing the Advertisements before directed, whereby other Creditors may sustain a Loss, the petitioning Creditor or Creditors, and those acting for them, shall be liable in all Damages arising from such undue Conduct or Omission: Providing always, that if the Debtor against whom Sequestration has been awarded without his own Concurrence, or if any Creditor, who has not concurred in or consented to the Application, shall apprehend that the Party against whom it is awarded does

Sequestrations erroneously awarded, how to be recalled.

does not come within the Description before given, or falls under any of the Exceptions therefrom, or that there is any other good Ground for recalling the Sequestration, and annulling the whole Proceedings, such Debtor or Creditor shall be at Liberty, at any Time within Thirty Days after Sequestration is awarded, to apply to the Court of Session, setting forth the Grounds upon which the Sequestration ought to be recalled, and this Petition being intimated to the Party or Parties at whose Instance the Sequestration was obtained, or their known Agent, and a reasonable Time given to make Answers thereto, and to adduce the necessary Proofs on either Side, the Court shall determine upon the same, and either recall or confirm the Sequestration, as the Justice of the Case may require, but in the mean Time, until this Matter is finally determined, the Proceedings under the Sequestration shall go on as if no such Application had been made.

Proceedure at the Meeting for the Choice of Trustee.

XX. And be it enacted by the Authority aforesaid, That at the General Meeting for chooling a Trustee, the said Interim Manager shall exhibit the Book of Sederunt containing the Minute of his Appointment, together with a State of his Intromissions, and the Books and Papers in his Possession, which State shall be ingrossed in the said Book of Sederunt, and the Majority of Creditors in Value or Extent of Debt present at this Meeting shall determine who is to be Trustee; but no Creditor shall be entitled to a Vote at this or any future Meeting, who has not, either then or formerly, exhibited not only an Oath of Verity on his Debt, but also the Grounds or Vouchers thereof, and got the same marked or entered in the Book of Sederunt; and at the said or any other Meeting it shall be lawful for Agents or Attornies having Commissions, either General or Special, from any of the Creditors, to appear and vote in all Matters wherein their Constituents themselves, if present, might have voted; and the Creditors may choose Two or more Trustees to act in Succession, One failing another by Death, Resignation, or Removal, but only One Trustee shall act at a Time; and in no Case shall it be competent

to

to the Creditors to appoint as Trustee, either the Bankrupt himself, or any Person who, with respect to him, is by the Law of Scotland held to be conjunct or confident.

Bankrupt to exhibit a State of his Affairs.

XXI. And be it enacted, That at the said Meeting the Bankrupt shall exhibit, or cause to be exhibited, a State of his Affairs, specifying the whole Estate and Effects, heritable and moveable, real and personal, wheresoever situated, belonging to him, and Debts due to him, including any Estate in Expectancy, which he may have an eventual Right to, by Contract of Marriage, Entail, or otherwise, and specifying also the Debts due by him, or Demands upon him, so far as they are known to him, and also a Rental of his Lands, and an Inventory or List of his Books, Papers, Accounts, Bills, Notes, and Title Deeds, or other Documents of his Estate, which State, Rental, and Inventory shall be ingrossed in the Sederunt Book, the same being duly authenticated by the Preses of the Meeting, who shall deliver the said Book of Sederunt, and the Title Deeds of the heritable Estate, to the Trustee so named, and shall deliver the other Papers to the Interim Manager aforesaid, to be kept by him until the same are duly taken off his Hands by the Trustee, upon being discharged of his Intromissions, and satisfied of all Demands which he has against the Estate for Advances of Money, Commission, or Trouble.

Interim Manager to be exonerated.

Trustee, on finding Security, to be confirmed by the Court;

XXII. And be it enacted, That so soon as the said Trustee shall have declared his Acceptance, and found Security for his Intromissions and faithful Management to the Extent required by the Majority of the Creditors in Value at the aforesaid Meeting, the Minutes of the said Meeting shall be reported to the Court of Session by the Trustee, a Copy of them being previously entered in the Sederunt Book, and if no good Objection is made to the Trustee, his Nomination shall be confirmed, and he shall then have a Right to call for, and take into his Custody, all Books, Accounts, Vouchers of Debt, Securities, and other Papers and Documents relative to the Estate, or to the Affairs of the Bankrupt, and to account with

and discharge the Interim Manager, and likewise to take such legal Steps as may be effectual for recovering the Possession of the Estate and Effects, wherever situated,

and entitled to Commission.

he being always entitled to a reasonable Allowance or Commission for his Trouble, to be fixed by the Commissioners herein-after mentioned, previous to each Dividend.

Estate vested in Trustee by Disposition, by virtue of this Act,

XXIII. And be it enacted by the Authority aforesaid, That the Nomination of the Trustee being thus reported and approved of, the Court shall, at the same Time, ordain the Bankrupt to execute and deliver, within a certain reasonable Time to be specified in the Interlocutor, a Disposition or other proper Deed or Deeds of Conveyance or Assignment, making over to the said Trustee or Trustees, in their Order, his whole Estate and Effects, heritable and moveable, real and personal, wherever situated, and which shall specially describe and convey the Premises, so far as they are known, or so far as the Trustees shall think it necessary, and be in such Form and Style as may effectually vest the Right in him, with full Powers of Recovery and Sale, for Behoof of the Creditors; and if the Bankrupt shall, without reasonable Cause, neglect or refuse to obey such Order, the Court may punish him by Imprisonment; and in all Events, whether such Deed or Deeds be executed or not, it is hereby statuted and declared, that the said whole Estate and Effects, of whatever Kind, and wherever situated (in so far as may be consistent with the Laws of other Countries, when the Effects are out of Scotland) shall be deemed and held to be vested in the said Trustee, or Trustees in Succession, for Behoof of the Creditors, and the Court

by Decreet of Adjudication of the Court.

shall, in the Act or Order above mentioned, declare every Right, Title, and Interest, which was formerly in the Bankrupt, to be now in the Trustee for the Purposes aforesaid, and particularly shall adjudge, decern, and declare the whole Lands and other heritable Estate belonging to the Bankrupt within the Jurisdiction of the Court, and which, as far as known, shall be specially enumerated and described, to pertain and belong to the Trustee, or Trustees in Succession, absolutely and irredeemably,

to the End that the same may be sold, levied, and recovered, and converted into Money for Payment of the Creditors, which Adjudication, being of the Nature of an Adjudication in Implement, as well as for Payment, or Security of Debt, shall be subject to no legal Reversion: Declaring always, that if any Part of the Bankrupt's Property happens to be entailed, or otherwise of a limited Nature, the Conveyance to be executed by him, or the Decree of Adjudication to be obtained by the Trustee, shall only be understood to carry that Right and Interest in the Estate which the Bankrupt himself has, and can safely convey, and which his Creditors can validly attach.

Entailed Property how far vested.

XXIV. And be it further enacted by the Authority aforesaid, That the Trustee shall cause an Abbreviate of the Act or Order aforesaid, adjudging the Estate of the Bankrupt, to be recorded, within Fifteen Days of the Date thereof, in the Register of Abbreviates of Adjudications, in the same Manner, and to the same Effect that Abbreviates of Adjudications must be recorded, and this being done, the Trustee shall be entitled, for Behoof of the whole Creditors, to rank in the same Manner upon the heritable Estate as if it had been a common Decree of Adjudication obtained and rendered effectual at the Date of the First Deliverance on the Petition for Sequestration, accumulating the whole Debts of the Bankrupt, Principal and Interest, as at that Period, and adjudging for Security or Payment thereof, and it shall further operate as a complete Attachment and Transfer of the moveable or personal Estate for Behoof of all the Creditors, at the Date of the First Deliverance aforesaid, and the said Disposition, Adjudication, or Transfer shall not be reducible upon any Ground of Law, nor struck at by any prior Inhibition, saving always the Effect which such Inhibition may be entitled to against Contractions of Debt by the Bankrupt posterior to the Inhibition; and provided always, that the said Disposition or Adjudication of the heritable Estate by the Act or Order of the Court, or the Adjudication before-mentioned, which the Court may direct in Name of the common Agent or Fac-

Adjudication to be sequestered.

Effects of Adjudication.

or, during the Dependance of a judicial Sale, shall have no Effect upon any Question of Succession between the Heir and Executor of the Creditor.

Feudal Titles may be completed on it.

XXV. And be it enacted by the Authority aforesaid, That upon the said Disposition or Decree of Adjudication, the feudal Titles requisite by the Law of Scotland to vest heritable Property shall and may be made up, either in the Person of the Trustee, or in the Person of the Purchaser from him, in virtue of such Trustee's Conveyance, agreeably to the Forms of the Law of Scotland; and

Succeeding Trustee how to be vested.

each Trustee succeeding a prior Trustee through Death, Resignation, or Removal (unless substituted at the First Nomination, in which Case no other Form is necessary) shall be vested in the Right, either by Disposition from the former Trustee, or by Adjudication obtained by the new Trustee, on a summary Application to the Court of

Superior to receive Trustee as a Vassal.

Session as before, and the Superior shall, if required, be obliged to enter the Trustee or Trustees, or Purchaser, in the same Manner as he is directed by an Act made in the Twentieth Year of His late Majesty's Reign for abolishing Ward-holdings; and if the Trustee shall afterwards

Heritable Estate afterwards discovered, how to be vested.

discover any other heritable Estate belonging to the Bankrupt, and which belonged to him at the Date of the First Deliverance aforesaid, the same shall be adjudged in Manner before directed, and to the same Effect; and in

Estates to which the Bankrupt has not made up Titles, how to be vested.

case the Bankrupt's own Titles to any Part of the Estate, heritable or moveable, real or personal, which belonged to him at that Period, or to which he had then succeeded as apparent Heir, nearest in Kin, or otherwise, to any Predecessor, have not been so completed as to vest the Right properly in him, the Trustee shall take the most safe and eligible Method of completing the Bankrupt's Title in such Way and Manner as the Law requires, which Title shall accresce to that already acquired by the Trustee in the same Way as if it had been completed prior to the Disposition by the Bankrupt, or Adjudication against him, declaring that the Rules of Preference or Ranking between the Creditors of the Ancestor and those of the Heir by the Law of Scotland are not meant to be altered by any Thing contained in this Act.

XXVI. And

XXVI. And be it enacted by the Authority aforesaid, That within Eight Days after the Appointment of the Trustee is confirmed by the Court of Session, he shall apply to the Sheriff of the County where the Debtor resides, or where his Business was carried on, who is hereby authorized and required to name One Day, being not less than Fourteen Days nor more than Three Weeks from the Date of the Application, and another Day, being not less than Fourteen Days nor more than Three Weeks after the First Day so named, for the publick Examination of the Bankrupt upon the State of his Affairs, and all Circumstances relative thereto, in the Sheriff Court House of the District, or such other Place as the Sheriff shall think proper to appoint, a Fee of One Guinea each Sitting being allowed to the Sheriff Depute or Substitute who officiates; and the Trustee may also, if he finds it necessary for the Purpose of obtaining a full Discovery of the Bankrupt's Estate and Effects, insist for an Examination of his Wife and others of his Family, or connected with his Business, upon all proper Interrogatories, which Examinations are to be taken upon Oath (if required) before the Sheriff, at One or other of the said Diets, or upon any intermediate Day; and after the said Diets are fixed, the Trustee shall immediately publish an Advertisement in the Newspaper before-mentioned, intimating to the Creditors his Appointment as Trustee on the Bankrupt Estate, the Two Days fixed for the Examination of the Bankrupt, and that on the first lawful Day immediately succeeding the last of these Examinations, a Meeting of the Creditors is to be held at the same Place for instructing the Trustee as to the Management and Recovery of the Estate, and requiring the Creditors to produce, in the Trustee's Hands, their Claims and Vouchers or Grounds of Debt, with their Oaths on the Verity thereof, at or previous to the said Meeting, if not already produced, and farther intimating, that unless the said Productions are made between, and a certain Day specified in the Advertisement, being Ten Months after the Date of the First Deliverance on the Petition for Sequestration, the

Sheriff to fix Two Diets for the Examination of the Bankrupt and others.

Trustee to advertise Diets, &c.

Party neglecting shall have no Share in the First Distribution of the Debtor's Estate, and the Sheriff Depute or Substitute shall, if necessary, issue his Warrant for apprehending the Bankrupt, or any of his Family, or others connected with his Business, who are to be examined, within his Jurisdiction, in order to force their Appearance at the Diets of Examination, or if they be without his Jurisdiction, the Court of Session shall, on the Application of the Trustee, grant such Warrant for apprehending and bringing them before the Judge who is to take the Examination as aforesaid; and if any of these Persons shall happen to be indisposed, or otherwise unable to attend at that Time in the Place appointed for Examination, the Court of Session, or the Sheriff, may give the necessary Directions for examining them elsewhere, and it shall be competent for the Trustee to apply at any Time for re-examining them, upon due Advertisement given in Manner foresaid; and the Court of Session shall likewise, in case it be necessary, grant a personal Protection to the Bankrupt, at the Application of the Trustee, for such Time as may be requisite for enabling him to attend the Diets of Examination, or may grant Warrant to Messengers at Arms, or other Officers of the Law, to bring his Person out of Prison in order to attend such Meetings, and thereafter to carry him back to Prison.

Warrant may be granted to bring the Bankrupt to be examined.

Trustee may at any Time examine.

and may get the Bankrupt protected till examined.

Procedure in Examinations.

XXVII. And be it enacted by the Authority aforesaid, That at the said Examinations the Bankrupt shall be allowed to make such Additions to or Alterations upon the State of his Affairs exhibited at the Meeting when the Trustee was chosen, as have occurred to him since the said Meeting, and are necessary to be set forth to give a perfect View of his Affairs, and the said Additions and Alterations shall also be engrossed in the Book of Sederunt, with the whole Examinations of the Bankrupt, and subscribed by the Judge Examinator and by the Bankrupt, and likewise by the Trustee; and at the last of the Two Diets appointed for his Examination, the Bankrupt shall take and subscribe the following Oath:

I Do, in the Preſence of Almighty God, and as I ſhall anſwer to God at the great Day of Judgement, ſolemnly ſwear, That the State of my Affairs, engroſſed in this Book, contains a full and true Account of all the Debts of whatever Nature due to me, and of all my Eſtate and Effects, heritable and moveable, real or perſonal (the neceſſary Wearing Apparel of myſelf, my Wife, and Family 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, which I have an eventual Right to by Contract of Marriage, Deed of Entail, or otherwiſe, to the beſt of my Knowledge; and that the ſaid State likewiſe contains a full and true Account of all Debts due by me, or Demands upon me, ſo far as I know or can remember; and that I have delivered up the whole Books, Documents, Accounts, and Papers of every Kind belonging to me, which in any Way relate to my Affairs, and which were in my Poſſeſſion or under my Power, and have made a full Diſcloſure of every Particular relating to my Affairs; and further I ſwear, that I ſhall forthwith reveal all and every other Circumſtance or Particular relative to my Affairs, or which may tend to increaſe or diminiſh my Eſtate, or in which my Creditors may be intereſted directly or indirectly, which may at any Time hereafter come to my Knowledge. Bankrupt's Oath.

So help me GOD.

And if the Perſon thus called upon is a Copartner with others, and examined reſpecting the Partnerſhip Affairs, the Words of the ſaid Oath ſhall only be varied by the Judge as to make it applicable to the Caſe; which Oath being annexed to the Proceedings in the Book of Sederunt, ſhall alſo be ſubſcribed by the Sheriff Depute or Subſtitute; and if the Bankrupt be one of the People called Quakers, it ſhall be ſufficient to take his ſolemn Affirmation upon the Matters contained in the ſaid Oath, and likewiſe in all other Caſes where an Oath is required by this Statute; and all Perſons convicted of taking the above Oath or Affirmation falſely ſhall be held Affirmation of Quakers to be admitted.

Penalties on fraudulent Bankrupts.

as guilty of Perjury, and of fraudulent Bankruptcy, and punished accordingly, and for ever rendered incapable of holding any Office of publick Trust or Emolument; declaring also, that if the Bankrupt shall wilfully fail to exhibit a fair State of his Affairs, or to make Oath in the Terms above specified, or to make a complete Surrender, he shall be considered as a fraudulent Bankrupt, and punished accordingly, and rendered ever after incapable of holding any Office of publick Trust or Emolument, and in either Case shall forfeit every Benefit or Privilege arising from this present Act, and be accounted infamous and incapable of giving Evidence in any Court of Justice, or of sitting or acting on any Assize or Jury.

Meeting to give Directions about the Recovery of the Estate,

XXVIII. And be it enacted by the Authority aforesaid, That the Creditors assembled upon the first lawful Day after the last Examination of the Bankrupt shall give Directions to the Trustee for the Recovery and Disposal of the Bankrupt's Estate, and the Trustee shall be obliged to follow the Directions and Rules prescribed by a Majority in Value of the Creditors assembled at this Meeting, or at any after Meeting called for the Purpose as after directed, and at the said Meeting immediately after the last Examination, the Majority in Value of Creditors present shall also name any Three of the Creditors as Commissioners for the Purpose of auditing the Trustee's Accounts, settling his Commission, concurring with him in Submissions and Compromises, and giving their Advice and Assistance to him in any other Matters, as herein-after mentioned, subject always to the Controul of General Meetings.

and to choose Commissioners.

Sequestrated Fund how to be divided.

XXIX. And be it further enacted by the Authority aforesaid, That the whole Estate and Effects, of whatever Kind, belonging to the Bankrupt at the Period of the Sequestration, or the Produce thereof, after paying all Charges, shall be a Fund of Division among those who were his Creditors prior to the Date of the First Deliverance aforesaid, and none else, Regard being had to Preferences obtained by Securities, or by Diligence, before the said Deliverance, and not expressly set aside

by this Act, but to no other Claims of Preference; and all Payments made by the Debtor to any of his Creditors after the Date aforesaid shall be void and ineffectual to the Receivers in the Event of a Sequestration taking Place, and the Trustee shall be entitled to recover the Money so paid as Part of the Bankrupt's Estate; and all Transactions of the Bankrupt subsequent to the said Date, from which any Prejudice may arise to the Creditors, shall be null and void; declaring always, that nothing herein contained shall oblige a bona fide Purchaser of any Part of the moveable Effects from the Bankrupt, while in actual Possession, and for a Price truly paid, to restore the Effects so purchased, nor the Debtor of a Bankrupt who has paid his Debt to him, bona fide, before he knew of the Bankruptcy, to pay it a Second Time to the Trustee.

Payments, &c. of the Bankrupt after the First Deliverance void.

Bona fide Transactions saved.

XXX. And be it enacted by the Authority aforesaid, That if posterior to the Sequestration any Estate or Effects shall devolve upon the Bankrupt, either in the Way of Succession or otherwise, he shall be obliged, immediately when such Event happens, to make a full Discovery thereof to the Trustee, and shall at all Times, when required by the Trustee, declare upon Oath before the Judge Ordinary, or any Magistrate or Justice of Peace, whether any such Estate or Effects have come to or devolved upon him, in order that the Trustee may have an Opportunity of taking such Steps as are necessary or proper for the Interest of his Constituents, and the Trustee shall likewise give Notice thereof to the Creditors, either at the next General Meeting, or by advertising a Meeting for the Purpose.

Estates devolving on the Bankrupt after Sequestration.

XXXI. And be it enacted by the Authority aforesaid, That no Arrestment of the Bankrupt's Effects used at any Time within Sixty Days before the Date of the First Deliverance on the Petition for Sequestration shall give a Preference to the arresting Creditor in the Event of Sequestration taking Place, but that in every such Case the Effects arrested shall be made forthcoming to the Trustee; and in case they have been actually recovered by the arresting Creditor, the Trustee shall nevertheless be

Arrestments and Privileges within 60 Days of Sequestration void.

be entitled to demand and receive the same from him as Part of the Fund of Division, in the same Way as if the Arrestment had been used for the Creditors at large; and in like Manner no Pointing of a Debtor's Effects, not completely executed Sixty Days at least before such Deliverance, shall give any Right or Preference to the Pointer in the Event of Sequestration taking Place, but the Pointer shall be obliged to deliver to the Interim Manager or Trustee the Goods pointed, if not sold or disposed of, when he is required so to do; and in case they are then sold or disposed of, he shall pay or cause to be paid to the Trustee the whole nett Price of the Goods pointed, and which shall make Part of the Fund to be distributed among the Creditors: Provided always, that all Arresters and Pointers, who shall be deprived of the Benefit of their respective Diligences in consequence of a Sequestration, shall be entitled to demand or retain the Expence bona fide laid out by them in prosecuting such Diligences, with Ten Pounds per Centum more on the Price or apprised Value, as before directed.

Trustee to proceed to Recovery of the Estate; and to call occasional Meetings, if required.

XXXII. And be it enacted by the Authority aforesaid, That the Trustee shall proceed to recover and convert into Money, in the speediest and most effectual Manner, the whole Estate under his Management or Power, whether at Home or in Foreign Parts, in order that the same may be distributed among the Creditors, and he shall, if required at any Time by One-fourth of the Creditors in Value, who have produced and proved their Claims, be obliged to call a General Meeting, or he himself may, on any Emergency, call such Meeting, sufficient previous Intimation of every occasional Meeting, and the Purpose of calling it, being always given by Advertisement in the Newspaper before-mentioned a Fortnight at least before the Meeting; and all Resolutions of the Creditors at their General Meetings shall be final and conclusive, unless objected to and complained of by a Petition to the Court of Session within Thirty Days after the Meeting.

Heritable Property of Bankrupts,

XXXIII. And be it further enacted by the Authority aforesaid, That if any Part of the sequestrated Estate consists

consists of Land or other heritable Subjects, it shall be optional to a Majority of Creditors in Value to determine, at the Meeting aforesaid held after the last Examination of the Bankrupt; or any other Meeting advertised for the Purpose, whether the Trustee is to bring the said heritable Estate to judicial Sale before the Court of Session, or to dispose thereof by voluntary publick Sale; and if the latter Mode is adopted, the Sale made after such Advertisement, and at such Upset Price, and upon such Articles and Conditions as shall be fixed by the Trustee, with the Consent of a Majority of the said Commissioners, shall be valid and effectual, with and under the Burden of all Real Securities or other Liens upon the Estate, in so far as the same are preferable to the Disposition or Decree vesting the said Estate in the Trustee, but which Burden shall go no farther than to the Extent of the Price; and the Purchaser shall have no Concern with the Application of the Price after Satisfaction of the preferable Securities aforesaid; and if a Majority of Creditors in Value determine for a judicial Sale, the Trustee shall be obliged forthwith to proceed in the same, and shall be entitled to carry it on as to a Part of the Estate, without including the Whole, and without any other Proof of Bankruptcy than the Act of Sequestration, and it shall be enough to call the Bankrupt himself, and his real Creditors in Possession upon a Citation of Fifteen Days, whether they are within the Kingdom or not, and the edictal Citations shall be dispensed with: Provided always, that nothing in this Act contained shall bar the Right which any real Creditor may have by the Law, as it stands at present, to bring his Debtor's Estate to a judicial Sale at his own Instance, unless such Sale has been previously brought at the Instance of the Trustee, or unless a Majority of the Creditors in Value shall have previously determined upon a voluntary Sale; and in the Event of the Estate being sold by judicial Sale, the Balance of the Price, if there be any, after satisfying the preferable Securities aforesaid, shall be paid into the Hands of the Trustee, as a Part of the Fund of Division to be made by him among

how to be disposed of.

the Creditors in general, the Purchaser being always entitled, upon making full Payment of the Price, whether the Lands have been sold in the one Way or in the other, to a Discharge from the Trustee, which shall have the Effect completely to disincumber the Subject acquired; and further, the Creditors shall be entitled to draw their Shares of the Price, in virtue of the Disposition and Adjudication before mentioned, without the Necessity of any other Adjudication; and no other Adjudication led or made effectual after the Date of the First Deliverance aforesaid, shall have any Effect in Competition with the Right of the Creditors under the Sequestration.

No Adjudication competent, after Sequestration.

Monies recovered by Trustee, to be deposited in Bank.

XXXIV. And be it enacted by the Authority aforesaid, That the Trustee shall be obliged to lodge all Money he receives in such Bank, or with such Banking Company, as Four-fifths of the Creditors in Number and Value at any General Meeting shall appoint, and failing such Appointment, in the Royal Bank, or Bank of Scotland, at such Interest as can be procured for the same, and never to retain in his own hands above the Sum of Fifty Pounds Sterling for the Space of Ten Days, otherwise to be liable to the Creditors for Seven and a Half per Centum per Annum, on whatever exceeds the Sum of Fifty Pounds Sterling, in the Name of Interest and Damages.

Trustee to mark and return Grounds of Debt produced to him, and to keep regular Accounts.

XXXV. And be it enacted by the Authority aforesaid, That the Trustee shall mark the Claims of the several Creditors, and their Vouchers, or Grounds of Debt, with the Oaths of Verity, and make a Minute or Entry thereof, and of the Date of Production, in the Book of Sederunt, but he shall return the Vouchers or Grounds of Debt, if desired, to the Claimant, or his Agent, and he shall be obliged to keep a regular Book of Accounts with the Bankrupt's Estate, and to make the same patent at all Times to any of the Creditors, or their Agents, or to any of the Commissioners, who desire to see the same; and within Ten Days after the Expiration of Ten Calendar Months from the Date of the First Deliverance on the Petition for Sequestration, the

Commissioners, or a Majority of them, shall audite the Trustee's Accounts, and by a Minute under their Hands, in the Book of Sederunt, shall ascertain the Sum to be allowed the Trustee in Name of Commission, and likewise the Nett Proceeds of the Estate recovered, at the Expiration of the said Ten Months, which, after making a reasonable Deduction for contingent Expences, shall be considered as belonging to the Creditors who have produced their Claims, and Grounds of Debt, and Oaths of Verity, prior to the Date of said Minute; and the Trustee shall be obliged, within the Space of One Calendar Month after the Expiration of the said Ten Months, to make up a State of the Debts entitled as before to a Share of the said First Dividend, calculating Interest on each up to the Date of the First Deliverance on the Petition for Sequestration, with a Scheme or Cast apportioning the Fund of Division among them, with the Deduction already mentioned, according to their due Order of ranking; and the Trustee shall also, at the same Time, make up a State of the Funds belonging to the Bankrupt still unrecovered, and of the Money remaining in Bank, after Deduction of the Sum so to be divided, which Scheme and State shall lie open for the Inspection of the Creditors, or their Agents in the Trustee's Hands, for the Space of One Month longer, at the usual Place where the Trustee's Business is carried on; and on the first lawful Day after the Expiration of One complete Year from the Date of the First Deliverance on the Petition for Sequestration, the Dividend shall be paid, and the Trustee shall give One Month's previous Notice thereof, by Advertisement in the Newspaper aforesaid, which Advertisement shall also bear, that the State and Scheme lie in his Hands for the Inspection of the Creditors; and in case any of the Debts claimed upon shall be objected to in Whole or in Part, or their Place in the ranking disputed, or any other Objection shall be made to the Scheme, as drawn out by the Trustee, a Share of the said Fund, corresponding to the utmost Amount of the Sums or Dividends to which the disputed Articles may be entitled, and to any contingent

First Dividend,

to be advertised;

if Objections made,

tingent Expences which the Trustee, with Consent of a Majority of the Commissioners named by the Creditors as aforesaid, may think reasonable, shall be left in the Bank or Banking House where the Monies were deposited as aforesaid, till all such Questions are determined, either by Arbitration or Compromise, or by the Court of Session; and the said Court is hereby authorized and required to determine the same summarily, upon the Application of the Trustee, or of any other Party interested; and when any such Application is made, it shall be competent for any Creditor to produce his Interest, and to have his Debt proved and constituted, if necessary, without raising a separate Action for the Purpose; and if, in the Event of such Question, the said Sum, or any Part of it, shall remain unapplied to the Debt or Debts for which it was claimed, the same shall go into the Fund for any subsequent Distribution, and the Shares of Creditors not called for at the Time of Distribution, shall again be deposited as before, on their Risk, at such Interest as can be got for the same.

Depositation to be made in Bank.

Court of Session to determine all Questions relative to objected Claims, &c.

Shares not called for to be deposited.

Second Division, &c.

XXXVI. And be it enacted by the Authority aforesaid, That within Ten Days after the Expiration of Sixteen Calendar Months from the Date of the First Deliverance on the Petition for Sequestration, the Commissioners, or the Majority of them, shall in like Manner audite the Trustee's Accounts with the Bankrupt's Estate, and settle the Trustee's Commission; and the Trustee shall, within One Calendar Month after the said Sixteen Months, make up another Scheme of Division of the Sums recovered among the Creditors who shall then have produced their Interests and Oaths of Verity as before, with new States of the Bankrupt's outstanding Funds, and of the Sum remaining in the Bank, if any be, which shall in like Manner remain open for Inspection during One Month longer, at the Expiration whereof, or on the First lawful Day thereafter, the Dividend shall be paid, after the like previous Advertisement, being exactly at the Distance of Eighteen Calendar Months from the Date of the First Deliverance aforesaid; and if any of the Debts are objected to, the Procedure

cedure above-mentioned shall be followed out, and the like Procedure shall be followed out at similar Intervals of Time thereafter, to the Effect that a Dividend may be made at the End of every Six Months, until the whole Funds of the Bankrupt are collected and distributed among his Creditors: Providing always, that after the Second Dividend is made, a Majority of the Creditors in Value, at any General Meeting called for the Purpose in Manner before specified, may determine that future Dividends shall be made after a shorter Interval, and the Affairs of the Trust brought to a more speedy Close; and even before the Period assigned for the First Dividend as aforesaid, it shall be competent to Four Fifths of the Creditors in Number and Value present at the Meeting after the last Diet of the Bankrupt's Examination, or at any after Meeting called for the Purpose, to direct the Trustee to apply for the Authority of the Court of Session to make the First Dividend at an earlier Period than the End of the First Year, but not earlier than Six Months from the Date of the First Deliverance aforesaid, if upon Cause shewn it shall be found expedient so to do, and also to accelerate the Time for making the Second and other Dividends; and in case there be any Failure to make such Dividends in the Manner hereby directed, it shall be competent for any One Creditor either to apply by Petition to the Court of Session to have the Trustee removed, or to require him to call a General Meeting of the Creditors to deliberate what Course shall be taken; and no Creditor shall draw any Share of the different Distributions, unless his Grounds of Debt, and Oath on the Verity thereof, shall have been lodged with the Trustee previous to the respective Times before mentioned when the Dividends are ascertained by the Commissioners, but he shall be entitled in the next Distribution which happens after the Grounds of Debt are so produced and proved, to draw out of the first of the remaining Fund in the Trustee's Hands a Sum equal to the former Dividend or Dividends on his Debt, with Deduction of Five per Centum on the said Dividends, which is to be retained by the Trustee for the common

No Share of Dividend to be drawn till Grounds of Debt produced, &c.

All Preferences to continue as before.

Behoof, or Account of the Creditor's Delay; and in making up the said Schemes of Division, all Debts claimed on which are entitled to a Preference by the Law of Scotland, not altered by this Act, shall be preferred accordingly.

Debts claimed on before the Term of Payment.

XXXVII. And be it further enacted by the Authority aforesaid, That in all Questions upon this Act, Persons to whom the Debtor is under Obligation to pay Money at a certain future Time, shall be accounted Creditors de presenti for the Amount of the Money, discounting the Interest to the Term of Payment specified in the Obligation, and may prove their Debts in the same Way as other Creditors, and shall be entitled to their rateable Dividends accordingly.

Contingent Debts.

XXXVIII. And be it also enacted by the Authority aforesaid, That where a Claim is entered by a Creditor upon any Obligation, the Existence or Amount of which depends upon a Contingency which is still unascertained at the Period of lodging the Claim, the Trustee shall rank the Claimant as if the Condition were purified, but the Dividend or Sum which the Claimant would be entitled in that Case to draw, shall again be deposited in the Bank or Banking House appointed by the Creditors as before, or lent out on heritable Security by the Trustee at the Sight of the Claimant, at such Rate of Interest as can be got for the same, and the Interest thereupon arising shall belong to the Creditors, and be included in the Fund for their Dividends, until the Contingency upon which the Obligation depends shall be declared, when the Dividend so deposited shall belong to the Claimant, or the other Creditors, according to the Terms of the Obligation; but such contingent Claims shall not be sufficient to authorize a Petition for Sequestration, unless in so far as the Amount of them is clearly ascertained, and the Condition purified, before presenting the Petition.

Securities on Bankrupt Estates to be deducted from the Amount of the Claim.

XXXIX. And be it enacted by the Authority aforesaid, That in case any of the Creditors shall hold any preferable Security or Lien for Payment of his Debt, obtained prior to the Date of the First Deliverance on the

Petition

Petition for Sequestration, and not set aside by this Act, upon any Part of the Bankrupt's Estate or Effects, the Amount or Value of such Security or Lien shall be deducted from his Debt, and he shall be only ranked and draw a Dividend for the Balance after such Deduction; and if any Dispute shall arise about the Value of such Security or Lien, or the Amount of what it will yield in Extinction of the Debt, the Trustee, with Consent of a Majority of the Commissioners, shall put a Value upon, and the Claimant shall have an Option, either to deduct the Value thus fixed from the Amount of his Claim, reserving the full Effect of his Security, or to draw the said Value, in the First Place, out of the Sums to be divided, and to draw his just Share of the Remainder of the divisible Funds corresponding to the Balance of his Claim, in which last Case he shall be obliged to convey the Security or Lien to the Trustee for Behoof of the whole Creditors, such preferable Claimant being in no Event entitled to more than his full Payment.

XL. And be it enacted by the Authority aforesaid, That in case any Creditor shall, after the First Deliverance on the Petition for Sequestration, obtain any legal or voluntary Preference or Payment on or out of any Estate or Subject belonging to the Bankrupt, directly or indirectly situated without the Jurisdiction of the Court, he shall be obliged to communicate and assign the same to the Trustee for Behoof of the Creditors, before he can draw any Dividend out of the Funds in the Hands of the Trustee, and he shall in all Events be liable to an Action before the Court of Session at the Instance of the Trustee, to communicate the said Security or Payment in so far as the Jurisdiction of the Court can reach him.

Production of Grounds of Debt to interrupt Prescription.

XLI. And be it enacted by the Authority aforesaid, That the making Production of the Ground of Debt, or certified Account, with the Oath of Verity aforesaid, in the Hands of the Interim Factor, Sheriff Clerk, or Trustee, or in the Court of Session, shall have the same Effect as to interrupting Prescription of every Kind, from the Period of such Production, as if a proper Action had been

raiſed on the ſaid Grounds of Debt againſt the Bankrupt, and againſt the Truſtee.

Oath of Verity.

XLII. And be it enacted by the Authority aforeſaid, That in every ſuch Oath the Creditor deponing ſhall ſpecify every Security he holds for his Debt, whether on the Eſtate of the Debtor or other Obligants, and ſhall ſwear that he holds no other Security than is mentioned in his Oath, otherwiſe his Oath ſhall not be received by the Truſtee as ſufficient, nor his Claim be ſuſtained; and the Oaths of Verity upon Debts required by this Act may be taken before any Judge Ordinary or Juſtice of the Peace; and where any Creditor is out of the Kingdoms of Great Britain and Ireland, or is under Age, or incapable to give an Oath, in all ſuch Caſes an Oath of Credulity by the Agent, Factor, Guardian, or other Manager, taken in the ſame Manner, ſhall be ſufficient, but which Oaths, either by the Party himſelf, or any other Perſon acting for him, ſhall not ſuperſede the Neceſſity of bringing legal Evidence of the Debt, if the ſame is objected to as unliquidated, or where Evidence appears to be neceſſary in the Circumſtances of the Caſe; and further declaring, that no Fee ſhall be paid by any Creditor to the Clerk of Court, or any Perſon whatſoever, for an Oath of Verity or Credulity as to the Debt claimed being due, or for Production of the Intereſt or Grounds of Debt of any Creditor, unleſs the Debt claimed on exceeds the Sum of Ten Pounds lawful Money of Great Britain.

Penalty of falſe ſwearing.

XLIII. And be it further enacted by the Authority aforeſaid, That in caſe any Creditor ſhall be guilty of falſe ſwearing in any Oath to be emitted in purſuance of this Act, he ſhall be liable to a Proſecution at the Inſtance of the Truſtee, or any of the Creditors, and his Majeſty's Advocate, for Perjury, and ſhall alſo forfeit to the Truſtee, for Behoof of the Creditors, the whole Dividends on his Debt.

Truſtee may enter into Submiſſions or Compromiſes.

XLIV. And be it further enacted by the Authority aforeſaid, That the Truſtee may, on Behalf of the Creditors at large, with Conſent of a Majority of the Commiſſioners named as aforeſaid, compound and tranſact, either by

Submission or by private Compromise, all doubtful Claims which the Bankrupt may have against others, or all Debts due to the Estate, out of other Bankrupt Subjects, and likewise all doubtful Claims or Demands made against the Estate or Questions of Ranking and Preference, and all contingent Debts and Annuities due to or by the Estate, the Value of which it may be expedient to settle in that Manner, in order that a final Distribution may sooner take Place.

After a Year and Half, outstanding Debts, &c. may be sold by Auction.

XLV. And be it enacted by the Authority aforesaid, That if, at the Expiration of One Year and an Half from the Date of the Sequestration, any of the personal Effects of the Bankrupt, or any Debts, whether heritable or moveable, due to him, remain still unrecovered, it shall be in the Power of Four Fifths of the Creditors in Number and Value, convened at any General Meeting called for the Purpose, after One Advertisement Two Weeks previous to the Meeting, in the Newspaper before mentioned, to direct that such remaining Debts and Effects, and also any contingent or future Interest which the Creditors at large may have in Dividends deposited in Bank, or lent out as aforesaid, be sold off by publick Auction upon Three Months previous Notice published in the Newspaper before mentioned, the Sale either to be in Whole or in Lots, as a Majority in Value of the Creditors shall direct.

Surplus of Estate, after Payment of Debts, to be paid to Bankrupt.

XLVI. And be it enacted by the Authority aforesaid, That the Surplus of the Bankrupt's Estate and Effects that may remain after Payment of his Debts, computing Interest thereon as aforesaid, and the Charges of recovering the Estate, and distributing the same, shall be paid or made over to him, or to his Assignees or Successors.

Bankrupt may get a personal Protection for a limited Time,

XLVII. And be it enacted by the Authority aforesaid, That at or after the First General Meeting of the Creditors, and at any Time before the Period assigned for the Second Dividend, it shall be competent for the Bankrupt, with Concurrence of the Interim Manager or Trustee, and of Four Fifths of the Creditors in Number and Value, who have produced their Grounds of

Debt and Oaths of Verity as before, to apply to the Court of Session for a personal Protection from Diligence for such Time as the Court shall think reasonable, and the same, being once obtained, shall be renewed within the same Period, if applied for in Name of the Bankrupt, with Consent of the Trustee alone, unless any of the Creditors oppose it, in which Case the Consent of Four Fifths in Number and Value shall be required as before: Providing always, That from and after the Period assigned for the Second Dividend, the Power of granting personal Protections under this Statute shall cease, unless upon Cause shewn to the Court, and Oath made, both by the Bankrupt and by the Trustee, that the Delays which have happened in making a final Distribution were unavoidable, and that every proper Step has been taken, and will continue, on their Part, to be taken for winding up the Affairs of the Bankrupt, and bring the Trust to a final Close; and also providing, that after the Period of the Third Dividend, or Two Years subsequent to the First Deliverance aforesaid, the Power of granting personal Protections under this Act shall entirely cease, without Prejudice to a final Discharge, either upon full Payment or as hereinafter directed.

but not after Period of 2d Dividend, unless upon Cause shewn, &c.

Composition with Creditors allowed under certain Conditions.

XLVIII. And be it enacted by the Authority aforesaid, That in case at the Meeting held immediately after the Second Examination of the Bankrupt, he or his Friends shall make a Proposal of Composition to the Creditors, and shall offer Caution to the Satisfaction of Nine Tenths of them, both in Number and Value, assembled at the said Meeting, for such Composition upon his whole Debts as the said Nine Tenths in Number and Value so assembled shall think just and reasonable, the Trustee shall appoint another Meeting for the Purpose of deciding upon such Offer, at the Distance of not less than Three Weeks thereafter, and of which Meeting he shall give Notice by advertising the same Twice in the said Newspaper a Fortnight at least before the proposed Meeting, specifying the Time and Place, and Purpose of the Meeting, but in the mean time he shall proceed in exe-

cuting his Duty as Trustee in the same Way as if no such Proposition had been made; and if at the Meeting so appointed it shall be the Opinion of Nine Tenths of the Creditors there assembled both in Number and Value, that the Offer should be accepted of, a Report of the Proceedings relative thereto shall be forthwith made up by the Trustee, and transmitted to the Clerk of the Sequestration in the Court of Session, for the Approbation of the Court, and if the Court, upon hearing any Objections that may be stated by opposing Creditors, shall find the Proposition reasonable, and that the same has been assented to not only by Nine Tenths in Number and Value of the Creditors who attended by themselves or others authorized by them at the Meeting last mentioned, but Nine Tenths of all the Creditors who have produced Grounds of Debt or Interests, and Oaths of Verity, an Act or Order shall be pronounced to that Effect, and the Bond of Caution, which must be previously lodged in the Clerk's Hands, shall then be given up to the Trustee for Behoof of the Creditors, the whole Expence attending the Sequestration being at the same Time paid or provided for, to the Satisfaction of the Court, by the Bankrupt or his Friends, after which all Proceedings in the Sequestration shall cease, and the said Act or Order shall declare the Trustee exonered, and the Bankrupt discharged, except as to Payment of the Composition.

All private and collusive Agreements illegal.

XLIX. And whereas it has too frequently happened that Sequestrations have been obstructed, and much Expence, Litigation, and Delay occasioned by collusive and ineffectual Plans of Composition concerted between the Bankrupt and particular Creditors; be it enacted by the Authority aforesaid, That every Proposal or Agreement for a Composition with individual Creditors, or to stop the Proceedings in the Sequestration, other than as hereby expressly authorised and allowed, shall be deemed illegal and void, and all Persons concerned in them shall be liable to be complained of to the Court of Session, at the Instance of any Party having Interest, and made answerable for all Consequences; and if it shall be

be proved that any Creditor has privately accepted of a Gratuity, or higher Composition, for giving his Concurrence to the Measures proposed on Behalf of the Bankrupt or his Friends, he shall forfeit his Debt, and be liable in Restitution of what he has received, which shall go into the General Fund of Division; and the Bankrupt himself shall, if required, make Oath that there has been no such private Transaction or Compromise between him and any of the Creditors, and that he has used no undue Influence with any of them to obtain their Concurrence.

Discharge to the Bankrupt allowed under certain Conditions.

L. And be it hereby enacted by the Authority aforesaid, That in case no Proposal of Composition is made at the Time, and in the Manner before specified, or in case the same, when made, shall become ineffectual, no other Proposal of a similar Nature shall be attended to by the Trustee, or be of any Effect, unless Proof is made that the same has been assented to by every Creditor, without Exception; but after the Period assigned for the Second Dividend, it shall be lawful for the Bankrupt, with Concurrence of the Trustee, and Four Fifths of the Creditors in Number and Value, to apply to the Court of Session by Petition, praying that he may be held as finally discharged of all his Debts contracted before the Application for Sequestration, and this Petition, being intimated upon the Wall, and in the Newspaper before mentioned, the Court shall, at the Distance of not less than Three Calendar Months thereafter, resume the Consideration thereof, and if no Objection is made, they shall pronounce an Act or Order in Terms of the Prayer of the Petition, but if Appearance is made by any of the Creditors, objecting that the Discharge ought not to be granted on Account of the Bankrupt's not having made a fair Discovery and Surrender of his Estate, or that he has refused to grant a Disposition to the Trustee, as ordered by the Court, or has wilfully been absent from the Diets of Examination, or has been guilty of any Collusion, or that his Bankruptcy did not arise from innocent Misfortunes, or Losses in Business, but from culpable or undue Conduct, the Court shall

judge of these Objections, and allow a Proof of them, if thought necessary, and shall either grant or refuse the Discharge, or annex such Conditions thereto as the Nature and Justice of the Case may require, the Bankrupt always taking an Oath before the Court, or upon Commission, when Judgement is pronounced in his Favour, and before the Act can be extracted, that he has faithfully complied with all the Requisites of the Statute, and has used no undue Influence, nor had Recourse to any secret Compromise with his Creditors, or any of them, to obtain their Concurrence; and if it shall appear that there has been any such private Transaction between the Bankrupt and any of his Creditors, the same is hereby declared to be unlawful, and no Action shall lie upon any Bill or other Security granted in consequence thereof.

Allowance to the Bankrupt.

LI. And whereas it may be reasonable that the Bankrupt should have some Allowance out of the Estate for supporting himself and his Family, while the Trustee may have Occasion for his Assistance, be it enacted by the Authority aforesaid, That Four Fifths of the Creditors in Number and Value, present at the Meeting after the last Diet of the Bankrupt's Examination, or at any after Meeting called for the Purpose, may authorize the Trustee, with Consent of the Commissioners, or any Two of them, to allow and pay to such Bankrupt conforming to the Terms of this Act, from Time to Time, as they shall think fit, such Sum or Sums of Money, out of the Proceeds of his own Estate, as they shall think proper, towards the Subsistance and Support of himself and Family till the Period assigned for the Second Dividend, not exceeding Two Guineas per Week from the Date of the Sequestration to the Period aforesaid, and so as not to amount upon the Whole to more than Five Pounds per Centum of the Nett Produce of the Estate: Provided always, That no such Allowance shall be given, if the Bankrupt has not kept, or shall not produce, such Book or Books as may enable the Creditors and Trustee to acquire a distinct Knowledge of his Affairs.

Creditors in Number and Value, how to be counted.

LII. And be it enacted by the Authority aforesaid, That in all Cases under this Act, where the Creditors are required

quired to be counted in Number, any Creditor whose Debt is below Twenty Pounds Sterling shall not be reckoned in Number, but the Debt due to such Creditor shall be computed in Value; and in the Cases before-mentioned of compounding with or discharging the Bankrupt, any Debt due to a Creditor who has a preferable Security or Lien upon the Bankrupt's Estate or Effects shall not be counted in the Value, but shall be laid aside to the Extent of what may be ascertained as the Value of such Security or Lien, in the Manner before directed, without Prejudice to his being counted in Number, if his whole Debt be not extinguished by such preferable Security or Lien, or to his being counted also in Value to the Extent of the Balance, and the same Rule shall be followed in the Case of Partnership Debts claiming upon the Estates of individual Partners.

Book of Sederunt to be kept, and Copy lodged in the Court of Session.

LIII. And be it enacted by the Authority aforesaid, That the Sederunt Book before mentioned shall contain a full Record of all Minutes of Meetings (which shall be subscribed by the Preses of such Meetings in the Sederunt Book) States of Accounts, and Schemes of Division, and another Duplicate of these Minutes, States, and Schemes shall be subscribed by the Trustee, and, within Fourteen Days after the Lapse of One Year from the Date of the First Deliverance on the Petition for Sequestration, shall be transmitted to the Clerk to the Sequestration, in the Court of Session, to lie among the Records of the Court, and within Fourteen Days after the End of every succeeding Half Year, till the Estate is finally divided, a similar Duplicate of the Proceedings in the said Book for the Half Year preceding shall be signed by the Trustee, and transmitted to the Clerk to the Sequestration, to lie among the Records of the Court; and Extracts of these Writings, signed by One of the principal Clerks of Session, shall bear Evidence in all Courts of Justice; and the said Book of Sederunt, and the Bankrupt's Books and Papers, and the Whole other Papers in the Trustee's Hands, shall at all Times be made patent to any Creditor who desires to see the same.

Book of Sederunt, &c. to be patent to the Creditors.

LIV. And

LIV. And be it enacted by the Authority aforesaid, That all Applications under this Act, which are directed to be made to the Court of Session, shall either be made to the whole Court, while it is sitting, or to the Lord Ordinary on the Bills in Time of Vacation, or during any Recess of the Court, and the Lord Ordinary on the Bills shall have the full Powers of the Court in ordering and following out the different Steps of Proceeding required by the Act, while the Court is not sitting. Court to proceed in Time of Session, Lord Ordinary on the Bills in Vacation.

LV. And be it enacted by the Authority aforesaid, That if any Appeal shall be taken against any Order or Interlocutor of the Court of Session, or against any Order of the Lord Ordinary upon the Bills, in the Execution of this Act, it shall be lawful and competent to the said Court in Time of Session, and the Lord Ordinary on the Bills in Time of Vacation, or during any Recess, notwithstanding such Appeal, to make such Orders, and direct such Proceedings, as shall appear to be necessary for preventing the Estate of the Debtor from being embezzled, secreted, damaged, or dilapidated, while the Appeal is pendant, and every Step may in the mean Time be taken in the Recovery of the Bankrupt's Estate, and the Distribution thereof, that is not repugnant or injurious to the Interest which the Party appealing by the Appeal insists upon. Court, &c. to make interim Orders in Case of Appeals.

LVI. And be it enacted by the Authority aforesaid, That when any Petition for Sequestration, under the Authority of this Act, is presented, it shall be competent for any other Creditor to concur therein, and to follow forth the same, even without the Consent, or after the Death of the Creditor or Creditors originally petitioning, and the Expence disbursed therein shall be repaid by the Trustee out of the First Money that comes into his Hands; and if the Bankrupt shall happen to die in the mean Time, the Proceedings under this Act shall notwithstanding be carried on and followed out to their Conclusion, as if he were in Life. Other Creditors may concur. Expence to be paid out of the Fund. If Bankrupt dies, the Sequestration to proceed.

LVII. And be it enacted by the Authority aforesaid, That it shall and may be lawful for the Court of Session to establish such Regulations as shall appear to be most proper for carrying this Act into effectual Execution, according Court may make further Regulations.

cording to the true Intent thereof, and to publish the same in any Act or Acts of Sederunt, which shall be binding in so far as is consistent with this Act.

Sheriff and Stewart synonimous.

LVIII. And be it enacted by the Authority aforesaid, That in all Cases under this Act, where any Thing is directed to be done by the Sheriff Depute or Substitute, or where any Mention is made of the Sheriff Clerk, or the Word County is used, it is hereby meant and intended that these Terms shall equally apply to the Stewart Depute or Substitute, or Stewart Clerk of any Stewartry in Scotland.

Trustee amenable to the Court.

LIX. And be it enacted by the Authority aforesaid, That the Interim Manager, and likewise the Trustee, shall at all Times be amenable to the Court of Session, by summary Application to that Court, to account for his Intromissions and Management, and answer for his Conduct, at the Instance of any Party interested; and in case such Application shall appear to the Court to be groundless, he shall be entitled to his full Costs, to be either retained out of the Funds, or recovered from the Party, as the Court shall direct; and it shall be competent at any Time for One-fourth of the Creditors in Value to apply summarily to the Court of Session for having him removed, upon Cause shewn; a Majority of Creditors in Value, at any Meeting to be advertised for the Purpose, shall likewise be entitled to remove or to accept of the Resignation of any Trustee; and in either of these Cases, or in the Event of the acting Trustee's Death, the next Trustee in Succession shall be entitled to act; and upon Failure of the several Trustees originally named, by Death or otherwise, it shall be competent to any Two of the Creditors to apply to the Court of Session to cause a Meeting of the Creditors to be held, upon due Advertisement, for choosing a new Trustee or Trustees in Succession, and in any of these Cases the new acting Trustee shall immediately call to account his Predecessors in Office, or their Heirs and Representatives, and shall be vested with the same Powers, and subject to the same Rules and Regulations as any former acting Trustee.

Power to remove Trustee, or accept of his Resignation.

New Trustee may be named.

LX. And be it enacted by the Authority aforesaid, That when a final Division is made among the Creditors in any Sequestration awarded under the Authority of this Act, or of the aforesaid Acts passed in the Twenty-third and Thirtieth Years of the Reign of his present Majesty, or when a Trustee or Factor named under the Authority of this or of the said former Acts intends to resign his Office, it shall be competent for him to apply by Petition to the Court of Session, craving to be discharged of the Trust, and the Court shall appoint the Petition to be advertised in the Newspaper before-mentioned, and at the End of Fourteen Days from the Date of the Advertisement, if no valid Objection is stated, the Court shall grant the Desire of the Petition, but if any Objection is stated, the Court shall proceed to determine the same in a summary Manner. Trustee may be discharged by the Court.

LXI. And be it enacted by the Authority aforesaid, That this Act shall be construed by all Judges in the most beneficial Manner for promoting the Ends hereby intended, and that the same shall be construed to comprehend unmarried Women and Widows coming within any of the Descriptions before-mentioned, and also married Women carrying on Trade or Merchandize independent of their Husbands. Act to be liberally interpreted, and to extend to Women.

LXII. And be it enacted by the Authority aforesaid, That no Rates or Duties imposed by any Statutes upon Estates or Effects sold by Auction shall be exigible upon any Estates or Effects sold under the Authority of this Act. No Duty on Estates sold under this Act.

LXIII. And whereas several personal Estates of Bankrupts, sequestrated under the Authority of an Act passed in the Twelfth Year of the Reign of his present Majesty, intituled, An Act for rendering the Payment of the Creditors of insolvent Debtors more equal and expeditious, and for regulating the Diligence of the Law by Arrestment and Poinding, and for extending the Privilege of Bills to Promissory Notes, and for limiting Actions upon Bills and Promissory Notes, in that Part of *Great Britain* called *Scotland*, have not yet been finally divided, and Doubts have arisen how the same ought to be divided, and the Trustee Estates sequestrated under 12 *Geo.* III, Cap. 72, to be finally divided, and Trustee discharged.

finally discharged; be it therefore enacted by the Authority aforesaid, That in all such Cases where the Sequestration was not renewed under the Authority of the aforesaid Act, passed in the Twenty-third Year of the Reign of his present Majesty, it shall be competent to and incumbent upon the Factor, Trustee or Trustees, named under the Authority of the foresaid Act, passed in the Twelfth Year of the Reign of his present Majesty, within Six Months after the Commencement of this Act, to make up a Scheme of Division of the whole Funds in his Hands among the Creditors, who, in Terms of the said Act passed in the Twelfth Year of his present Majesty's Reign, have Right thereto, and to present the said Scheme, with a Petition, to the Court of Session, craving that Warrant may be given for dividing the said Funds in Conformity to the said Scheme, and for relieving him of his Office, or continuing him, as the Circumstances may require, and the Court shall appoint Notice thereof to be given in the Newspaper before mentioned; and after the Elapse of a reasonable Time from the Date of such Advertisement, the Court shall resume Consideration of the Petition, and proceed in a summary Manner in the Division of the Funds among the Creditors having Right thereto, and the Exoneration of the Factor or Trustee, or giving him such further Directions as may be necessary; and in case no such Scheme and Petition are presented by the Factor or Trustee, it shall nevertheless be competent for the common Debtor, or for any of the Creditors, to make a summary Application to the Court for calling the Factor, or Trustee or Trustees, to account, and for winding up the Affairs of the Trust in such a Manner as shall appear to the Court to be most proper and effectual in the Circumstances of the Case; and failing any such Application to the Court, within Six Months after the Commencement of this Act, it shall be held and considered that the Sequestration or Trust created under the said Act of the Twelfth of his Majesty, and not renewed under the Act of the Twenty-third, is entirely at an End; and if there be still any Part of the Estate or Effects falling under such Sequestration or Trust remaining undivided,

divided, the same shall be open to the legal Diligence of any Creditor of the Bankrupt, prior or posterior.

Bankrupts discharged under the Act 23 *Geo.* III, intitled to the same Benefits as if discharged under this Act.

LXIV. And be it further enacted by the Authority aforesaid, That Bankrupts who have obtained their Discharge from their Creditors prior to this Act, and under and by virtue of the Act passed in the Twenty-third Year of his present Majesty's Reign, shall be entitled to the same Benefits and Advantages as they would have been entitled to if such Discharge had been granted under this Act, and their future Effects shall be no otherwise liable than they would have been had such Discharge been granted under and by Authority of the same.

Continuance of Act.

LXV. And be it enacted by the Authority aforesaid, That this Act shall continue and be in Force for Five Years from and after the Commencement thereof, and to the End of the then next Session of Parliament, and no longer.

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