

ANNO QUINQUAGESIMO QUARTO

GEORGII III. REGIS.

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Decree of Adjudication of any Part of his heritable Eſtate, for Payment or Security of Debt, ſhall, when joined with Inſolvency, be held a ſufficient Proof of legal Bankruptcy, and equivalent to the Deſcription of Notour Bankruptcy, given in the Act of the Parliament of *Scotland* before mentioned, made in the Year One thouſand ſix hundred and ninety-ſix; and it is hereby declared, that ſuch Inſolvent Debtor ſhall, from and after the Period when both the Charge of Horning againſt the Perſon, and one or other of the ſaid Diligences of Arreſtment (not looſed or diſcharged as aforeſaid) or Poinding have been executed, or Decree of Adjudication obtained, be holden and deemed a legal or Notour Bankrupt, and ſubject to the Regulations of the ſaid Act in the Year One thouſand ſix hundred and ninety-ſix, as hereby extended and explained; and every Perſon, whether he be out of *Scotland* or not, whoſe Eſtate has been or ſhall be ſequeſtrated under the Authority of any of the Acts before recited, or of the preſent Act, ſhall in like Manner be holden and deemed a Notour Bankrupt in all Queſtions upon the 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.

Pari Paſſu Preference of Arreſtments in certain Caſes.

II. And be it enacted, That when a Debtor is made legally Bankrupt in Terms of the ſaid Act, made in the Year One thouſand ſix hundred and ninety-ſix, or of this Act, 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 upon any 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 of Preference, and thereupon ſhall 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 an Arreſtment ſhall not compete with thoſe uſed prior to or within the Period aforeſaid, but may rank with one another on any Reverſion of the Fund attached, according to the former Law and Practice.

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

III. And be it enacted, 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 previouſly in the Knowledge of ſuch Arreſtment having been ſo uſed.

IV. And

IV. And be it enacted, That the Meſſenger or other Perſon employed in executing a Poinding for Debt, ſhall leave the pointed Goods in the Hands of the Debtor, with a Schedule of the pointed Goods, and Note of the appraiſed Values (One Appraiſement being in every Caſe ſufficient), and ſhall forthwith report his Execution of Poinding to the Sheriff, or other Judge Ordinary, who ſhall give Direction for keeping the Goods pointed in ſafe Cuſtody, and ſelling them by public Roup, after ſuch Publication, not ſhorter than Eight free Days, nor longer than Twenty, from and after the Day when the Order was given, and at ſuch Time and Place as Circumſtances may require, and who ſhall give all neceſſary Orders for intermediate Security, any Perſon who intromits with, or carries off the Goods in the mean Time, in order to diſappoint the Poinding, being liable in double the appraiſed Value thereof; and a Note or Minute of the Sale, and of the Sum ariſing from it, ſhall be within Eight Days of the Sale lodged with the Clerk to the ſaid Sheriff or Judge Ordinary, and forthwith marked by him as ſo lodged, within Eight Days after ſuch Sale, to be made patent to all concerned for a Fee of One Shilling, and the Net Sum ariſing from ſuch Sale, after Deduction of all Charges, or the Goods in caſe no Offerers appear, ſhall be delivered over to the poinding Creditor. Pointed Goods to be ſold by Roup.

V. And be it enacted, That when a Perſon has been rendered legally 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, or judicially producing the ſame, in any Proceſs or Competition relative to the Goods or Price thereof, 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, which the Poinder ſhall retain in Preference to the other Creditors: 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 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 Arreſtment and Poindings ſhall be regulated as herein-after directed. Pari Paſſu Preference of Poindings in certain Circumſtances.

VI. 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 Bankrupts 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 Bankrupts Eſtates*, 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 Acts of Scotland of 1681 and 1695 in part recited,

proceed and be concluded by Decree before the Sale of the Lands, which Regulation has generally been prejudicial to the Creditors; be it enacted, and repealed. That the ſaid in Part recited Acts ſhall be and the ſame are hereby in Judicial Sales of Eſtates. 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, Purchaſers may lodge Prices in the Bank, &c. 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*, or the Bank of the *Britiſh* Linen Company, 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 of the ſaid Price; and further, the Court of Seſſion, upon the Application of any of the Creditors, ſhall be empowered 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.

VII. 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.

VIII. 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 expedient that ſuch *Induciæ* ſhould be of long Duration; be it enacted, That the *Induciæ* 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 *Induciæ* of Twenty Days only; any Law or Practice to the contrary notwithſtanding.

IX. And,

IX. 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 the 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 ſignetted, 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 its being brought forward again in more due Form, or ſtill conjoined with any after Adjudication; and, without Prejudice to the Validity and Order of ranking of poſterior Adjudications according to the Rules of Law, when any after Proceſs or Proceſſes of Adjudication are brought into Court, the ſame ſhall be regulated, as to the Time and Manner of Proceeding in them, by an Act or Acts of Sederunt of the Court of Seſſion, ſo as to provide, as far as Circumſtances will admit, for the *pari paſſu* Preference of ſuch poſterior Adjudications with one another, and to abridge the Number and Expence of ſuch Proceedings; and in all Caſes where Penalties for Non-payment over and above Performance are contained in Bonds, or other Obligations for Sums of Money, and are made the Subject of Adjudication, or of Demand in any other Shape, it ſhall be in the Power of the Court to modify and reſtrict ſuch Penalties, ſo as not to exceed the real and neceſſary Expences incurred in making the Debt effectual.

Different Creditors may be joined in One Adjudication.

X. And be it enacted, That when the Eſtate of a Debtor is brought into the Court of Seſſion by Proceſs of judicial Sale and Ranking, the Decree of Sale to be pronounced by the Court ſhall be held as a general Decree of Adjudication in favour of every Creditor who ſhall afterwards be included in the Decree of Diviſion; and the Effect of ſuch general Decree ſhall be the ſame in all Competitions, or Queſtions of Ranking and Preference, as if it had been pronounced and extracted of the Date of the firſt calling of the Proceſs of Sale before the Lord Ordinary in the Outer Houſe, and no ſeparate Adjudication ſhall be allowed to proceed during the Dependence of a judicial Sale, it being hereby declared to be competent to the Court of Seſſion to ſettle, by an Act or Acts of Sederunt, in what Manner, and at what Period or Periods the Principal Sums and bygone Intereſts of the Debts ſhall be accumulated, ſo as to do equal Juſtice to all concerned, but declaring that it ſhall be competent to any Creditor who is in a Situation to adjudge to carry on the Action of Sale to its Concluſion, although deſerted or abandoned by the original Purſuer.

Decree of Sale to be held as a general Decree of Adjudication.

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

Mode of rendering an Adjudication effectual.

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.

Further Extenſion of the Act 1696, c. 5.

XII. And whereas, by the Act before mentioned, in the Year One thouſand ſix hundred and ninety-ſix, intituled *Act for declaring Notour Bankrupts*, it is *inter alia* declared, "That all Diſpoſitions, Heritable Bonds, or other heritable Rights, whereupon Infeftment may follow, granted by the foreſaid Bankrupt, ſhall only be reckoned, as to this Caſe of Bankrupt, to be of the Date of the Seiſin lawfully taken thereon;" but it would be more expedient, that inſtead of the Date of the Seiſin, the Date of recording the Seiſin in the Regiſter of Seiſins and Reverſions, ſhould be taken as the Rule; be it hereby enacted, That in all Queſtions upon the ſaid Act, in the Year One thouſand ſix hundred and ninety-ſix, or this preſent Act, the Diſpoſitions, Heritable Bonds, or other Heritable Rights, whereupon Infeftment may follow, ſhall in Time coming be reckoned to be of the Date of the Regiſtration of the Seiſin lawfully taken thereon, without Prejudice to the Validity or Invalidity of the ſaid heritable Rights, in all other Reſpects as formerly.

Diſpoſitions not requiring Seiſin, &c.

XIII. And be it enacted, That in all Queſtions upon the ſaid Statutes all Diſpoſitions, Aſſignations, and Venditions, which do not require Seiſin, but to which Intimation or Delivery are requiſite in order to render them complete as Transferences or as Securities, ſhall be reckoned to be of the Date of the Intimation, Delivery, or other Act requiſite for completing the ſame, without Prejudice to their Validity in other Reſpects.

Securities for Caſh Accounts or Credits.

XIV. And whereas, by another Clauſe in the ſaid Act One thouſand ſix hundred and ninety-ſix, it is declared, "That any Diſpoſition, 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 as ſhall be found to be contracted, after the Seiſin or Infeftment following on the ſaid Diſpoſition or Rights;" but it would tend not only to the Benefit of Commerce, but alſo of Agriculture and Manufactures, if Securities by Infeftment for the Payment or Relief of future Balances ariſing upon Caſh Accounts or Credits, or of Sums paid on ſuch Caſh Accounts or Credits, were made an Exception from the Rule laid down in the ſaid recited Clauſe; be it therefore enacted, 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 any Sums paid or Balances ariſing or which may ariſe upon Caſh Accounts or Credits, or by way of Relief to any Perſon or Perſons who may become bound with him or them for the Payment of ſuch Sums or Balances, although poſterior to the Date of the Infeftment, to grant heritable Securities accordingly upon their ſaid Lands or other heritable Eſtate, containing Procuratory of Reſignation and Precept of Seiſin for infefting any Bank or Bankers, or other Perſons who ſhall agree to give them ſuch Caſh Accounts or Credits, or for infefting ſuch Perſons as ſhall become Cautioners for them, or jointly bound with them in ſuch Caſh Accounts or Credits: Provided always, that 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, the ſaid definite Sum

not exceeding the Amount of the Principal Sum, and Three Years Intereſt thereon, at the Rate of Five *per Centum*; and it is hereby declared, that it ſhall and may be lawful to the Perſon to whom any ſuch 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 Seiſins or Infeftments taken upon the ſaid Heritable Securities ſhall be equally valid and effectual, as if the whole Sums advanced upon the ſaid Caſh Account or Credit had been paid prior to the Date of the Seiſin 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 Seiſin or Infeftment renounced; any Thing to the contrary in the ſaid recited Act notwithſtanding.

Eſtates of Merchants, Manufacturers, &c. if Bankrupt, may be ſequeſtrated, if certain Diligence be done at Inſtance of Creditors.

XV. And whereas it is for the Intereſt of Commerce, that the Eſtates of thoſe concerned in Trade and Manufactures, when they become 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, That from and after the paſſing of this Act, if any Perſon being a Merchant or Trader in *Scotland*, in Groſs or by Retail, or a Banker, Broker, or Underwriter, or a Manufacturer, or Artificer, 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 of the foregoing Occupations, or holds a Share in any ſuch Undertaking, ſhall be under legal Diligence by Horning and Caption againſt him for Debt, and ſhall either, in virtue thereof, be impriſoned, or retire to a Sanctuary, or fly or abſcond for his perſonal Safety from ſuch Diligence, or defend his Perſon by force, or being out of *Scotland* at the Time, or not liable to be impriſoned by reaſon of Privilege or perſonal Protection, ſhall be under Diligence by Charge of Horning attended with Arreſtment executed of any Part of his moveable Eſtate or Effects, and not looſed or diſcharged by the Debtor within Fifteen Days thereafter, or with Poinding executed of any Part of his Moveables, or Decree of Adjudication of any Part of his heritable Eſtate for Payment or Security of Debt, at the Inſtance of any of his Creditors, it ſhall be lawful for 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 ſhall 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 Sequeſtration of the ſaid Debtor's Eſtate, heritable and moveable, real and perſonal; and upon Production of the Grounds of Debt, or a Copy of the Account, ſigned by the Party to whom it is due, and a Depoſition by the Creditor or Creditors at whoſe Inſtance the Application is made, taken before any Judge Ordinary, or Juſtice of the Peace, ſwearing 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 aforeſaid, and always ſpecifying which Deſcription the Court ſhall grant Warrant for citing the ſaid Debtor, by delivering to him perſonally,

Debtor to be cited.

ſonally, or by leaving at his Dwelling Houſe, a Copy of the ſaid Petition; or, if the ſaid Debtor be forth 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 Steps of 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 to any other Creditor or Creditors who may have appeared and concurred in the Application, or ſhew other reaſonable Cauſe why the Sequeſtration ſhould not proceed further, 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; declaring always, that it ſhall not be a ſufficient Ground for awarding Sequeſtration under this Act, that the Debtor is a Holder of Stock in any of the Public or National Funds, or of *India* Stock, or of Stock in any of the Banks eſtabliſhed by Public Authority, or in any Inſurance Company againſt Fire, or in the *Forth* and *Clyde* Navigation Company, or other Inland Navigation Company, or the *Britiſh* Fiſheries, or that he is a Common Labourer or Workman for Hire, unleſs ſuch Perſon ſhall be otherwiſe *bonâ fide* under one or other of the foregoing Deſcriptions; and that no Landholder or Tenant of Land ſhall as ſuch be liable to have his Eſtate ſequeſtrated, even although he deal in Cattle or Grain, unleſs he ſhall *bonâ fide* be of the Deſcription of a Trader in theſe Articles, gaining or ſeeking to gain his Livelihood, or a material Part thereof, by dealing in Cattle not the Produce of, nor grazed upon, or made uſe of in the Labour of his Farm, or in Grain not produced thereon.

Court to fix Meetings for choice of Factor and Truſtee,

XVI. And be it enacted, 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 one, or, failing their doing ſo, to devolve the interim Care and Cuſtody of the Effects upon the Sheriff Clerk of the County where the Bankrupt carried on his Buſineſs; and the Court ſhall, by the ſame Deliverance, make another Order upon the Creditors to meet upon a certain Day and Hour, to be named by the Court in the ſaid Deliverance, being not more than Four Weeks, and leſs than Two Weeks from the Day of ſuch Firſt Meeting, 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 advertized in the Paper called *The Edinburgh Gazette*, and alſo in *The London Gazette*, otherwiſe the whole Proceedings at thoſe Meetings to be null

which are to be advertiſed, otherwiſe void.

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 Preſes choſen by them; and all Queſtions at this Meeting ſhall be determined by a Majority of the Creditors in Value or Extent of Debt (ſubject however to the Explanation after mentioned,) 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, 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 the Preſervation of the Effects.

Court to grant Commiſſion to Sheriff to attend Firſt Meeting.

Queſtions there how to be determined

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

XVII. And be it enacted, 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, grant Powers of Attorney, or other Deeds, which may be deemed neceſſary or proper for the Recovery of the Eſtate and Effects ſituate in Foreign Parts, under the Pain of fraudulent Bankruptcy, and of being deprived of all Benefit from this Statute; and the Factor ſhall lodge all Monies received by him in ſuch Bank, or with ſuch Banking Company, as the Creditors preſent at the Meeting at which he ſhall have been choſen ſhall appoint, and failing ſuch Appointment, in the Royal Bank or Bank of *Scotland*, or the Bank of the *Britiſh* Linen Company, at ſuch Intereſt as can be procured for the ſame, upon an Account to be opened in the Name of the Sequeſtrated Eſtate, and the ſaid 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 Magiſtrate and by the Preſes of the Meeting, and by the ſaid Factor or Sheriff Clerk, ſhall be tranſmitted by them to the Clerk of the Sequeſtration, to be kept among the Records of the Court of Seſſion.

Powers and Duty of Factor, &c.

XVIII. And be it enacted, 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 Debts ſhall amount to the Sum of One hundred Pounds Sterling, or any Two Creditors whoſe Debts ſhall amount

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

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 ſpecifying which Deſcription, and not within the Exceptions aforeſaid, the Court is hereby authorized and required to award Sequeſtration of the Debtors Eſtate, heritable 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.

XIX. And be it enacted, 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 legally authorized to act for him, concur in the Application.

Eſtates of Partnerſhips may be ſequeſtrated.

XX. And be it enacted, 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 Houſe 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*.

Latent Partners.

XXI. And whereas it is often attended with great Inconvenience that latent Partners of a Company do not come forward, but remain unknown when the Sequeſtration of a Company's Eſtate is awarded, it is hereby enacted, That any Partner of a Company whoſe Name does not appear as ſuch in the Books of the Company, or who ſhall not come forward and acknowledge himſelf as a Partner, on or before the Day appointed for the Firſt Examination of the Bankrupt Partners, or any of them, ſuch Perſon ſhall not be entitled to any of the Benefits or Privileges of this Act, in caſe it ſhall afterwards be diſcovered that he was truly a Partner in that Concern, unleſs he can make it appear to the Satisfaction of the Court, that this Omiſſion proceeded entirely from innocent Miſtake or Ignorance of the Proceedings, or from a reaſonable Miſconception of his Liability as a Partner, and ſhall then follow out all neceſſary Steps under the Direction

of the Court for remedying as far as poſſible the Loſs and Inconvenience thence ariſing.

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

XXII. And be it enacted, 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, and to a Citation in an Adjudication againſt the Debtor and his Property for Behoof of the whole Creditors, in caſe the Sequeſtration is finally awarded, but the Proceedings ſhall be of no Effect as an Inhibition, or as a Citation in an Adjudication, 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 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 Sixty 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.

Sequeſtrations erroneouſly awarded how to be recalled.

Procedure at the Meeting for the Choice of a Truſtee.

XXIII. And be it enacted, That at the General Meeting for chooſing a Truſtee, the Interim Factor or Sheriff Clerk 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 engroſſed 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 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

in no Caſe ſhall it be competent 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; neither ſhall it be competent to the Creditors to appoint as a Truſtee any Perſon whoſe Place of Reſidence ſhall be without the Juriſdiction of the Court of Seſſion; and if any Perſon who has been elected a Truſtee ſhall remain at any Time for Three Calendar Months forth of *Scotland*, it ſhall be competent to the Creditors, at any General Meeting called for that Purpoſe by any of the Commiſſioners herein-after mentioned, by Advertiſement inſerted in the *Edinburgh Gazette*, Fourteen Days before the ſaid Meeting, to apply to the Court of Seſſion for the Purpoſe of the Creditors being authorized to declare the Appointment of the ſaid Truſtee either ſuſpended or at an End, and to appoint the Truſtee next in Succeſſion, or if there be no Truſtee choſen to act in Succeſſion, to chooſe a Truſtee for the Purpoſe of managing the Affairs of the Bankrupt; and the Court ſhall thereupon, upon Cauſe ſhewn, authorize the Creditors to make either an interim Appointment or ſuch an Appointment of a Truſtee as ſhall appear to be proper.

Contingent Creditors not to vote.

XXIV. And be it enacted, That no Perſon whoſe Claim upon the Bankrupt Eſtate is merely contingent, or depending upon an uncertain Condition, ſhall be entitled either to join in the Petition above mentioned for Sequeſtration, or to vote in the Choice of Factor or Truſtee, or in the other Steps of Proceeding herein ſpecified; and that any Creditor who holds a preferable Security or Lien upon the Debtor's Property, or has other Obligants bound with him, except where the Common Debtor in this laſt Caſe is the principal or primary Obligant, and liable to relieve the others, ſhall be obliged upon Oath to put a Value upon ſuch Security or collateral Obligation, ſo far as he may thereby be covered, and to deduct ſuch Value from his Claim, and to give his Vote in all Matters reſpecting the Bankruptcy as Creditor only for the Balance, which Balance ſhall be ſpecified in his Affidavit, without Prejudice to his correcting his Valuation afterwards, and without Prejudice to the Amount of his Debt in other Reſpects.

Bankrupt to exhibit a State of his Affairs.

XXV. And be it enacted, That at the ſaid Meeting for chooſing a Truſtee, 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, wherever 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 engroſſed 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 Factor or Sheriff Clerk, 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.

XXVI. 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, 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.

Truſtee, on finding Security, to be confirmed by the Court; and entitled to Commiſſion.

XXVII. And be it enacted, That in caſe any Queſtion ſhall ariſe as to the Election, either of the Interim Factor or of the Truſtee, the ſame ſhall be reported to the Court of Seſſion, and it ſhall be competent either to the Court in Time of Seſſion, or to the Lord Ordinary on the Bills in Time of Vacation, to decide in the moſt ſummary Manner on the Merits of ſuch Election.

Diſputed Election of Factor or Truſtee.

XXVIII. And be it enacted, That in ſuch Caſe the unſucceſsful Party claiming to have been elected Interim Factor or Truſtee, ſhall pay the Expences of the Proceeding; and no Part of the Expences of either Party ſhall be paid out of the Bankrupt Eſtate; ſave and except in the Caſe of the Sheriff Clerk, with Reference to whoſe Expences the Court ſhall and may give ſuch Directions, and make ſuch Order as to them ſhall ſeem fit.

Expence how to be paid.

XXIX. And be it enacted, 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 declared and enacted, 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 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

Eſtate veſted in Truſtee by Diſpoſition, by virtue of this Act, by Decreet of Adjudication of the Court.

belonging to the Bankrupt, within the Juriſdiction of the Court, and which, as far as known, ſhall be eſpecially 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 in the Nature of an Adjudication in Implement, as well as for Payment or Security of Debt, ſhall be ſubject to no legal Reverſions: 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.

Adjudication to be recorded.

Effects of Adjudication.

XXX. And be it enacted, That the Truſtee ſhall cauſe 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, ſo as to rank *pari paſſu* with any prior effectual Adjudication within Year and Day of the ſame; 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, without the Neceſſity of Intimation; 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 in the ranking 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 any Adjudication in Name of the Factor or Interim Manager during the Dependence 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.

Succeeding Truſtee how to be veſted.

Superior to receive Truſtee as a Vaſſal.

XXXI. And be it enacted, 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 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 Seſſion as before mentioned; 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 Wardholdings; and if the

Truſtee.

Truſtee ſhall afterwards 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, on an Application to the Court of Seſſion by the Truſtee, be adjudged in Manner before directed, and to the ſame Effect; and in 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.

Heritable Eſtate afterwards diſcovered, how to be veſted.

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

XXXII. And be it enacted, That within Eight Days after the Appointment of the Truſtees 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, not being 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 public 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 *Edinburgh Gazette*, and in the *London Gazette*, 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, 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 Party neglecting ſhall have no Share in the Firſt Diſtribution of the Debtor's Eſtate under the Exceptions afterwards provided for; 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,

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

Truſtees to advertiſe Diets, &c.

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

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, or for examining ſuch Perſons of the above Deſcription as have not already been examined, upon due Advertiſement given in Manner aforeſaid; and the Court of Seſſion ſhall likewiſe, in caſe it be neceſſary, grant a perſonal Protection to the Bankrupt on 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, or the Sanctuary, in order to attend ſuch Meetings, and thereafter to carry him back.

Truſtee may at any Time examine,

and may get the Bankrupt protected till examined.

Procedure in Examination.

XXXIII. And be it enacted, 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 may 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:

Bankrupt's Oath.

'I DO, in the Preſence of Almighty God, and as I ſhall anſwer to God at the great Day of Judgment, ſolemnly ſwear, That the State of my Affairs, 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.

'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,

Affirmation of Quakers to be admitted.

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 as guilty of Perjury, and of fraudulent Bankruptcy, and puniſhed accordingly, and for ever rendered incapable of holding any Office of Public 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 Public 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,

Penalties on fraudulent Bankrupts.

XXXIV. And be it enacted, That the Creditors aſſembled at a Meeting to be held Fourteen Days after the laſt Examination of the Bankrupt, or on the Firſt lawful Day after Expiration of the ſaid Fourteen Days, ſhall examine into the State of the Bankrupt's Affairs, and into the Proceedings which till then have been held, and 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, 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 relative to the Management of the Bankrupt or Truſt Eſtate, ſubject always to the Controul of General Meetings; and in caſe of any Diſpute about the Election of theſe Commiſſioners, the ſame ſhall be reported to and ſummarily adviſed by the Court of Seſſion or Lord Ordinary on the Bills, in the Manner before directed as to the Election of Interim Factor and Truſtee.

Meeting to give Directions about the Recovery of the Eſtate,

and to chooſe Commiſſioners.

XXXV. And be it enacted, That it ſhall and may be lawful for ſuch Commiſſioners to meet at any Time they may think fit, for the Purpoſe of aſcertaining the Situation of the Bankrupt Eſtate, and of examining the Acts and Tranſactions of the Truſtee, and to make ſuch Reports as they or any One of them may think proper to make from Time to Time, to a General Meeting of the Creditors which they or any One of them may call by Advertiſement in the *Edinburgh Gazette*, upon Fourteen Days previous Notice.

Commiſſioners may meet when they think proper.

XXXVI. And be it enacted, That at ſuch General Meetings held after the laſt Examination of the Bankrupt, there ſhall be exhibited a State of the Bankrupt's Eſtate made up by the Truſtee, with an Eſtimation or Valuation of what he expects at the Time it will produce, according to the beſt of his Judgement, upon the Information procured from the Bankrupt or otherwiſe, which State ſhall be inſerted in the Sederunt Book, and ſigned by the Preſes of the Meeting.

State of Bankrupt Eſtate to be exhibited, after laſt Examination of Bankrupt.

XXXVII. And be it enacted, That a ſimilar State and Eſtimate, or Valuation, ſhall be made out by the Truſtee and exhibited to the Commiſſioners once

Similar State to be exhibited once in

every Three Months.

once in every Three Months thereafter, ſhewing the Debts and Effects recovered, and thoſe remaining outſtanding at the Time when each ſuch State ſhall be made up; and every ſuch State ſhall be inſerted in the Sederunt Book, and ſigned by the Commiſſioners, and when Notice of a Dividend is given, it ſhall alſo be notified in the Advertiſement or Notice, that ſuch State or States, as well as the State of the Ranking of the Creditors, are lying in the Hands of the Truſtee for the Inſpection of the Creditors.

Sequeſtrated Fund how to be divided.

XXXVIII. And be it enacted, 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 *bonâ 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, *bonâ 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.

Bonâ fide Tranſactions ſaved.

Eſtates devolving on the Bankrupt after Sequeſtration.

XXXIX. And be it enacted, 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.

Arreſtments and Poindings within Sixty Days of Sequeſtration void.

XL. And be it enacted, 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 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 Poinding of a Debtor's Effects, not completely executed Sixty Days at leaſt before ſuch Deliverance, ſhall give any Right or Preference to the Poinder in the Event of Sequeſtration taking place, but the Poinder ſhall be obliged to deliver to the Factor or Truſtee the Goods poinded, if not

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 net 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 Poinders, 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 *bonâ fide* laid out by them in proſecuting ſuch Diligences.

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

XLI. And be it enacted, 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 *Edinburgh Gazette* and *London Gazette*, 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 how to be diſpoſed of.

XLII. And be it enacted, That if any Part of the ſequeſtrated Eſtate 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 public 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 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 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 diſencumber 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: Provided always, that where heritable Property belonging to the Bankrupt, after having been duly advertiſed for Sale, ſhall have been Three Times expoſed to judicial or public Sale without Effect, it ſhall be competent to the Truſtee, with Conſent of a Majority of the Commiſſioners, and with the Approbation of a general Meeting of the Creditors called for the Purpoſe, to ſell the ſaid heritable Property by private Sale, provided the Price at which it ſhall be ſold ſhall not be leſs than the laſt upſet Price at which it had been expoſed to public Sale without Effect.

No Adjudication competent after Sequeſtration.

XLIII. And be it enacted, 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*, or in the Bank of the *Britiſh* Linen Company, upon an Account to be opened in the Name of the ſequeſtrated Eſtate, 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 Twenty *per Centum per Annum* on whatever exceeds the Sum of Fifty Pounds Sterling, in the Name of Intereſt and Damages; and it ſhall be competent to the ſaid Commiſſioners, or to any One of them, at any Time when they ſhall think proper, to compare the Sums ſo lodged from Time to Time by the Truſtee, with the Sums received by him, and to examine the Sums drawn by him from ſuch Bank, and diſburſed by him in Payment for or on Account of the Bankrupt Eſtate; and the ſaid Commiſſioners are hereby required, at the Time when they audit the Accounts of the Truſtee in Manner herein directed, to cauſe an Entry to be made in the Sederunt Book, certifying that they have made ſuch Compariſon and Examination, and whether they have found the Money received by the Truſtee regularly and duly lodged by him in the Manner herein directed, and whether the ſame has been duly drawn out and diſburſed on Account of the Bankrupt Eſtate; and in every Caſe where it ſhall appear that the Money received by the Truſtee ſhall not have been regularly and duly lodged by him in the Manner herein directed, the Commiſſioners are hereby required to make a ſummary Application to the Court to compel the Truſtee to pay at the Rate of Twenty Pounds *per Centum per Annum* upon every Sum above Fifty Pounds Sterling, at any Time retained by him in his Hands, beyond the Space of Ten Days, which Money ſo recovered ſhall be lodged in the Bank or Banking Company, with whom an Account ſhall have been opened as aforeſaid for the ſequeſtrated Eſtate.

Monies recovered by Truſtee to be depoſited in Bank.

XLIV. Provided

XLIV. Provided always, and be it enacted, That the Bank or Banking Company, with whom Money belonging to a ſequeſtrated Eſtate ſhall be lodged, either by the Interim Factor or Truſtee, ſhall not be one in which ſuch Interim Factor or Truſtee ſhall be an acting Partner, Manager, or Caſhier. Truſtee not to have an Intereſt in the Bank.

XLV. And be it enacted, That the Truſtee ſhall mark the Productions made to him of the Claims of the ſeveral Creditors, and their Vouchers, or Grounds of Debt, and certified Accounts, with the Oaths of Verity upon the ſaid Claims, 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 ſaid 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 audit 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 net 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 the 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; and by putting into the Poſt Office of the Place where he reſides, printed Notices addreſſed to each Creditor claiming on the Eſtate, which Advertiſement and printed Notice 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 Fund, correſponding to the utmoſt Amount of the Sums or Dividends to which the diſputed Articles may be entitled, and to any contingent 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

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

Firſt Dividend,

to be advertiſed;

if Objections made,

Depoſition to be made in Bank.

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

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 ſubſequent Diſtribution; and the Shares of Creditors not called for at the Time of Diſtribution ſhall again be forthwith depoſited as before, on their Riſk, at ſuch Intereſt as can be got for the ſame.

Shares not called for to be depoſited.

Second Diviſion, &c.

XLVI. And be it enacted, 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 audit the Truſtee's Accounts with the Bankrupt's Eſtate, and by a Minute under their Hands in the Book of Sederunt ſhall aſcertain 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 and printed Notices, 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 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: Provided 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

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

 aſcertained

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 of the Bankrupt Eſtate, a Sum equal to the former Dividend or Dividends on his Debt, with Deduction of the Intereſt obtained on the ſaid Dividends, which is to be retained by the Truſtee for the common Behoof, on account of the Creditors Delay, unleſs there ſhall be ſufficient Funds for the Payment of all the Creditors, in which Event the ſaid Creditor ſhall alſo ultimately receive full Payment of his Debt; 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.

All Preferences to continue as before.

XLVII. And be it enacted, 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.

Debts claimed on or before the Term of Payment.

XLVIII. And be it enacted, 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.

Contingent Debts.

XLIX. And be it enacted, That the Mode of ſettling Intereſt upon Claims ſhall be as follows; namely, the Principal Sum of each Debt on which Intereſt is chargeable, together with the bygone Intereſt due upon it, if there be any, ſhall be accumulated as at the Date of the ſaid Firſt Deliverance, for the Purpoſe of the Claimant being ranked and receiving his Share of the Firſt Dividend correſponding to ſuch accumulated Sum, along with the Principal Sums of ſuch Debts as do not bear Intereſt, or from which there may be a Diſcount of Intereſt, as not being exigible till an after Period; and the Second and other Dividends ſhall in like Manner be applied in Extinction *pro tanto* of the Sums then ranked, without counting Intereſt upon them, from the Date of the ſaid Firſt Deliverance; but if there be any Reſidue left of the ſequeſtrated Funds, after diſcharging the Whole of ſuch Claims, the Creditors ſhall alſo be entitled to claim out of ſuch Reſidue any Arrear of Intereſt which may ſtill be due to them, as ariſing ſince the Date of the ſaid Firſt Deliverance, upon the reſpective Sums ranked and ſtated as before mentioned.

Mode of ſettling Intereſt.

L. And be it enacted, 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 for Sequeſtration, and not ſet aſide

Securities on Bankrupt Eſtates to be deducted from the

Amount of the Claim.

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, the Creditor or Claimant ſhall upon Oath put a Value upon it, and the Truſtee with Concurrence of a Majority of the Commiſſioners ſhall then have an Option either of taking an Aſſignment to the Security for the Benefit of the Creditors at large, on Payment of the Value ſo eſtimated, out of the firſt of the common Fund, or of reſerving the full Effect of it to the Creditor or Claimant himſelf; and in either Caſe the Creditor or Claimant ſhall be ranked on the diviſible Fund for the Balance of his Debt ſo aſcertained alongſt with the other Creditors, ſuch Creditor or Claimant being in no Event entitled to draw more than his full Payment.

If any Creditor obtain Payment from the Eſtate after Firſt Deliverance, he muſt aſſign the ſame to the Truſtee, &c.

LI. And be it enacted, 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 Fund 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; he being always entitled to Indemnification of his neceſſary Expences, and to an Allowance of Five *per Centum* on the Sum recovered to the ſequeſtrated Eſtate.

Production of Grounds of Debt to interrupt Preſcription.

LII. And be it enacted, 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.

LIII. And be it enacted, 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 Kingdom 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 Ground of Debt of any Creditor, unleſs the Debt claimed on exceeds the Sum of Ten Pounds lawful Money of *Great Britain*.

LIV. And be it enacted, 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 a Truſtee, or any of the Creditors and of His Majeſty's Advocate, for Perjury, and ſhall alſo forfeit to the Truſtee, for Behoof of the Creditors, the whole Dividends on his Debt. Penalty of falſe Swearing.

LV. And be it enacted, 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. Truſtee may enter into Submiſſions or Compromiſes.

LVI. And be it enacted, 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 *Edinburgh* and *London Gazettes*, 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 Public Auction upon Two Months previous Notice publiſhed in the *Edinburgh* and *London Gazettes*, the Sale either to be in Whole or in Lots, as a Majority in Value of the Creditors ſhall direct. After a Year and Half, outſtanding Debts, &c. may be ſold by Auction.

LVII. And be it enacted, That the Surplus of the Bankrupt's Eſtate and Effects that may remain after Payments 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. Surplus of Eſtate, after Payment of Debts, to be paid to Bankrupt.

LVIII. And be it enacted, 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, or certified Copies of their Accounts and Oaths of Verity as before mentioned, 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 may 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 Bankrupt may get a perſonal Protection for a limited Time; but not after Period of Second Dividend, unleſs upon Cauſe ſhewn, &c.

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 bringing 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 herein-after directed.

Compoſition with Creditors allowed under certain Conditions.

LIX. And be it enacted, That in caſe at the Meeting held immediately after the Second Examination of the Bankrupt, or at any ſubſequent Meeting called by the Truſtee with Conſent of a Majority of the Commiſſioners, the Bankrupt 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 or Propoſal with or without Amendment, 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, and by putting into the Poſt Office of the Place where he reſides, printed Notices addreſſed to each of the Creditors claiming on the ſequeſtrated Eſtate, 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 executing 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 conſidering ſaid Report, and 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 by 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 the Payment of the Compoſition.

All private and colluſive Agreements illegal.

LX. And whereas it has too frequently happened that Sequeſtrations have been obſtructed, and much Expence, Litigation and Delay, have been occaſioned by colluſive and ineffectual Plans of Compoſition concerted between the Bankrupts and particular Creditors; be it enacted, That every Propoſal or Agreement for a Compoſition with individual Creditors, or to ſtop the Proceedings in the Sequeſtration, other than as hereby expreſsly authorized

thorized 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 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.

LXI. And be it enacted, That in caſe no Propoſal of Compoſition is made 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 *Edinburgh Gazette* and *London Gazette*, the Court ſhall, at the Diſtance of not leſs than Three Calendar Months thereafter, reſume the Conſideration thereof, and if no Objection is made, the Court may then 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 before the Sheriff, 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, the Perſon taking ſuch Oath being alſo liable in the Pains of Perjury, if convicted of having ſworn falſely.

Proviſion as to Diſcharges under former Acts.

LXII. And be it enacted, That all Diſcharges granted to any Bankrupt under any preceding Act of Parliament, ſhall not be affected by any Thing contained in this preſent Act.

Allowance to the Bankrupt.

LXIII. And whereas it may be reaſonable that the Bankrupt ſhould have ſome Allowance out of the Eſtate for ſupporting himſelf and his Family, while

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 Eſtate, as they ſhall think proper, towards the Subſiſtence and Support of himſelf and Family till the Period aſſigned for the Second Dividend, not exceeding Three 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 net 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.

LXIV. And be it enacted, That in all Caſes under this Act, where the Creditors are required 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.

LXV. And be it enacted, 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.

Court to proceed in Time of Seſſion; Lord Ordinary on the Bills in Vacation.

LXVI. And be it enacted, That all Applications under this Act, which are directed to be made to the Court of Seſſion, ſhall be made to either Diviſion thereof when the Court is ſitting, or to the Lord Ordinary on the Bills in Time of Vacation, or during any Receſs of the Court, or when the Court is not ſitting; 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, excepting only that no Diſcharge ſhall be granted by the Lord Ordinary without the Authority of the Diviſion of the Court to which he belongs.

Court, &c. to make interim Orders in caſe of Appeals.

LXVII. And be it enacted, 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.

Other Creditors may concur.

Expence to be paid out of the Fund.

If Bankrupt dies, the Sequeſtration to proceed.

LXVIII. And be it enacted, 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 after the Petition for Sequeſtration ſhall be preſented, the Proceedings under this Act ſhall, notwithſtanding, be carried on and followed out to their Concluſion, as if he were in Life.

Court may make further Regulations.

LXIX. And be it enacted, That it ſhall and may be lawful for the Court of Seſſion to eſtabliſh ſuch Regulations reſpecting the Forms of Proceeding as ſhall appear to be moſt proper for carrying this Act into effectual Execution, according 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 ſynonymous.

LXX. And be it enacted, 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.

Power to remove Truſtee.

LXXI. And be it enacted, That the Interim Factor, Sheriff Clerk, and the Truſtee and Commiſſioners, or any of them, ſhall at all Times be amenable to the Court of Seſſion, by ſummary Application to that Court, to account for their Intromiſſions and Management, and to anſwer for their Conduct, at the Inſtance of any Party intereſted; and in caſe it ſhall appear to the Court that ſuch Application ought not to have been made, the Party complained of ſhall be entitled to his full Coſts, to be either retained out of the Funds, or recovered from the Party complaining, as the Court ſhall direct; but otherwiſe the Court ſhall give ſuch Directions in regard to Coſts as they ſhall think fit; 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 the ſaid Interim Factor,

or accept of his Reſignation.

or Truſtee 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.

New Truſtee may be named.

Truſtee may be diſcharged by the Court.

LXXII. And be it enacted, That when a final Diviſion is made among the Creditors in any Sequeſtration awarded under the Authority of this Act, or of the aforeſaid recited Acts, or when a Truſtee or Factor, named under the Authority of this or 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 *Edinburgh Gazette*, and, at the End of Fourteen Days from the Date of the Advertiſement, if no valid Objection is ſtated, and if the Court is ſatisfied that the Truſtee has complied with the Regulations of the Statute, ſo far as they regard him, the Prayer of his Petition may then be granted; but if any Objection is ſtated, the Court ſhall proceed to determine the ſame in a ſummary Manner: Provided always, that before making any ſuch Application, the Truſtee ſhall make out a full State of his Accounts, and of the Situation of the ſequeſtrated Eſtate, and ſhall call a Meeting of the Creditors, of which at leaſt Four Weeks Notice ſhall be given, by Advertiſement inſerted in the *Edinburgh Gazette*, and alſo by Letters through the Medium of the Poſt Office, addreſſed to every Creditor who ſhall have produced their Claims and proved their Debts, intimating the Purpoſe of the Meeting, and alſo that the aforeſaid State will in the mean Time lie in his Hands for their Inſpection.

Act to be liberally interpreted, and to extend to Women.

LXXIII. And be it enacted, 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.

No Duty on Eſtates ſold under this Act.

LXXIV. And be it enacted, 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.

Report to be drawn up by the Truſtee.

LXXV. And be it enacted, That upon the Expiration of Three Years after the Date of the Firſt Deliverance, if the Affairs of the Bankrupt Eſtate ſhall not have been previouſly winded up, the Truſtee ſhall draw up a Report ſhewing the Situation of the Eſtate and ſtating the unclaimed Dividends, a printed Copy of which Report ſhall be ſent to every Creditor who ſhall have proved a Debt upon the Eſtate; and within Two

Months after the Expiration of the ſaid Three Years from the Date of the Firſt Deliverance, a general Meeting of the Creditors ſhall be called by the Truſtee after Notice given by Advertiſement in the *Edinburgh Gazette* and in the *London Gazette*, Fourteen Days before ſuch Meeting, when the Creditors ſhall give ſuch Directions as ſhall appear to them proper for the Diſpoſal by Public Sale of any outſtanding Debts or Effects, and otherwiſe, as they ſhall think proper in regard to the Situation of the Bankrupt Eſtate.

Period after which the Proceedings may be cloſed.

LXXVI. And be it enacted, That after ſuch Meeting ſhall have been held, or after the Expiration of the Period when the ſame ought to have been held, it ſhall be competent for the Court, upon the Application of any of the Creditors, or of the Truſtee, and after due Notice given by ſuch Form of Publication as may be thought requiſite, to fix a reaſonable Time within which the whole Proceedings ſhall be finally cloſed; and the Time ſo fixed being elapſed, if there be no further Application from the Truſtee, or any of the Creditors, the Sequeſtration ſhall be conſidered as virtually at an End; but in caſe ſuch Application ſhall in the mean Time have been made by any one concerned, the Court will judge according to Circumſtances what further Directions ought to be given, ſo as within a ſhort limited Time to attain the Object in view.

Eſtates ſequeſtrated under former Acts to be finally divided.

LXXVII. And whereas ſeveral Eſtates of Bankrupts which were ſequeſtrated under the Authority of former Acts, have not been finally divided; be it enacted, That ſuch Sequeſtrations ſhall ſtill ſubſiſt to the Effect of being proceeded in and brought to a Concluſion in the Manner directed by this Act: Provided always, that every Thing done in any ſuch Sequeſtration prior to the paſſing of this Act, in purſuance of any ſuch former Acts, ſhall remain valid and effectual, any Thing herein contained to the contrary notwithſtanding.

Commencement and Continuance of Act.

LXXVIII. And be it enacted, That this Act ſhall commence from and after the paſſing thereof, and ſhall continue and be in force for Seven Years from thence and to the End of the then next Seſſion of Parliament.

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