

ANNO SECUNDO & TERTIO

VICTORIÆ REGINÆ.

****

CAP. XLI.

An Act for regulating the Sequestration of the Estates of Bankrupts in *Scotland*.

[17th *August* 1839.]

WHEREAS it is expedient to amend the Laws for regulating the Sequestration of Estates of Bankrupts in *Scotland*; be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all Sequestrations depending at the Commencement of this Act shall be proceeded in and brought to a Conclusion under the Provisions of an Act passed in the Fifty-fourth Year of the Reign of His Majesty King *George* the Third, intituled *An Act for rendering the Payment of Creditors more equal and expeditious in* Scotland, and not under this Act; and the said recited Act, so far as not altered or repealed, shall for such Purpose, and in all other respects, except applying for, awarding, proceeding with, and bringing to a Conclusion Sequestrations as herein-after provided for, and in as far as not at variance or inconsistent with this Act, remain and continue in force.

Depending Sequestrations to be proceeded in under 54G.3.c.137.

II. And be it enacted, That this Act shall commence and take effect from and after the End of the present Session of Parliament; and

Commencement of this Act.

and thereafter all Sequestrations shall be awarded in virtue of and in Terms of this Act, and of no other Act, and such Sequestrations shall be proceeded in and brought to a Conclusion under the Provisions of this Act.

Construction and Meaning of Words.

III. And be it enacted, That in construing this Act the Word "Lord Ordinary" shall mean the Lord Ordinary officiating on the Bills in the Court of Session; that the Words "Clerk or Officer of the Court of Session" shall include the Keeper of the Register of Abreviates of Adjudications; that the Word "Commissioners" shall mean a Majority of the Commissioners herein-after mentioned; that the Word "Estates" shall include every Kind of Property, Heritable or Moveable, Real or Personal, and Lands, Tenements, and Hereditaments, wherever situated, and Debts, Claims, and incorporeal Rights belonging or due or falling by Succession or otherwise to the Bankrupt, and any Part thereof; that the Word "Deliverance" shall include any Order, Warrant, Judgment, Interlocutor, or Decree; that the Word "Security" shall include Securities, Heritable or Moveable, Real or Personal, and Liens and Preferences, and Conveyances thereof, and any Part thereof; that the Word "Successors" shall include Heirs, Heirs Apparent, Representatives by Deed or otherwise, Executors, and nearest of Kin, and also Assignees and singular Successors where they have acquired the Right; that the Word "Month" shall mean a Calendar Month; that the Word "Oath" shall include Affirmation where by Law such Affirmation shall be required to be taken in place of an Oath; that the Word "Vote" shall, as well as the ordinary Meaning thereof, include a Consent to any Offer of Composition and to a Discharge of the Debtor, and also a Dissent from such Offer or Discharge, and generally any Act as a Creditor; that the Words "Debtor," "Bankrupt," and "Creditor" shall include Bodies Corporate, Politic, or Collegiate, Companies or Partnerships, as well as Individuals, and shall, as well as all other Words importing the Singular Number and Masculine Gender, include several Persons as well as one Person, and Females as well as Males, and Married Women carrying on Trade independent of their Husbands, and Widows and Aliens (unless in this and also in the other Cases herein above specified a different Construction shall be provided, or the Construction be repugnant to the Subject Matter or Context); and this Act shall be construed in the most beneficial Manner for promoting the Ends hereby intended.

Act to be construed beneficially for the Ends thereof.

Sequestration of Estates of a deceased Debtor.

IV. And be it enacted, That Sequestration may be applied for of the Estates of any deceased Debtor who at the Time of his Death resided or had a Dwelling House or carried on Business in *Scotland*, and was at that Time Owner of Heritable or Moveable Estates in *Scotland*, provided such Sequestration shall be applied for by One or more Creditors qualified as herein-after mentioned; but no such Sequestration shall be awarded until the Expiration of Six Months from the Debtor's Death, unless he shall have granted a Mandate to apply for Sequestration, or was at the Time of his Death notour Bankrupt, or had remained in Sanctuary for Sixty Days (either continuously or not) within the Space of Twelve Months immediately preceding

preceding his Death, or unless his Successors shall concur in the Petition or renounce the Succession, in which several Cases Sequestration shall forthwith be awarded.

Sequestration of Estates of Merchants, &c.

V. And be it enacted, That the Estates of any Debtor subject to the Laws of *Scotland* who is or has been a Merchant, Trader, Manufacturer, Banker, Broker, Warehouseman, Wharfinger, Underwriter, Artificer, Packer, Builder, Carpenter, Shipwright, Innkeeper, Hotel Keeper, Stable Keeper, Coach Contractor, Cattle Dealer, Grain Dealer, Coal Dealer, Fish Dealer, Lime Burner, Dyer, Printer, Bleacher, Fuller, Calenderer, and generally the Estates of any Debtor subject as aforesaid who seeks or has sought his Living, or a material Part thereof, for himself, or in Partnership with another, or as Agent or Factor for others, by using the Trade of Merchandize by way of Bargain, Exchange, Barter, Commission, or Consignment, or by buying and selling, or by buying and letting for Hire, or by the Workmanship or Manufacture of Goods or Commodities, may be sequestrated, with the Consent of such Debtor, provided that the Debtor shall petition for Sequestration with the Concurrence of One or more Creditors qualified as herein-after mentioned; and if the Petition is not signed by such Debtor, a Mandate by him, authorizing such Petition, shall be therewith produced; or without the Consent of such Debtor, provided that he be notour Bankrupt, and have carried on Business in *Scotland* in any of the said Occupations, and have also, within a Year before the Date of presenting the Petition for Sequestration resided or had a Dwelling House or Place of Business in *Scotland*, and that a Petition be presented by One or more Creditors, as herein-after directed; but it shall not be competent to sequestrate the Estates of any Debtor as a Holder of Stock in any of the Public or National Funds, or of *India* Stock, or as a Partner in any Company incorporated or established by Act of Parliament or by Charter, or as a Landholder or Farmer, unless such Landholder or Farmer be *bonâ fide* a Dealer in Cattle not the Produce of nor grazed nor worked on his Farm, or unless he be a Dealer in Grain not the Produce thereof.

Exceptions.

Sequestration of Estates of Companies.

VI. And be it enacted, That the Estates of any Company subject to the Laws of *Scotland*, and falling within any of the said Descriptions, and not within any of the said Exceptions, may be sequestrated, with the Consent of such Company, provided that the Company shall petition for Sequestration, with the Concurrence of One or more Creditors, qualified as herein-after mentioned; and if the Petition is not signed by such Company, a Mandate signed by such Company, or those entitled to act for it, authorizing such Petition, shall be therewith produced; or without Consent, provided any Partner thereof has been rendered notour Bankrupt for a Company Debt, and the Company have carried on Business in *Scotland* in any of the said Occupations, and a Partner have, within a Year before the Date of presenting the Petition for Sequestration, resided or had a Dwelling House, or the Company have had a Place of Business, in *Scotland*, and a Petition for Sequestration be presented by One or more Creditors of the Company as herein-after directed.

VII. And

Sequestration of the Estates of Debtors retiring to the Sanctuary.

VII. And be it enacted, That if any Debtor subject to the Laws of *Scotland*, and falling within any of the said Descriptions, and not within any of the said Exceptions, shall retire to the Sanctuary, and remain therein for Sixty Days (either continuously or not) within the Space of Twelve Months, the Estate of such Debtor, although he be not notour Bankrupt, may be sequestrated without the Consent of such Debtor, provided a Petition be presented by One or more Creditors as herein-after directed.

Creditors entitled to petition for Sequestration.

VIII. And be it enacted, That any One Creditor whose Debt amounts to not less than Fifty Pounds, or any Two Creditors whose Debts together amount to not less than Seventy Pounds, or any Three or more Creditors whose Debts together amount to One hundred Pounds or upwards, whether such Debts are liquid or illiquid (provided they be not contingent), may concur in a Petition by a Debtor or Company for Sequestration, or may petition for Sequestration, of the Estates of any Debtor or Company liable to be sequestrated without Consent; provided that if it be without Consent of the Debtor or Company the Petition be presented within Four Months after the Date of the notour Bankruptcy, or, in case of retiring to the Sanctuary, within Four Months after the Expiration of the said Sixty Days as aforesaid.

Creditors to make Oaths to Verity of Debt.

IX. And be it enacted, That to entitle a Creditor residing within the Kingdom of *Great Britain* and *Ireland* to petition or concur in a Petition for Sequestration, or to vote, or to draw a Dividend, he shall produce, either with the Petition for Sequestration, or at a Meeting of the Creditors, or in the Hands of the Trustee, an Oath taken by him before a Judge Ordinary, Magistrate, or Justice of the Peace to the Verity of the Debt claimed by him; and he shall in such Oath state what other Persons (if any) are, besides the Bankrupt, liable for the Debt or any Part thereof, and specify any Security which he holds over the Estate of the Bankrupt or of other Obligants, and depone that he holds no other Obligants or Securities than those specified, and where he holds no other Person than the Bankrupt so bound, and no Security, he shall depone to that Effect; and if he hold a collateral Obligation or Security he shall, before voting, and before being ranked in order to draw a Dividend, be bound to qualify his Claim as herein-after provided; and in Cases where the Creditor is a Body Corporate an Oath of Verity made as aforesaid by the Manager, Cashier, Secretary, Clerk or other principal Officer of such Body Corporate shall be sufficient, although the Person making the same be not a Partner in such Corporation; or in case of a Company an Oath by a Partner shall be sufficient.

Creditors out of Great Britain and Ireland;

X. And be it enacted, That to entitle a Creditor who is out of the Kingdom of *Great Britain* and *Ireland* to petition or concur in a Petition, or to vote, or to draw a Dividend, he shall produce as aforesaid an Oath taken by him to the Verity of the Debt in the Manner above provided before a Magistrate or Justice of the Peace, or other Person qualified to administer Oaths in the Country where he resides, (he being certified to be a Magistrate or Justice of the Peace or qualified as aforesaid by a *British* Minister or *British* Consul, or by

a Notary Public,) or his known Agent or Mandatory in *Great Britain* or *Ireland* shall make an Oath of Credulity in the Manner and to the Effect before provided; and where any Creditor shall be under Age, or incapable to make Oath, an Oath of Credulity as aforesaid by his authorized Agent, Factor, Guardian, or Manager shall be sufficient. or incapable of an Oath.

XI. And be it enacted, That the Creditor shall produce with his said Oath such Accounts and Vouchers as shall be necessary to prove his Debt; but if not in Possession thereof previously to the Period herein-after assigned for lodging Claims with a view to a Share in any Dividend, he shall state in his Oath the Cause why the said Accounts and Vouchers are not produced, and in whose Hands, to the best of his Knowledge, the same are, which Oath shall entitle him to have a Dividend set apart till a reasonable Time be afforded for Production thereof, or for otherwise establishing his Debt according to Law, but he shall not be entitled to act or vote till such Production be made or the Debt established as aforesaid; and the Interim Factor or Trustee shall, on Production of the Oaths and Grounds of Debt, mark the same with his Initials, and make an Entry thereof in the Sederunt Book, and of the Date when the same were produced, and if required he shall return to the Creditor the Grounds of Debt. Production of Vouchers.

XII. And be it enacted, That Application for Sequestration shall be made by Petition to the Lord Ordinary signed by the Petitioner or his Counsel, and the Division of the Court to which the Sequestration shall be appropriated may be marked thereon, and the petitioning or concurring Creditor shall in all Cases produce with such Petition an Oath to the Effect above specified, and also the Accounts and Vouchers of Debt as herein-before provided; and where the Petition is presented for Sequestration of the Estates of a deceased Debtor, the Petitioning Creditor shall in his Oath, or in a separate Oath, specify the Place where the Debtor resided or had a Dwelling House or carried on Business in *Scotland* at the Time of his Death, and whether he was then Owner of Estates in *Scotland;* and where the Petition is presented during the Life of the Debtor, or for Sequestration of the Estates of a Company, without the Consent of the Debtor or Company, the Petitioning Creditor shall in such Oath swear that he believes the Debtor or Company (as the Case may be) to be within one or other of the said Descriptions, and he shall specify which Description, or that he believes the Debtor to have retired and remained within the Sanctuary as herein-before provided. Mode of applying for Sequestration.

XIII. And be it enacted, That where a Petition is presented for Sequestration by the Debtor or by a Company with Concurrence as aforesaid, the Lord Ordinary shall forthwith issue a Deliverance by which he shall award Sequestration of the Estates which then belong or shall thereafter belong to the Debtor or Company before the Date of the Discharge, and declare the Estates to belong to the Creditors for the Purposes of this Act; and he shall appoint a Meeting of the Creditors to be held at a specified Hour on a specified Day, being not earlier than Eight and not later than Fourteen Days from the Date of the Deliverance, at a convenient Place within On Petition by the Debtor, Sequestration to be awarded. Order to elect Interim Factor, Trustee, and Commissioners.

within the County where the Debtor carries on or last carried on his Business, (failing which, at a convenient Place within the County wherein he resides or last resided,) to elect an Interim Factor, and another Meeting to be held at a specified Hour on another specified Day, being not less than Four Weeks and not more than Six Weeks from the Date of the Deliverance, at the Place fixed for the Election of Interim Factor, to elect a Trustee or Trustees in succession and Commissioners, and do the other Acts herein-after provided; and he shall likewise remit to the Sheriff of the County where the Meeting is to be held to proceed in manner herein-after mentioned, and grant to the Debtor or Partners of the Company (as the Case may be) a Warrant of Protection against Arrest or Imprisonment for Civil Debt until the Meeting of the Creditors for the Election of Trustee as herein-after provided.

Remit to Sheriff.

Protection of Debtor.

Sequestration of the Estates of deceased Debtor.

XIV. And be it enacted, That where a Petition is presented for Sequestration of the Estates of a Debtor who is dead the Lord Ordinary shall grant Warrant to cite the Debtor's Successor personally, or at his Dwelling Place if known and within *Scotland*, or if not known, or if furth of *Scotland*, at the Office of Edictal Citations, and in either of these last Cases also at the House where the Debtor had, at the Time of his Death his Residence or his Place of Business in *Scotland*, on Induciæ of Twenty-one Days from the Date of Citation to show Cause why Sequestration should not be awarded; and if on the Expiration of the said Twenty-one Days, and Production of an Execution of Citation, no Appearance be made, the Lord Ordinary shall order Intimation of such Warrant to be published in the *Edinburgh Gazette*, requiring the said Successor to appear within a further Space of Twenty-one Days from the Date of the Publication of the said Intimation, and if he do not then appear, or, if appearing, no Cause to the contrary be shown by him or any Party interested, the Lord Ordinary shall award Sequestration, and issue the other Orders as herein-above provided in the Case of any other Debtor, in so far as Circumstances will permit, and he shall ordain any Successor who has made up a Title to or is in Possession of the Estate of the Debtor to transfer such Estate, so far as liable for the Debts of the Deceased, to the Trustee to be appointed as herein-after directed; and if desired the Lord Ordinary shall grant Diligence to recover Evidence to show that the Debtor resided or had a Dwelling House or carried on Business in *Scotland* at the Time of his Death, and was then the Owner of Heritable or Moveable Estates in *Scotland*, and was notour Bankrupt, or had retired to and remained in Sanctuary as herein-before mentioned; and if Sequestration shall be awarded such Sequestration shall proceed in the same Way as in other Cases, with the Differences necessarily arising from the Death of the Debtor; and the Petitioning Creditor may at any Time after the Execution of the Citation, and before Sequestration is awarded, apply by written Note to the Lord Ordinary to appoint a Judicial Factor to administer the Estate in the meantime, and if no Cause be shown to the contrary the Lord Ordinary may appoint a Factor accordingly; and it shall not be competent for any Creditor, after the Date of the first Deliverance on the Petition for Sequestration, to be confirmed Executor Creditor,

or

or to raise or insist in any Adjudication or Diligence against the Estate of the Debtor.

If Sequestration applied for without the Debtor's Consent, Warrant to cite, &c. to be granted.

XV. And be it enacted, That where the Petition for Sequestration is presented without the Consent of the Debtor, the Lord Ordinary shall grant Warrant to cite him to appear within a specified Period, if he be within *Scotland*, of not less than Six Days nor more than Twenty-one Days from the Date of Citation, by delivering to him personally, or by leaving at his Dwelling House or Place of Business, a Copy of the Petition and Warrant, and if the Debtor be furth of *Scotland* to cite him to appear within a specified Period, being not less than Thirty Days nor more than Forty Days from the said Date, by leaving a Copy at the Dwelling House or Place of Business last occupied by him, and also at the Office of Edictal Citations, to show Cause why Sequestration should not be awarded; and the Lord Ordinary shall, if desired, grant Diligence to recover Evidence of the notour Bankruptcy, and of the Debtor being within the requisite Description, or of his having retired to and remained within the Sanctuary as aforesaid; and if upon the Expiration of the Time specified in the Warrant the Debtor do not appear at the Diet of Appearance either in Person or by his Counsel or Agent, or so appearing do not instantly pay or produce written Evidence of the Debt or Debts being satisfied in respect whereof he was made notour Bankrupt, or in respect of which he had retired to and remained within the Sanctuary, and also pay or satisfy or produce written Evidence of the Payment or Satisfaction of the Debt or Debts due to the Petitioner or Petitioners, or to any other Creditor or Creditors appearing and concurring in the Petition, or do not show Cause why Sequestration should not be awarded, the Lord Ordinary, on Production of Evidence of the Citation and of the notour Bankruptcy, and of the Debtor being within the requisite Description, or of having retired to and remained within the Sanctuary as aforesaid, shall award Sequestration, appoint a Meeting to be held for the Election of an Interim Factor, Trustee, and Commissioners, remit to the Sheriff, and grant a personal Protection, all to the Effect and in the Manner above specified.

Sequestration of the Estates of a Company without Consent.

XVI. And be it enacted, That where a Petition is presented for the Sequestration of the Estates of any Company, the Lord Ordinary shall issue Warrant and other Orders to the same Effect, and dispose of the Petition in the same Way, as in the Case of individual Debtors; and it shall be a sufficient Citation that a Copy of the Petition and Warrant be left at the Place where the Business of the Company is or was last carried on, provided a Partner or a Clerk or a Servant of the Company be there, and failing thereof, at the Dwelling House of any of the acting Partners, and if the House of such Partner cannot be found, by leaving the Copy at the Office of Edictal Citations; and Sequestration may be awarded, either on the Application of the Company itself, or on the Application of a Creditor without the Consent thereof, of the Estates of the Company and Partners jointly, or of their respective Estates separately.

XVII. And

Liberation of Debtor.

XVII. And be it enacted, That the Lord Ordinary may, on Application made either in the Petition for Sequestration or by a separate Petition by the Debtor, grant Warrant for liberating the Debtor if in Prison, after such Intimation to the incarcerating Creditor or his known Agent as the Lord Ordinary shall deem to be just, and after hearing any Objection to the granting of such Warrant; and if the Application be refused it shall be competent for the Debtor to make a new Application for Liberation, with Consent of the Trustee and the Commissioners, and on Intimation and hearing Objections as aforesaid the Lord Ordinary may grant Warrrant to liberate.

Effect of Warrant to protect or liberate.

XVIII. And be it enacted, That the Warrant granting Protection or Liberation, or a Copy thereof certified by one of the Bill Chamber Clerks, shall protect or liberate the Debtor from Arrest or Imprisonment in *Great Britain* and *Ireland* and Her Majesty's other Dominions for Civil Debt contracted previous to the Date of Sequestration; but such Warrant of Protection or Liberation shall not be of any Effect against the Execution of a Warrant of Arrest or Imprisonment in *meditatione fugæ*, or *ad factum præstandum*, or for any Criminal Act.

Bill Chamber Clerks to be Clerks of Sequestrations, and shall keep the Register of Sequestrations.

XIX. And be it enacted, That the Clerks of the Bill Chamber in the Court of Session shall be Clerks to Sequestrations under this Act; and they shall keep a Book, intituled "The Register of Sequestrations," in the Form of Schedule (A.) hereunto annexed, which Book shall be patent to all concerned; and they shall forthwith therein enter the Division of the Court to which the Sequestration is appropriated, the Date of the first Deliverance on every Petition for Sequestration, the Name and Designation of the Debtor, the Place and County of his Residence, Dwelling House, or Place of Business, and the Name and Designation of the petitioning or concurring Creditor, the Date of awarding or recalling Sequestration, the Date of Transmission to the Sheriff, the Time and Place appointed for the Election of the Interim Factor and Trustee, the Name and Designation of the Interim Factor, and of the Trustee and Commissioners, and the Time for lodging Claims in order to obtain Payment of the first Dividend.

Abbreviate to be recorded in Register of Inhibitions.

XX. And be it enacted, That the Party applying for Sequestration shall, before the Expiration of the Second lawful Day after the first Deliverance, present an Abbreviate of the Petition and Deliverance, signed by him or his Agent, in the Form of Schedule (B. No. 1.) hereunto annexed, to the Keeper of the Register of Hornings and Inhibitions at *Edinburgh*, who shall forthwith therein record the said Abbreviate in the Register of Inhibitions, and write and subscribe a Certificate thereof on the said Petition in the Form also specified in the said Schedule (B. No. 2.); and the Abbreviate so recorded shall from the Date of the said Deliverance have the Effect of an Inhibition and of a Citation in an Adjudication of the Estate of the Debtor at the Instance of the Creditors afterwards ranked on the Estate; and it shall not be competent to stop such Effect, or the Effect of the Sequestration after it is awarded, by paying the Debt or Debts in respect

respect of which it was applied for or awarded; and if the said Abbreviate be not so recorded it shall have no Effect as an Inhibition or Citation as aforesaid; and the Party applying for Sequestration shall, within Four Days from the Date of the Deliverance awarding Sequestration, insert a Notice in the Form of Schedule (C.) hereunto annexed in the *Edinburgh Gazette*, and also One Notice in the same Terms, within Eight Days from the said Date, in the *London Gazette*, but it shall not be necessary to insert any other Notice under this Act in the *London Gazette*.

Notice of Sequestration to be published in the Gazette.

XXI. And be it enacted, That the Deliverance awarding Sequestration shall not be subject to Review; but any Debtor whose Estate has been sequestrated without his Consent, or the Successors of any deceased Debtor whose Estate has been sequestrated as aforesaid, or any Creditor (whether the Sequestration has been awarded with or without the Consent of the Debtor or his Successor), may within Forty Days after the Date of the said Deliverance present a Petition to the Lord Ordinary, setting forth the Grounds for Recall, and praying for Recall; and where Sequestration has been awarded of the Estate of a deceased Debtor when his Successor was edictally cited, it shall be competent to such Successor, or any Person having Interest, to apply by Petition as aforesaid at any Time before the Publication of the Advertisement for Payment of the first Dividend herein-after mentioned; and the Lord Ordinary shall in these several Cases order a Copy of the Petition and of his Deliverance to be served on the Petitioning Creditor or (as the Case may be) on the Petitioning Debtor and the concurring Creditor, or on their respective known Agents, and on the Interim Factor or Trustee, if appointed, and he shall require them to answer within a specified short Time, and order a Notice of the presenting of the Petition to be published in the *Edinburgh Gazette*, and on the Expiration of the Time so fixed he shall proceed to pronounce Judgment; and if he shall recall the Sequestration the Recall shall be entered in the Register of Sequestrations and on the Margin of the said Register of Inhibitions; but in the meantime and until the Sequestration be finally recalled the Proceedings in the Sequestration shall go on as if no such Petition had been presented.

Deliverance awarding Sequestration not liable to Review, but may be recalled.

Notice to be published.

XXII. And be it enacted, That no Petition for Recall of the Sequestration shall be competent after the Expiration of the said Forty Days, or after the said Advertisement for Payment of the first Dividend respectively: Provided that Nine Tenths in Number and Value of the Creditors ranked on the Estate as herein directed may apply at any Time for Recall by Petition to the Lord Ordinary, who shall order Notice of his Deliverance to be published in the *Edinburgh Gazette*, requiring all concerned to appear within Fourteen Days from the Date of Publication in the Gazette to show Cause why the Sequestration should not be recalled, and on Expiration of the said Time he shall proceed to pronounce Judgment; but in the meantime and until the Sequestration be finally recalled the Proceedings in the Sequestration shall go on as if no such Petition had been presented.

No Recall competent after a certain Time, unless Nine Tenths of Creditors apply.

Creditors may be sisted in place of others.

XXIII. And be it enacted, That if a Creditor who has petitioned for Sequestration or concurred in such Petition, or who has petitioned for Recall of a Sequestration, or appeared to oppose a Petition for Sequestration or Recall, or lodged an Objection, shall withdraw, or become bankrupt, or die, any other Creditor may be sisted in his Place, and follow out the Proceedings; and if the Debtor shall die after the Petition for Sequestration is presented, the Proceedings shall notwithstanding be followed out in Terms of this Act, so far as Circumstances will permit.

Proceedings to go on although Debtor die.

Date of Sequestration.

XXIV. And be it enacted, That in all Questions under this Act the Sequestration shall be held to commence and take effect on and from the Date of the first Deliverance by the Lord Ordinary, which shall be held to be the Date of the Sequestration, although the Sequestration be not actually awarded till a later Date.

Sequestration equivalent to notour Bankruptcy.

XXV. And be it enacted, That the awarding of Sequestration in virtue of this Act shall render the Debtor or Company notour Bankrupt, as at the Date of the first Deliverance, without Prejudice to any previous notour Bankruptcy; and in all Questions upon this Act all Dispositions, Heritable Bonds, or other Heritable Rights whereupon Infeftment may follow shall be reckoned to be of the Date of the Registration of the Sasine taken thereon, without Prejudice to the Validity or Invalidity of the said Heritable Rights in all other respects; and all Dispositions, Assignations, and Venditions which do not require Sasine, but to which Intimation or Delivery is requisite in order to render them complete as Transferences or as Securities, shall in all Questions under this Act be reckoned to be of the Date of the Intimation, Delivery, or other Act requisite for completing the same, without Prejudice to their Validity or Invalidity in other respects.

Petitioning, concurring, or claiming, shall interrupt Prescription, and bar the Statute of Limitations.

XXVI. And be it enacted, That the presenting of or concurring in a Petition for Sequestration, or the lodging a Claim in Terms of this Act in the Hands of the Interim Factor, Sheriff Clerk acting as Factor or Trustee, or the Sheriff officiating or Preses at any Meeting of Creditors, shall interrupt Prescription of the Creditor's Debt so petitioning, concurring, or claiming, and in regard to such Debt bar the Effect of any Statute of Limitations in *England* or *Ireland* or Her Majesty's Dominions, and although the Sequestration shall be recalled such Interruption or Bar shall notwithstanding be effectual.

Sequestration to remain in the Bill Chamber, but certified Copy of Petition, &c. to be transmitted to the Sheriff Clerk.

Jurisdiction of Sheriff.

XXVII. And be it enacted, That notwithstanding the said Remit to the Sheriff the Process of Sequestration shall be held to be in the Bill Chamber of the Court of Session, and shall not fall asleep; and on the said Remit being made a Copy of the Petition for Sequestration, and of the first Deliverance, and also (where it is different) of the Deliverance awarding Sequestration, certified by One of the Clerks of the Bill Chamber, shall, with the Productions, be transmitted by the Petitioner to the Sheriff Clerk of the County or Place where the Meeting for Election of Interim Factor is directed to be held; and the Sheriff shall have as full Power and Jurisdiction as hitherto possessed by the Court of Session (subject to Review) in all Questions in the Sequestration, except in those Cases where the Power is otherwise

wise specially conferred, and the Sheriff Clerk and Messengers at Arms and Officers of the Sheriff Court shall have Power to act in their respective Offices under this Act; and the Sheriff Clerk shall keep a Register of Sequestrations transmitted to him in Terms of the said Schedule (A.)

Sheriff Clerk to keep Register.

XXVIII. And be it enacted, That all Deliverances of the Lord Ordinary and of the Court of Session and of the Sheriff, as well as Extracts and certified Copies of all Deliverances under this Act, shall be Evidence in all Courts and Places within *Great Britain* and *Ireland* and Her Majesty's Dominions, and shall be sufficient Warrants for all Diligence and Execution by Law competent.

Extracts to be Evidence and Warrants for Diligence.

XXIX. And be it enacted, That no Person shall, by merely lodging an Oath and Claim, or being ranked, or receiving Payment of a Dividend, or appearing or voting at a Meeting in a Sequestration, as a Creditor, be liable for any Claim by the Agent or other Person employed by the Interim Factor or Trustee for Money advanced or Expence incurred or Remuneration in relation to the Affairs of the Estate, reserving to the Agent or other Person so employed Right to Payment out of the Estate, and from the Interim Factor or Trustee by whom he may have been so employed, in so far as the same may be competent to him; and no Interim Factor or Trustee shall have Relief in respect of such Payment against such Creditor, reserving to such Interim Factor or Trustee Relief against the Estate, and against those Creditors or others who may on other Grounds be liable in Relief.

Agent's Claim for Expences restricted to the Estate and against the Employer.

XXX. And be it enacted, That the Mandatory of any Person entitled to vote as a Creditor may vote in the Absence of such Creditor, provided he exhibit a Mandate; and the Vote of such Mandatory shall, within his Mandate, be held as the Vote of the Creditor himself.

Mandatories for Creditors may vote.

XXXI. And be it enacted, That no Person who shall acquire, after the Date of the Sequestration, otherwise than by Succession or Marriage, a Debt due by the Bankrupt, shall be entitled to vote in the Election of Interim Factor or Trustee or Commissioners, but in all other respects such Person may be reckoned as a Creditor.

Persons acquiring Debts after Sequestration not to vote.

XXXII. And be it enacted, That if a Creditor claim for a Debt with bygone Interest he may in his Oath accumulate the Interest as at the Date of the Sequestration, and he shall specify the Amount of the Interest, and also of the accumulated Sum, but he shall not be entitled to claim on the Estate for Interest either on the Principal Debt or on such accumulated Sum after the Date of the Sequestration; and if a Creditor claim for a Debt which is not payable till after the Date of the Sequestration, he shall in his Oath deduct the legal Interest thereon from the Date of the Sequestration to the Time of Payment, and specify the Balance, and if he claim for a Debt which by the Usage of Trade is liable to a Discount of more than legal Interest, he shall in his Oath state the Amount of such Discount, and deduct it from the Debt, and specify the Balance; provided that if

Creditors may accumulate Arrears of Interest.

Rules as to Interest on Debts and Discounts.

if such Debt be not payable at the Date of the Sequestration he shall also deduct from such Balance the legal Interest as aforesaid, and specify the Balance; and the Creditor in the said several Cases shall be entitled to vote and to draw Dividends for the said accumulated Sum or Balance respectively and no more; provided that if there be any Residue of the Estate after discharging the Debts ranked he shall be entitled to claim out of such Residue the full Amount of the Interest on his Debt in Terms of Law.

Rules as to Valuation of Securities with a view to voting where a Creditor holds them over the Bankrupt's Estate.

XXXIII. And be it enacted, That if a Creditor hold a Security for his Debt over the Estate of the Bankrupt he shall, before voting, make an Oath, in which he shall put a specified Value on such Security, and deduct such Value from his Debt, and specify the Balance, and if the Estate be sold he shall specify in his Oath the free Proceeds which he has received or shall be entitled to receive therefrom, and specify the Balance due after Deduction thereof; and he shall be entitled in either Case to vote in respect of such Balance, and no more, without Prejudice to the Amount of his Debt in other respects; and in Questions as to the Disposal or Management of the Estate subject to his Security he shall be entitled to vote as a Creditor for the whole Amount of his Debt, without making any such Deduction.

Where he has Obligants, &c. liable in Relief to the Bankrupt.

XXXIV. And be it enacted, That where a Creditor has an Obligant bound with but liable in Relief to the Bankrupt, or holds any Security from an Obligant liable in Relief to the Bankrupt, or any Security from which the Bankrupt has a Right of Relief, such Creditor shall, before voting, make an Oath, in which he shall put a specified Value on the Obligation of such Obligant, and on such Security, to the Extent to which the Bankrupt is entitled to Relief, and he shall deduct such Value from his Debt, and specify the Balance, and he shall be entitled to vote in respect of such Balance, and no more, without Prejudice to the Amount of his Debt in other respects.

Creditors of a Company on a Partner's Estate.

XXXV. And be it enacted, That a Creditor on the Estate of a Company shall not be bound, for the Purpose of voting on the Company's Estate, to deduct from his Claim the Value which he may be entitled to draw from the Estates of the Partners; but if he claim on the Estate of a Partner, he shall, before voting, in his Oath, put a specified Value on his Claim against the Estate of the Company, and also against the other Partners thereof, in so far as they are liable to relieve such Partner, and deduct such Value from his Debt, and specify the Balance, and he shall be entitled to vote as a Creditor for the said Balance, and no more, without Prejudice to the Amount of his Debt in other respects.

Right of Trustee to Assignation to such Securities.

XXXVI. Provided always, and be it enacted, That it shall be competent to the Trustee, with Consent of the Commissioners, within Two Months after an Oath specifying the Value of a Security or Obligation or Claim in the several Cases before mentioned has been made use of in voting at any Meeting, or in assenting to or dissenting from the Bankrupt's Composition or Discharge, as also it shall be competent to the Majority of the Creditors (excluding the Creditor making such Oath) assembled at any Meeting and during such Meeting,

Meeting, to require from the Creditor making such Oath a Conveyance or Assignation in favour of the Trustee to such Security or Obligation, on Payment of the specified Value, with Twenty *per Centum* in addition to such Value; and the Creditor shall be bound to grant such Conveyance or Assignation at the Expence of the Estate: Provided that where a Creditor has put a Value on such Security or Obligation, he may at any Time before he has been required to convey and assign as aforesaid correct such Valuation by a new Oath, and deduct such new Value from his Debt.

Provision for Change on Values of Securities.

XXXVII. And be it enacted, That to entitle any Creditor who holds a Security over the Estate of the Bankrupt to be ranked in order to draw a Dividend, he shall on Oath put a specified Value on such Security, and deduct such Value from his Debt, and specify the Balance; and the Trustee, with Consent of the Commissioners, shall be entitled to a Conveyance or Assignation to such Security, at the Expence of the Estate, on Payment of the Value so specified out of the first of the common Fund, or to reserve to such Creditor the full Benefit of such Security; and in either Case the Creditor shall be ranked for and receive a Dividend on the said Balance, and no more, without Prejudice to his Debt in other respects.

Rules as to Valuation of Securities with a view to a Dividend.

XXXVIII. And be it enacted, That where Creditors claim on the Estate of a Partner of a Company in respect of a Debt due by such Company, the Trustee on the Estate of such Partner shall, before ranking such Creditors for Payment of a Dividend, put a Valuation on the Estate of the Company, and deduct from the Claims of such Creditors such estimated Value, and rank and pay to them a Dividend only on the Balance, but the Judgment of the Trustee shall be subject to Review as herein-after provided.

Valuation of Claims by Creditors of a Company with a view to a Dividend on a Partner's Estate.

XXXIX. And be it enacted, That where the Claim of a Creditor depends upon a Contingency which is unascertained at the Date of lodging his Claim, he shall not be entitled to vote nor to draw a Dividend in respect of such contingent Debt, but he may apply to the Sheriff, if the Trustee has not been elected, or if elected to the Trustee, to put a Value on such Debt, and the Sheriff or Trustee (as the Case may be) shall put a Value thereon; and on such Value being fixed such Creditor shall be entitled to vote and draw Dividends in respect of such Value, and no more: Provided that if such Contingency have taken place before the Debt has been valued such Creditor may vote and draw Dividends in respect of the Amount of the Debt, but the same shall not disturb any former Dividends allotted to other Creditors; and where such Application is made to the Sheriff Notice thereof shall be given to the Interim Factor (if he be elected), and if not elected to the Bankrupt and petitioning or concurring Creditor; and the Judgment of the Sheriff or Trustee shall be subject to Review, and any Creditor who has claimed on the Estate may appear and be heard thereon.

Contingent Creditors.

XL. And be it enacted, That no Creditor in respect of an Annuity granted by the Bankrupt shall be entitled to vote or draw a Dividend until such Annuity shall be valued, but he may, if the Trustee has

Annuity to Creditor.

has not been elected, apply to the Sheriff, or if elected to the Trustee, to put a Value on such Annuity, and the Sheriff or Trustee (as the Case may be) shall put a Value on the Annuity, regard being had to the original Price given for the said Annuity, deducting therefrom such Diminution in the Value of the Annuity as shall have been caused by the Lapse of Time since the Grant thereof to the Date of the Sequestration; and such Creditor shall be entitled to vote and draw Dividends in respect of such Value, and no more: Provided always, that where such Application is made to the Sheriff Notice thereof shall be given to the Interim Factor (if elected), and if not elected to the Bankrupt and the petitioning or concurring Creditor; and the Judgment of the Sheriff or Trustee shall be subject to Review, and any Creditor who has claimed on the Estate may appear and be heard thereon.

Provision as to Cautioners for Annuities.

XLI. Provided always, and be it enacted, That where any Person is bound as Cautioner for Payment of such Annuity it shall not be lawful for the Creditor therein to sue or charge after the Date of the Sequestration such Cautioner; and such Cautioner shall only be liable for the Value fixed as aforesaid, and the Arrears of Annuity; and on such Cautioner making Payment of such Value and Arrears to the Creditor, and the lawful Interest thereon, he shall be discharged of all Liability for such Annuity, and he may thereupon enter a Claim in the Sequestration for the Sum so paid, and vote and draw Dividends thereon: Provided, that if such Cautioner shall not pay the Sum so fixed, and Arrears as aforesaid, before any Payment of the Annuity subsequent to the fixing thereof becomes due, he shall be bound to make Payment of the said Annuity, and all subsequent Annuities, until he shall make Payment of the Sum so fixed, Arrears of Annuity, and Interest as aforesaid, deducting always such Dividends as the Creditor shall have received before full Payment as aforesaid.

Claiming or acting in the Sequestration not to discharge Co-obligants.

XLII. And be it enacted, That where a Creditor has an Obligant bound to him along with the Bankrupt for the Whole or Part of the Debt, such Obligant shall not be freed from his Liability for such Debt in respect of any Vote given or Dividend drawn by the Creditor, or of his assenting to the Discharge of the Bankrupt or to any Composition, but such Obligant may require and obtain, at his own Expence, from such Creditor, an Assignation to the Debt, on Payment of the Amount thereof, and in virtue thereof enter a Claim on the said Estate, and vote and draw Dividends if otherwise lawfully entitled to do so.

Oaths not to supersede legal Evidence.

XLIII. And be it enacted, That in no Case shall Oaths of Verity or Credulity supersede Production of legal Evidence where required in any judicial Discussion before the Court of Session, the Lord Ordinary, the Sheriff, or the Trustee.

Rule as to Majorities.

XLIV. And be it enacted, That all Questions at any Meeting of Creditors shall be determined by the Majority in Value of those present and entitled to vote, unless in the Cases herein otherwise provided for; and where for the Purpose of voting the Creditors are

 required

required to be counted in Number, no Creditor whose Debt is under Twenty Pounds shall be reckoned in Number, but his Debt shall be computed in Value.

Proceedings at Meetings for Election of Interim Factor or Trustee.

XLV. And be it enacted, That Creditors, or their Mandatories qualified as aforesaid, shall assemble at the Times and Places fixed respectively for the Election of Interim Factor and for Election of the Trustee, with Power to adjourn for such reasonable Time as may seem fit, provided such Adjournments do not postpone the Meetings for the Election of Interim Factor and Trustee beyond the Limits of the Periods within which these Meetings are by this Act appointed to be held; and the Sheriff Clerk shall transmit or cause to be transmitted for Exhibition to the Meeting for the Election of Interim Factor the certified Copy of the Petition for Sequestration and Deliverances thereon; and if Two or more Creditors shall give Notice to the Sheriff or Sheriff Substitute of the County, such Sheriff or Sheriff Substitute (or in case of necessary Absence a Sheriff Substitute authorized by the Sheriff to act under this Act) shall attend the Meeting and adjourned Meetings, and preside; and the Sheriff Clerk or his Deputy shall also attend, and mark the Oaths and Productions with his Initials, and write the Minutes in the Presence of the Meeting, and enter therein the Names and Designations of the Creditors present, or the Mandatories of Creditors, and the Amount for which they claim, and any other Circumstances which the presiding Sheriff shall judge fit, which Minutes the presiding Sheriff shall sign; and the Clerk shall retain the Oaths of the several Claimants, subject to Exhibition thereof, in his Hands, till the Election shall be determined, when he shall deliver the same to the Interim Factor or Trustee (as the Case may be); and where the Sheriff or Sheriff Substitute is not present the Creditors shall elect a Preses, and (if the Sheriff Clerk or a Depute be not present) a Clerk, and the Preses shall mark the Oaths and Productions with his Initials, and sign the Minutes, and the Clerk shall in the Presence of the Meeting write the Minutes, and enter therein the Names and Designations of the Creditors or Mandatories, and the Amount for which they claim, and any other Circumstances relating to the said Meeting; and in either Case the Creditors or their Mandatories who have produced their Oaths and Documents of Debt, and who have been entered in the Minutes, shall then and there elect a fit Person to be Interim Factor or to be Trustee (as the Case may be), or Two or more Trustees to act in succession in case of Nonacceptance, Death, Resignation, Removal, or Disqualification, and in the Case of the Sequestration of the Estates of a Company and of the Partners, One Interim Factor and (as the Case may be) One Trustee for all the Estates, or separate Interim Factors or (as the Case may be) separate Trustees on the Estates of the Company, and on the Estates of all or each of the individual Partners, and Trustees in succession as aforesaid; and it shall not be lawful to elect as Interim Factor or Trustee the Bankrupt, or any Person conjunct and confident with the Bankrupt, or who holds an Interest opposed to the general Interest of the Creditors, or whose Residence is not within the Jurisdiction of the Court of Session.

XLVI. And

Where the Sheriff or his ordinary Substitute is present at Election.

XLVI. And be it enacted, That if the Sheriff or ordinary Sheriff Substitute be present at the Election either of Interim Factor or Trustee, and there be no Competition for the Office or Objections stated to the Candidate or Candidates, he shall, by a Deliverance on the Minutes, declare the Person chosen by the Creditors to be Interim Factor or Trustee; and if there be Competition or Objections to the Candidate or Candidates, any Objections shall be stated at the Meeting to the Votes or Candidates, the Sheriff or ordinary Sheriff Substitute may either forthwith decide thereon, or make Avizandum, and he shall, if necessary, make a short Note of the Objections and of the Answers, on which he shall, within Four Days after the Meeting, hear Parties *vivâ voce*, and declare the Person to be Interim Factor, or (as the Case may be) the Person or Persons, Trustee or Trustees in succession, whom he shall find to have been duly elected, and state the Grounds of his Decision in a Note, and the same, as well as the said short Note, shall form Part of the Process.

Where the Sheriff or ordinary Substitute is not present.

XLVII. Provided always, and be it enacted, That where the officiating Sheriff present at the said Meeting for the Election is a Sheriff Substitute appointed to act in the Absence of the Sheriff or of the ordinary Sheriff Substitute of the County, or where the Preses has been elected by the Creditors, such Substitute or Preses (whether there be any Competition or Objection or not) shall forthwith report the Proceedings to the Sheriff or ordinary Sheriff Substitute, and the Oaths of the several Claimants shall, if the Sheriff Clerk or his Depute be present, remain in his Possession, or if he be not present shall be transmitted to the Sheriff Clerk by the Preses, to be retained by him till the Interim Factor or Trustee (as the Case may be) shall be finally appointed, when he shall deliver the same to such Interim Factor or Trustee; and if there be no Competition or Objection the Sheriff or ordinary Substitute shall declare the Person elected Interim Factor or (as the Case may be) Trustee or Trustees in succession; and if there be Competition or Objection, the Parties shall, within Four Days from the Date of the said Meeting, lodge in the Hands of the Sheriff Clerk short Notes of Objections, and the Sheriff or ordinary Sheriff Substitute shall forthwith hear Parties thereon *vivâ voce*, and give his Decision, and state the Grounds thereof in a Note, which Note, as well as the said short Notes, shall form Part of the Process; and the Deliverance of the Sheriff or Sheriff Substitute declaring the Person elected to be Interim Factor shall be final, and in no Case be subject to Review in any Court or in any Manner whatever.

Amount of Caution to be fixed, and Bond to be lodged.

XLVIII. And be it enacted, That the Creditors shall at the said Meetings respectively fix a Sum for which the Interim Factor shall find Security, and for which the Trustee to be confirmed shall also find Security, for their respective Intromissions and Performance of the Duties and Rules hereby enacted, and shall also decide on the Sufficiency of the Caution offered by the respective Competitors; and the Interim Factor and the Person declared to be Trustee shall respectively forthwith lodge with the Sheriff Clerk a Bond of Caution, signed by the Interim Factor and his Cautioner and by the Trustee and his Cautioner (as the Case may be), in the Form of the Schedule

Schedule (D.) hereunto annexed, which Bond shall be furnished to him by the Sheriff Clerk.

On Bond being lodged, the Sheriff to confirm the Election, and Act and Warrant to be issued;

XLIX. And be it enacted, That on the Bond for the Interim Factor being lodged the Sheriff shall confirm his Election, which Confirmation shall be final and not subject to Review in any Court or in any Manner whatever; and the Sheriff Clerk shall issue an Act and Warrant, in the Form of Schedule (E.) hereunto annexed, to the Interim Factor; and in the Event of the said Deliverance declaring the Election of Trustee becoming final by no Appeal being entered as herein-after provided, and in case of any such Appeal being entered, and the Competition or Objections being finally disposed of, and on a Bond being duly lodged as aforesaid, the Sheriff shall confirm the Election of the Person elected or preferred as Trustee, which Confirmation shall be final and not subject to Review in any Court or in any Manner whatever; and the Sheriff Clerk shall issue an Act and Warrant in the Form of Schedule (F.) hereunto annexed to the Trustee; and the Interim Factor or Trustee (as the Case may be) shall immediately transmit a Copy of the said Act and Warrant to the Bill Chamber Clerks, who shall make an Entry of the Name and Designation of the Interim Factor and of the Trustee (as the Case may be) in the Register of Sequestrations; and the said Act and Warrant shall be an effectual Title to the Interim Factor and Trustee respectively to perform the Duties hereby imposed on them, and shall be Evidence of the Trustee's Right and Title to the said Estates for the Purposes of this Act; and a Copy of the said Act and Warrant in favour of the Interim Factor or Trustee, certified by One of the Bill Chamber Clerks, and authenticated by the Seal of the Court of Session, shall be received in all Courts and Places within *England*, *Ireland*, and Her Majesty's other Dominions as Evidence of the Title, and shall entitle the Trustee or Interim Factor to recover any Debt due to the Bankrupt, and to maintain Actions, in the same Way as the Bankrupt might have done if his Estates had not been sequestrated.

and to be a Title to the Interim Factor or Trustee.

Sheriff Clerk to act if no Interim Factor elected.

Power to Sheriff to seal up and preserve the Estate before Election of Factor.

L. And be it enacted, That in case the Creditors shall fail to elect an Interim Factor, or the Nomination shall otherwise fail, the interim Care and Management of the Estate shall devolve on the Sheriff Clerk of the County; and the Sheriff shall have Power, upon Cause shown by any of the Creditors, at any Time after the Sequestration and before the Election of an Interim Factor, to seal up and cause to be put under safe Custody the Books and Papers of the Bankrupt, and to lock up his Shop, Warehouse, or other Repositories, and to keep the Keys thereof till a Factor is named, or the Care of the Estate devolved on the Sheriff Clerk, subject to such Orders as the Sheriff may see fit for Preservation.

Duties of Interim Factor.

LI. And be it enacted, That the Interim Factor shall immediately on receiving the Act and Warrant of his Appointment, or failing him the Sheriff Clerk, shall take such Steps as may be necessary for the Preservation of the Estate until the Meeting of the Creditors for the Election of Trustee, and he shall take possession of and recover the Bankrupt's Estate, and his Title Deeds, Books, Bills,

Vouchers, and all other Documents whatsoever, so far as then known, and make an Inventory thereof, and he shall transmit a Copy of such Inventory to the Bill Chamber Clerks; and he shall lodge in Bank all Monies received by him as herein-after directed, and pay to the petitioning or concurring Creditor, out of the first Funds which shall come into his Hands, the Expence incurred by him in obtaining the Sequestration, and doing the other Acts hereby required prior to the Election of the Interim Factor, as the same shall be taxed; and if the Funds received by the Interim Factor or Sheriff Clerk shall not be sufficient such Expences shall be paid by the Trustee, when he shall be appointed, out of the first of the Funds which shall come into his Hands.

To lodge Money in Bank, &c.

LII. And be it enacted, That the Bankrupt shall with all Despatch, and before the Time appointed for the Election of Trustee, make up and deliver to the Interim Factor (or Sheriff Clerk, as the Case may be,) a State of his Affairs, specifying his whole Estate wherever situated, the Estates in expectancy or to which he may have an eventual Right, the Names and Designations of his Creditors and Debtors, and the Debts due by and to him, and a Rental of his Heritable Subjects, which State and Rental shall be subscribed by the Bankrupt, and preserved by the Interim Factor or Sheriff Clerk acting as Factor, and Abstracts thereof shall be ingrossed in a Sederunt Book to be kept by him; and the Bankrupt shall at all Times give every Information and Assistance necessary to enable the Interim Factor or Sheriff Clerk acting as Factor, or the Trustee, to execute his Duty; and if the Bankrupt fail to do so, or to grant any Deed which may be requisite for the Recovery of the Estate, the Interim Factor or Sheriff Clerk acting as aforesaid, or Trustee, may apply to the Sheriff to compel him to give such Information and Assistance, and to grant such Deed, under the Penalty of Incarceration and of Forfeiture of the Benefits of this Act, and unless Cause be shown to the contrary the Sheriff shall issue a Warrant of Incarceration accordingly.

Bankrupt to make up a State of his Affairs, and give Information and Assistance.

LIII. And be it enacted, That at the Time and Place appointed for the said Meeting to elect a Trustee the Interim Factor (or Sheriff Clerk acting as Factor) shall exhibit the Sederunt Book containing the said Inventory, State, and Rental, and also an Account of his Intromissions and Disbursements, and, if required by any Creditor, the Books of the Bankrupt, with the Title Deeds, Bills, Vouchers, and other Documents, conform to Inventory; and if the Meeting be satisfied that the Interim Factor (or Sheriff Clerk acting as Factor) has duly lodged the Money and performed his Duties, they shall fix his Remuneration, and he shall receive Payment thereof, and of all Advances made by him, out of the Funds in his Hands; and if the Interim Factor (or Sheriff Clerk) be dissatisfied with the Sums allowed the same shall be determined by the Sheriff; but the Interim Factor (or Sheriff Clerk) shall not be entitled, in respect of Nonpayment thereof, or on any other Ground, to retain any Part of the Estate, and he shall be bound forthwith to deliver the Estate, Books, Title Deeds, Bills, Vouchers, and the said State, Rental, and all other Documents, to the Trustee, who shall, (if sufficient Funds have not been realized by the Interim Factor or Sheriff Clerk), pay the said Remuneration

At Meeting to elect a Trustee, the Interim Factor to exhibit Documents and be remunerated.

ration and Advances out of the first Money which shall come into his Hands.

Appeal against Election of Trustees.

LIV. And be it enacted, That any Creditor or Competitor giving Notice in Writing to the Sheriff Clerk, within Two Days after the Date of the Sheriff's Deliverance declaring the Election of the Trustee, of his Intention to appeal against such Deliverance, shall be entitled to appeal during Session to the Inner House of the Court of Session, or in Vacation to the Lord Ordinary, provided that in the Case of Competition a Bond of Caution for the Competitor, signed by a Cautioner approved of at the said Meeting for Election of Trustee, shall, along with such Notice, be lodged with the Sheriff Clerk, and a Certificate thereof by the Sheriff Clerk, with a Note of Appeal against such Deliverance, be lodged with and marked by the Clerk of the Bill Chamber, within Fourteen Days from the Date of such Deliverance; and on a Copy of such Note, certified by One of the Bill Chamber Clerks, being delivered to the Sheriff Clerk, he shall forthwith transmit to the Bill Chamber the Minutes of Election, together with such of the Proceedings as may be required, and the Inner House or the Lord Ordinary (as the Case may be) shall thereupon hear Parties *vivâ voce*, and pronounce Judgment, and may order a new Election, and appoint a Time and Place for that Purpose; and if the appealing Competitor shall be preferred a Remit shall be made to the Sheriff to confirm him; and no Part of the Expence of such Competition either before the Sheriff Court or any other Court shall be paid out of the Estate, but the Expences shall be ordered to be paid by the unsuccessful Party to the successful Party.

Expence how to be paid.

Appeal not to stop Sequestration.

Interim Factor to continue to act.

LV. And be it enacted, That no Appeal shall have the Effect to stop the Proceedings in the Sequestration, and the Interim Factor (or Sheriff Clerk, as the Case may be,) shall continue to act until a Trustee shall be finally confirmed; and on every new Election an Appeal may be made and other Proceedings take place in manner before provided; and the Interim Factor shall deliver to the Person confirmed Trustee the Estate of the Bankrupt, with the Books, Title Deeds, and other Documents in his Possession, and account to him for his Intromissions; and the Creditors may at any Meeting (which if required the Trustee shall call) make an Allowance to the Interim Factor (or Sheriff Clerk) for his Trouble during the Period of his Administration, subject to Review of the Sheriff as aforesaid; and the Trustee shall pay the Sum so allowed, and the Expences incurred by the Interim Factor or Sheriff Clerk, out of the first of the Funds.

Remuneration to Interim Factor.

Election of Commissioners.

LVI. And be it enacted, That at the Meeting for Election of Trustee the Creditors present, or their Mandatories, shall after the Election of the Trustee elect Three Commissioners (if there be so many Creditors who have claimed) who shall be either Creditors or Mandatories of Creditors, and the same Proceedings shall take place in regard to their Election as is provided in regard to the Election of Trustee (except that they shall not be bound to find Security); and the Sheriff shall decide who are the Persons duly elected, and declare their Election by a Deliverance in the Sederunt Book, which shall entitle them to act without further Confirmation; and a Majority of them shall

Disqualification. shall be a Quorum: Provided that no Person shall be eligible as a Commissioner who is disqualified to be a Trustee; and any Mandatory who has been elected a Commissioner shall lose that Office upon written Intimation being sent by his Constituent to the Trustee that he has recalled the Mandate, and the Trustee shall immediately record the Intimation in the Sederunt Book; and the Trustee shall in all Cases where a Commissioner has declined to act, or resigned or become incapacitated, call a Meeting of Creditors for the Purpose of electing a new Commissioner, and such Commissioner shall be elected in manner herein-before provided.

Duties of Commissioners. LVII. And be it enacted, That the Commissioners shall superintend the Proceedings of the Trustee, concur with him in Submissions and Transactions, give their Advice and Assistance relative to the Management of the Estate, examine the Acts and Intromissions of the Trustee, audit his Accounts, decide as to paying or postponing Payment of a Dividend, fix his Remuneration, and may assemble at any Time to ascertain the Situation of the Bankrupt Estate; and any One of them may make such Report as he may think proper to a General Meeting of the Creditors.

Offer of Composition may be made at this Meeting. Renewal of personal Protection. LVIII. And be it enacted, That at the said Meeting for Election of a Trustee, or at the Meeting held after the Examination of the Bankrupt, or at any Meeting called for the Purpose, an Offer of Composition may be made to the Creditors in manner herein-after provided; and the Majority in Number and Value of the Creditors present at these Meetings, or at any other Meetings called for the Purpose, may resolve that the personal Protection of the Bankrupt ought to be renewed for such Time as they may think fit, and in such Case the Trustee shall apply to the Sheriff, who shall renew the Protection; and the Deliverance by him renewing the same, or an Extract thereof signed by the Sheriff Clerk, shall have the same Effect as the original Warrant of Protection.

Allowance to Bankrupt. LIX. And be it enacted, That at the said Meeting for Election of a Trustee, or at the Meeting held after the Examination of the Bankrupt, or at any Meeting called for the Purpose, Four Fifths in Value of the Creditors present may authorize Payment from Time to Time to the Bankrupt, or to the Partners of a Company (if the Sequestration be of a Company Estate), of such Sum out of the Estate as they shall think proper for Subsistence until the Period assigned for Payment of the Second Dividend, but such Allowance shall not exceed Three Guineas *per* Week to the Bankrupt or to each individual Partner of a Company from the Date of the Sequestration to the Period aforesaid, and no Allowance shall be given if the Bankrupt shall not have complied with the Provisions of this Act.

Entry of Confirmation in Register of Adjudications. LX. And be it enacted, That the Trustee, within Twenty-one Days after his Election is confirmed, shall present an Abbreviate, signed by him or his Agent, in the Form of Schedule (G. No. 1.) hereunto annexed, to the Keeper of the Register of Abbreviates of Adjudications, who shall forthwith record the same, and write and subscribe a Certificate on the said Abbreviate in the Form also specified

specified in the said Schedule (G. No. 2.), and the like Proceeding shall take place within Twenty-one Days after the Election of each new Trustee shall be confirmed.

Trustee's Duties.

LXI. And be it enacted, That the Trustee shall manage, realize, and recover the Estate belonging to the Bankrupt wherever situated, and convert the same into Money, according to the Directions given by the Creditors at any Meeting, and if no such Directions are given he shall do so with the Advice of the Commissioners; and he, as well as the Interim Factor or Sheriff Clerk acting as Factor, shall lodge all Money which he may receive in such Bank as Four Fifths of the Creditors in Number and Value at any General Meeting shall appoint, and failing such Appointment, in one or other of the following Banks; *videlicet*, the Bank of *Scotland*, the Royal Bank of *Scotland*, the Bank of the *British* Linen Company, the Commercial Bank of *Scotland*, or the National Bank of *Scotland* (provided that the Bank be not one in which the Interim Factor or Trustee shall be an acting Partner, Manager, or Cashier); and the Money shall be lodged in the Name of the Interim Factor or Sheriff Clerk or Trustee, in his official Character under this Act, at the highest Rate of Interest which can be procured for the same; and such Bank shall, once yearly at least, balance the said Account, and accumulate the Interest with the Principal Sum, so that both shall thereafter bear Interest as Principal; and if the Bank fail to do so such Bank shall be liable to account as if such Money had been so accumulated.

Money to be lodged in Bank by him and Interim Factor.

Factor or Trustee retaining more than 50*l.* in hand to pay 20 per Cent. on Excess not lodged.

LXII. And be it enacted, That if either the Interim Factor or Sheriff Clerk acting as Factor or the Trustee shall keep in his Hands more than Fifty Pounds of Money belonging to the Estate for more than Ten Days, he shall pay a Sum to the Creditors at the Rate of Twenty Pounds *per Centum per Annum* on the Excess of the said Sum of Fifty Pounds for such Time as it shall be in his Hands beyond the said Ten Days; and unless the Money has been kept from innocent Causes, the Interim Factor or Trustee shall be dismissed from his Office, upon Petition to the Lord Ordinary by any Creditor, and be liable in Expences, and have no Claim to Remuneration.

Trustee to keep a Sederunt Book and Accounts, and to send a Copy of the Accounts to the Bill Chamber Clerks.

LXIII. And be it enacted, That the Trustee shall keep a Sederunt Book in which he shall record all Minutes of Creditors and of Commissioners, States of Accounts, Reports, and all the Proceedings necessary to give a correct View of the Management of the Estate; and he shall also keep regular Accounts of the Affairs of the Estate, and transmit to the Bill Chamber Clerks, before each of the Periods herein assigned for Payment of a Dividend, a Copy certified by himself, of such Accounts, and such Copies shall be preserved in the Office of the said Clerk; and the said Sederunt Book and Accounts shall be patent to the Commissioners and to the Creditors, or their Agents, at all Times: Provided always, that where any Document is of a confidential Nature (such as the Opinion of Counsel in regard to any Matter affecting the Interests of the Creditors on the Estate) the Trustee shall not be bound to insert it in the Sederunt Book, or to exhibit it to any other Person than the Commissioners, unless he be ordered by competent Authority to do so.

LXIV. And

Interim Factor, Sheriff Clerk, Trustee, and Commissioners amenable to Lord Ordinary and Sheriff.

LXIV. And be it enacted, That the Interim Factor, Sheriff Clerk acting as Factor, Trustee, and Commissioners shall be amenable to the Lord Ordinary and to the said Sheriff, although resident beyond the Territory of the said Sheriff, at the Instance of any Party interested, to account for their Intromissions and Management, by Petition served on them; and in case it shall appear that such Application ought not to have been made, the Party complained of shall be entitled to his full Expences, to be either retained out of the Funds or recovered from the Party complaining, as the Lord Ordinary or the Sheriff shall direct.

Sheriff to appoint Day to examine Bankrupt; and Meeting of Creditors to be published.

LXV. And be it enacted, That the Trustee shall within Eight Days after the Date of Confirmation apply to the Sheriff to name a Day for the public Examination of the Bankrupt; and the Sheriff shall issue his Warrant for the Bankrupt to attend within the Sheriff Court House or other convenient Place on a specified Day and at a specified Hour (being not sooner than Fourteen Days nor later than Twenty-one Days from the Date of his Warrant); and on the Sheriff granting such Warrant the Trustee shall publish an Advertisement in Terms of Schedule (H.) hereunto annexed in the *Edinburgh Gazette*, intimating to the Creditors his Name and Designation, his Election as Trustee, the Day, Hour, and Place fixed for the Examination of the Bankrupt, and also a specified Day, (being not sooner than Fourteen Days nor later than Twenty-one Days after the Day appointed for the Examination of the Bankrupt, or in the Case of a deceased Debtor not sooner than Fourteen Days nor later than Twenty-one Days from the Date of the Trustees Confirmation,) and the Hour and Place, for holding a Meeting of the Creditors.

Warrant to apprehend Bankrupt for Examination.

LXVI. And be it enacted, That it shall be competent for the Sheriff to grant Warrant to apprehend the Bankrupt, and bring him before the Sheriff for Examination; and if the Bankrupt be incarcerated for a Debt or other civil Obligation within *Scotland*, the Sheriff may grant Warrant to Magistrates and Gaolers, on receiving a Duplicate of such Warrant, and an Acknowledgment for the Person of the Bankrupt, to deliver him to the Officer presenting the same, and they shall do so accordingly; and the Sheriff may also grant Warrant to bring the Bankrupt from the Sanctuary; which Warrants shall protect against Arrest for Debt or other civil Obligation while under Examination, and on the Way to and from the Place of Examination, and shall be sufficient Authority, either within or beyond the Territory of the said Sheriff, in *Scotland*, to Messengers at Arms, and to the Officers of the said Sheriff, to apprehend, transmit, detain, and incarcerate, and to Gaolers to deliver up, receive, and detain, the Bankrupt until his Examination is concluded, and also for his Re-transmission after Examination to the Gaol from which he was delivered up, and Re-incarceration therein; and if the Bankrupt cannot conveniently be brought from Gaol or the Sanctuary, or cannot be examined by the Sheriff there, or is by a lawful Cause prevented from attending at the Time and Place appointed, or is in Custody on a Criminal Charge, or is abroad, the Sheriff may grant Commission to take the Examination; and the Sheriff or Commissioner may, if he shall see Cause, adjourn the Examination of the Bankrupt to an early Time

Time to be then fixed, and the Sheriff may, on the Application of the Trustee, order the Bankrupt to be examined as often as he shall see fit; and the Examination may, at the Discretion of the Sheriff or the Commissioner, be upon Oath.

Warrant where the Bankrupt is in England or Ireland.

LXVII. And be it enacted, That if the Bankrupt be in any Part of *Great Britain* and *Ireland* other than *Scotland*, the Lord Ordinary may, on Petition by the Trustee, grant Warrant under the Seal of the Court of Session to all Judges, Magistrates, Justices of the Peace, and Officers of the Law to apprehend and transmit him to the Place of his Examination, and to enforce the same, which they are hereby required to do; and if the Bankrupt be in Prison or Custody the Lord Ordinary may grant Warrant as aforesaid to Magistrates and Gaolers, upon receiving a Duplicate of such Warrant, and an Acknowledgment for the Person of the Bankrupt, to deliver him to the Messenger or Officer presenting such Warrant, which they shall do accordingly; and such Warrant shall be sufficient Authority for the Apprehension, Transmission, Detention, and Incarceration of the Bankrupt (where necessary for his safe Custody), and for his Re-transmission after Examination to and Re-incarceration in the Prison or Custody from which he was delivered up.

Other Persons may be examined, and if necessary apprehended.

LXVIII. And be it enacted, That the Sheriff may at any Time, on the Application of the Trustee, order an Examination of the Bankrupt's Wife and Family, Clerks, Servants, Factors, Law Agents, and others who can give Information relative to his Estate, either by Declaration or on Oath, as to the Sheriff shall seem fit, and issue his Warrant requiring such Persons to appear; and if they refuse or neglect to appear when duly summoned the Sheriff may issue another Warrant to apprehend the Person so failing to appear: Provided that where such Person is not the Bankrupt, nor his Wife nor one of his Family, nor his Clerk or Servant, no Warrant for Apprehension shall be issued until the Expiration of Eight Days from the Service of the first Warrant, unless the Trustee shall on Oath specify a reasonable Cause of Belief that such Person intends to leave the Country to avoid the Examination, in which Case the Sheriff may forthwith issue such Warrant; which several Warrants shall be sufficient to authorize Messengers at Arms, or the Officers of the said Sheriff, to execute the same either within or without the Territory of the Sheriff in *Scotland* as aforesaid; and if any Person liable to be examined as aforesaid cannot conveniently attend for Examination, the Sheriff may grant Permission to take his Examination; and such Examination, whether by the Sheriff or by a Commissioner, may be adjourned, if seen fit, to an early Time, to be then fixed.

Bankrupt and other Persons must answer all lawful Questions, &c.

LXIX. And be it enacted, That the Bankrupt and the said Persons shall answer all lawful Questions relating to the Affairs of the Bankrupt; and the Sheriff may order such Persons to produce for Inspection any Books of Account, Papers, Deeds, Writings, or other Documents in their Custody relative to the Bankrupt's Affairs, and cause the same, or Copies thereof, to be delivered to the Trustee: Provided that Persons, other than the Bankrupt, summoned to attend for

Parties entitled to

Expences as Witnesses.

for Examination, shall be entitled to such Allowances as Witnesses are in other Cases entitled to, and the Amount of which, if disputed, shall be fixed by the Sheriff.

Effect of Refusal to answer, &c.

LXX. And be it enacted, That if the Bankrupt or any of the said Persons shall refuse to be sworn, or to answer, to the Satisfaction of the Sheriff, any lawful Question put to him by the Sheriff or Trustee, or by any Creditor with the Sanction of the Sheriff, or without lawful Cause shall refuse to sign his Examination, or to produce Books, Deeds, or other Documents in his Custody or Power relating to the Estate, the Sheriff may grant Warrant to commit him to Prison, there to remain until he comply with the Order; which Warrant shall specify the Question and Answer, Book, Deed, Document, or the Refusal to swear or to sign the Examination; and such Warrant shall not be subject to the Review of the Court of Session, but the Bankrupt or Person incarcerated may apply by written Petition (without Argument) to the Lord Ordinary for a Recall of the Warrant, and the Lord Ordinary shall order the Petition to be served on the Trustee or the said Creditor, and shall thereafter hear Parties *vivâ voce*, and pronounce Judgment.

Latent Partners must disclose themselves.

LXXI. And be it enacted, That if any latent Partner of a Company whose Estates have been sequestrated shall not, by Intimation to the Interim Factor or Trustee, acknowledge that he is a Partner, on or before the Day appointed for the Examination of the known Partners, he shall not be entitled to the Benefits or Privileges of this Act, unless in an Application for the same he satisfy the Lord Ordinary that the Omission proceeded from innocent Mistake, or Ignorance of the Proceedings, or reasonable Misconception as to his Liability as a Partner, and unless he shall then follow out all necessary Steps for remedying, as far as possible, the Loss and Inconvenience thence arising.

Bankrupt may correct his State; and must then take the following Oath.

LXXII. And be it enacted, That the Bankrupt, before the Close of his Examination, may make such Additions to or Alterations upon the State of his Affairs as may have occurred to him to be necessary to give a full View of his Affairs, which State, with the Additions and Alterations, shall be subscribed by the Sheriff and the Bankrupt; and the Bankrupt shall then take the following Oath, which shall be engrossed in the Sederunt Book, and subscribed as aforesaid, as relative to the said State; and where the Bankrupt is a Partner with others, and examined respecting the Affairs of the Partnership, the Words of the Oath shall so far be varied as to make it applicable to the Case; and when he is by Law entitled to make an Affirmation in the place of an Oath, it shall be sufficient to take his solemn Affirmation upon the Matters contained in the said Oath, which shall be varied accordingly, and be engrossed and subscribed as aforesaid:

Oath.

'I DO, in the Presence of Almighty God, and as I shall answer to 'God at the great Day of Judgment, solemnly swear, That the 'State of my Affairs subscribed by me, as relative hereto, contains a 'full and true Account, to the best of my Knowledge and Belief, of 'all the Debts of whatever Nature due to me, and of all my Estate

'and Effects, Heritable and Moveable, Real and Personal, wherever 'situated (the necessary Wearing Apparel of myself, my Wife, and 'Family, only excepted), as well as of all Claims which I am entitled 'to make against any Person or Persons whatsoever, and of all Estate 'in Expectancy, or Means of whatever Kind to which I have an 'eventual Right, by Contract of Marriage, Trust Deed, Settlement, 'Deed of Entail, or otherwise; and that the said State likewise con-'tains a full and true Account of all Debts due by me, or Demands upon 'me; and that I have delivered up the whole Books, Documents, 'Accounts, Title Deeds, and Papers of every Kind belonging to me 'which in any way relate to my Affairs, and which were or are in my 'Possession or under my Power; and that I have made a full Disclo-'sure of every Particular relating to my Affairs: And further I pro-'mise and swear, That I will forthwith reveal all and every other 'Circumstance or Particular relative to my Affairs which may here-'after come to my Knowledge, and which may tend to increase or 'diminish the Estate in which my Creditors may be interested, 'directly or indirectly. So help me GOD.'

Trustee to prepare a Report, which shall be exhibited at a Meeting to be held after Bankrupt's Examination.

LXXIII. And be it enacted, That within Fourteen Days after the Examination of the Bankrupt the Trustee shall prepare a Report setting forth the State of the Bankrupt's Affairs, and an Estimate of what it may produce, which Report he shall exhibit at the Meeting of the Creditors to be held after the Examination of the Bankrupt, and give all Explanations relative thereto; and the Creditors assembled at such Meeting may receive any Offer of Composition as herein-after provided, and may, either at this or any other Meeting called for the Purpose, give Directions for the Recovery, Management, and Disposal of the Estate; and where any Part of the Estate consists of Land or other Heritable Subjects, it shall be optional to the Creditors to determine whether the Trustee is to bring the said Heritable Estate to Judicial Sale, or to dispose thereof by voluntary Public Sale.

Meetings may be called at any Time.

LXXIV. And be it enacted, That the Trustee or any Commissioner may at any Time call a Meeting of the Creditors, and the Trustee shall call such Meeting when required by One Fourth in Value of the Creditors ranked on the Estate.

Advertisements of Meetings.

LXXV. And be it enacted, That wherever it is in this Act directed that a Meeting of Creditors shall or may be called or held, a Notice of the Day, Hour, Place, and Purpose of the Meeting shall be advertised in the *Edinburgh Gazette* Fourteen Days at least before the Day of the Meeting (except in the Case of the Meeting for the Election of Interim Factor); and such Meeting may be adjourned to the following Day.

To what Creditors Notices through the Post Office not to be sent.

LXXVI. And be it enacted, That it shall not in any Case be necessary to send any Notification, as is by this Act directed to be sent, by Post to any Creditor whose Debt shall be under Twenty Pounds, unless such Creditor shall have given Directions in Writing that such Notification shall be sent; and no Notification shall be sent to any Creditor who has directed that none shall be sent.

Removal or Resignation of Trustee.

LXXVII. And be it enacted, That a Majority in Number and Value of the Creditors present at any Meeting to be called by an Advertisement published in the *Edinburgh Gazette* at least Fourteen Days before such Meeting, specifying the Purpose of the Meeting, may remove the Trustee, or accept of his Resignation; and One Fourth of the Creditors in Value may at any Time apply by Petition to the Lord Ordinary for Removal of the Trustee, and the Lord Ordinary shall order the said Petition to be served on the Trustee, and intimated in the *Edinburgh Gazette;* and if the Lord Ordinary shall be satisfied that sufficient Reason has been shown, he shall remove the Trustee, and appoint a Meeting of the Creditors to be held for devolving the Estate on the Trustee next in succession, or electing a new Trustee; and if the Trustee shall die, resign, or be removed, or remain at any One Time for Three Months furth of *Scotland*, any Commissioner, or any Creditor ranked or claiming and entitled to be ranked on the Estate, may apply to the Sheriff for an Order to hold a Meeting for devolving the Estate on the next Trustee in succession, or electing a new Trustee; and the Sheriff shall grant Warrant to hold such Meeting at a certain Time and Place, which shall be advertised in the *Edinburgh Gazette* by the Commissioner or Creditor so applying; and at the Time and Place so appointed the Creditors at such Meeting may devolve the Estate on the Trustee next in succession, or elect a new Trustee; and where the Estate is devolved on such Trustee the said Creditors shall fix the Amount for which he shall find Security, and on a Bond being lodged the Sheriff shall confirm him, and an Act and Warrant shall be issued and recorded in the same Way and to the same Effect as on the first Election of a Trustee; and in like Manner, in all Cases of a new Election of a Trustee, the Procedure shall take place in the same Way as is herein-before provided for the Case of the first Election; and the succeeding or the new Trustee shall be vested with the Powers, and shall perform the Duties, and be subject to the same Rules as are herein-before provided, and shall call to account the former Trustee, or his Heirs and Representatives.

Vesting of the Moveable Estate in the Trustee.

LXXVIII. And be it enacted, That the Moveable Estate and Effects of the Bankrupt, wherever situated, so far as attachable for Debt, shall, by virtue of the Act and Warrant of Confirmation in favour of the Trustee, be transferred to and vested in him or any succeeding Trustee, for behoof of the Creditors, absolutely and irredeemably as at the Date of the Sequestration, with all Right, Title, and Interest, to the same Effect as if actual Delivery or Possession had been obtained or Intimation made at that Date; subject always to such preferable Securities as existed at the Date of the Sequestration, and are not null or reducible.

Vesting of the Heritable Estate in the Trustee.

LXXIX. And be it enacted, That the whole Heritable Estates belonging to the Bankrupt in *Scotland* shall by virtue of the said Act and Warrant be transferred to and vested in the Trustee or any succeeding Trustee, for Behoof foresaid, absolutely and irredeemably, as at the Date of the Sequestration, with all Right, Title, and Interest to the same Effect as if a Decree of Adjudication in Implement of Sale, as well as a Decree of Adjudication for Payment and in Security of

Debt,

Debt, subject to no legal Reversion, had been pronounced in favour of the Trustee, and recorded at the Date of the Sequestration, and as if a Poinding of the Ground had then been executed, subject always to such preferable Securities as existed at the Date of the Sequestration, and are not null and reducible, and the Creditors Right to poind the Ground as herein-after provided; and the Right of the Trustee shall not be challengeable on the Ground of any prior Inhibition (saving the Effect which such Inhibition may be entitled to in the ranking of the Creditors): Provided always, that such Transfer and vesting of the Heritable Estate shall have no Effect upon the Rights of the Superior, nor upon any Question of Succession between the Heir and Executor of any Creditor claiming on the sequestrated Estate, nor upon the Rights of the Creditors of the Ancestor (except that the Act and Warrant of Confirmation shall operate in their Favour as complete Diligence); and if the Right to any Part of the Bankrupt's Heritable Estate be entailed or otherwise limited, the Right vested in the Trustee shall be effectual only to the Extent of the Interest in the Estate which the Bankrupt might legally convey or which the Creditors might validly attach.

Limitations and Qualifications of the Trustee's Right.

LXXX. And be it enacted, That all Lands, Tenements, and Hereditaments in *England*, *Ireland*, or in any of Her Majesty's Dominions to which the Bankrupt is entitled, and all Interest to which he is entitled in any such Lands, Tenements or Hereditaments, and of which he might, according to the Laws of *England*, *Ireland*, or other Her Majesty's Dominions, have disposed, and all such Lands, Tenements, and Hereditaments which he shall purchase, or which shall descend, be devised, revert to, or come to the Bankrupt before he shall have obtained his Discharge, and all Deeds, Papers, and Writings respecting the same, shall by virtue of the Act and Warrant of Confirmation vest in and belong to the Trustee for the Purposes of this Act as at the Date of the Sequestration: Provided that where according to the Laws of *England*, *Ireland*, or other Her Majesty's Dominions any Deed or Conveyance would require Registration, Enrolment, or Recording, the Act and Warrant of Confirmation shall be so registered, enrolled, or recorded according to the Laws of *England*, *Ireland*, or other Her Majesty's Dominions; and if any Purchase is made by any Person for valuable Consideration, and without Notice of the Sequestration, prior to the Registration, Enrolment, or Recording of the said Act and Warrant of Confirmation, such Purchase shall not be invalidated by the Existence of such Act and Warrant, or the subsequent Registration, Enrolment, or Recording thereof.

Estates in England, Ireland, and other British Dominions.

LXXXI. And be it enacted, That if any Estate, wherever situated, shall, after the Date of the Sequestration, and before the Bankrupt has obtained his Discharge, be acquired by him, or descend or come to him, the same shall *ipso jure* fall under the Sequestration, and the full Right and Interest accruing thereon to the Bankrupt shall be held as transferred to and vested in the Trustee as at the Date of the Acquisition thereof or Succession for the Purposes of this Act; and the Trustee shall on coming to the Knowledge of the Fact present a Petition setting forth the Circumstance to the Lord Ordinary, who shall

Acquisitions of Bankrupt after the Sequestration to belong to the Creditors.

shall appoint Intimation to be made in the *Edinburgh Gazette*, and require all concerned to appear within a certain Time for their Interest, and after the Expiration thereof, and no Cause shown to the contrary, the Lord Ordinary shall declare all Right and Interest in such Estate which belongs to the Bankrupt to be vested in the Trustee, as at the Date of the Acquisition thereof or Succession thereto, to the same Effect as is herein-before enacted in regard to the other Estates; and the Proceeds thereof when sold shall be divided in Terms of this Act; and if the Bankrupt do not immediately notify to the Trustee that such Estate has been acquired or has come to him as aforesaid, he shall forfeit all the Benefits of this Act, and it shall be competent to the Trustee to examine him as aforesaid in relation thereto: Provided always, that the Rights of the Creditors of the Person from whom such Estate shall come or descend to the Bankrupt shall be reserved entire.

Sequestration equivalent to an Adjudication in Competition;

LXXXII. And be it enacted, That the Sequestration shall, as at the Date thereof, be equivalent to a Decree of Adjudication of the Heritable Estates of the Bankrupt for Payment of the whole Debts of the Bankrupt, Principal and Interest accumulated at the said Date, and when it is dated within Year and Day of any effectual Adjudication the Estate shall be disposed of under the Sequestration according to the Provisions of this Act: Provided always, that nothing herein contained shall affect the Rights of any Heritable Creditor holding a Power of Sale preferable to the Trustee.

and to Arrestment and Poinding.

Diligence Sixty Days before Sequestration, or after it ineffectual.

Expences of Diligence.

LXXXIII. And be it enacted, That the Sequestration shall, as at the Date thereof, be equivalent to an Arrestment in Execution and Decree of Forthcoming, and to an executed or completed Poinding; and no Arrestment or Poinding executed of the Funds or Effects of the Bankrupt on or after the Sixtieth Day prior to the Sequestration, or executed after the Date of the Sequestration, shall be effectual; and such Funds or Effects, or the Proceeds of such Effects if sold, shall be made forthcoming to the Trustee: Provided that the Arrester or Poinder, before the Date of the Sequestration, who shall be thus deprived of the Benefit of his Diligence, shall have Preference out of such Funds or Effects for the Expence *bonâ fide* incurred by him in such Diligence.

Preferences in case of a deceased Debtor.

LXXXIV. And be it enacted, That where the Sequestration of the Estates of a deceased Debtor is dated within Seven Months after his Death, any Preference or Security for any prior Debt acquired by legal Diligence on or after the Sixtieth Day before his Death or subsequent to his Death, and any Preference or Security acquired for a prior Debt by any Act or Deed of the Debtor which has not been lawfully completed for a Period of more than Sixty Days before his Death, and any Confirmation as Executor Creditor after the Debtor's Death, shall in these several Cases be of no Effect in competition with the Trustee; and the Estates and Effects over which such Preferences or Securities shall have been obtained, or of which Confirmation shall have been expede, shall belong to the Trustee: Provided always, that the Creditor who is so deprived of the Benefit of his Diligence or Confirmation shall have Preference for Payment out

out of the said Estates or Effects of the Expences *bonâ fide* incurred by him in such Diligence or Confirmation.

Acts and Payments by Bankrupt after Sequestration null, except in certain Cases.

LXXXV. And be it enacted, That all Payments and Preferences or Securities obtained by or granted to prior Creditors, and all Acts done or Deeds granted by the Bankrupt after the Date of the Sequestration, and before his Discharge, out of or in relation to the Estate (unless with the Consent of the Interim Factor or Trustee), shall in the event of Sequestration being awarded be null and void; and the Trustee shall be entitled to such Preference or Security and to any Money so paid, deducting any Expence *bonâ fide* incurred; but if a *bonâ fide* Purchaser is in Possession of Moveable Effects received from the Bankrupt after the Sequestration, and when ignorant thereof, for a Price paid or which he is ready to pay, he shall not be obliged to restore the Effects; and if a Debtor, when ignorant of the Sequestration, have paid his Debt *bonâ fide* to the Bankrupt, he shall not be obliged to pay it a second Time to the Trustee; and if the Possessor of any Bill or Promissory Note, with recourse on other Parties, which is payable by the Bankrupt, or of a Security for a Debt due by the Bankrupt, shall have received Payment of his Debt from the Bankrupt in ignorance of the Sequestration, and given up such Bill, Promissory Note, or Security to the Bankrupt, such Person shall not be liable to repay to the Trustee the Amount so received, unless the Trustee shall replace him in the Situation in which he stood, or reimburse him for any Loss or Damage.

Subjects improperly included in Sequestration may be struck out.

LXXXVI. And be it enacted, That any Person claiming Right to any Estate included in the Sequestration may present a Petition to the Lord Ordinary praying to have such Estate struck out of the Sequestration, and the Lord Ordinary shall order the Trustee to answer within a certain Time, and on Expiration of such Time he shall proceed to dispose of the Application.

Trustee may complete feudal Titles, or grant such Rights as Bankrupt could do.

LXXXVII. And be it enacted, That the Bankrupt shall, if required, grant all Deeds necessary for recovering and feudally vesting his Estates in the Trustee for the Purposes of this Act; and if the Bankrupt's Title to any Estate has not been completed the Trustee may complete Titles in his own Person, whom failing, in favour of any Trustee who may succeed him, for Behoof of the Creditors, or in the Person of the Bankrupt; and Superiors shall, if required, enter the Trustee or the Purchaser from him in Terms of Law; and the Trustee may, without making up a feudal Title in his Person, and without Concurrence of the Bankrupt, grant Conveyances of the Heritable Estate belonging to the Bankrupt, with such Procuratories, Precepts, or other Warrants as the Bankrupt might competently have granted, which Conveyances shall be as effectual to the Purchaser as if they had been granted by the Bankrupt with Concurrence of the Trustee, and shall not be affected by any Inhibition against the Bankrupt, reserving the Effect of such Inhibition in the Ranking.

Trustee may get Property transferred to him,

LXXXVIII. And be it enacted, That where Sequestration is awarded against the Estate of a Person after his Death, and his Successor has made up a Title to his Heritable Estate, the Trustee may apply

although the Heir of the Bankrupt has made up Titles.

apply by Petition to the Lord Ordinary praying that such Estate shall be transferred to and vested in him, and the Lord Ordinary shall order the Petition to be served upon such Successor, and require him to answer the same within Fourteen Days; and an Abbreviate of such Petition and Deliverance in Terms of the Schedule (B. No. 3.) being recorded in the Register of Inhibitions kept at *Edinburgh*, it shall have the Effect of an Inhibition, and the Keeper thereof shall write on the said Petition a Certificate in Terms of the said Schedule (B. No. 2.); and if on Expiration of that Period no Cause is shown to the contrary, the Lord Ordinary shall declare such Estate to be transferred to and vested in the Trustee as at the Date of the Sequestration, to the same Effect as is herein-before provided in regard to the Act and Warrant of Confirmation; and the Trustee shall within Eight Days thereafter cause an Abbreviate of such Petition and Deliverance to be recorded in the Register of Abbreviates of Adjudications in Terms of the Schedule (G. No. 3.) hereto annexed, and the Keeper of the said Register shall write on such Abbreviate a Certificate in Terms of the said Schedule (G. No. 2.).

Decree to be recorded in the Register of Adjudications.

Circumstances in which Heritable Creditors not to interfere with Sale by Trustee.

LXXXIX. And be it enacted, That if the Creditors at the Meeting held after the Examination of the Bankrupt, or at any other Meeting called for the Purpose, resolve that the Trustee shall dispose of the Heritable Estate by public Sale or bring it to judicial Sale, and if such Resolution has been made before a Creditor holding a Power of Sale shall have commenced Proceedings for Sale, or if such Proceedings, after being commenced prior to the Date of such Resolution, have thereafter been unduly delayed, such Creditor shall not be entitled to interfere with the Sale by the Trustee.

Public Sale of Heritable Subjects:

Effect on Securities.

XC. And be it enacted, That if a public Sale of the Heritable Estate be resolved on, such Sale shall be made by Auction at the upset Price and in the Manner which shall be fixed by the Trustee, with Consent of the Commissioners; and if the Estate be sold the Trustee, with Consent of the Commissioners, shall grant a Disposition to the Purchaser, which shall have the Effect of conveying whatever Right is in the Trustee, under Burden of the Securities preferable to the Right of the Trustee, but shall discharge the Estate of all Securities not preferable to the Right of the Trustee, and of all Diligence not completed at the Date of the Sequestration.

Heritable Creditor may allow Trustee to sell.

XCI. And be it enacted, That if a Creditor holding an Heritable Security, with a Power to sell, concur with the Trustee in bringing the Estate to Sale, the Trustee shall sell the same in his own Name, and the Articles of Roup and Conveyance to the Purchaser shall be executed by the Trustee, with Consent of the said Creditor and the Commissioners, and the Price shall be paid by the Purchaser to the Parties legally entitled thereto, and in so far as not paid at the Time of the Delivery of the Conveyance it shall be consigned in the Bank in which the Money of the sequestrated Estate is deposited; which Payment or Consignation of the Price shall free and discharge the Estate sold and the Purchaser from all Securities preferable to that of the said consenting Creditor, in so far as the Debts in such Securities

are

are satisfied by such Payment or Consignation, and also from the Security of the consenting Creditor, whether the Debt in such Security be satisfied or not, and from all Securities postponed to the Security of such Creditor.

Heritable Creditor, with Power to sell, may sell.

XCII. And be it enacted, That a Creditor who holds an Heritable Security preferable to the Right of the Trustee, with a Power to sell, may sell in Terms of his Bond notwithstanding the Sequestration, and it shall be competent to the Trustee to concur therein in order to fortify the Title; and the Trustee, or any posterior Heritable Creditor preferable to him, may, by Petition to the Lord Ordinary or to the Sheriff, compel the Creditor and the Purchaser to account for any Reversion of the Price.

Judicial Sale.

Disposal of Price.

XCIII. And be it enacted, That if the Creditors assembled as aforesaid shall resolve on a judicial Sale, the Trustee shall institute such an Action, which may be carried on as to a Part or the Whole of the Estate, and without any other Proof of Bankruptcy than the Act of Sequestration; and every Heritable Creditor in Possession shall be cited upon Induciæ of Fifteen Days, whether within *Scotland* or not, and it shall not be necessary to call any other Parties; and on the Estate being sold the Price, after satisfying any Securities preferable to the Right of the Trustee, shall be paid by the Purchaser to the Trustee, and the Purchaser shall upon Payment of the Price receive a Discharge from the Trustee, which, with the Decree of Sale, shall free and discharge the Estate in the same Way as a Decree of Sale in an Action of Ranking and Sale.

Expences as against Heritable Creditors.

XCIV. And be it enacted, That no Part of the Expences of the Sequestration, nor of the Sale in any way of the Heritable Estate, nor of the Trustee's Commission, shall be payable out of such Part of the Price as may be necessary to discharge the Securities on the Heritable Estate preferable to the Right of the Trustee; and no Heritable Creditor, or Creditor preferable to the Trustee on the Heritable Estate, shall be liable for the Expence of the Sequestration or the Trustee's Commission, nor of such Sale, unless he shall have consented to the Sale, in which Case he shall be liable for the Expence of the Sale.

Heritable Creditor's Right to poind the Ground limited.

XCV. And be it enacted, That no Poinding of the Ground which has not been carried into execution by Sale of the Effects at least Sixty Days before the Date of the Sequestration, and no Decree of Maills and Duties on which a Charge has not been given at least Sixty Days before the said Date, shall (except to the Extent herein-after provided) be available in any Question with the Interim Factor or Trustee: Provided always, that no Creditor who holds a Security over the Heritable Estate preferable to the Right of the Trustee shall be prevented from executing a Poinding of the Ground or obtaining a Decree of Maills and Duties after the Sequestration, but such Poinding or Decree shall, in competition with the Trustee, be available only for the Interest on the Debt for the current Term, and for the Arrear of Interest for One Year immediately before the Commencement of such Term.

XCVI. And

Landlord's Hypothec saved.

XCVI. And be it enacted, That nothing herein contained shall affect the Landlord's Right of Hypothec.

Interim Factor or Trustee may be authorized to receive and open Post Letters.

XCVII. And be it enacted, That the Lord Ordinary or Sheriff, on Cause shown, may order that for a Period not exceeding Three Months from the Date of the Order all Letters addressed to the Bankrupt shall be delivered by the Postmaster General, or the Officers acting under him, to the Interim Factor or Trustee, to be opened in Presence of the Sheriff, after written Notice to the Bankrupt to attend, if within *Scotland*; and in case the Letters shall relate in whole or in part to the Estate, they shall be placed in such Custody as the Sheriff may direct; and the Lord Ordinary or Sheriff may, on Cause shown, renew such Order for a like Period as often as shall be necessary.

Trustee and Commissioners may compound and transact.

XCVIII. And be it enacted, That the Trustee may, with Consent of the Commissioners, compound and transact or refer to Arbitration any Questions which may arise in the Course of the Sequestration regarding the Estate, or any Demand or Claim made thereon, and the Compromise, Transaction, or Decree Arbitral shall be binding on the Creditors and the Bankrupt.

Creditors may purchase.

XCIX. And be it enacted, That where any Estate is sold by virtue of this Act it shall be lawful for any Creditor to purchase the same, but the Interim Factor, Sheriff Clerk if acting as Factor, Trustee, or Commissioners shall not be entitled to purchase.

Realized Estate to be a Fund of Division.

C. And be it enacted, That the whole Estate when reduced into Money shall, after paying all necessary Charges and a Commission to the Trustee, be divided among those who were Creditors of the Bankrupt at the Date of the Sequestration, ranked according to their several Rights and Interests.

Times at which Dividends to be paid.

CI. And be it enacted, That where there are sufficient Funds realized the First Dividend shall be payable on the first lawful Day after the Expiration of Eight Months from the Date of the Sequestration, and the Second Dividend shall be payable on the first lawful Day after the Expiration of Twelve Months from the said Date of the Sequestration, and a Dividend shall be payable on the first lawful Day after the Expiration of Four Months from the Date of the Payment of the immediately preceding Dividend, until the whole Funds of the Bankrupt be distributed, subject always to the Provisions herein-after made.

Time within which Creditors to produce Oaths &c. in order to receive Payment of Dividends.

CII. And be it enacted, That to entitle any Creditor to Payment of the First Dividend he shall produce, as herein-before directed, his Oath and Grounds of Debt at least Two Months before the Time fixed for Payment of the First Dividend; and to entitle any Creditor to Payment of the Second Dividend he shall produce as aforesaid his Oath and Grounds of Debt at least Two Months before the Time fixed for Payment of the Second Dividend; and to entitle a Creditor to Payment of any of the subsequent Dividends he shall produce as aforesaid his Oath and Grounds of Debt at least Two Months before the

the Day fixed for Payment of the Dividend which he means to claim: Provided that if a Creditor has not produced his Oath and Grounds of Debt in Time to share in the First Dividend, but has done so in Time to share in the Second Dividend, he shall be entitled, on Occasion of Payment of the Second Dividend, to receive out of the first of the Fund (if there be sufficient for that Purpose) a Sum equal to the Dividend he would have drawn if he had claimed in Time for the First Dividend; and the same Rule shall apply as to all subsequent Dividends.

First Dividend.

CIII. And be it enacted, That immediately on the Expiration of Six Months from the Date of the Sequestration the Trustee shall proceed to make up a State of the whole Estate of the Bankrupt, of the Funds recovered by him, and of the Funds outstanding (specifying the Cause why they have not been recovered), and of his Intromissions, and generally of his Management; and within Fourteen Days after the Expiration of the said Six Months the Commissioners shall meet and examine the said State, and ascertain whether the Trustee has lodged the Monies recovered by him in Bank or not, and if he has failed to do so they shall debit him with a Sum at the Rate of Twenty Pounds on every Hundred Pounds not so lodged, and so after that Rate on any larger or smaller Sum, being not less than Fifty Pounds; and they shall audit his Accounts, and settle the Amount of his Commission, and authorize him to take Credit for such Commission in his Accounts with the Estate; and they shall certify by a Writing under their Hands engrossed in the Sederunt Book the Balance due to or by the Trustee in his Account with the Estate as at the Expiration of the said Six Months; and they shall declare whether any and what Part of the net Produce of the Estate, after making a reasonable Deduction for future Expences, shall be divided among the Creditors.

Trustee to make up and exhibit to Commissioners State of Funds.

Commissioners to resolve as to Payment of Dividend, &c.

CIV. And be it enacted, That if a Dividend is to be made the Trustee shall also within the said Fourteen Days examine the Oaths and Grounds of Debt, and in Writing reject or admit them, or require further Evidence in support thereof; and in case he shall reject any Claim he shall in his Deliverance state the Grounds of such Rejection; and he shall complete the List of the Creditors entitled to draw a Dividend, specifying the Amount of their Debts, with Interest thereon to the Date of the Sequestration, and distinguishing whether they are ordinary Creditors or preferable or contingent, and he shall make up a separate List of any Creditors whose Claims he has rejected in whole or in part.

Trustee to examine and reject or admit Claims, and make up List of Creditors entitled to Payment of Dividend;

CV. And be it enacted, That the Trustee shall give Notice in the *Edinburgh Gazette* published next after Expiration of the said Fourteen Days of the Time and Place of the Payment of the Dividend, and also notify the same by Letters put into the Post Office on or before the first lawful Day after the said Fourteen Days, addressed to each Creditor, in which he shall specify the Amount of the Claim and proposed Dividend thereon, and where he has rejected any Claim he shall notify the same to the Claimant by Letter as aforesaid, which shall also contain a Copy of his Deliverance, and specify the Amount of the Claim and the Dividend to which the rejected

and to publish and send Notices of Payment of Dividend.

Claimant would be entitled if not rejected, or as near to the Amount thereof as Circumstances will permit; and a Certificate by the Trustee, or an Execution by a Messenger or Sheriff Officer, that such Letters have been put into the Post Office, shall be sufficient Evidence thereof; and if any Creditor be dissatisfied with the Decision of the Trustee he may appeal by a short written Note to the Lord Ordinary or to the Sheriff; but if no such Note be lodged with and marked by the Bill Chamber or Sheriff Clerk (as the Case may be) before the Expiration of Thirty Days from the Date of the Publication in the Gazette of the said Notice, the Decision of the Trustee shall be final and conclusive so far as regards that Dividend; and in case the Claim have been rejected, such Decision shall be without Prejudice to any new Claim being afterwards made in reference to future Dividends, but which new Claim shall not disturb prior Dividends.

Creditors may appeal within a limited Period.

Trustee to make up a Scheme of Division.

CVI. And be it enacted, That the Trustee shall, before the Expiration of Eight Months from the Date of the Sequestration, make up a Scheme of Division of the Fund directed by the Commissioners to be divided, and apportion the same, according to their respective Rights, among those Creditors whose Claims have been sustained by him or by the Lord Ordinary or Sheriff, or who shall have appealed against his Decision, and which Scheme shall be patent to all concerned.

Dividends to be paid, and those disputed or claimed by contingent Creditors to be lodged in Bank.

CVII. And be it enacted, That on the said first lawful Day after Expiration of Eight Months from the Date of Sequestration, and at the Place appointed, the Trustee shall pay to the Creditors the Dividends allotted to them respectively in Terms of the said Scheme; and he shall lodge the Dividends apportioned to those Claims which are under Appeal, but not finally determined, and the Dividends effeiring to contingent Creditors or other Claimants not then entitled to uplift the same, in the Bank appointed by the Creditors, or failing such Appointment in one of the said Banks in a separate Account, or if the Money be deposited in Bank he shall transfer it to a separate Account in Name of himself and the Commissioners, to remain therein until the said Appeals be disposed of, or the Dividends are payable.

Second Dividend.

Trustee to make up State, &c., and Commissioners to resolve as in case of First Dividend.

CVIII. And be it enacted, That on the Expiration of Ten Months from the Date of Sequestration, the Trustee shall again make up a State as herein-before provided, which he shall within Fourteen Days after the Expiration of the said Ten Months exhibit to the Commissioners, who shall meet and adjust the State, and perform the other Acts and Duties incumbent on them, in manner before specified, and direct a Second Dividend to be paid if there shall be Funds to pay the same; and if the Commissioners shall direct a Dividend to be paid the Trustee shall also make up Lists of the Creditors who are entitled and who are not entitled to Payment of the Dividend, and frame a Scheme of Division, and notify in the Gazette and by Letters, and any Creditor may appeal, all as is herein-before provided for the First Dividend.

Dividend to be paid.

CIX. And be it enacted, That on the said first lawful Day after the Expiration of Twelve Months from the Date of Sequestration the Trustee shall make Payment of the Second Dividend to those Creditors who

who are entitled to and shall lodge the Dividends disputed or not then payable, all as herein-before provided for the First Dividend.

Subsequent Dividends.

Same Proceedings as in prior Dividends.

CX. And be it enacted, That the like Procedure shall be followed out as to subsequent Dividends at similar Intervals of Time thereafter in order that a Dividend may be made on the first lawful Day after the Expiration of every Four Months from the Day of Payment of the immediately preceding Dividend, until the whole Funds of the Bankrupt shall be divided.

Proceedings when Commissioners postpone the Dividend.

CXI. And be it enacted, That if it shall appear to the Commissioners that a Dividend ought to be postponed, they may do so till the Recurrence of another stated Period for making a Dividend, and they shall authorize the Trustee to give a Notice to that Effect in the next *Edinburgh Gazette*; provided that notwithstanding such Postponement the State of the Funds shall be made up, and the Accounts of the Trustee audited, at the Time and in the Manner before directed, and Circulars containing a Copy or Abstract of the said State shall be sent by Post to the Creditors, unless the Commissioners shall otherwise direct.

Winding up of Estate.

CXII. And be it enacted, That if on the Lapse of Twelve Months from the Date of Sequestration it shall appear to the Trustee and Commissioners expedient to sell the Heritable or Moveable Estates not disposed of, and any Interest which the Creditors have in the outstanding Debts and consigned Dividends, they shall fix a Day for holding a Meeting of the Creditors to take the same into consideration; and the Trustee, besides advertising the same in the *Edinburgh Gazette*, shall, Fourteen Days before the Day appointed, send by Post to each Creditor claiming on the Estate a Notice of the Time and Place of the Meeting, with a Valuation of the Estate and Effects, and a List of the outstanding Debts and of the consigned Dividends; and if Three Fourths of the Creditors in Value assembled at the Meeting shall decide in favour of a Sale in Whole or in Lots, the Trustee shall cause the same to be sold by Auction, after Notice thereof published at least once in the *Edinburgh Gazette* One Month previous to the Sale, and in such other Newspapers as the Creditors at the Meeting shall appoint.

Discharge of Bankrupt on Composition.

Offer may be made at the Meeting for Election of Trustee.

CXIII. And be it enacted, That at the Meeting for Election of Trustee the Bankrupt or his Friends, or in case of his Decease his Successors, and in case of a Company One or more of the Partners thereof, may offer a Composition to the Creditors on the whole Debts, with Security for Payment of the same; and if the Majority of the Creditors in Number and Nine Tenths in Value present at such Meeting shall resolve that the Offer and Security shall be entertained for Consideration, the Trustee shall forthwith advertise in the *Edinburgh Gazette* a Notice that an Offer of Composition has been so made and entertained, and that it will be decided upon at the Meeting to be held after the Examination of the Bankrupt, and shall specify the Hour, Day and Place, and also transmit by Post Letters to each of the Creditors claiming on the Estate, or mentioned in the Bankrupt's State of Affairs, containing a Notice of such Resolution, and of the

Day

Day and Hour at which and the Place where the said Meeting is to be held, and specifying the Offer and Security proposed, and giving an Abstract of the State of the Affairs and of the Valuation of the Estate, so far as the same can be done, to enable the Creditors to judge of the said Offer and Security.

Offer, if entertained, to be disposed of at the Meeting after the Bankrupt's Examination.

CXIV. And be it enacted, That if at the Meeting held after the Examination of the Bankrupt a Majority in Number and Nine Tenths in Value of the Creditors there assembled shall accept the said Offer and Security, a Bond of Caution for Payment of the Composition executed by the Bankrupt, or his Successors (as the Case may be), and the proposed Cautioner, shall be forthwith lodged in the Hands of the Trustee; and the Trustee shall thereupon subscribe and transmit a Report of the Resolution of the Meeting, with the said Bond, to the Bill Chamber Clerk or Sheriff Clerk, in order that the Approval of the Lord Ordinary or Sheriff (whichever may be selected by the Trustee) may be obtained thereto; and if the Lord Ordinary or the Sheriff, after hearing any Objections by Creditors, shall find that the Offer, with the Security, has been duly made, and is reasonable, and has been assented to by a Majority in Number and Nine Tenths in Value of all the Creditors assembled at the said Meeting, he shall pronounce a Deliverance approving thereof; provided that he shall hear any Objection by opposing Creditors; and if he shall refuse to sustain the Offer or reject the Vote of any Creditor he shall specify the Grounds of Refusal or Rejection.

Lord Ordinary or Sheriff to approve.

Offer on Composition may also be made at Meeting after Bankrupt's Examination.

CXV. And be it enacted, That in like Manner at the Meeting held after the Examination of the Bankrupt, or at any subsequent Meeting called for the Purpose by the Trustee, with the Consent of the Commissioners, the Bankrupt or his Friends, or in case of his Decease his Successors, and in the Case of a Company One or more of the Partners thereof, may offer a Composition to the Creditors on the whole Debts, with Security for Payment of the same; and if a Majority in Number and Four Fifths in Value of the Creditors present shall resolve that the Offer and Security shall be entertained for Consideration, the Trustee shall call another Meeting, to be held at a specified Hour on a specified Day, being not less than Twenty-one Days thereafter, and at a specified Place, and shall, Fourteen Days at least before such other Meeting, advertise a Notice of the same in the *Edinburgh Gazette*, and send by Post Letters addressed to each of the Creditors who have claimed on the Estate or are mentioned in the Bankrupt's State of Affairs, which Letters shall contain a Notice of such Resolution, and of the Hour, Day, and Place and Purpose of the Meeting, and specify the Offer and the Security proposed, and give an Abstract of the State of the Affairs and Valuation of the Estate, so far as can be done, to enable the Creditors to judge of the said Offer; and if at the Meeting so called a Majority in Number and Four Fifths in Value of the Creditors present shall accept the said Offer and Security, a Bond of Caution shall be lodged, and a Report made, and a Deliverance pronounced, all in the same Manner and to the same Effect as is herein-before provided.

CXVI. And

CXVI. And be it enacted, That on such Deliverance being pronounced approving of the Composition in either of the Cases above specified, the Bankrupt shall make a Declaration, or if required by the Trustee or any Creditor an Oath before the Lord Ordinary or the Sheriff, (as the Case may be,) that he has made a full and fair Surrender of his Estate, and has not granted or promised any Preference or Security, or made or promised any Payment, or entered into any Secret or collusive Agreement or Transaction, to obtain the Concurrence of any Creditor to the said Offer and Security; and if the Bankrupt shall be at the Time beyond the Jurisdiction of the Lord Ordinary or Sheriff, or is by a lawful Cause prevented from appearing before the Lord Ordinary or Sheriff, Commission may be granted to any fit Person to take such Declaration or Oath; and the Lord Ordinary or the Sheriff (as the Case may be), on being satisfied with the said Oath or Declaration, shall pronounce a Deliverance discharging the Bankrupt of all Debts and Obligations contracted by him or for which he was liable at the Date of the Sequestration, and shall declare the Sequestration to be at an end, and the Bankrupt reinvested in his Estate (reserving always the Claims of the Creditors for the said Composition against him and the Cautioner); and the Bond of Caution shall be recorded in the Books of the Court of Session, or, when the said Deliverance is pronounced by the Sheriff, in the Books of the Sheriff Court; and an Extract of the said Deliverance, signed by the Sheriff Clerk, shall forthwith be transmitted to the Clerk of the Bill Chamber, who shall present the same to the Lord Ordinary, and the Lord Ordinary shall confirm the same; and the said Deliverance of the Lord Ordinary and the Deliverance of the Sheriff, when confirmed as aforesaid, shall operate as a complete Discharge and Acquittance to the Bankrupt in Terms thereof, and shall receive effect within *Great Britain* and *Ireland* and Her Majesty's other Dominions; and an Entry thereof shall be made by the Bill Chamber Clerk in the Register of Sequestrations.

Bankrupt, on making Declaration or Oath, to obtain his Discharge.

CXVII. And be it enacted, Before the Lord Ordinary or the Sheriff shall pronounce the Deliverance approving of the Composition, the Commissioners shall audit the Accounts of the Trustee, and ascertain the Balance due to or by him, and fix the Remuneration for his Trouble, subject to the Review of the Lord Ordinary or the Sheriff if complained of by the Trustee, the Bankrupt, or any of the Creditors; and the Expence attending the Sequestration and such Remuneration shall be paid or provided for to the Satisfaction of the Trustee and Commissioners before the said Deliverance is pronounced.

Trustees Accounts to be audited before the Composition be approved of.

CXVIII. And be it enacted, That notwithstanding such Offer of Composition and Proceedings consequent thereon the Sequestration shall continue, and the Trustee shall proceed in the Execution of his Duty, as if no such Offer had been made, until the said Deliverance by the Lord Ordinary be pronounced, when the Sequestration shall cease and be at an end, and the Trustee be exonered and discharged: Provided nevertheless, that the Trustee and his Cautioner shall be liable, on Petition to the Lord Ordinary or Sheriff by the Bankrupt or his Cautioner for the Composition, to account for his Intromissions and other Acts as Trustee.

Sequestration to go on notwithstanding Offer of Composition.

Trustee held liable to account.

Bankrupt and Cautioner not to be entitled to object to Claims, &c.

CXIX. And be it enacted, That neither the Bankrupt nor the Cautioner for the Composition shall be entitled to object to any Debt which the Bankrupt has given up in the State of his Affairs as due by him, or admitted without Question to be reckoned in the Acceptance of the said Offer of Composition, nor to object to any Security held by any Creditor, unless in the Offer of Composition such Debt or Security shall be stated as objected to, and Notice in Writing given to the Creditor in right thereof.

Claims against Cautioner limited in certain Cases to Two Years.

CXX. And be it enacted, That no Person who has not produced an Oath as a Creditor before the Date of the said Deliverance approving of the Composition shall be entitled to make any Demand against the Cautioner after the Space of Two Years from the Date of such Deliverance, reserving to such Creditor his Claim for the Composition against the Bankrupt and his Estate.

If Offer of Composition rejected no other to be entertained unless Nine Tenths of Creditors ranked shall agree.

CXXI. And be it enacted, That if an Offer of Composition have been made and rejected or have become ineffectual, no other Offer of Composition shall be entertained unless Nine Tenths in Number and Value of all the Creditors ranked on the Estate shall assent in Writing to such Offer; which Offer shall state the Amount of Composition and the Terms of Payment, and be subscribed by the Cautioner proposed, in which Case a Meeting shall be called by the Trustee for finally disposing of the same; and if at the Meeting so called a Majority in Number and Nine Tenths in Value of the Creditors present shall accept the said Offer and Security, and the same shall be assented to by Nine Tenths in Value of all the Creditors who have produced Oaths as aforesaid, a Bond of Caution shall be lodged, and a Report made, and Deliverances pronounced, and the other Proceedings shall take place and have effect, in the same Manner as is herein-before provided for other Offers of Composition.

Discharge without Composition.

Proceedings for this Purpose.

CXXII. And be it enacted, That the Bankrupt may at any Time after the Meeting held after his Examination petition the Lord Ordinary or the Sheriff to be finally discharged of all Debts contracted by him before the Date of the Sequestration, provided that every Creditor who has produced his Oath as aforesaid shall concur in the Petition; and the Bankrupt may also present such Petition on the Expiration of Eight Months from the Date of the Sequestration, provided a Majority in Number and Four Fifths in Value of the Creditors who have produced Oaths concur in the Petition; and the Lord Ordinary or the Sheriff (as the Case may be) shall in either Case order the Petition to be intimated in the *Edinburgh Gazette;* and if at the Distance of not less than Twenty-one Days from the Publication of such Intimation, and on Evidence being produced of Concurrence as aforesaid, there be no Appearance to oppose the same, the Lord Ordinary or the Sheriff (as the Case may be) shall pronounce a Deliverance finding the Bankrupt entitled to a Discharge; but if Appearance be made by any of the Creditors, or by the Trustee, the Lord Ordinary or the Sheriff (as the Case may be) shall judge of any Objections against granting the Discharge, and either find the Bankrupt entitled to the Discharge, or refuse the same, or annex such Conditions thereto as the Justice of the Case may require.

CXXIII. And

CXXIII. And be it enacted, That if the Bankrupt shall be found entitled to his Discharge he shall make a Declaration, or if required by the Trustee or any Creditor an Oath, before the Lord Ordinary or Sheriff, that he has made a full and fair Surrender of his Estate, and has not granted or promised any Preference or Security, nor made or promised any Payment, nor entered into any secret or collusive Agreement or Transaction, to obtain the Concurrence of any Creditor to his Discharge; and if the Bankrupt shall be at the Time beyond the Jurisdiction of the Lord Ordinary or Sheriff, or is by lawful Cause prevented from coming before the Lord Ordinary or Sheriff, Commission may be granted to any fit Person to take such Declaration or Oath; and the Lord Ordinary or the Sheriff (as the Case may be), on being satisfied with the said Oath or Declaration, shall pronounce a Deliverance discharging the Bankrupt of all Debts and Obligations contracted by him or for which he was liable at the Date of the Sequestration; and when the said Deliverance discharging the Bankrupt is pronounced by the Sheriff an Extract thereof signed by the Sheriff Clerk shall forthwith be transmitted to the Clerks of the Bill Chamber, who shall present the same to the Lord Ordinary, and the Lord Ordinary shall confirm the same by a Deliverance; and the said Deliverance by the Lord Ordinary or the said Deliverance by the Sheriff, when confirmed as aforesaid, shall operate as a complete Discharge and Acquittance to the Bankrupt in Terms thereof, and shall receive effect within *Great Britain* and *Ireland* and all Her Majesty's other Dominions; and an Entry thereof shall be made by the Bill Chamber Clerks in the Register of Sequestrations.

Bankrupt to make a Declaration or Oath before obtaining Discharge.

CXXIV. And be it enacted, That all Preferences, Gratuities, Securities, Payments, or other Consideration not sanctioned by this Act granted, made, or promised, and all secret or collusive Agreements and Transactions, for concurring in, facilitating, or obtaining the Bankrupt's Discharge, either on or without an Offer of Composition, and whether the Offer be accepted or not, or the Discharge granted or not, shall be null and void; and if during the Sequestration any Creditor shall have obtained any such Preference, Gratuity, Security, Payment, or other Consideration or Promise thereof, or entered into such secret or collusive Consideration or Agreement or Transaction, the Trustee shall be entitled to retain his Dividend, and he or any Creditor ranked on the Estate may present a Petition to the Lord Ordinary or to the Sheriff, praying that such Creditor shall be found to have forfeited his Debt, and be ordained to pay to the Trustee Double the Amount of the Preference, Gratuity, Security, Payment, or other Consideration given, made, or promised, and if no Cause be shown to the contrary Decree shall be pronounced accordingly; and the Sums which in such Case may be recovered shall, under Deduction of the Expences of recovering the same, be distributed by the Trustee among the other Creditors under the Sequestration; and if the Sequestration shall have been closed it shall be competent to any Creditor who shall not have received full Payment of his Debt to raise a Multiplepoinding in Name of the Person who has obtained such Preference, Gratuity, Security, Payment, or other Consideration, or Promise as aforesaid, and on the Value

Preferences, Payments, and collusive Agreements for Discharge.

Value of the Preference, Gratuity, or Security or Amount of the Sum paid or Consideration obtained being ascertained, double such Value or Amount, together with the Amount of the Debt of the colluding Creditor, shall be ordered to be consigned by him, and shall be divided among the Creditors who were ranked or were entitled to be ranked in the Sequestration, and have not received full Payment of their Debts, and who shall lodge Claims in such Multiplepoinding, according to their respective Rights and Interests; and the Multiplepoinding shall be executed in Terms of Law against the colluding Creditor, and Notice thereof at the same Time be inserted in the *Edinburgh Gazette*; and in the event that there shall be any Surplus, after paying the full Debts of the Creditors, and defraying the Expences of the Sequestration or other Proceeding, the same shall be paid into the Account of unclaimed Dividends as herein-after provided.

Bankrupt to forfeit Privileges, if participant in giving such Preferences, &c.

CXXV. And be it enacted, That if the Bankrupt shall have been personally concerned in or cognizant of the granting, giving, or promising any Preference, Gratuity, Security, Payment, or other Consideration, or in any secret or collusive Agreement or Transaction as aforesaid, he shall forfeit all Right to a Discharge and all Benefits under this Act, and such Discharge, if granted, either on or without an Offer of Composition, shall be annulled; and the Trustee or any One or more of the Creditors may apply by Petition to the Lord Ordinary to have such Discharge annulled accordingly.

Proceedings if Bankrupt do not make a fair Surrender.

CXXVI. And be it enacted, That if it shall appear to a Majority of the Creditors in Number and Value assembled at any Meeting after the Examination of the Bankrupt that he has not made a full and fair Surrender of his Estate, or that he has disposed of or concealed any Part of his Funds, to the Prejudice of his Creditors, or that his Bankruptcy has been fraudulent, they may direct a Meeting to be called for taking the Subject into consideration, on Fourteen Days Notice; and the said Meeting, if they see Cause, may authorize the Trustee to proceed against him in Terms of Law at the Expence of the Estate.

Judicial Proceedings.

Appeals, &c. against Resolutions of Creditors and Deliverances of Trustee to the Lord Ordinary or Sheriff.

CXXVII. And be it enacted, That it shall be competent to appeal against the Resolutions of the Creditors at Meetings either to the Lord Ordinary or the Sheriff, provided a Note of Appeal shall be lodged with and marked by One of the Clerks of the Bill Chamber within Fourteen Days after the Date of the Meeting at which the Resolution objected to has been passed, or (as the Case may be) in the Hands of and marked by the Sheriff Clerk within the like Period; and it shall in like Manner be competent to appeal against any Deliverance of the Trustee to the Lord Ordinary or the Sheriff, provided the Note of Appeal shall be lodged and marked as aforesaid within Thirty Days from the Date of the said Deliverance (except in the Case of Dividends as herein-before specified); and where any such Appeal is made, or where any Petition or Complaint is presented against the Trustee or Commissioners or against any of the Creditors, the Lord Ordinary or the Sheriff (as the Case may be) shall appoint a Copy thereof, and of his Deliverance thereon, to be served on the Respondent,

or his Mandatory or known Agent, and appoint the Respondent to appear at a specified Diet within such Period as may be reasonable; and the Lord Ordinary or the Sheriff (as the Case may be) shall at such Diet hear Parties *vivâ voce*, and the Lord Ordinary shall proceed to dispose of the Case, with or without a Record, as he shall consider best; and the Sheriff, without a Record, may decide, provided he shall specify the Facts, and assign the Grounds of his Judgment; but if he shall see Cause he may order Minutes to be lodged by the Parties, containing their Averments in Fact and Pleas in Law, without Argument, and may hold the same as a closed Record, and proceed in a summary Way, and in pronouncing his Judgment he shall assign his Reasons; and it shall be competent to the Lord Ordinary or the Sheriff, where any Resolution of a Meeting of the Creditors is appealed against, to order a new Meeting to be held in order to reconsider the Resolution.

Review of Sheriff's Judgments.

CXXVIII. And be it enacted, That it shall be competent to bring under the Review of the Inner House of the Court of Session any Deliverance of the Sheriff, (except where the same is declared not to be subject to Review,) provided a Note of Appeal shall be lodged with and marked by One of the Bill Chamber Clerks within Twenty-one Days from the Date of such Deliverance, (except in the Case of Appeals against a Deliverance declaring the Election of a Trustee, which shall be lodged as herein-before provided,) failing which the same shall be final; and such Reclaiming Note shall be disposed of by the Inner House as speedily as the Forms of Court will allow; and if it be lodged in Time of Vacation the Lord Ordinary may hear Parties and give Judgment, subject to Review of the Inner House; and it shall be competent for the Inner House or the Lord Ordinary to remit to the Sheriff with Instructions.

Review of Lord Ordinary's Judgments.

CXXIX. And be it enacted, That where any Judgment of the Lord Ordinary is intended to be brought under Review of the Inner House the same shall be done by a Reclaiming Note in common Form.

Regulation by Sheriff of interim Possession.

CXXX. And be it enacted, That during the Dependence of Appeals or Petitions and Complaints it shall be competent to the Sheriff to give such Orders as may be necessary to regulate the interim Possession and Administration of the Estate.

Appeals to House of Lords.

CXXXI. And be it enacted, That if any Appeal shall be made to the House of Lords, the Sequestration shall, in all respects not inconsistent with or injurious to the Interests which may be affected by the Appeal, proceed without Interruption, and the Lord Ordinary shall make such Orders as may be necessary to regulate the interim Possession and Management of the Estate, and which Orders shall not be subject to Appeal.

Agents in Court of Session may be Agents in Causes under

CXXXII. And be it enacted, That it shall be lawful for all Agents duly qualified to practise before the Court of Session to practise in all Sheriff Courts in so far as relates to any of the Proceedings authorized by this Act to be carried on before the Sheriff,

provided

this Act before Sheriff.

provided that they shall not be entitled to Payment of any higher Fees than those legally exigible in such Courts.

Trustee to make an annual Return to Sheriff Clerk, and the Sheriff Clerk to the Bill Chamber Clerk.

CXXXIII. And be it enacted, That each Trustee shall on the Thirty-first Day of *October* if a lawful Day, or on the first lawful Day thereafter, yearly deliver free of Expence to the Sheriff Clerk of the County a Return in the Form of the Schedule marked (I.) hereunto annexed of every Sequestration in which he is Trustee, and the Sheriff Clerk shall within Fourteen Days thereafter transmit in the Form of the said Schedule, to the Bill Chamber Clerks, a Return of all the Sequestrations depending in the Sheriffdom whereof he is Clerk; and the Bill Chamber Clerks shall cause the Returns so made to be regularly bound up and preserved, according to the alphabetical Order of Counties, in a Volume to be kept at all Times in his Office, with an Index thereto framed by the said Clerks, and which Volume shall be patent to all concerned; and any Trustee who shall fail to make such Return shall be removeable from his Office at the Instance of any One Creditor, or subject to such Censure as the Lord Ordinary may think suitable, and be found liable in Expences.

Trustee's Discharge.

CXXXIV. And be it enacted, That after a final Division of the Funds the Trustee shall call a Meeting of the Creditors by an Advertisement in the *Edinburgh Gazette*, to be held not sooner than Twenty-one Days after such Publication, specifying the Time, Place, and Purpose of holding the Meeting, and by Letters addressed by Post to every Creditor who has produced an Oath as aforesaid, to consider as to an Application for his Discharge; and at such Meeting he shall lay before the Creditors the Sederunt Book and Accounts, with a List of unclaimed Dividends, and the Creditors may then declare their Opinion of his Conduct as Trustee; and he may thereafter apply to the Lord Ordinary or the Sheriff, who, on advising the Petition with the Minutes of the Meeting, and hearing any Creditor, may pronounce or refuse Decree of Exoneration and Discharge; and when the said Decree is pronounced by the Sheriff an Extract thereof signed by the Sheriff Clerk shall forthwith be transmitted to the Bill Chamber Clerks who shall present the same, without Enrolment, to the Lord Ordinary, who shall confirm the same by a Deliverance; and such Decree, when so confirmed, shall be entered in the Register of Sequestrations, and the Bond of Caution for the Trustee delivered up.

Proceedings for this Purpose.

All Trustees to lodge unclaimed Dividends, &c. in Bank.

CXXXV. And be it enacted, That every Trustee in any Sequestration awarded under this Act shall, before his Discharge, transmit the Sederunt Book to the Bill Chamber Clerks, who shall thereupon intimate to the Trustee the Bank in which the unclaimed Dividends are to be deposited, and they shall name the Banks in the following Rotation; *videlicet*, the Bank of *Scotland*, the Royal Bank of *Scotland*, the Bank of the *British* Linen Company of *Scotland*, the Commercial Bank of *Scotland*, and the National Bank of *Scotland*; and the Trustee shall forthwith transfer the whole Dividends not then claimed to the Bank so intimated, to be there entered in an Account to be kept under the Title of "Account of unclaimed Dividends;" and a Book or Books shall be kept in the Office of the Bill Chamber Clerks, to be entitled

entitled "Register of unclaimed Dividends," showing such Rotation, and containing a List, with the Names arranged alphabetically, of all the Creditors entitled to such unclaimed Dividends, and in what Bank deposited, which shall be patent to all Persons; and after the Discharge of the Trustee it shall be competent for any Person producing Evidence of his Right to apply to the Lord Ordinary for Authority to receive such Dividends, and on the Lord Ordinary being satisfied of the Claimant's Right a Warrant shall be granted for Payment of such Dividend, whereof the Clerks shall make an Entry in the said Register, and upon such Warrant the Bank shall pay the same; provided that the Claimant shall not be entitled to Interest on such Dividend, but such Interest shall go into a general Fund, of which an Account shall be kept by such Bank, to be called "The Interest Account of unclaimed Dividends," and which Fund shall be applied in such Manner as shall be regulated by any Act of Parliament; and if at the End of Twenty-five Years from the Date of closing any Sequestration there shall remain in the Bank any unclaimed Dividends belonging to the Estate, the same shall be vested in Government Stock, and the Dividends thereon shall be regularly accumulated for the Purpose of forming a Fund for defraying the Expence of Proceedings in Bankruptcy, or otherwise as Parliament shall hereafter direct; and the said Banks shall once yearly at least balance the said Accounts, and accumulate the Interest with the Principal Sum, so that both shall thereafter bear Interest as Principal; and if any such Bank fail to do so such Bank shall be liable to account as if such Money had been so accumulated.

Claimants showing Right to apply to Lord Ordinary for Authority to receive Dividends.

Interest Account of unclaimed Dividends.

CXXXVI. And be it enacted, That any Surplus of the Bankrupt's Estate and Effects that may remain after Payment of his Debts, with Interest, and the Charges of recovering and distributing the Estate, shall be paid to the Bankrupt, or to his Successors or Assignees.

Surplus to be paid to Bankrupt.

CXXXVII. And be it enacted, That if any Person shall be guilty of wilful Falsehood in any Oath or Affirmation made in pursuance of this Act, he shall be liable to a Prosecution either at the Instance of Her Majesty's Advocate, or at the Instance of the Trustee with the Concurrence of Her Majesty's Advocate, provided that in the latter Case the Prosecution shall be authorized by a Majority in Value of the Creditors present at a Meeting to be called for the Purpose; and such Person shall, on Conviction, besides the awarded Punishment, forfeit to the Trustee, for Behoof of the Creditors, his whole Right, Claim, and Interest in or upon the sequestrated Estate; and the same shall be distributed either under the Sequestration, or if it be closed, under a Process of Multiplepoinding as is herein-before provided.

Punishment of wilful Falsehood.

CXXXVIII. And be it enacted, That all Deliverances, Bonds, Schedules, and Executions under this Act may be either printed or in Writing, or partly both; and Service or Citation may be by a competent Officer without Witnesses.

Deliverances, &c.

Service of Citations.

CXXXIX. And be it enacted, That in place of the whole other Fees heretofore exigible upon Proceedings in Sequestrations there shall be payable the Fees which are set forth in the Schedule marked (K.) hereunto

Fees payable.

hereunto annexed, and which shall form a Fund which shall be applied in the Payment of the Salaries and Expences of Officers in the Court in which the same are payable, and of any Compensations allowed by this Act, and any Surplus which shall at any Time arise shall be paid as the Commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain* and *Ireland* shall direct.

Fees payable and additional Allowance to the Bill Chamber Clerks.

CXL. And be it enacted, That the Bill Chamber Clerks are hereby prohibited from charging or receiving any Fees except for Copies of Interlocutors or other Papers ordered or required, for which an Allowance shall be paid at the Rate of Sixpence for each Page of One hundred and fifty Words, without any further Charge for Stationery; provided that the Person or Persons discharging the Duties of Clerk in the Bill Chamber under this Act shall be entitled to an Addition to his or their present Salaries, the Amount whereof, payable out of the said Fee, shall not exceed in all One hundred Pounds *per Annum*, and shall be settled and apportioned by the said Commissioners of Her Majesty's Treasury, and shall be paid to the Clerk or Clerks discharging the said Duties.

Compensation.

CXLI. And be it enacted, That it shall be lawful for any Clerk or Officer of the Court of Session, entitled to Compensation for Loss to be suffered through the Operation or Effect of this Act, to make Application to the said Commissioners of Her Majesty's Treasury for Compensation, giving at the same Time Notice of such Application to Her Majesty's Advocate for *Scotland;* and it shall be lawful for the said Commissioners of the Treasury to investigate such Claim, and call for such Evidence in relation thereto as they may think necessary; and upon such Claim being established to their Satisfaction the said Commissioners, or any Three of them, are hereby authorized and empowered to award to such Person such Compensation as they shall, under all the Circumstances of the Case, and having reference to the Nature of the Appointment and the Duration of the Service, think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as they shall think proper: Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Thirty Days from the Day on which the same shall be granted, if Parliament shall then be sitting, and if not then within Thirty Days after the then next Sitting of Parliament; and no such Award shall be final and conclusive until Two Calendar Months after the same shall have been so laid before Parliament; provided also, that it shall be a Condition of every such Grant, that the Compensation so granted, in the event of the Appointment thereafter of any of the said Persons to any Office of Profit or Emolument under the Crown, shall abate or wholly cease during the Period in which such Person shall hold such Office, so as that the Compensation and Emolument thereof, taken together, shall not exceed the Emoluments of the Office in respect of which the Compensation had been granted.

Compensation how to be paid.

CXLII. And be it enacted, That the several Compensations which may be awarded under the Authority of this Act shall be payable and paid out of the Monies which by the Acts of the Seventh and Tenth Years

Years of the Reign of Her Majesty Queen *Anne* were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in *Scotland*.

Gazette Keeper to furnish Copies of Gazette.

CXLIII. And be it enacted, That from and after the Commencement of this Act the Keeper of the *Edinburgh Gazette* shall on each Day of Publication furnish a Copy thereof to the Keeper of Edictal Citations and to the Bill Chamber Clerks, who shall keep the same regularly filed, and make the said Gazettes on all Occasions patent to the Lieges at Office Hours, on Payment of a Fee of Sixpence and no more.

Charges on Advertisements under this Act and 54 G. 3. c. 137. and 6 & 7 W. 4. c. 56. regulated.

CXLIV. And be it enacted, That no Advertisement inserted in the *London Gazette* or in the *Edinburgh Gazette* by virtue of this Act, or the said recited Act of the Fifty-fourth Year of the Reign of His Majesty King *George* the Third, intituled *An Act for rendering the Payment of Creditors more equal and expeditious in* Scotland, or an Act of the Sixth and Seventh Year of His late Majesty, intituled *An Act for regulating the Process of Cessio bonorum in the Court of Session, and for extending the Jurisdiction of Sheriffs in* Scotland *to such Cases*, shall be charged by the Keepers of the said Gazettes for Publication therein at a higher Price, nor shall a higher Price be paid for such Publication, than the Sums specified in the Schedule (L.) hereunto annexed.

Conveyances, Deeds, &c. relating to Estates of Bankrupts, Notices, or Gazette Advertisements not liable to Stamp or other Duties.

CXLV. And be it enacted, That from and after the Commencement of this Act all Conveyances, Assignations, Instruments, Discharges, Writings, or Deeds relating solely to the Estate belonging to any Bankrupt against whom Sequestration has been or may be awarded either under this or any former Act, and which Estate, after the Execution of such Conveyances, Assignations, Instruments, Discharges, Writings, or Deeds, shall be and remain the Property of such Bankrupt for the Benefit of his Creditors, or the Trustee appointed or chosen under or by virtue of such Sequestration, and all Discharges to the said Bankrupt, and all Deeds, Assignations, Instruments, or Writings for reinvesting the said Bankrupt in the Estate, and all Powers of Attorney, Commissions, Factories, Oaths, Affidavits, Articles of Roup or Sale, Submissions, Decrees Arbitral, and all other Instruments and Writings whatsoever relating solely to the Estate of any Bankrupt sequestrated as aforesaid, and all other Deeds or Writings forming a Part of the Proceedings ordered under such Sequestration, and all Notices or Advertisements inserted in the *London* and *Edinburgh* Gazettes relative thereto, shall be exempt from all Stamp Duties or other Government Duty, and no Rates or Duties imposed by any Statutes upon the Sale of Estates or Effects by Auction shall be exigible on the Sale of any Estates or Effects by Auction under the Authority of this Act: Provided always, that no Exemption from Auction Duty shall be allowed on the Sale by Auction under this Act of any Estate and Effects, unless the Auctioneer who shall conduct such Sale shall, at the Time of passing his Account thereof, produce to the Officer of Excise a Catalogue, signed and certified by the Trustee by whose Order such Sale shall

Sales by Auction not liable to Duty.

have been made, in Manner and Form required by the Laws of the Excise.

Acts of Sederunt may be made.

CXLVI. And be it enacted, That it shall be lawful for the Judges of the Court of Session, either during Session or Vacation, by an Act or Acts of Sederunt, from Time to Time to apportion the Duties to be performed by the Officers in the Bill Chamber, or in the said Court, or in the Sheriff Courts, and to regulate Procedure in relation to this Act, in so far as consistent therewith, and to establish a Table of Fees to be allowed to Agents, both in the Court of Session and Sheriff Courts, for conducting the Proceedings, and to amend or alter such Act or Acts from Time to Time; and the said Act or Acts of Sederunt shall within One Month after the making thereof be transmitted by the Lord President of the Court of Session to the Secretary of State for the Home Department, that the same may be laid before both Houses of Parliament.

Act may be repealed this Session.

CXLVII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.

SCHE-

SCHEDULES referred to in this Act.

SCHEDULE (A.)

Register of Sequestrations.

Name and Designation of Bankrupt.	Place and County of Bankrupt's Residence or Business.	Name and Designation of petitioning or concurring Creditor.	Division of the Court.	Date of First Deliverance.	Date of awarding. (If recalled, Entry to be in this Column.)	Date of Transmission to Sheriff, and of Receipt by Sheriff Clerk.	Time and Place for electing Interim Factor.	Interim Factor's Name and Designation.	Time and Place for electing Trustee.	Trustee's Name and Designation.	Commissioners Names and Designation.	Time for lodging Claims for Dividend.	Bankrupt's Discharge on or without Composition.	Date of Trustee's Discharge.

SCHEDULE (B.)

No. 1.

Abbreviate for the Register of Inhibitions.

PETITION for Sequestration of *A. B.* [*Name and Designation*].
Date of First Deliverance Day of .
(Signed) *C. D.* [*If an Agent, state so.*]

No. 2.

ertificate by the Keeper.

Edinburgh [*Date*].
THIS Petition was presented by [*name and design the Presenter*] on the [*Date*], and recorded on [*Date*] in the Register of Inhibitions.
(Signed) *E. F.*, Keeper.

No. 3.

Abbreviate.

PETITION for transferring, in Terms of [*specify Title and Date of this Act*], from *A. B.* [*Name and Designation*], as Heir of *C. D.* [*Name and Designation*], the Estates of *C. D.*, [*Date of Deliverance*]
Day of . (Signed) *E. F.* [*If an Agent, state so.*]

SCHEDULE (C.)

Notice to the Gazettes.

THE Estates of *A. B.* [*Name and Designation*] were sequestrated on [*Date, Month, and Year*].
The First Deliverence is dated the [*Date*].
The Meeting to elect Interim Factor is to be held at [*Hour*] o'Clock on [*Day of the Week*] the [*Date, Month, and Year*], within [*specify particular Place*] in [*Town*]; and the Meeting to elect the Trustee and Commissioners is to be held at [*Hour*] o'Clock on the [*Day of the Week*] the [*Date, Month, and Year*], within [*specify*

particular Place] in [*Town*]. A Composition may be offered at this latter Meeting; and to entitle Creditors to the first Dividend their Oaths and Grounds of Debt must be lodged on or before the [*insert Date*].

All future Advertisements relating to this Sequestration will be published in the Edinburgh Gazette alone.

(Signed) *P. Q.*, Agent [*specify Place of Business*].

SCHEDULE (D.)

Form of Bond of Caution for an Interim Factor or Trustee.

I *A.B.* [*Name and Designation*], having been appointed Trustee [*or* Interim Factor] on the sequestrated Estate of *C. D.* [*Name and Designation*], and I *E. F.* [*Designation*] as Cautioner, Surety, and full Debtor for and with the said *A. B.*, hereby bind and oblige ourselves, conjunctly and severally, our Heirs and Executors, That I the said *A. B.* shall faithfully discharge all the Duties which by Law attach to the said Office of Trustee [*or* Interim Factor], and fully account for my whole Intromissions with the said Estate, and make Payment of any Balance due by me to the Creditors on the said Estate, or Trustee elected by them to succeed me; declaring that this Bond shall not be in any way affected, nor shall I the said *E. F.* be liberated, by any Omission, Negligence, or Want of Diligence on the Part of the Creditors or Commissioners on the said Estate. [*In case the Caution has been limited by the Creditors, the following Clause will be here inserted:* And declaring further, that this Bond, so far as concerns me the said *E. F.*, shall not bind me or my foresaids to a greater Extent than the Sum of [*here insert Sum in Writing*], to which my Obligation before written is hereby limited.] In witness whereof this Bond (*so far as not printed*), written and filled up by [*here shall be inserted in Writing attesting Clause in legal Form*].

O. T., Witness. (Signed) *A. B.*
L. F., Witness. *E. F.*

SCHEDULE (E.)

Act and Warrant to the Interim Factor.

[*Place and Date.*]

THE Sheriff of the County of [*insert County*] has confirmed and hereby confirms *A. B.* [*Name and Designation*] Interim Factor on the Estates of *C. D.* [*Name and Designation*], and the said *C. D.* is hereby invested with all the Powers conferred on Interim Factors by an Act passed in the Year of the Reign of Her Majesty Queen Victoria, intituled [*insert the Title of this Act*].

[*Signed by Sheriff Clerk.*]

SCHEDULE (F.)

Act and Warrant of Confirmation to the Trustee.

[*Place and Date.*]

THE Sheriff of the County of [*insert County*] has confirmed and hereby confirms *A. B.* [*Name and Designation*] Trustee on the sequestrated Estate of *C. D.*, [*Name and Designation*]; and the whole of the Estates and Effects, Heritable and Moveable, and Real and Personal, wherever situated, of the said *C. D.*, are transferred and belong to *A. B.* as Trustee for behoof of the Creditors of the said *C. D.*, in Terms of an Act of the Year of the Reign of Her Majesty Queen Victoria, intituled [*here insert the Title of this Act*]; and the said *A. B.* has, as Trustee aforesaid, in Terms of the said Act, full Right and Power to sue for and recover all Estates, Effects, Debts, and Money belonging or due to the said *C. D.*

(Signed) *C. D.*, Sheriff Clerk.

SCHEDULE (G.)

No. 1.

Abbreviate of Adjudication.

THE whole Estates and Effects, Heritable and Moveable, and Real and Personal, wherever situated, of *C. D.* [*Name and Designation*], are transferred and belong to *A. B.* [*Name and Designation*], as Trustee on his sequestrated Estate, conform to Act and Warrant of Confirmation dated the Day of , issued in Terms of an Act of the Year of the Reign of Her Majesty Queen Victoria, intituled [*here insert the Title of this Act*].

[*Signed by the Trustee or his Agent.*]

No. 2.

Certificate by the Keeper.

THIS Abbreviate was presented by [*Name and Designation*] on the Day of and recorded on [*Date*] in the Register of Abbreviates of Adjudications.

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

No. 3.

No. 3.

Abbreviate of Adjudication.

THE Estates vested in *A. B.* [*Name and Designation*] as Heir of *C. D.* [*Name and Designation*] are transferred and belong to *E F.* [*Name and Designation*], as Trustee on the sequestrated Estate of the said *C. D.*, conform to Deliverance by the Lord Ordinary, dated the Day of and in Terms of an Act of the Year of the Reign of Her Majesty Queen Victoria, intituled [*insert the Title*].

[*Signed by the Trustee or his Agent.*]

SCHEDULE (H.)

For the Gazette.

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

A. B. [*Name and Designation*], has been elected Trustee on the Estate, and *E. F.* and *G.* [*Names and Designations*], have been elected Commissioners. The Examination of the Bankrupt will take place in the Sheriff Court House [*or other Place*] on [*Day of Week*] the [*Date*] of [*Month*] next, at [*Hour*]. The Creditors will meet in [*specify the Place, Day, Date, and Month, and Hour*] o'Clock. [*If any Offer of Composition has been entertained at the Meeting for Election of Trustee, intimate this, as provided by the Act.*]

[*Signed by the Trustee.*]

[*Date.*]

SCHE-

SCHEDULE (I.)

ANNUAL RETURN by each TRUSTEE on the Thirty-first Day of October, and by each SHERIFF CLERK within Fourteen Days thereafter.

Name and Designation of Bankrupt.	County and Place.	Name and Designation of Interim Factor.	Name and Designation of Trustee.	Names and Designation of Commissioners.	Amount of Funds as in the Bankrupt's State.	Amount of Funds realized.	Amount of Debts.	Allowance to Bankrupt.	Discharge on Composition or without Composition.	Amount of Composition, and when payable, and Names and Designations of Cautioners.	Dividend Amount paid or unpaid.	AMOUNT OF EXPENCES.		
												Trustee's Commission.	Law Expences.	Miscellaneous.

Signed by Trustee
and by
Sheriff Clerk.

SCHEDULE (K.)

Table of Fees payable under this Act.

I.—In the Court of Session.

	£	s.	d.
(1.) To the Collector of the Fee Fund:			
Original Petitions for Sequestration, or any other Writ or Step by which a Process of Sequestration is originated -	0	10	0
All other Papers, being Steps of Procedure, and not Productions, each - - - - - - - - -	0	2	6
(2.) To the Keeper of the General Minute Book:			
For entering the first Deliverance, and Deliverance awarding Sequestration, Adjudication, and Discharge, and Approval of Composition, each - - - - - - -	0	2	6
For entering any other Deliverance or Intimation - -	0	1	0
(3.) To the Extractors:			
For every Extract made of the Proceedings or of the Deliverance of the Lord Ordinary or Inner House, per Sheet -	0	1	0

II.—To the Keepers of the Records.

For entering any Schedule - - - - - -	0	1	0
For entering on the Margin of any Record the Recall of Sequestration or Discharge in favour of the Bankrupt -	0	1	0
For Access to and Liberty to make Excerpts of Proceedings under this Act from any Register or Record appointed herein to be kept, or in which Entries are herein appointed to be made, a Fee of One Shilling for each Year of the Record inspected, but not exceeding in all for any One Record	0	10	0
For Extracts or certified Copies therefrom, per Sheet - -	0	1	0
For collating and certifying Excerpts therefrom, per Sheet -	0	0	6

III.—Sheriff Court.

(1.) To the Sheriff Clerk:			
On every Deliverance pronounced by the Sheriff, declaring the Election of an Interim Factor or a Trustee, appointing Diets of Examination, granting a Discharge to the Bankrupt, approving of Composition, or exonerating the Trustee	0	2	6
For every other Deliverance, not being merely an Order for Papers or Revisals - - - - - -	0	1	0
For every Transmission to or by him of the Proceedings -	0	1	0
For entering the First Deliverance, and the Deliverance awarding Sequestration, in the Register, each (if separate)	0	0	6
For entering the Name and Designation of the Interim Factor in the Register - - - - - -	0	0	6
For entering the Name and Designation of the Trustee and Commissioner in the Register - - - - -	0	0	6
For issuing, receiving back, and examining Bond of Caution for an Interim Factor or Trustee, to be paid at the issuing of Bond - - - - - - -	0	2	6

	£	s.	d.
For Oath of the Bankrupt, and Examinations of him or others, per Sheet	0	1	0
For every Warrant of Apprehension or Citation of the Bankrupt or others, or Commission to take Examination	0	2	6
For every certified Copy or Extract of the Proceedings before the Sheriff, or of any Deliverance pronounced by him, per Sheet	0	1	0
For every Annual Report of the depending Sequestrations, for each Sequestration, to be paid by the Trustee	0	0	6
For every borrowing of all or any Part of the Proceedings	0	0	6
(2.) To the Sheriff:			
Attending any Meeting of Creditors or Examination, for each such Meeting or Diet of Examination, not being on the same Day	1	1	0

SCHEDULE (L.)

Table of Prices payable for Advertisements in the London or Edinburgh Gazette.

	£	s.	d.
For Six Lines and under	0	6	0
For more than Six Lines and not exceeding Ten Lines	0	7	6
For more than Ten Lines and not exceeding Fifteen Lines	0	10	6
For more than Fifteen Lines and not exceeding Twenty Lines	0	14	6
For more than Twenty Lines and not exceeding Twenty-five Lines	0	17	6
For more than Twenty-five Lines and not more than Thirty-Lines	1	0	6

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