



Execution Act 1844

1844 CHAPTER 96

Petition for Protection from Process may be presented to any Court of Bankruptcy without any Notice given.

That a Petition for Protection from Process under the said Act may be presented to any Court or District Court of Bankruptcy within the District of which the Petitioner shall have resided Twelve Calendar Months, without any Notice whatever being given to any Creditor, or in the *London Gazette*, or any Newspaper.

II Form of Petition. Petition and Schedule to be verified by Affidavit in the Form specified.

And be it enacted, That every Petition for Protection from Process presented after the Commencement of this Act to the Court of Bankruptcy, or to any District Court of Bankruptcy, shall be in the Form specified in the Schedule hereunto annexed (A. No. 1.); and such Petition, and the Schedule required by the said recited Act to be annexed thereto, shall be verified by an Affidavit of the Petitioner in the Form specified in the Schedule hereunto annexed (A. No. 2.); and such Affidavit shall be sworn in like Manner as Affidavits in Matters of Bankruptcy may be sworn by any Law now in force relating to Bankrupts, and shall be annexed to such Petition at the Time of filing the same ; and if such Petition and Affidavit shall not be in the Form herein prescribed such Petition shall be dismissed.

III Forthwith after filing of Petition a Notice to be given to Creditors and advertised in the Gazette, &c., and a public Sitting of the Court appointed for first Examination of Petitioner and Choice of Creditors Assignee. Commissioner may reject or remove the Person so chosen.

And be it enacted, That the Commissioner authorized to act in the Matter of such Petition shall forthwith, after such Petition shall have been filed, cause Notice of the filing of such Petition to be given, in such Manner as the Commissioner shall direct, to the Creditors named in the Schedule of the Petitioner, and resident within the United Kingdom, and whose Debts respectively shall amount to the Sum of Five Pounds, and to be inserted in the *London Gazette* and in some Newspaper or Newspapers circulating within the County wherein the Petitioner shall reside, and shall thereby appoint a public Sitting of the Court whenever the Commissioner shall think fit for the

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first Examination of the Petitioner; and the Commissioner may adjourn such Sitting from Time to Time, and allow the Petitioner to amend his Schedule and correct any Mis-statement therein, at the Discretion of the Commissioner, and the Choice of the Creditors Assignee shall take place at such Sitting, or any Adjournment thereof, and shall be made by the Majority in Number and Value of the Creditors who may attend, by themselves or their Attornies duly authorized by Letters of Attorney in that Behalf, before the Commissioner on such Day; provided that the Commissioner shall have Power to reject any Person so chosen who shall appear to him unfit to be such Assignee as aforesaid, or to remove any Assignee; and upon such Rejection or Removal a new Choice of another Assignee shall be made in like Manner.

IV Property of Petitioner to vest in Assignees for the Time by virtue of the Appointment.

And be it enacted, That the Property of the Petitioner shall, for the Purposes of the said recited Act and of this Act, vest in the Assignee or Assignees for the Time being, by virtue of the Appointment of such Assignee or Assignees ; and every such Assignee shall be deemed to be an Officer of the Court in which the Petition shall be filed, and shall be liable as such to the Control thereof: Provided always, that the Property of the Petitioner shall in every Case be possessed and received by the Official Assignee alone, save where it shall be otherwise directed by the Commissioner: Provided also, that it shall be lawful for the Lord Chancellor, or the Judges and Commissioners of the Court of Bankruptcy in *London*, or the Majority of them, if authorized so to do by the Lord Chancellor, from Time to Time to make such Orders, Rules, and Regulations for the Security of the Property of the Petitioner as he or they may judge reasonable and proper.

V Upon Petition being filed, Commissioner to have the like Power for Seizure of the Property of the Petitioner, and the Examination of him and other Persons, as in Bankruptcy.

And be it enacted, That upon such Petition being filed the Commissioner shall possess the like Power and Authority touching the Seizure of the Property of such Petitioner (except as herein otherwise directed), and also to compel the Attendance of and to examine such Petitioner and his Wife, and every Person known or suspected to have any of the Property of such Petitioner in his Possession, or who is supposed to be indebted to such Petitioner, and every Person whom the Commissioner believes capable of giving any Information concerning the Person, Trade, Business, or Galling, Dealings, or Property of such Petitioner, or any Information material to the full Disclosure of the Dealings of such Petitioner, and to enforce both Obedience to such Examination, and the Production of Books, Deeds, Papers, Writings, and other Documents, as by any Law now in force relating to Bankrupts are possessed by the several Courts authorized to act in the Prosecution of Fiats in Bankruptcy touching the Seizure of Property and the Examination of any Bankrupt or other Person under a Fiat in Bankruptcy.

VI Any Prisoner in Execution upon Judgment in an Action for Debt, not being a Trader, or being a Trader whose Debts are less than 300l., may by Petition be protected from Process and from being detained in Prison for any Debt

mentioned in his Schedule; and if so detained, Commissioner may order his Discharge.

And be it declared and enacted, That any Prisoner in Execution upon any Judgment obtained in any Action for the Recovery of any Debt, either not being a Trader within the Meaning of the Statutes relating to Bankrupts, or being a Trader within the Meaning of the said Statutes owing Debts amounting on the whole to less than Three hundred Pounds, may be a Petitioner for Protection from Process ; and every such Petitioner to whom an Interim Order for Protection shall have been given shall not only be protected from Process, as provided by the said recited Act, but also from being detained in Prison in Execution upon any Judgment obtained in any Action for the Recovery of any Debt mentioned in his Schedule; and if any such Petitioner, being a Prisoner in Execution, shall be detained in Prison in Execution upon any such Judgment, it shall be lawful for the Commissioner to order any Officer who shall have such Petitioner in custody by virtue of such Execution to discharge such Petitioner out of Custody as to such Execution, without exacting any Fee, and such Officer shall hereby be indemnified for so doing; and no Sheriff, Gaoler, or other Person whatsoever shall be liable to any Action as for the Escape of any such Prisoner by reason of such his Discharge; and such Petitioner so discharged shall be protected by his Interim Order from all Process for such Time as the Commissioner shall by such Interim Order or any Renewal thereof think fit to appoint, until the making of the Final Order for Protection, in the same Manner as if such Petitioner had not been a Prisoner in Execution: Provided always, that after the Time allowed by any such Interim Order or any Renewal thereof (as the Case may be) shall have elapsed such Petitioner shall not by such Discharge be protected from being again taken in Execution upon such Judgment, but such Judgment shall remain in full Force and Effect notwithstanding such Discharge.

VII If Petitioner be in custody, and is not entitled to be discharged, he may be brought up by Warrant.

And be it enacted, That whenever any such Petitioner is a Prisoner under any Process, Attachment, Execution, Commitment, or Sentence, and is not entitled to his Discharge in manner aforesaid, the Commissioner may, by Warrant under his Hand directed to the Person in whose Custody such Petitioner is confined, cause such Petitioner to be brought before him for Examination at any Sitting of the Court, either public or private, and the Expence of bringing such Petitioner shall be paid out of his Estate, and such Person shall be indemnified by the Warrant of the Commissioner for bringing up such Petitioner.

VIII In case of Death of Petitioner.

And be it enacted, That if any Petitioner for Protection from Process shall die after the filing of his Petition, the Commissioner may proceed in the Matter of such Petition, for the Discovery and Distribution of his Property, as he might have done if the Petitioner were living.

IX Wearing Apparel, Bedding, working Tools, &c. of the Value of 20l. excepted from the Operation of the Act.

And be it enacted, That the Wearing Apparel, Bedding, and other Necessaries of the Petitioner and his Family, and the working Tools and Implements of the Petitioner, not exceeding in the whole the Value of Twenty Pounds, may be excepted by the

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Petitioner in his Petition from the Operation of the said recited Act and of this Act, and in such Case shall be altogether excluded from the Operation of the said Acts : Provided always, that such excepted Articles, with the Values thereof respectively, to be ascertained and appraised, if the Commissioner shall think fit, in such Manner as he shall direct, be fully and truly described by the Petitioner in his Schedule, but otherwise the Exception thereof shall be of no Force as to any Part of the same.

X Official Assignee may act until Creditors Assignee appointed; may sell the Property if Commissioner so order, and make Allowance to Petitioner for his Support. Property vested in Official Assignee to go to his Successor. If Petition dismissed, all Acts theretofore done according to the Act to be good and valid.

And be it enacted, That until an Assignee shall be chosen by the Creditors of any Petitioner for Protection from Process the Official Assignee nominated by the Commissioner upon the filing of the Petition of such Petitioner shall be enabled to act, and shall be deemed to be, to all Intents and Purposes, a sole Assignee of the Property of such Petitioner, and, if the Commissioner shall so order, may sell or otherwise dispose of such Property, or any Part thereof, and make such Allowance out of the Property of such Petitioner for the Support of himself and his Family as the Commissioner shall direct; and the Property vested in any Official Assignee alone, or jointly with any Assignee chosen by Creditors under the said recited Act, this Act, or either of them, shall not remain in such Official Assignee alone, or jointly with such Assignee chosen by Creditors, if such Official Assignee shall resign or be removed from his Office, nor in the Heirs, Executors, or Administrators of such Official Assignee, nor in the surviving Assignee alone, in case of the Death of such Official Assignee, but all such Property shall in every such Case go to and be vested in the Successor in Office of such Official Assignee alone, or jointly with the Assignee chosen by the Creditors (if any), as the Case may be; and whenever any such Petition shall have been or shall be dismissed all Sales and Dispositions of Property, and Payments duly made, and all other Acts theretofore done by any Assignee, or any Person or Persons acting under his Authority, or by any Messenger or other Person under the Authority of the Commissioner, according to the Provisions of the said recited Act and of this Act or either of them, shall be good and valid, but the Property of the Petitioner shall otherwise in such Case revert in such Petitioner ; provided, however, that no Action or Suit shall be prosecuted or commenced against such Assignee, Messenger, or other Person or Persons acting as aforesaid, except to recover any Property of such Petitioner detained after an Order made by the Commissioner for the Delivery thereof, and Demand made thereupon.

XI Assignees may execute Powers which the Petitioner might have executed for his own Benefit.

And be it enacted, That all Powers vested in any Petitioner for Protection from Process, whose Estate shall, under the Provisions of the said recited Act, of this Act, or of either of them, have been vested in an Assignee or Assignees, which such Petitioner might legally execute for his own Benefit, (except the Right of Nomination to any vacant Ecclesiastical Benefice,) shall be hereby vested in such Assignee or Assignees, to be by such Assignee or Assignees executed for the Benefit of the Creditors of such Petitioner under this Act, in such Manner as such Petitioner might have executed the same.

XII Where Lease accepted by Assignees, the Petitioner not liable for the Rent. Assignees not determining whether to accept the Lease, the Lessor may apply to the Court.

And be it enacted, That in all Cases in which any such Petitioner shall be entitled to any Lease or Agreement for a Lease, and his Assignee or Assignees shall accept the same, and the Benefit thereof, as Part of such Petitioner's Property, the said Petitioner shall not be liable to pay any Rent accruing after the filing of his Petition, nor be in any Manner sued after such Acceptance, in respect of any subsequent Nonobservance or Nonperformance of the Conditions, Covenants, or Agreements therein contained: Provided that in all such Cases as aforesaid it shall be lawful for the Lessor or Person agreeing to make such Lease, his Heirs, Executors, Administrators, or Assigns, if the said Assignee or Assignees shall decline, upon his or their being required so to do, to determine whether he or they will or will not accept such Lease or Agreement for a Lease, to apply to the Commissioner, praying that he or they may either so accept the same, or deliver up such Lease or Agreement for a Lease, and the Possession of the Premises demised or intended to be demised; and the Commissioner shall thereupon make such Order as in all the Circumstances of the Case shall seem meet and just, and such Order shall be binding on all Parties.

XIII Assignees may sue in their own Names ; may make Composition for Debts ; may submit Differences to Arbitration. Proviso for Consent of Creditors to Compositions and Arbitrations.

And be it enacted, That it shall be lawful for the Assignee or Assignees of any such Petitioner, and such Assignee or Assignees shall be hereby empowered, to sue, from Time to Time as there may be Occasion, in his or their own Name or Names, for the Recovery, obtaining, and enforcing of any Property or Rights of such Petitioner, but in trust for the Benefit of the Creditors of such Petitioner, according to the Provisions of the said recited Act and this Act, and to give such Discharge and Discharges to any Person or Persons who shall be respectively indebted to such Petitioner as may be requisite; and to make Compositions with any Debtors or Accountants to such Petitioner, where the same shall appear necessary, and to take such reasonable Part of any such Debts as can upon such Composition be gotten in full Discharge of such Debts and Accounts; and to submit to Arbitration any Difference or Dispute between such Assignee or Assignees and any Person or Persons for or on account or by reason of any Matter, Cause, or Thing relating to the Property of such Petitioner: Provided nevertheless, that no such Composition, or Submission to Arbitration, shall be made, nor any Suit in Equity be commenced, by any such Assignee or Assignees, without the Consent in Writing of the major Part in Value of the Creditors of such Petitioner, who shall meet together pursuant to a Notice of such Meeting, to be published at least Fourteen Days before such Meeting in the *London Gazette*, and also in some Newspaper usually circulated in the Neighbourhood of the Place where such Petitioner had his last usual Residence before the filing of his Petition, nor without the Approbation of the Commissioner.

XIV Creditors to vote according to Balance due to them on an Account fairly stated.

And be it enacted, That in all Matters wherein Creditors shall Vote, or wherein the Assent or Dissent of Creditors shall be exercised in pursuance of or in carrying into effect the said recited Act or this Act, every Creditor shall be accounted such in respect of such Amount only as upon an Account fairly stated between the Parties, after allowing the Value of mortgaged Property, and other such available Securities and

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Liens, shall appear to be the Balance due; and that all Disputes arising in such Matters concerning any such Amount shall, upon Application duly made in that Behalf, be examined into by the Commissioner, who shall have Power to determine the same, and, if it seem fit, to refer the Examination thereof to an Officer of the said Court: Provided always, that the Amount in respect of which any such Creditor shall vote in any such Matter shall not be conclusive of the Amount of his or her Debt for any ulterior Purposes, in pursuance of the Provisions of this Act.

XV Where the Petitioner is beneficially entitled to Stock, the Commissioner may order a Transfer.

And be it enacted, That if any such Petitioner shall at the Time of filing his Petition, or at any Time before such Petitioner shall become entitled to his Final Order according to this Act, have any Government Stocks, Funds, or Annuities, or any of the Stock or Shares of or in any public Company, either in *England, Scotland, or Ireland*, standing in his own Name in his own Right, it shall be lawful for the Commissioner, whenever he shall deem fit so to do, to order all Persons whose Act or Consent is thereto necessary to transfer the same into the Name of such Assignee or Assignees as aforesaid; and all such Persons whose Act or Consent is so necessary as aforesaid shall be hereby indemnified for all Things done or permitted pursuant to such Order.

XVI Suits not to be abated by the Death or Removal of Assignees.

And be it enacted, That whenever any Assignee shall duly resign, or be removed, or a new Assignee shall be duly appointed, no Action at Law or Suit in Equity shall be thereby abated, but the Court in which any Action or Suit is depending may, upon the Suggestion of such Death, Resignation, or Removal, and new Appointment, (if any,) allow the Name or Names of the surviving or new Assignee to be substituted in the Place of the former, and such Action or Suit shall be prosecuted in the Name or Names of the said surviving or new Assignee, in the same Manner as if he had originally commenced the same.

XVII Goods in Possession, Order, or Disposition of Petitioner, whereof he was reputed Owner, to be deemed his Property.

And be it enacted, That if any Petitioner for Protection from Process shall, at the Time of filing his Petition, by the Consent and Permission of the true Owner thereof, have in his Possession, Order, or Disposition any Goods or Chattels whereof such Petitioner was reputed Owner, or whereof he had taken upon him the Sale, Alteration, or Disposition as Owner, the same shall be deemed to be the Property of such Petitioner, so as to become vested in the Assignee or Assignees for the Time being of the Estate and Effects of such Petitioner ; provided that no Transfer or Assignment of any Ship or Vessel, or any Share thereof, made as a Security for any Debt or Debts, either by way of Mortgage or Assignment, duly registered according to the Provisions of an Act made in the Session of Parliament held in the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for the registering of British Vessels*, shall be invalidated or affected by reason of such Possession, Order, or Disposition of the same as aforesaid.

XVIII Distress not to be available for more than One Year's Rent.

And be it enacted, That no Distress for Rent made and levied, after the filing of any Petition for Protection from Process, upon the Goods or Effects of the Petitioner, shall be available for more than One Year's Rent accrued prior to the filing of such Petition, but that the Landlord or Party to whom the Rent shall be due shall and may be a Creditor for the Overplus of the Rent due, and for which the Distress shall not be available, and entitled to all the Provisions made for Creditors by the said recited Act or by this Act.

XIX Voluntary Preference fraudulent and void as against Assignees. Proviso.

And be it enacted, That if the Petitioner shall, before or after the filing of his Petition, in contemplation of his becoming insolvent, or being in insolvent Circumstances, voluntarily convey, assign, transfer, charge, deliver, or make over any Estate, Real or Personal, Security for Money, Bond, Bill, Note, Money, Goods, or Effects whatsoever, to any Creditor or Creditors, or to any Person or Persons in trust for, or to or for the Use, Benefit, or Advantage of any Creditor or Creditors, or to any Person who is or may be liable as Surety for such Petitioner, every such Conveyance, Assignment, Transfer, Charge, Delivery, and making over shall be deemed fraudulent and void as against any Assignee or Assignees of the Estate and Effects of such Petitioner appointed under the Provisions of the said recited Act and of this Act, or of either of them: Provided always, that no such Conveyance, Assignment, Transfer, Charge, Delivery, or making over shall be so deemed fraudulent and void if made at any Time prior to Three Months before the filing of the Petition, and not with the View or Intention, by the Party so conveying, assigning, transferring, charging, delivering, or making over, of petitioning the Court for Protection from Process.

XX Provisions of 3 G.4 c.39 extended to the Assignees of Insolvent Petitioners.

And be it enacted, That the Provisions of an Act passed in the Third Year of the Reign of His late Majesty King George the Fourth, intituled *An Act for preventing Frauds upon Creditors by secret Warrants of Attorney to confess Judgment*, shall extend to the Assignee or Assignees of every Petitioner for Protection from Process whose Estate shall, after the Expiration of Twenty-one Days next after his Execution of such Warrant of Attorney, or giving of such Cognovit actionem as therein mentioned, be vested in an Assignee or Assignees under the Provisions of the said recited Act and of this Act or of either of them, as if the said Act so intituled as aforesaid had been expressly herein enacted; and every such Warrant of Attorney, and Judgment and Execution thereon, and every such Cognovit actionem, and Judgment entered up thereon, and Execution taken out on such Judgment, as are declared by the said last-mentioned Act to be fraudulent and void against the Assignees mentioned therein, shall be deemed equally fraudulent and void against the Assignee or Assignees of the Estate of such Petitioner, and such Assignee or Assignees shall be entitled to recover back and receive, for the Use of the Creditors of such Petitioner, all the Monies levied and Effects under or by virtue of any such Judgment or Execution.

XXI Warrant of Attorney and Cognovit actionem not to be acted upon against Property of Insolvent Petitioner after filing his Petition.

And be it enacted, That in all Cases where any Petitioner for Protection from Process, whose Estate shall have been vested in an Assignee or Assignees under the Provisions of the said recited Act and of this Act or of either of them, shall have executed any

Warrant of Attorney to confess Judgment, or shall have given any Cognovit actionem or Bill of Sale, whether for a valuable Consideration or otherwise, no Person shall, after the filing of the Petition of such Petitioner, avail himself of any Execution issued or to be issued upon any Judgment obtained or to be obtained upon such Warrant of Attorney or Cognovit actionem, either by Seizure and Sale of the Property of such Petitioner or any Part thereof, or by Sale of such Property theretofore seized, or any Part thereof, or avail himself of such Bill of Sale, but that any Person or Persons to whom any Sum or Sums of Money shall be due in respect of any such Warrant of Attorney or Cognovit actionem, or of such Bill of Sale, shall and may be a Creditor or Creditors for the same under the said recited Act and this Act.

XXII Final Order to protect the Person of the Petitioner from Process in respect of the Debts or Sums herein particularly mentioned. Specification of Debts, &c. not necessary in Final Order.

And be it enacted, That the Final Order to be made under the Provisions of the said Act as amended by this Act shall protect the Person of the Petitioner from being taken or detained under any Process whatever in the Cases herein-after mentioned; (that is to say,) from all Process in respect of the several Debts and Sums of Money due or claimed to be due at the Time of filing the Petition from such Petitioner to the several Persons named in his Schedule as Creditors, or as claiming to be Creditors for the same respectively, or for which such Persons shall have given Credit to such Petitioner before the Time of filing such Petition, and which were not then payable, or in respect of the Claims of any other Persons not known to such Petitioner at the Time of making the Pinal Order, who may be Indorsees or Holders of any negotiable Securities set forth in such Schedule : Provided always, that every such Pinal Order may be made without specifying therein any such Debt or Debts, or Sum or Sums of Money, or Claims as aforesaid, or naming therein any such Creditor or Creditors as aforesaid; and such Pinal Order shall be in the Form specified in Schedule (A. No. 3.)

XXIII If Prisoner be detained for any Claim in respect of which he is protected Commissioner may order his Discharge.

And be it enacted, That if any such Petitioner, being a Prisoner in Execution at the Time of filing his Petition, shall be detained in Prison for any Debt or Claim in respect of which he is protected from Process by his Final Order, it shall be lawful for the Commissioner to order any Officer who shall have such Petitioner in custody by virtue of such Execution to discharge such Petitioner without exacting any Fee; and such Officer shall be hereby indemnified for so doing.

XXIV If it appear to Commissioner that any Debts of the Petitioner were contracted by Fraud or Breach of Trust, &c. no Day to be named for making the Final Order for Protection ; but if otherwise, a Notice of such Day to be given.

Provided always, and be it enacted, That if on the Day for the first Examination of the Petitioner, or at any Adjournment thereof, it shall appear to the Commissioner that the Debts of the Petitioner, or any of them, were contracted by any manner of Fraud or Breach of Trust, or by any Prosecution whereby he had been convicted of any Offence, or without having at the Time a reasonable or probable Expectation of being able to pay such Debt or Debts, or that such Debts, or any of them, were contracted by reason of any Judgment in any Proceeding for Breach of the Revenue Laws, or in any Action for Breach of Promise of Marriage, Seduction, Criminal Conversation, Libel,

Slander, Assault, Battery, malicious Arrest, malicious suing out a Fiat of Bankruptcy, or malicious Trespass, or that the Petitioner has parted with any of his Property since the presenting of his Petition, the Commissioner shall not be authorized in any such Case to name any Day for making such Final Order, or to renew such Interim Order; and in every such Case wherein any such Petitioner shall have been a Prisoner in Execution, and discharged out of Custody by Order of the Commissioner under the Provision herein in that Behalf contained, such Petitioner shall be remanded by an Order of the Commissioner to his former Custody ; but if none of the Matters aforesaid shall so appear, and the Commissioner shall be satisfied that the Petitioner has made a full Discovery of his Estate, Effects, Debts, and Credits, it shall then be lawful for the Commissioner to cause Notice to be given that on a certain Day, to be named therein, he will proceed to make such Final Order, unless Cause be shown to the contrary.

XXV Sums payable by way of Annuity to be deemed Debts, and the Annuitants to be Creditors for the Value thereof.

And be it enacted, That every Sum of Money which shall be payable, by way of Annuity or otherwise, at any future Time or Times, by virtue of any Bond, Covenant, or other Securities of any Nature whatsoever, shall be deemed and taken to be Debts within the Meaning of the said recited Act and of this Act: Provided always, that every Person who would be a Creditor of any Petitioner for Protection from Process for such Sum or Sums of Money, if the same were presently due, shall be admissible as a Creditor of such Petitioner for the Value, and no more, of such Sum or Sums of Money so payable as aforesaid, which Value the Commissioner authorized to act in the Matter of the Petition shall, upon Application at any Time made in that Behalf, ascertain, regard being had to the original Price given for such Sum or Sums of Money, deducting therefrom such Diminution in the Value thereof as shall have been caused by the Lapse of Time since the Grant thereof to the- Time of filing such Petition ; and such Creditor shall be entitled in respect of such Value to the Benefit of all the Provisions made for Creditors by the said recited Act or by this Act, without Prejudice nevertheless to the respective Securities of such Creditor, excepting as respects the Effect of the Final Order which shall be obtained by such Petitioner under the Provisions of the said recited Act and of this Act.

XXVI Final Order may extend to Process for Contempt in Nonpayment of Money, and to Costs incurred by Creditor, but subject to Taxation.

Provided always, and be it enacted, That the Final Order for Protection from Process shall and may extend to all Process issuing from any Court for any Contempt of Court, Ecclesiastical or Civil, for Nonpayment of Money or of Costs or Expences in any such Court; and that in such Case such Final Order shall be deemed to extend also to all Costs which the Petitioner would be liable to pay in consequence or by reason of such Contempt, or on purging the same; and that every Final Order as to any Debt or Damages of any Creditor of the Petitioner shall be deemed to extend also to all Costs incurred by such Creditor before the filing of the Petitioner's Schedule in any Action or Suit brought by such Creditor against the Petitioner for the Recovery of the same ; and that all Persons as to whose Demands for any such Costs, Money, or Expences as aforesaid the Final Order obtained by the Petitioner shall be adjudged to extend shall be deemed and taken to be Creditors of such Petitioner in respect thereof, and entitled to the Benefit of all the Provisions made for Creditors by the said recited Act or by this Act; subject nevertheless to such ascertaining of the Amount of the said Demands

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as may be had by Taxation or otherwise, and to -such Examination thereof as is herein provided in respect of all Claims to a Dividend of such Petitioner's Estate and Effects.

XXVII Adjournment of Consideration of Final Order.

And be it enacted, That it shall be lawful for the Commissioner, at the Time appointed for making the Final Order for Protection from Process, or at any Adjournment thereof, to adjourn the Consideration of such Final Order *sine Die*.

XXVIII If Final Order refused, or adjourned *sine Die*, the Court, after the Lapse of such Time as it thinks just, having regard to the Insolvency and the Conduct of the Insolvent, may make an Order to protect him from further Imprisonment in respect of the Debts, &c. mentioned in his Schedule.

And be it enacted, That if for any of the Causes in that Behalf aforesaid no Day be named for making the Final Order, or if the Consideration of such Final Order be adjourned *sine Die*, or such Final Order be refused, the Commissioner shall have the Power, after the Expiration of such Time subsequent to the filing of the Petition as, having regard to all the Circumstances of the Insolvency, and the Conduct of the Petitioner as an Insolvent Debtor before and after his" Insolvency, the Commissioner shall think just, and after hearing the Petitioner or any of his Creditors, or his or their Counsel or Attornies, to make an Order to protect the Petitioner from being taken or detained under any Process whatever for or in respect of the several Debts and Sums of Money due or claimed to be due at the Time of filing, his Petition, from the said Petitioner, to the several Persons named in his Schedule as Creditors or as claiming to be Creditors for the same respectively, or for which such Persons should have given Credit to the said Petitioner before the Time of filing his Petition, and which were not then payable, and as to the Claims of all other Persons not known to the said Petitioner at the Time of making such Order, who may be Endorsers or Holders of any negotiable Security set forth in his said Schedule: Provided always, that no Debtor shall be imprisoned on any Process for more than Twelve Calendar Months for any Debt contracted before filing his Petition, in case the Final Order shall be refused or shall not be made, or in case the Protecting Order shall not be renewed.

XXIX Petitioner taken or detained after obtaining such Order may be discharged.

And be it enacted, That if such Petitioner shall be taken or detained under any Process whatever for any Debt or Claim in respect of which he is protected from Process by such Order as last aforesaid it shall be lawful for the Commissioner to order any Officer who shall have such Petitioner so in Custody to discharge such Petitioner therefrom, without exacting any Fee ; and such Officer shall be hereby indemnified for so doing.

XXX Where Error in Schedule without Fraud, Act to operate upon the actual Amount of Debt.

And whereas it may sometimes happen that a Debt of, or Claim upon, or Balance due from a Petitioner for Protection from Process may be specified in his Schedule so sworn to as aforesaid at an Amount which is not exactly the actual Amount thereof, without any culpable Negligence or Fraud or evil Intention on the Part of such Petitioner; be it enacted, That in such Case the Commissioner shall allow the Schedule to be amended in that Behalf; and in every Case in which an Amendment of the Schedule shall be allowed the said Petitioner shall be entitled to every Benefit and

Protection of the said recited Act and of this Act; and the Creditor in that Behalf shall be entitled to the Benefit of all the Provisions made for Creditors by the said recited Act and by this Act in respect of the actual Amount of such Debt, Claim, or Balance, and neither more nor less than the same, to all Intents and Purposes, such Error in the said Schedule notwithstanding.

XXXI How Dividend to be made. Notice of Sittings. Examination of Objections and Claims. Commissioner may require Proof of Debts.

And be it enacted, That whenever after an Audit there shall appear to the Commissioner to be in the Hands of the Official Assignee any Balance wherewith a Dividend may be made, Proceedings shall be had forthwith, under the Direction of the Commissioner, for making such Dividend, and also, when it shall appear necessary, for correcting and ascertaining the List of Creditors entitled to receive the same ; and Notice of any Sitting of the Court ordered to be held for such ascertaining of Debts, or for an Audit, or for declaring a Dividend thereupon, or for all such Purposes, shall be given for such Time and in such Manner as the Commissioner shall from Time to Time direct; and such Dividend shall be made amongst the Creditors of the Petitioner whose Debts shall be admitted in his Schedule sworn to by the Petitioner, and amongst such other Creditors (if any) who shall prove their Debts in pursuance of any Order of the Commissioner to be made in that Behalf, in proportion to the Amount of the Debts so admitted, or so admitted and proved, as the Case may be: Provided always, that if the Petitioner, or any Creditor or Assignee, shall object in whole or in part to any Debt tendered to be so proved as aforesaid, or to any Debt mentioned in the Schedule of the Petitioner, or if any Person whose Demand is stated in such Schedule, but is not admitted therein to the Extent of such Demand, shall claim to be admitted as a Creditor for the whole of such Demand, or for more thereof than is so admitted, the said Objections and Claims shall, upon Application duly made, be examined into by the Commissioner, and the Decision of the Commissioner thereupon shall be conclusive with respect to the Title of such Creditor or Creditors to his or their Share of such Dividend: Provided always, that if in any Case it shall appear expedient it shall be lawful at any Time for the Commissioner, by Notice as may be directed in that Behalf, to cause all or any of the Creditors to prove their Debts, in such Manner as the Commissioner shall require, and to decide upon such Debts, and the Right to receive Dividends thereupon, and to do all Things requisite thereto, as aforesaid.

XXXII Outstanding Debts, &c. may be sold by Order of the Commissioner.

And be it enacted, That if at the Expiration of Twelve Calendar Months from the filing of any Petition for Protection from Process there shall remain any outstanding Debts or other Property due or belonging to the Estate of the Petitioner, which cannot, in the Opinion of the Commissioner, be collected and received, without unreasonable or inconvenient Delay, it shall be lawful for the Assignees, under the Direction of the Commissioner, to sell and assign such Debts and other Property in such Manner as shall be ordered by the Commissioner.

XXXIII Proceedings not liable to Stamp Duty, nor Sales to Auction Duty.

And be it enacted, That no Letter of Attorney, Affidavit, Certificate, or other Proceeding, Instrument, or Writing whatsoever in the Matter of any Petition for Protection from Process, nor any Copy thereof, nor any Advertisement inserted in any Newspaper by the Direction of any Commissioner of the Court of Bankruptcy relating

Status: This is the original version (as it was originally enacted).

to any such Matter, shall be liable to or charged with the Payment of any Stamp or other Duty whatsoever; and that no Sale of any Real or Personal Estate of any such Petitioner as aforesaid, for the Benefit of his Creditors, under the said recited Act or this Act, shall be liable to any Auction Duty: Provided always, that no such Exemption from Auction Duty shall be allowed unless such Sale shall be conducted by a licensed Auctioneer, and such Auctioneer shall at the Time of passing his Account thereof produce to the Officer of Excise a Catalogue, signed and certified by the Assignees by whose Order such Sale shall have been made, in manner and form required by the Laws of Excise.

XXXIV Sum to be paid on Prosecution of Petition.

And be it enacted, That under every Petition for Protection from Process after the passing of this Act in the Court of Bankruptcy in *London*, or in any District Court of Bankruptcy in the Country, there shall be paid by the Official Assignee of the Estate and Effects of the Petitioner, into the Bank of *England*, to the Credit of the Accountant in Bankruptcy, to the Account intituled " The Secretary of Bankrupts Account," a Sum not less than One Eighth of a Pound *per Centum* and not exceeding Five Pounds *per Centum* on the gross Produce from Time to Time of the Petitioners Estate, such Sum, within the Limit aforesaid, and the Time or Times for Payment thereof, to be fixed by the Lord Chancellor by any general Order for those Purposes, and to be applicable to all the Purposes of the said Account, and to be subject to the like Orders as other Monies directed to be paid in to the said Account; and that it shall be lawful for the Lord Chancellor from Time to Time to lessen or increase such Sum, within the Limit aforesaid, as to the Lord Chancellor may seem just and reasonable, upon Consideration of the Amount from Time to Time standing to the said Account; and of the Claims from Time to Time chargeable thereupon.

XXXV Remuneration to Official Assignee.

And be it enacted, That from and after the passing of this Act it shall be lawful for the Commissioner authorized to act in the Matter of any Petition for Protection from Process to direct Remuneration to the Official Assignee for his Services in the Matter of such Petition, in like Manner as in Bankruptcy, but nevertheless so as such Remuneration shall in no Case exceed the Rate of Five Pounds *per Centum* on the Sum received as Produce of the Property of the Petitioner.

XXXVI Fees.

And be it enacted, That no Fee or Gratuity shall be received or taken by the Court of Bankruptcy, or any District Court of Bankruptcy, or any Solicitor, Auctioneer, Broker, Appraiser, Accountant, Messenger, or other Officer of any such Court, for any thing done or to be done in the Matter of any such Petition, of or from any Person whomsoever, except as herein-before authorized, and except such Fees as shall at any Time be specified in a List thereof to be signed by the Commissioners of the Court of Bankruptcy authorized to act in the Prosecution of Fiats in Bankruptcy in *London*, or the major Part of them, and such of the Commissioners of the said Court authorized to act in the Prosecution of Fiats in Bankruptcy in the Country as shall be nominated by the Lord Chancellor for that Purpose, and to be approved of by the Lord Chancellor, a Copy of which List shall be exposed to View in every such Court.

XXXVI Proceedings, or a Copy thereof, duly signed, receivable in Evidence.

And be it enacted, That any Petition for Protection from Process, and any Proceeding in the Matter of such Petition purporting to be signed by a Commissioner of the Court of Bankruptcy, or a Copy of such Petition or other Proceeding purporting to be so signed, shall in all Cases be receivable in Evidence of such Proceedings having respectively taken place.

XXXVII Rules and Orders made under recited Act to be applicable to this Act.

And be it enacted, That the Rules and Orders made by the Judges and Commissioners of the Court of Bankruptcy under the said recited Act shall extend and be applicable to this Act, except as otherwise provided by this Act: Provided always, that it shall be lawful for the Commissioners of the Court of Bankruptcy acting in *London*, or the major Part of them, and such of the Commissioners of the said Court acting in the Country as -shall be nominated by the Lord Chancellor for that Purpose, from Time to Time to alter or vary such Rules and Orders, or to make other Rules and Orders, to be approved of by the Lord Chancellor, for the better carrying into execution the said recited Act, as amended by this Act: Provided also, that any such Rules and Orders may be rescinded or varied as the Lord Chancellor shall direct.

XXXIX Persons wilfully omitting any thing in Schedule guilty of a Misdemeanor, and liable to Three Years Imprisonment. Indictment need only set out the Substance of the Offence charged.

And be it enacted, That in case any Petitioner for Protection from Process shall, with Intention to defraud the Creditors of such Petitioner, wilfully and fraudulently omit in his Schedule so sworn to as aforesaid any Property whatsoever, or retain or except out of such Schedule as Wearing Apparel, Bedding, or other Necessaries, or working Tools or Implements, Property of greater Value than Twenty Pounds, every such Person so offending, and any Person aiding and assisting him to do the same, shall, upon being thereof convicted by due Course of Law, be adjudged guilty of a Misdemeanor, and thereupon it shall be lawful for the Court before whom such Offender shall have been so tried and convicted to sentence such Offender to be imprisoned and kept to hard Labour for any Period not exceeding Three Years; and that in every Indictment or Information against any Person for any Offence under this Act it shall be sufficient to set forth the Substance of the Offence charged on the Person offending, without setting forth the Petition, or any Proceeding whatever in the Matter of such Petition, except so much of the Schedule of such Petitioner as may be necessary for the Purpose.

XL Wilfully making a false Oath or Affirmation punishable as if guilty of Perjury.

And be it enacted, That if any Person who shall make or take any Oath or Affirmation under or in pursuance of the said recited Act or of this Act shall therein be guilty of wilful Falsehood, every such Person, being duly convicted thereof, shall be subject to the same Pains, Penalties, and Forfeitures to which Persons convicted of wilful and corrupt Perjury are or shall be subject.

XXI The Lord Chancellor may issue a Fiat in Bankruptcy against a Trader having filed a Declaration of Insolvency, upon the Petition of the Trader himself.

And be it enacted, That the Lord Chancellor shall have Power, upon Petition made to him in Writing by any Trader who shall have filed a Declaration of Insolvency in manner and form prescribed by the Statute in that Case made and provided relating to Bankrupts, and upon Payment of the like Sum as is payable upon the granting a Fiat upon the Petition of a Creditor, to be carried 'to and applicable to the Purposes of the Account in the Bank of *England* intituled " The Secretary of Bankrupts Account," to issue a Fiat in Bankruptcy against such Trader, and to authorize the Prosecution thereof in the Court of Bankruptcy in *London* or in any District Court of Bankruptcy ; and that it shall and may be lawful for such Court so authorized as aforesaid, upon the Application of such Trader, and upon Proof of the Trading and of the filing of such Declaration, or upon the Application of any Creditor or Creditors of such Trader to such Amount as by the said Statute required for a Petitioning Creditor's Debt, and upon Proof of the Matters requisite to support a Fiat issued upon the Petition of a Creditor, to make the Adjudication of Bankruptcy under such Fiat, and all further Proceedings under such Fiat shall be thenceforth prosecuted and carried on in like Manner as if such Fiat had been issued and adjudicated upon on the Petition of a Creditor of the Bankrupt.

XXII Lord Chancellor may attach the Country Commissioners to Districts.

And be it enacted, That it shall be lawful for the Lord Chancellor from Time to Time to attach the several Commissioners of the Court of Bankruptcy appointed to act in the Country to such Districts described by Her Majesty, with the Advice of Her Privy Council, as he shall think fit.

XXIII Minute of Petitions filed to be transmitted to Secretary of Bankrupts.

And be it enacted, That a Minute of every Petition filed by any Trader under the Provisions of the said recited Act as amended by this Act shall be transmitted to the Lord Chancellor's Secretary of Bankrupts at such Time and in such Manner and Form as the Lord Chancellor shall direct.

XXIV Lord Chancellor authorized to give necessary Directions where Courts shall sit.

And whereas it may be expedient that the Courts of Bankruptcy should hold Sittings in some Matters of Bankruptcy, or Petitions for Protection from Process, at some Place or Places at which such Courts have not hitherto been used to sit; be it enacted, That it shall be lawful for the Lord Chancellor, at any Time or Times whenever it shall appear to him under the Circumstances of the Case to be expedient, by any Order or Orders, to give the necessary Directions in that Behalf; and every Commissioner and Deputy Registrar acting under any such Order shall have paid to him his travelling and other Expences, in the same Manner and out of the same Fund as travelling and other Expences are directed to be paid by the Act passed in the Sixth Year of the Reign of Her present Majesty, intituled *An Act for the Amendment of the Law of Bankruptcy*, to any Commissioner or Deputy Registrar acting for or in aid of any Commissioner or Deputy Registrar in Cases provided for by such Act.

XLV Lord Chancellor empowered to appoint a Taxing Officer. Tenure of Office, Duties, and Removal. General Provision as to Business of Taxing Officer.

And be it enacted, That from and after the passing of this Act it shall be lawful for the Lord Chancellor to appoint some fit and proper Person, such Person being a Barrister of not less than Five Years standing at the Bar, or who shall have practised as a Pleader for not less than Five Years, or who shall have held the Office of Registrar or Deputy Registrar of the Court of Bankruptcy for not less than Five Years, or an admitted Attorney of One of Her Majesty's Superior Courts at *Westminster*, or of Her Majesty's Court of Bankruptcy, in actual Practice, of not less than Five Years standing on the Roll of such Court or Courts, to be the Taxing Officer of the Court of Bankruptcy, and to be called the Master of the said Court, at such Salary, not exceeding One thousand two hundred Pounds *per Annum*, as the Lord Chancellor shall think fit, and to be entitled to an Annuity not exceeding Two Thirds of such Salary, if and when such Officer shall be affected with some permanent Infirmary disabling him from the due Execution of his Office, such Salary or Annuity, as the Case may be, to be charged upon and paid (without any Deduction except the Tax on Income) out of the same Fund and at the same Times and in like Manner as the Salaries or Annuities, as the Case may be, of the Registrars and Deputy Registrars of the said Court; and as and when any Vacancy shall occur in such Office the same shall be supplied by the Lord Chancellor, by the Appointment of some other fit and proper Person of like Qualifications as aforesaid; and every such taxing Officer shall hold his Office during his good Behaviour, and shall discharge his Duties in Person, except where otherwise provided by this Act, or by any Regulation to be made under this Act, and may be removed from his Office by the Lord Chancellor for Misconduct; and the Business to be transacted by such Taxing Officer, from and after the passing of this Act, shall be the swearing of such Affidavits as may be sworn before any Commissioner, Registrar, or Deputy Registrar of the Court of Bankruptcy, and the taxing of such Costs taxable by any Court of Bankruptcy by virtue of any Statute now or hereafter to be in force as the Lord Chancellor shall from Time to Time by any general or other Order direct, subject to Review of the Court authorized to tax the same; and the Place, Time, and Manner in which the same shall be conducted shall be such as the Lord Chancellor shall by any such Order direct.

XLVI Sum to be paid on the Taxation of Bills.

And be it enacted, That upon the Taxation by virtue of this Act of any Bills of Fees, Charges, or Disbursements there shall be paid to the Master such Sum as the said Master shall decide, not less than One Shilling nor more than the Sum of Ten Shillings, and also Four-pence a Folio, over and above the said Sum of Ten Shillings, for every Folio exceeding Twenty Folios of such Bill.

XLVII Sums received by the Master to be paid into the Bank of England, after deducting such Sum as the Lord Chancellor thinks fit for Expences of Office.

And be it enacted, That the Sums so directed to be paid to and received by the Master, and also all Fees received by him for swearing Affidavits, shall be paid by him, at such Times as the Lord Chancellor shall by any Order direct, into the Bank of *England*, to the Credit of the Accountant in Bankruptcy, to the Account intituled " The Secretary of Bankrupts Account," after deducting, thereout such Sum as the Lord Chancellor shall think fit for the Expences of the said Office; and all Monies to be so paid in to the said Account shall be applicable to all the Purposes of the said Account, and be subject to the like Orders as other Monies directed to be paid in to the said Account.

Status: This is the original version (as it was originally enacted).

XLVIII In case of Sickness or other reasonable Cause, the Duty of the Master may be performed by Deputy.

Provided always, and be it enacted, That if the said Master shall from Sickness or other unavoidable Cause have Occasion to be absent from the Business of his Office for a longer Period than Two Months at any One Time, then and in every such Case it shall be lawful for the Lord Chancellor to give Leave of Absence, by his Order in Writing, to such Master, and, if necessary, to appoint a Deputy in his Place during such Time as shall be expressed in such Order; and the Name of such Deputy, and the Cause and Time of such Absence, shall be stated in such Order; and such Deputy may, if Occasion require it, be changed by the Lord Chancellor; and every Deputy so appointed shall be paid out of the said Fund as the Salary of the said Master is chargeable upon such Remuneration for his Services as the Lord Chancellor shall direct in such Order, not being in any Case less than One Third of the Amount of the Salary of such Master.

XLIX Registrars, &c. who now receive the Surplus of certain Fees to be paid in future solely by Salary.

And whereas the Registrars and Deputy Registrars of the Court of Bankruptcy, in addition to their respective Salaries, are entitled to and now receive the Surplus of certain Fees authorized to be taken, and the Payment or partial Payment of such Officers by Fees has been found to be objectionable ; be it enacted, That instead of the Salaries and surplus Fees heretofore received by such Registrars and Deputy Registrars there shall, from and after the Eleventh Day of *October* next, be paid to them by the Governor and Company of the Bank of *England*, out of the Fund placed to the Credit of the Accountant in Bankruptcy intituled " The Secretary of Bankrupts Account," by virtue of any Order or Orders of the Lord Chancellor to be from Time to Time made for that Purpose, and without any Draft from the Accountant in Bankruptcy, the several Salaries herein-after mentioned; that is to say, the net yearly Sum of One thousand two hundred Pounds to each of the Registrars of the said Court appointed under an Act passed in the Reign of His late Majesty, intituled *An Act to establish a Court in Bankruptcy*, and his Successors in such Office; the net yearly Sum of One thousand Pounds to each Deputy Registrar of the said Court, acting as such in the City of *London*, and his Successors in such Office; and the net yearly Sum of Eight hundred Pounds to each Deputy Registrar of the said Court, acting as such in the Country, and his Successors in such Office; which Salaries shall be free from all Taxes, Deductions, and Abatements whatsoever out of the same or any Part thereof (except the Tax on Income), and shall be paid quarterly, on the Eleventh Day of *January*, the Eleventh Day of *April*, the Eleventh Day of *July*, and the Eleventh Day of *October* in every Year, by equal Portions; and that if any Person for the Time being holding any of the said Offices shall die, resign, or be removed from the same, the Executor or Administrator of the Person so dying, or the Person so resigning or being removed, shall be entitled to receive such proportionable Part of his Salary as shall have accrued during the Time that such Person shall have executed his Office since the last Payment; and that the Successor of any such Person so dying, resigning, or being removed as aforesaid shall be entitled to receive such Portion of his Salary as shall be accruing or shall accrue from the Day of such Death, Resignation, or Removal.

L Fees to be accounted for.

And be it enacted, That from and after the Eleventh Day of *October* next all Fees received and taken by or accounted for and paid over to the Chief Registrar of the Court of Bankruptcy shall be paid by him, at such Times as the Lord Chancellor

shall by any Order direct, into the Bank of *England*, to the Credit of the Accountant in Bankruptcy, to the Account intituled " Interest arising from the Bankruptcy Fund Account," after deducting thereout such Sum as the Lord Chancellor shall think fit for Stationery and other incidental Expences of the Offices of the Chief Registrar and the Court of Review; and that the Salaries and Sums of Money to Clerks, Ushers, and other Under Officers of the Court of Bankruptcy heretofore paid by the Chief Registrar out of such Fees shall thenceforth be paid by the Governor and Company of the Bank of *England* out of the Fund standing to such Account, under such Order or Orders as may from Time to Time be made by the Lord Chancellor, but subject and without Prejudice to the Payment of all Salaries and Sums of Money by any Act or Acts now in force directed or authorized to be paid thereout; and that on or before the First Day of March One thousand eight hundred and forty-five, if Parliament be then sitting, or, if not, within Fourteen Days from the Commencement of the then next Session of Parliament, there shall be laid before Parliament by the said Chief Registrar a Return, made up to the Thirty-first Day of December then last, of the total Amount of all Fees received by or accounted for and paid over to him, and of the Payment over to the Bank of *England* (such Payment over to the Bank of *England* to be certified by the Accountant in Bankruptcy), and that a like Return shall be afterwards made by him annually at the same Period for the Year ending the Thirty-first Day of December then last.

LI Retiring Pension to Registrars.

And be it enacted, That it shall be lawful for the Lord Chancellor, by any Order or Orders to be by him from Time to Time made on a Petition to be presented to him for that Purpose, to order (if he shall think fit) an Annuity or clear yearly Sum of Money to be paid to any Person executing the Office of Chief Registrar, Registrar, or Deputy Registrar of the Court of Bankruptcy, and acting in *London* or in the Country, not exceeding Two Thirds of the yearly Salary which such Person shall under this Act be entitled to at the Time of presenting such Petition, to be paid out of the Interest and Dividends that have arisen or may arise from the Securities now or hereafter to be placed in the Bank of *England* to the Account intituled " The Bankruptcy Fund Account," (but subject and without Prejudice as aforesaid,) if and when such Person shall be afflicted with some permanent Infirmary disabling him from the due Execution of his Office, and shall be desirous of resigning the same; and the Annuity or yearly Sum mentioned in such Order or Orders shall be paid by the Governor and Company of the Bank of *England* out of the Interest and Dividends of the said Securities (but subject and without Prejudice as aforesaid) by equal quarterly Payments, on the Fifth Day of *January*, the Fifth Day of *April*, the Fifth Day of *July*, and the Tenth Day of *October* in every Year, to such Person, from the Period when he shall resign his said Office, for the Term of his Life, free from Taxes, except the Tax on Income.

LII Compensation to T. A. Warburton for having performed the Duties of Deputy Registrar.

And whereas one of the Deputy Registrars of the Court of Bankruptcy has since the Twenty-first Day of November One thousand eight hundred and forty-two performed the Duties of Taxing Officer; and during that Period the Duties of Deputy Registrar were discharged by *Thomas Acton Warburton* Esquire, Barrister at Law; be it enacted, That out of the Fund placed to the Credit of the Accountant in Bankruptcy, intituled " The Secretary of Bankrupts Account," there shall be paid to the said *Thomas Acton Warburton*, by the Governor and the Company of the Bank of *England*, by virtue of

an Order in Writing of the Lord Chancellor, such Sum of Money, not exceeding Eight hundred Pounds, as the Lord Chancellor shall think reasonable.

LIII Court may send a Registrar to take Proof of Debts, &c. where expedient. Examinations to be taken down.

And be it enacted, That the Court authorized to act in the Prosecution of any Fiat in Bankruptcy or any Petition for Protection from Process shall have Power, whenever it shall seem expedient to such Court, to direct a Deputy Registrar of such Court to act in the Prosecution of such Fiat or Petition for Proof of Debts and the Examination of Parties or Witnesses on Oath, or for either of such Purposes, subject to such Rules and Regulations as the Lord Chancellor shall from Time to Time think fit to make in that Behalf; the travelling Expences of such Officer to be settled by such Court, and paid out of the Estate of the Bankrupt or Petitioner, as the Case may be ; and such Officer so acting shall have and exercise the Power vested in such Court for Proof of Debts and Examination of Parties or Witnesses, except the Power of Commitment: Provided always, that all such Examinations of Parties or Witnesses shall be taken down in Writing, and shall be annexed to and form Part of the Proceedings under such Fiat or Petition, as the Case may be.

LIV Style of Deputy Registrars of the Court of Bankruptcy.

And be it enacted, That from and after the passing of this Act the Deputy Registrars of the Court of Bankruptcy and their Successors, whether acting in *London* or in the Country, shall be called the Registrars of the said Court.

LV Repealing Provisions in 5 & 6 W.4. c. 29. as to Fees receivable by Accountant in Bankruptcy.

And whereas by an Act which passed in the Sixth Year of the Reign of King *William* the Fourth, intituled *An Act for investing in Government Securities a Portion of the Cash lying unemployed in the Bank of England belonging to Bankrupts Estates, and applying the Interest thereon in discharge of the Expences of the Court of Bankruptcy; and for the Relief of the Suitors in the said Court; and for removing Doubts as to the Extent of the Powers of the Court of Review and of the Subdivision Courts,* it is enacted, that the Salaries herein before provided shall be in lieu of all Fees and Emoluments whatsoever, and that all such Fees and Emoluments, whether for Commission, Brokerage, or otherwise, as are now receivable by the said Accountant General of the Court of Chancery in Matters of Bankruptcy, shall, from and after the Appointment of the said Accountant in Bankruptcy, be received by him and paid into the Bank in the Name of the said last-mentioned Accountant, and be carried to the Credit of the said Account to be intituled " Interest arising from the Bankruptcy Fund Account," and be applicable to all the Purposes of the said Account: And whereas the said Enactment requires Alteration; be it enacted, That the said Enactment shall be repealed.

LVI Salary of Accountant.

And be it enacted, That the Salary allowed to the Accountant shall be in lieu of all Fees and Emoluments whatsoever, and that the Accountant shall not, directly or indirectly, receive any Sum either for Commission, Brokerage, or otherwise, but only the Sum expressly allowed to him as his Salary; that from henceforth the Broker shall transact

the Brokerage Business of the Accountant's Office upon such Terms as the Accountant and any Two of the Commissioners of the Court of Bankruptcy to be appointed by the Lord Chancellor shall, with the Approbation of the Lord Chancellor, determine; and that the Sum paid to the Broker shall be charged by the Accountant to the Estate for which the Investment or Sale shall be made; and that when such Sum to be paid to the Broker shall be determined it shall be lawful for the Lord Chancellor to direct the Payment or any Part of it to be made from such Time retrospectively and prospectively as to him may seem just.

LVII Arrest upon Final Process in an Action for Debt not exceeding 20l. and Costs abolished.

And whereas it is expedient to limit the present Power of Arrest upon Final Process; be it enacted, That from and after the passing of this Act no Person shall be taken or charged in Execution upon any Judgment obtained in any of Her Majesty's Superior Courts, or in any County Court, Court of Requests, or other Inferior Court, in any Action for the Recovery of any Debt wherein the Sum recovered shall not exceed the Sum of Twenty Pounds, exclusive of the Costs recovered by such Judgment.

LVIII Persons in Execution at the Time of passing this Act where the Debt shall not exceed 20l. and Costs shall be discharged on Application to a Judge. Proviso for Discharge fraudulently obtained. Sheriffs, &c. not liable as for Escape. Judgment to remain in force notwithstanding the Discharge of the Debtor.

And be it enacted, That all Persons in Execution at the Time of passing this Act, upon any Judgment obtained in any of the Courts aforesaid in any Action for the Recovery of any Debt wherein the Sum recovered shall not exceed the Sum of Twenty Pounds, exclusive of the Costs recovered by such Judgment, shall and may, upon the Application of every such Person or Persons for that Purpose, made at any Time after the passing of this Act, to a Judge of one of Her Majesty's Superior Courts of Law at *Westminster*, or to the Court in which such Judgment shall have been obtained, to the Satisfaction of such Judge or Court, be forthwith discharged out of Custody as to such Execution by an Order of such Judge or Court: Provided always, that if it shall happen that any such Discharge shall have been unduly or fraudulently obtained upon any false Allegation of Circumstances, which, if true, might have entitled the Prisoner to be discharged by virtue of this Act, such Prisoner shall, upon the same being made to appear to the Satisfaction of the Judge or Court by whose Order such Prisoner shall have been so discharged, be liable to be again taken in Execution, and remanded to his former Custody by an Order of such Judge or Court: Provided also, that no Sheriff, Gaoler, or other Person whatsoever shall be liable as for the Escape of any such Prisoner in respect of his Enlargement during such Time as he shall have been at large by means of such his undue Discharge as aforesaid: Provided also, that, for and notwithstanding the Discharge of any Debtor or Debtors by an Order of any such Judge or Court in manner aforesaid, the Judgment whereupon any such Debtor or Debtors was or were taken or charged in Execution shall nevertheless remain and continue in full Force to the Intent and Purpose that the Judgment Creditor or Creditors may have and take Remedy and Execution upon every such Judgment against the Property and Effects of any such Debtor or Debtors, in such Manner and Form as such Creditor or Creditors otherwise could or might have done in case such Debtor or Debtors had never been taken or charged in Execution upon such Judgment, and it shall be lawful for such Creditor or Creditors to have and take such Remedy and Execution.

LIX Power of Imprisonment for Fraud.

Provided always, and be it enacted, That if at any Time it shall appear to the Judge who shall try such Cause, being either a Judge of One of the Superior Courts, or a Barrister or Attorney at Law, that the Defendant, in incurring the Debt or Liability which may be the Subject of Demand, has obtained Credit from the Plaintiff under false Pretences, or with a fraudulent Intent, or has wilfully contracted such Debt or Liability without having at the same Time a reasonable Assurance of being able to pay or discharge the same, or shall have made or caused to be made any Gift, Delivery, or Transfer of any Personal Property, or shall have removed or concealed the same with an Intent to defraud his Creditors or any of them, it shall be lawful for such Judge, if he shall think fit, to order that such Defendant may be taken and detained in Execution upon such Judgment in like Manner and for such Time as he might have been if this Act had not been passed, or for any Time not exceeding Six Calendar Months in any Case in which, the Time for which a Person taken in Execution under Process issuing out of any such Court could lawfully be detained in Custody, according to the Constitution of the said Court, before the passing of this Act, is less than Six Calendar Months, whether or not Execution against the Goods and Chattels of such Defendant shall have issued as herein-after provided.

LX Execution against the Goods.

And be it enacted, That whenever the Judge of any such Court shall have made an Order for the Payment of Money the Amount shall be recoverable, in case of Default or Failure of Payment thereof forthwith, or at the Time or Times and in the Manner thereby directed, by Execution against the Goods and Chattels of the Party against whom such Order shall be made ; and the Clerk of the said Court, at the Request of the Party prosecuting such Order, shall issue, under the Seal of the Court, a Writ of Fieri facias, as a Warrant of Execution to One of the Bailiffs of the Court, who by such Warrant shall be empowered to levy, by Distress and Sale of the Goods and Chattels of such Party within the Jurisdiction of the said Court, such Sum of Money as shall be so ordered, and also the Costs of the Execution ; and all Constables and other Peace Officers within their several Jurisdictions shall aid in the Execution of every such Warrant.

LXI Execution not to issue till after Default in Payment of Instalment.

And be it enacted, That if the Judge of any such Court shall have made any Order for Payment of any Sum of Money by Instalments, Execution upon such Order shall not issue against the Party until after Default in Payment of some Instalment according to such Order, and Execution or successive Executions may then issue for the whole of the said Sum of Money and Costs then remaining unpaid, or for each successive Instalment and Costs remaining from Time to Time unpaid, as the Judge shall order, either at the Time of making the original Order, or at any subsequent Time, under the Seal of the Court.

LXII Power to suspend Execution in certain Cases.

And be it enacted, That if it shall at any Time appear to the Satisfaction of the Judge of any such Court, by the Oath or Affirmation of any Person, or otherwise, that any Defendant is unable, from Sickness or unavoidable Accident, to pay and discharge the Debt or Damages recovered against him, or any Instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Judge, in his Discretion, to suspend or stay any

Judgment, Order, or Execution given, made, or issued in such Action for such Time as the Judge shall think fit, and so from Time to Time until it shall appear, by the like Proof as aforesaid, that such temporary Cause of Disability has ceased.

LXIII Execution to be suspended on Payment of Debt and Costs.

And be it enacted, That in or upon every such Warrant of Execution issued against the Goods and Chattels of any Person whomsoever the Clerk of the Court shall cause to be inserted or endorsed the Sum of Money and Costs adjudged, with the increased Costs allowed for such Execution; and if the Party against whom such Execution shall be issued shall, before an actual Sale of the Goods and Chattels, pay or cause to be paid or tendered unto the Clerk of the said Court, or to the Bailiff holding the Warrant of Execution, such Sum of Money and Costs as aforesaid, or such Part thereof as the Person entitled thereto shall agree to accept in full of his Debt or Damages and Costs, together with such Fees as shall have been lawfully incurred by him in the Suit on which such Execution issued, the Execution shall be superseded.

LXIV Bailiffs made answerable for Neglect to levy.

And be it enacted, That in case any Bailiff of any such Court who shall be employed to levy any Execution against Goods and Chattels shall, by wilful or notorious Neglect or Connivance or Omission, lose the Opportunity of levying any such Execution; then, upon Complaint of the Party aggrieved by reason of such Neglect, Connivance, or Omission, (and the Fact alleged being proved to the Satisfaction of the Court out of which Execution issued, on the Oath of any credible Witness,) the Judge shall order such Bailiff to pay such Damages as it shall appear that the Plaintiff has sustained thereby, not exceeding in any Case the Sum of Money for which the said Execution issued, and the Bailiff shall be liable thereto; and upon Demand made thereof, and on his Refusal so to pay and satisfy the same, it may be recovered against him by such Ways and Means as are provided for the Recovery of Debts adjudged in the said Court.

LXV Remedies against Bailiffs and other Officers.

And be it enacted, That if any Bailiff or Officer of any such Court, acting under colour or pretence of the Process of the said Court, shall be charged with Extortion or Misconduct, or with not duly paying or accounting for any Money levied by him under the Authority of the Court, it shall be lawful for the Judge to inquire into such Matter in a summary Way, and for that Purpose to summon and enforce the Attendance of all necessary Parties in like Manner as the Attendance of Witnesses in any Suit before him may be enforced, and to make such Order thereupon for the Repayment of any Money extorted, or for the due Payment of any Money so levied as aforesaid, and for the Payment of such Damages and Costs, as he shall think just; and in default of Payment of any Money so ordered to be paid the same may be recovered by such Ways and Means as are provided for the Recovery of Debts adjudged in the said Court.

LXVI Execution against the Goods to be within the Provisions of 7 & 8 G.4 c.17.

And be it enacted, That every Sale of Goods which shall be taken in Execution under Process issuing from any such Court for the Recovery of Small Debts shall be taken to be within all the Provisions of an Act passed in the Eighth Year of the Reign of King George the Fourth, intituled *An Act to extend the Provisions of an Act made in*

Status: This is the original version (as it was originally enacted).

the Fifty-seventh Year of King George the Third, for regulating the Costs of certain Distresses.

LXVII Landlord's Lien for Rent restrained.

And be it enacted, That no Landlord of any Tenement let at a weekly Rent shall have any Claim or Lien upon any Goods taken in Execution under the Process of any Court of Law for more than Four Weeks Arrears of Rent; and if such Tenement shall be let for any other Term less than a Year the Landlord shall not have any Claim or Lien on such Goods for more than the Arrears of Rent accruing during Four such Terms or Times of Payment.

LXVIII Claims as to Goods taken in Execution to be adjudicated in Court.

And be it enacted, That if any Claim shall be made to or in respect of any Goods or Chattels taken in Execution under the Process of any Court for the Recovery of Small Debts, or in respect of the Proceeds or Value thereof, by any Landlord for Rent, or by any Person not being the Party against whom such Process has issued, it shall be lawful for the Clerk of the Court out of which such Execution issued, upon Application of the Officer charged with the Execution of such Process, either before or after any Action brought against such Officer, to issue a Summons calling before the Court out of which such Execution issued both the Party issuing such Process and the Party making such Claim, and thereupon any Action which shall have been brought in any of Her Majesty's Superior Courts at *Westminster*, or in the Court of Common Pleas at *Lancaster*, or in any local or inferior Court, in respect of such Claim, shall be stayed; and the Court in which such Action shall have been brought, or any Judge thereof, on Proof of the Issue of such Summons, and that the Goods and Chattels were so taken in Execution, may order the Party bringing such Action to pay the Costs of all Proceedings had upon such Action after the Issue of such Summons; and the Judge of the Court for the Recovery of Small Debts out of which such Execution issued shall adjudicate upon such Claim, and make such Order between the Parties in respect thereof, and of the Costs of the Proceedings, as to him shall seem fit; and such Order shall be enforced in like Manner as any Order made in any Suit brought in such Court.

LXIX Distress not unlawful for Want of Form.

And be it enacted, That where any Distress shall be made for any Sum of Money to be levied by virtue of this Act the Distress itself shall not be deemed unlawful, nor the Party making the same be deemed a Trespasser, on account of any Defect or Want of Form in the Information, Summons, Conviction, Warrant of Distress, or other Proceeding relating thereto, nor shall the Party distraining be deemed a Trespasser from the Beginning on account of any Irregularity which shall afterwards be committed by the Party so distraining, but the Person aggrieved by such Irregularity may recover full Satisfaction for the special Damage in an Action upon the Case.

LXX Compensations to Persons whose Emoluments will be diminished.

And be it enacted, That every Person entitled to any Fees or Salary for his Services as a Judge or other Officer of any Court, and every Keeper or other Officer of any Debtors Prison, whose Emoluments shall be diminished under the Operation of this Act, so far as the same relates to or restrains Imprisonment for Debt, shall be entitled to make a Claim for Compensation to the Commissioners of Her Majesty's Treasury

within Twelve Calendar Months after the passing of this Act; and it shall be lawful for the said Commissioners, in such Manner as they shall think proper, to inquire what were the lawful Fees and Emoluments of the Claimant or Claimants before the passing of this Act in respect of which such Compensation should be allowed, and how the same have been affected under this Act, by reason of the Decrease of the Number of Causes or otherwise ; and the Commissioners in each Case shall take into account the Manner of Appointment of every such Judge, Officer, and Person, and his Term or Interest in his Office or Employment, and all other Circumstances of the Case, and shall award such gross or yearly Sum, and for such Time, as they shall think just to be awarded, upon Consideration of the special Circumstances of each Case, and shall order and direct such Compensation to be paid out of the Consolidated Fund of the United Kingdom of *Great Britain and Ireland*.

LXXI Inquiry into Amount of Compensation.

And be it enacted, That the Commissioners of Her Majesty's Treasury shall have Power from Time to Time to appoint such and so many Persons to be Commissioners for enabling them to ascertain the Amount of Compensation to be awarded under this Act as to them shall appear fit and necessary ; and every such Commissioner shall ascertain the gross and net annual Value, according to a fair Average of Seven Years before the passing of this Act, or, if the Court shall not have been established with its present Jurisdiction for Seven Years, then for the Period during which the Court shall have been established with its present Jurisdiction, of any Fees and Emoluments the Consideration of which shall be referred to him by the said Commissioners of the Treasury, and shall be empowered to inquire into and ascertain as well the Legality as the Amount of such Fees and Emoluments, and the Manner of Appointment of the Person entitled thereto, and his Term or Interest in his Office or Employment, and such other Circumstances of the Case as shall be necessary for ascertaining the Amount of such Compensation.

LXXII Appointment of Assessors of Inferior Courts.

And whereas there are divers Courts of Requests and other Inferior Courts for the Recovery of Small Debts not presided over by a Barrister or an Attorney at Law as Judge or Assessor; be it enacted, That it shall be lawful for the Commissioners of any such Court, if they shall think fit, with the Approval of One of Her Majesty's Principal Secretaries of State, to appoint any Person, being a Barrister who shall have practised as a Barrister for at least Seven Years then last past, or an Attorney at Law of One of the Superior Courts of Common Law at *Westminster*, or of the Court of Common Pleas at *Lancaster*, who shall have practised as an Attorney for at least Ten Years, to be the Assessor of such Court, and to direct what Fees shall be paid to such Assessor by the Suitors of such Court, not exceeding the Fees in the Schedule marked (B.) hereunto annexed; and it shall be lawful for the said Secretary of State to remove any such Assessor for Incompetence or Misbehaviour : Provided always, that no Assessor so to be appointed shall be deemed to be entitled to any Compensation for the Loss of his Office, or for any Diminution in the Value thereof, by reason of the passing of any general Act for the Recovery of Small Debts.

LXXIII Construction of the Act.

And be it enacted, That in construing this Act the Word " Property" shall mean and include all the Real and Personal Estate and Effects of the Petitioner within this Realm

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and abroad, (except the Wearing Apparel, and such other Articles of the Value in that Behalf aforesaid as may by this Act be excepted from the Operation of the said recited Act and this Act,) and all the future Estate, Right, Title, Interest, and Trust of such Petitioner in or to any Real or Personal Estate and Effects within this Realm or abroad which such Petitioner may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he shall have obtained the Final Order, and all Debts due or to be due to such Petitioner before he shall have obtained such Final Order; and the Words " Oath " and " Affidavit " shall mean and include Affirmation, where by Law such Affirmation shall be required or may be taken in place of an Oath; and all Powers given to or Duties directed to be performed by the Lord Chancellor may be performed by the Lord Keeper or Lords Commissioners of the Great Seal; and the "Word " Judge," as applied to any Court for the Recovery of Small Debts, shall mean and include the County Clerk, Judge, Steward, and Assessor, or the Person holding or presiding in such Court; and every Word importing the Singular Number only shall extend and be applied to several Persons or Things as well as one Person or Thing, and Bodies Corporate as well as Individuals; and every Word importing the Plural Number shall extend and be applied to one Person or Thing as well as several Persons or Things ; and every Word importing the Masculine Gender only shall extend and be applied to a Female as well as a Male; (unless, in the Cases above specified, a different Construction shall be provided, or the Construction be repugnant to the Subject Matter or Context;) and the Provisions of the said recited Act and of this Act shall be construed by Analogy to the Law of Bankruptcy, except where otherwise therein respectively expressed, and in the most beneficial Manner for promoting the Ends intended by the said recited Act and by this Act.

LXXIV Recited Act not to be affected, except as herein provided.

And be it enacted, That nothing herein contained shall be construed to repeal, affect, or in any Manner alter the Provisions of the said recited Act, except so far as herein above expressly provided, or except so far as the Provisions of the said recited Act may be inconsistent with or at variance with the Provisions of this Act.

LXXV Act may be altered this Session.

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