

75-1



0125

**B I L L**

Intituled,

*An ACT, for the better Relief of the Creditors of such Merchants as shall become Bankrupts in that Part of Great Britain called Scotland; and for Extending the Privileges of Bills of Exchange to Promissory Notes; and for limiting Actions upon such Bills and Notes.*

1. **W**HEREAS many Hardships and Inconveniences do frequently happen to the Subjects of that Part of *Great Britain* called *Scotland*, from Merchants failing in their Credit and Substance by accidental Losses, so as not to be able to make sufficient or immediate Satisfaction to their Creditors: And that by the Laws now in being in that Part of the Realm, their Estates and Effects, Real and Personal, cannot be reduced into Money for the Payment of their Creditors, but by a long Course of expensive legal Diligence; and their Moveables and Personal Estate is, for the most part, carried off by a few Creditors, to the Prejudice and Detriment of the rest, and to the great Discouragement of Trade and Commerce:

For Remedy whereof, Be it Enacted,

By the KING's Most Excellent MAJESTY,

By and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same.

A That

( 2 )

That if any Person or Persons, residing within that Part of Great Britain called Scotland, who exercise the Trade of Merchandize within the same, whether in Gross or by Retail, or seek to gain their Living by buying and selling, or by Exchange of Money, shall, from and after the First Day of August in the Year of our Lord One thousand Seven hundred and Fifty-one, be under Diligence by Horning and Caption at the Instance of his Creditor, and either be imprisoned, or retire to the Abbey of Holyrood-House, or any other privileged Place, or fly or abscond for his personal Security, or defend his Person by Force; it shall be lawful to any one or more of his Creditors, whose Debts amount in the Whole to the Sum of One hundred Pounds, of lawful Money of Great Britain, or upwards, to apply by Petition to the Court of Session, in the time of Session, or to the Lord Ordinary on the Bills in time of Vacance: And the said Court of Session, or, in time of Vacante, the Ordinary on the Bills, with any other Two of the said Lords, shall, upon Production of the Vouchers and Instructions of their Debts extending as aforesaid, and of the said Horning and Caption, and upon bringing satisfying Evidence, that such Merchant hath been in the Terms of any one of the said Alternatives, either imprisoned, or hath retired or fled, or absconded, or forcibly defended himself, and upon the Petitioner's making Oath, That the Debts due to him, her, or them, extend to the above Sum of One hundred Pounds, forthwith nominate and appoint such Person as to them shall seem meet, to be Commissioner for executing the Powers and Trusts herein after specified.

2. And be it further Enacted, by the Authority aforesaid, That the said Commissioner shall, within the Space of Five Days after Notification made to him of such Commission, enter an Advertisement, and again repeat the same Two several times in any News-paper published at Edinburgh, which shall for that Purpose be authorized

( 3 )

authorized by the Magistrates of that City for the Time, setting forth the Commission granted to him at the Suit of such Creditor or Creditors, and requiring the Debtor and his whole Creditors to appear before him at such Time and Place as he shall appoint, after Expiration of Twenty-one Days from the last of the said Three Advertisements; and the Commissioner shall also before the last of the said Advertisements cause the Debtor to be warned to compear before him at the Time and Place aforesaid, either by a Schedule delivered to him personally, or by a Schedule left Two several times at his Dwelling-place.

3. And at the said Place and Time so appointed, or any other Time and Place to which the Meeting shall be adjourned by the said Commissioner, not exceeding the Space of Five Days thereafter, the said Commissioner shall take down a List of all the Debts, of which Documents and Vouchers shall be produced by the Creditors who shall appear before him, either by themselves, or their Agents, and shall take the Creditors Oaths upon the Debts claimed, which are not instructed by Writing, to this Effect only, that the same may be entered in the said List, in order to intitule the Claimants to vote with the other Creditors.

4. And in case the Debtor shall appear before the Commissioner at the said Meeting, either by himself, or his Attorney, and shall produce Instructions of Payment of the Debts upon which the Diligence proceeded; and also of the Debts due to the Creditors who applied for the Commission; the Commissioner shall proceed no further in Execution thereof, unless some other Creditor, who produces a written Document of Debt extending to One hundred Pounds; or upwards, shall insist, that he should proceed: But if the Debtor either do not appear at the said Meeting by himself, or his Attorney, or do not produce Instructions of Payment of the Debts upon which the Diligence and the Commission proceeded, and do not

( 4 )

*This clause as it stands makes the necessary that ye Bankrupt shall insist that the Com<sup>r</sup> shall proceed before he can be declared Bankrupt the warrant should therefore be left out*

not forthwith clear the said Debts that shall be instructed by written Documents, to be due to such Creditor, who shall be present at the said Meeting, and shall insist that Execution of the Commission should proceed; then the Commissioner shall forthwith declare the Debtor a Bankrupt: And that from the Time at which any of the said Alternatives of Imprisonment, or retiring, or flying, or absconding, or forcibly defending, shall be proved to have happened; and shall publish the said Declaration in the next *Edinburgh* News-paper aforesaid; and at the same Time advertise a Time and Place for the Creditors to meet: At which Meeting, the Creditors contained in the said List, and shall be Creditors severally in the Sum of Ten Pounds, or upwards, shall chuse one or more Commissioners, either admitting or leaving out the Commissioner formerly named, and also shall chuse one or more Trustees for recovering the Bankrupt's Estate and Effects; and the Person or Persons who shall be chosen to be Commissioners and Trustees respectively, by the major Part in Value of such Creditors, or the lawful Attorneys of those who are absent, shall, upon a summary Application, be confirmed and authorised by the Court of Session, if in time of Session, or by the said Three Lords, if in Time of Vacance; And thereupon the said Commissioners and Trustees respectively shall be fully intitled to all the Powers hereby granted to Commissioners or Trustees of a Bankrupt's Estate.

5. And be it enacted, by the Authority aforesaid, That it shall be lawful to the said Commissioner named by the Court of Session, or Three Judges, as aforesaid, immediately after his Nomination, at the Desire of the Creditor or Creditors, upon whose Application he was made, to grant Warrant under his Hand, authorising such Creditors to seize and take Possession of the Books, Papers, Writings, Goods, Wares, Merchandizes, or other personal Estate or Effects, in the Possession of the said Debtor or Bankrupt; and of which personal Effects his

( 5 )

*the warrant given to the Comm<sup>r</sup> is taken away by ye Prisoner therefore inaccurate*

his said Creditors shall make up an Inventory at the Sight of the said Commissioner, or any Person authorised by him; and the same shall be safely kept by the said Creditor or Creditors, and shall be delivered over by him or them to the Trustees chosen by the whole Creditors, as aforesaid; and with Power also to the said Commissioner, in case of Necessity, to grant Warrant to break open the Houses, Chambers, Shops, Warehouses, Trunks, Chests, or Repositories, of the said Debtor or Bankrupt.

6. Providing always, That, in case of such necessary Breaking open, the Authority and Warrant of the Judge Ordinary of the Place, shall be applied for; and which the said Judge Ordinary is hereby empowered and required to grant.

7. And be it further Enacted, by the Authority aforesaid, That the Commissioner or Commissioners named by the Creditors, or major Part of them, shall have full Power to ascertain the Extent of the Debts due to the several Creditors, and the Distribution amongst them of the Bankrupt's Estate and Effects herein after-declared to be vested in the said Trustees; and to use all proper Means for Discovery thereof: And they are hereby empowered and required, at their first Meeting after their Election, as aforesaid, to nominate and appoint a Clerk, who shall also be Clerk to the said Trustees; and the Clerk so appointed shall, from Day to Day, enter the whole Proceedings of the said Commissioners in the Execution of their said Commission, into a Book to be kept by the said Clerk; and which Entry is to be signed by the Clerk, and One or more of the said Commissioners: And that the said Clerk shall also be bound to keep another Book, into which he shall enter the whole Proceedings of the Trustees, from Day to Day, as aforesaid: And, in order to the better Execution of this Trust, the said Commissioners are hereby authorised and required to call before them the said Bankrupt, by Notice in Writing, to be given to him either personally, or at his Dwelling-

( 6 )

Dwelling-place; and by an Advertisement in the *Edinburgh* News-paper aforesaid: And if the said Bankrupt shall appear upon the said Notice, with Power to the said Commissioners to examine him upon Oath, concerning the Extent of his Estate and Effects, or Debts due to him; and the Conveyances or Disposal he may have made thereof, or any other Question which to them shall seem proper; and to reduce the said Examination into Writing; and to cause him deliver up to the Trustees named by the Creditors, his Books, Papers, Writings, and Effects, in so far as the same may be within his Power.

8. And be it further Enacted, by the Authority aforesaid, That if any such Person or Persons, who shall be declared Bankrupt in manner above-mentioned, shall not within Thirty Days after Notice given, as aforesaid, surrender himself to the said Commissioners, and subscribe such Surrender, and submit to be examined from time to time, upon Oath, and fully and truly disclose and discover his whole Estate and Effects, Real and Personal, Heretable and Moveable, and how, and in what manner, to whom, and upon what Consideration, and at what Time, he hath disposed of, assigned, or conveyed, any of the said Estate or Effects (and all Books, Papers, and Writings relating thereto), of which he was possessed, or in or to which he was any-ways interested or intitled; or which any other Person had in Trust for him, or his Use, at any time before or after the issuing of the said Commission, or whereby such Bankrupt, or his Family, might have or expect any Profit, Possibility of Profit, Benefit, or Advantage whatsoever (except only such Part of his Estate and Effects as shall have been really and *bona fide* before sold and disposed of, in the way of his Trade and Dealings; and except such Sums of Money as shall have been laid out in the ordinary Expence of his Family); and also upon such Examination, deliver up to the said Commissioners, or to the said Trustees, by their Order, all such Part of his Goods,  
Merch.

( 7 )

Merchandizes, Money, Estate, and Effects; and all Books and Writings relating thereto, as at the time of his Examination shall be in his Possession, Custody and Power, (the necessary wearing Apparel of such Bankrupt, his Wife, and Children, only excepted) then such Bankrupt, in case of any Default or wilful Omission, in not surrendering and submitting to be examined, as aforesaid; or in case he shall remove, conceal, or embezzle any Part of his said Estate, Real or Personal, to the Value of Twenty Pounds, or any Books of Account or Writings whatsoever relating thereto, with Intent to defraud his Creditors; and being thereof lawfully convicted, upon Proof brought before the Lords of Session, at the Suit of any Two or more of his Creditors, with Concurrence of the said Commissioners, shall be found and declared to be a fraudulent Bankrupt: And the said Lords are hereby authorized to punish the said Offender, by Pillory, Imprisonment, or such other Punishment as shall to them seem meet, according to the Degree of the Offence.

9. Provided always, and it is hereby Declared and Enacted, by the Authority aforesaid, That it shall be lawful to the Court of Session, in time of Session, or to the said Three Lords in time of Vacance, to enlarge the Time for such Bankrupt's surrendering and discovering, as aforesaid, as they shall think fit, not exceeding Forty Days, to be computed from the End of the said Thirty Days above-mentioned; so as such Order for enlarging the Time be made at least Six Days before the time on which such Bankrupt ought to have surrendered himself as aforesaid.

10. And be it further Enacted, by the Authority aforesaid, That every Bankrupt, having surrendered, as aforesaid, shall, at all seasonable times before the Expiration of the said Thirty Days (or such further time as the Commissioners shall find necessary for the said Bankrupt's Examination) be at Liberty to inspect his Books,  
Papers

Papers, and Writings, in the Presence of the said Trustees, or any Person by them appointed; and to take and bring with him, for his Assistance, such Persons as he shall think fit, not exceeding Two Persons at one time; and to make out such Extracts and Copies from thence as he shall think fit, the better to enable him to make a full and true Discovery and Disclosure of his Estate and Effects.

11. And in order thereto, every such Bankrupt, who shall not be in Prison at the time of such Notice to surrender, as aforesaid, shall be free from all Diligence, Restraint, or Imprisonment, at the Instance of any of his Creditors, in coming to surrender; and from his actual Surrender, during the said Thirty Days, or such further time as shall be allowed him for finishing his Examination; and in case such Bankrupt shall be apprehended for any Debt in coming to surrender, or after his Surrender, within the time before-mentioned; then, on producing the Schedule or Notice, requiring him to surrender, under the Hand of the Commissioners, to the Messenger or Officer who shall apprehend him, and giving a Copy thereof, the said Bankrupt shall be immediately discharged: And if he is thereafter detained, the Messenger or Officer so detaining him shall forfeit and pay to such Bankrupt, for his own Use, the Sum of Three Pounds Money aforesaid, for every Day he shall detain such Bankrupt, to be recovered by Action before the Court of Session, with full Costs of Suit.

12. And be it further Enacted, That the said Commissioners shall be, and they are hereby impowered to give such Order and Directions, with respect to the Seizure and Custody of any Person, who shall be declared Bankrupt, as they shall think fit; and that before Surrender, upon Application of the said Commissioners, and Production of a Certificate under their Hand, that such Person is declared a Bankrupt, every Sheriff, Justice of Peace, or other Judge, within whose Jurisdiction the Bank-

Bankrupt shall be found at the time, shall be obliged, and are hereby authorised and required, to grant Warrants for apprehending such Person, and committing him to the next sure Prison, there to remain in safe Custody, until removed by Order of the said Commissioners.

13. And after the Bankrupt's Surrender, or being seized, and delivered up to the Commissioners, as aforesaid, they shall have Power to give such Orders, with respect to the Custody of his Person, during the time of his Examination, as they shall think fit; and to apprehend and imprison him, at any time during the Course thereof, if they shall see Cause.

14. Provided always, That he have full Liberty to inspect his Books, Papers, and Writings, in manner aforesaid; and that at the Close of the Examination, every Bankrupt who shall voluntarily surrender, shall be dismissed, unless Evidence has been brought before the Commissioners of fraudulent Bankruptcy; in which case they are hereby impowered to direct his Confinement, until Tryal thereof before the Court of Session, reserving to the Bankrupt to apply, by Petition, to the said Court, or to the said Three Lords in Time of Vacance, for his Liberation; and to them to grant such Order thereupon as they shall see Cause.

*this ought  
be a suspens  
not out caution*

15. And in case any such Bankrupt shall be in Prison at the time of issuing such Commission, then the Commissioners and Trustees, or some Person by them appointed, shall, from time to time, attend such Bankrupt in Prison, and take his Examination in Prison, and produce to him his Books, Papers, and Writings, as aforesaid, in order to his being prepared for the said Discovery and Examination.

16. And be it further Enacted, That the said Commissioners shall have Power to call before them the Wife or Children of such Bankrupt, or any other Person, or Persons whom they shall suspect to have in their Custody or Possession, any Writings, Goods, Money, Merchandizes,

dizes, or other Effects whatsoever, belonging to the said Bankrupt, or to be in the Knowledge where the same are; or to be Debtors to him in any Sum of Money, or other Debt; and to examine them upon Oath with respect to all such Matters and Things; and to ask every Question that shall to them seem proper for Discovery of the Trade, Dealings, Estate, and Effects, of the Bankrupt; and to take down the Answers in Writing; and to call for Production and Delivery of all Papers, Writings, Goods, Money, and other Effects; in all which the Parties so called are hereby required to obtemper the Order of the said Commissioners.

17. And in case any Person so called shall fail to compear before the said Commissioners, or a Sub-Commissioner by them named, within the County where such Person dwells, upon Five Days Notice; or upon appearing shall refuse to answer to their Satisfaction all lawful Questions put by them; or shall refuse to subscribe his Examination, or deliver up any Writings, Goods, Money, or Effects, in his Possession, belonging to the said Bankrupt; it shall be lawful to the said Commissioners, or Sub-Commissioner, to apply to any Magistrate of the Burgh, Sheriff of the County, or Stewart of the Stewartry, within which such Person shall be or reside; and upon Production of Evidence of the Notice given, by the Oath of the Person who left a Schedule at the Party's Dwelling-house, or delivered it to him personally, and of the Commissioner or Sub-Commissioner's Certificate of his Refusal to compear, or to answer or subscribe, or to deliver up, as aforesaid, every such Judge is hereby authorised and required forthwith to issue out his Warrant for apprehending such Person, and bringing him before the said Commissioners or Sub-Commissioner by them named, to any Place by them appointed within such Borough, County, or Stewartry respectively, there to be detained until he answer the Questions put to him, and subscribe his Examination, and deliver up the Goods,

Goods, Money, and Effects in his Possession, belonging to the Bankrupt: The said Certificate always specifying the particular Questions which such Person refused to answer, or to which he refused to subscribe his Answer, and the Writings or Effects he refused to deliver, that he may have Access to apply to the Court of Session, by Suspension, in case he can make it appear, that he has fully answered all lawful Questions put to him, or that he had good Reason to refuse to sign the Answer, or to deliver the Effects required.

18. And it is hereby further Enacted, That every Person who shall have accepted of any Trust, and shall wilfully conceal or protect any Estate, Real or Personal, of any Bankrupt, from his Creditors; and shall not, within Thirty Days next after the Commissioners and Trustees chosen by the Creditors, and authorised by the Court of Session, or three Lords as aforesaid, are notified in the *Edinburgh* News paper aforesaid, discover and disclose such Trust and Estate in Writing, to one or more of the Commissioners or Trustees; and likewise submit himself to be examined by the Commissioners, if thereunto required, and truly discover the same, shall forfeit double the Value of the Estate, either Real or Personal, so concealed, to the Use and Benefit of the said Creditors, to be recovered by Action before the Court of Session, at the Instance of the said Trustees; in which Action full Costs of Suit are to be allowed to either Party, in whose Favours the Decree shall be pronounced.

19. And be it further Enacted, by the Authority aforesaid, That every Person, who shall at any time after the time allowed to such Bankrupt to surrender and conform as aforesaid, voluntarily come and make Discovery, either to the Commissioners or Trustees, of any Part of such Bankrupt's Estate, not before come to their Knowledge, shall be allowed Five Pounds *per centum*, and such other Reward as the Trustees, and the major Part

Part of the Creditors in Value, present at any Meeting, shall think fit to be paid out of the neat Proceeds, which shall be recovered, in consequence of such Discovery, by the Trustees, who shall be allowed the same in their Accounts.

20. And be it further Enacted, by the Authority aforesaid, That the said Commissioners shall, within the said Thirty Days allowed for the Bankrupt to surrender and conform as aforesaid, appoint no less than Three several Meetings, the last of which shall be on the Thirtieth Day hereby limited for such Bankrupt's Appearance: And at the said Meeting, and all other Meetings to be held by the said Commissioners, they shall diligently inquire into the several Matters and Things above set forth; and also shall take Cognizance of the several Debts claimed by any Person or Persons whatsoever, as Creditors to the said Bankrupt; and shall consider the Documents and Vouchers produced thereof; and issue Orders to warn such Witnesses as may be desired by any Party, either for proving any of the said Debts or Claims, or for proving Objections thereto; or to warn Havers of Writings to compare before the said Commissioners, or any of them, or before a Sub-Commissioner, by them to be named, within the County where such Haver or Witness dwells: And in case of their not appearing upon Five Days Notice, or refusing to answer, or exhibit the Writings called for, the like Remedy and Compulsure shall be competent against such Witnesses or Haver, by Application to the Judge-Ordinary, within whose Jurisdiction he dwells, as is herein before directed, with respect to the Examination of Persons suspected to be possessed of Writings or Effects belonging to the Bankrupt; which Directions are hereby referred to, and declared to take Place as to all such Witnesses and Havers in all Points.

21. And after due Consideration had of the several Documents produced, and Evidence adduced as aforesaid,

said, the Commissioner or Commissioners authorized as aforesaid, or the major Part of them, are hereby empowered to judge and determine upon the Validity and Extent of the whole Debts claimed by the Creditors of the said Bankrupt; and to rank and determine the Order of Preference on the Bankrupt's Estate, whether heretable or moveable, real or personal; and to order the Distribution of the Value and Produce of the Bankrupt's Estate and Effects amongst the several Creditors, proportionally effecting to their Debts, after due Regard had to the Preferences, which any of them may be intitled to claim according to Law, and to the Rules herein after laid down; and to order the Delivery over of the Residue thereof, if any be, to the said Bankrupt, his Heirs, Executors, or Assigns.

22. Provided always, as it is hereby expressly Provided and Declared, That it shall be lawful for the said Commissioners to take under their Cognizance all Debts due by the said Bankrupt, altho' the Term of Payment shall not then be come; and to allow a proportional Share to the Creditors in such Debts, along with the other Creditors, with Deduction only of the legal Interest of such Share, from the Time of Distribution, to the Term of Payment of such future Debt.

23. And Declaring also, That where it shall appear that there has been mutual Credit given, or mutual Debts contracted between the Bankrupt and any other Person, before the issuing out of the first Commission, the said Commissioners shall state the Accompt, by setting the mutual Debts against one another; so as the Balance which may arise from such Account, and no more, may be claimed on either Side respectively.

24. And, to the end that the Extent of the said Debts and the Ranking and Preference of the Creditors, may be ascertained as quickly as possible, Be it further Enacted, by the Authority aforesaid, That all and every Creditor of the said Bankrupt shall produce the Documents  
or

or Vouchers of their respective Debts, in the Hands of the Clerk to the Commission; or bring Evidence thereof before the said Commissioners; and also depone upon the Verity of the said Debts before the Commissioners, or some Person by them authorised for that Purpose, within Four Months from the time of the said Commissioners being authorised, as aforesaid; under Certification, That every Creditor, who shall not so produce and depone within the said Space, shall suffer a Deduction of Ten Pounds *per centum* from their Debts, although they shall thereafter sufficiently instruct and prove the same.

25. And be it further Enacted, That the said Commissioners shall, with all convenient Diligence, and as soon as possible, after Expiration of the said Four Months, give their Judgment upon the Validity, Extent, and Preference of the several Debts that have been proved before them; and which Decrees shall be pronounced within Eight Months after authorising the said Commissioners, as aforesaid: And the said Commissioners are hereby required immediately after Expiry of the said Eight Months, to make a State of the Effects of the Bankrupt, which shall at that time have been converted into Money, and brought into the Hands of the said Trustees; and make an Order for Distribution thereof, amongst the whole Creditors, who shall then have proved their Debts under the said Commission, specifying the Sum to be paid to each particular Creditor in this first Division: And the said Commissioner or Commissioners shall publish their said Judgments and Decrees, and the Division made in consequence thereof, to a Meeting of the Creditors to be called by an Advertisement in the *Edinburgh* News-paper aforesaid, upon Ten Days Notice; and which Advertisement shall be made in the said *Edinburgh* News-paper, that shall be first published after the Expiry of the said Eight Months.

26. And be it further Enacted, by the Authority aforesaid, That every Judgment to be given by the said Com:

Commissioner or Commissioners, or major Part of them, with respect to the Validity, Extent, and Preference of the Debts claimed by the several Creditors, shall be final, and binding upon all Parties concerned; unless, that within Twenty Days after such Meeting, and Notification of the Dividend as aforesaid, the Party who thinks himself aggrieved by such Judgment or Judgments, shall prefer a Petition to the Court of Session, if in time of Session, or to the Lord Ordinary on the Bills, if in time of Vacance, complaining of such Judgment or Judgments, and assigning the Reasons of his Complaint: Which Petition shall forthwith be ordered to be intimated to the other Party or Parties concerned, or their Agents who appeared in their behalf before the Commissioners; or to be intimated to the said Trustees, where the Creditors in general are the Parties concerned to answer the Appeal: And he or they shall be obliged to answer upon Fifteen Days Notice: And after such Answer, the Court of Session is hereby required to determine upon the said Petition and Answer summarily, after hearing Counsel, without abiding the Course of any Roll; and to affirm or reverse the Judgment of the Commissioners, or remit with such Instructions as they shall see Cause; and in case the Judgment shall be affirmed, to order the full Costs of Suit to be paid by the Appellant.

27. And be it further Enacted, by the Authority aforesaid, That all and every of the Creditors of the said Bankrupt, who shall not have proved their Debts, and obtained a Judgment of the Commissioner or Commissioners affirming the same, within the said Eight Months, from the Nomination and Authorising of the Commissioners, shall be intitled to no Share of this first Dividend, but shall be utterly excluded therefrom.

28. Provided always, and it is hereby Enacted and Declared, That where any Creditor of the Bankrupt hath, within the foresaid Term of Eight Months, duly claimed his Debt before the said Commissioner or Commissioners,



missioners, and where the Proof of his Debt is to brought from Foreign Parts, that it shall and may be lawful for the said Commissioner or Commissioners to allow such Creditor a further Time for bringing his Proof, so as to intitle him to a Share in the said first Dividend; and the Commissioner or Commissioners shall make the Division accordingly, reserving the Proportion falling to such Creditor, who hath not concluded his Proof as aforesaid; but with this Provision, That if the said Creditor shall not, within the time limited by the said Commissioners, bring a Proof of his Debt to their Satisfaction, that thereupon the Share reserved for such Creditor shall be distributed proportionally among the other Creditors, whose Debts have been allowed before the first Dividend.

*the Creditor  
-not who  
has not got  
his claim  
ascertained  
within 6 mo  
is not to have  
a share of  
the first Divi  
dend  
is that loss  
to be made  
up to him out  
of the last Divi  
dend?*

29. And be it further Enacted, by the Authority aforesaid, That it shall and may be lawful to every Creditor of the said Bankrupt, who shall not have proved his Debt before the first Dividend, and obtained a Judgment of the Commissioners sustaining the same, to produce the Vouchers and Instructions thereof; and to bring such other Proof, before the said Commissioners at any time thereafter; provided always, that such Instructions be produced, and the Proof concluded within such time as that the said Commissioner or Commissioners may be enabled to pronounce their Judgments thereon, within the time after limited for their ascertaining the whole Debts of the Bankrupt, and dividing his whole Effects among his Creditors.

30. And be it Enacted, by the Authority aforesaid, That the said Commissioner or Commissioners shall, within Sixteen Months from the Nomination and Authorizing of the said Commissioners, give their Judgment upon the Validity and Extent of the whole Debts which shall be claimed before them; and shall rank and class them according to their Rights and Diligences upon the remaining Estate of the Bankrupt; and settle what Share

of

of such remaining Effects of the Bankrupts shall be distributed to each Creditor; and immediately thereafter shall call a Meeting of the Creditors, upon Ten Days Notice, to be given in the *Edinburgh* News-paper aforesaid: And at such Meeting they shall publish to the said Creditors the said Scheme of Division, and their Judgments, upon which the same is founded: All which Judgments of the said Commissioners shall be final, and binding upon all Parties concerned; unless within Twenty Days after the said Meeting, such Remedy shall be taken for reversing or amending such Judgments, as is herein before directed, with respect to the Judgments pronounced touching the first Dividend.

31. And be it further Enacted, by the Authority aforesaid, That all and every of the Creditors of the said Bankrupt, who shall not have proved their Debts, and obtained a Judgment of the Commissioners, affirming the same within Sixteen Months from the Nomination and Authorizing of the said Commissioners, shall be intitled to no Share of this second Dividend, or of any other Estate or Effects of the Bankrupt, which shall be then standing out; but shall be utterly excluded therefrom.

32. Provided always, That where the Proof of any of the Creditors Debts is to be brought from Foreign Parts, it shall and may be lawful to the said Commissioners to enlarge the Time for bringing such Proof; and to reserve the Share of such Creditor in Manner, and under the Provision already directed, in relation to the Creditors who are intitled to the first Dividend in all Points.

33. And be it further Enacted, by the Authority aforesaid, That all the moveable Estate belonging or addebted to any Person or Persons, who shall be declared Bankrupt, as aforesaid, or to which he or they shall or may succeed, or be any ways interested in, or intitled unto at the time of the said Bankruptcy, or at any time after, before the Certificate shall be granted to such Bankrupt,

C

Bankrupt, in manner herein after directed, shall be deemed and adjudged, in virtue of this Act, and is hereby declared and enacted, to be vested in the Trustee or Trustees to be chosen by the said Creditors, and authorized as aforesaid, and to pertain and belong, and to be due and addebted, to the said Trustee or Trustees, in the same manner as if such Bankrupt had established legal and complete Titles in his Person to all and every the said moveable Estate; and thereafter had properly conveyed the same to such Trustee or Trustees, with Consent of all his Creditors.

34. And be it further Enacted, by the Authority aforesaid, That the Commissioner or Commissioners named by the Creditors, and authorized as aforesaid, or major Part of them, shall and may grant Warrant under his or their Hands, authorizing the said Trustees to seize and take Possession of the said moveable Estate, vested as aforesaid: And in case of Necessity, the said Commissioners, or major Part of them, shall have full Power to grant Warrant to break open the Houses, Chambers, Shops, Warehouses, Trunks, Chests, or other Repositories of the said Bankrupt; providing always, that in case of such necessary Breaking-open, the Authority and Warrant of the Judge-Ordinary of the Place shall be applied for; and which the said Judge-Ordinary is hereby impowered and required to grant.

*what are the  
Commissioners  
to do if the  
Judge Ordinary  
shall refuse  
his warrant;*

35. And be it further Enacted, by the Authority aforesaid, That all and every the Lands, Houses Tenements, Tiends, Annualrents, Life-rents, Tacks, and other Heretages, or heretable Rights whatsoever, redeemable or irredeemable, which may or shall pertain and belong, or be due and addebted, to any such Bankrupt, at the time that the said Bankruptcy shall be found to have happened, or at any time after, before the Certificate shall be granted to such Bankrupt, in manner hereafter directed, shall be deemed and adjudged by virtue of this Act, and are hereby declared and enacted to be vested

vested in the Trustee or Trustees chosen and authorized as aforesaid; and to pertain and belong, and to be due to the said Trustee or Trustees, in the same manner as if such Bankrupt had conveyed the same to such Trustee or Trustees, with Consent of all his Creditors; and as if the said Trustee had fully completed their Right upon the said Conveyance in the most legal and effectual Method, by Infestment, or otherways.

36. And be it further Enacted, by the Authority aforesaid, That in case the Succession of any heretable Estate shall have devolved upon the said Bankrupt at any time before his being declared Bankrupt, as aforesaid, or if the Succession of any heretable Estate shall devolve upon such Bankrupt at any time after, and before the Certificate shall be granted to such Bankrupt, in manner herein after-mentioned, and to which Estate respectively the said Bankrupt hath not made up Titles, but shall remain in the State of Apparency, that the Benefit of such Succession shall belong to the said Trustee, who, in order to establish the same in their Persons, shall and may apply to the Court of Session, by a summar Petition: And the said Lords are hereby impowered and authorized, upon such Petition, to adjudge such heretable Estate, whereof the Succession hath devolved upon the said Bankrupt, as aforesaid, to the said Trustee or Trustees, without abiding the Course of any Roll.

37. And it is hereby Enacted, That such Adjudication shall vest the heretable Estate, to which the Bankrupt might have succeeded as aforesaid, in the said Trustee or Trustees in the same manner, and as effectually, as if the whole Creditors of the said Bankrupt had severally adjudged the said Estate in Payment of their respective Debts; upon special Charges to enter Heir against the said Bankrupt; and had thereafter conveyed such Adjudications in Favour of the said Trustee or Trustees.

38. Pro-

38. Provided always, and it is hereby specially Provided, Enacted and Declared, That if the Death of the Predecessor of the said Bankrupt shall have happened within Three Years before the presenting of the said Petition to the Court of Session, as aforesaid, that then, and in that case, the Creditors of such Predecessor shall be intitled to the Benefit of the said Adjudication, in Favour of the Trustees, and to Preference thereon, in the same manner as if the Creditors of such Predecessor had each of them, for their respective Debts, adjudged their Debtor's Estate of the same Date with the aforesaid Adjudication obtained by the said Trustee or Trustees.

39. And further Provided, That if the Death of the Predecessor of the Bankrupt shall have happened more than Three Years before the presenting of such Petition for Adjudication as aforesaid, then the Creditors of such Predecessor shall be intitled to draw their Share of the Price of such Estate, *pari passu*, with the Bankrupt's proper Creditors.

40. Provided always, That such Creditors of the Bankrupt's Predecessor shall produce the Vouchers and Instructions of their Debts, and prove the same before the said Commissioners, within the Times, and in the Manner before directed for Proof of the Bankrupt's proper Debts in all Points; otherwise they shall not be intitled to the Benefit of the said Adjudication, or to any Share of the Price of the Subjects thereby adjudged.

41. And further it is hereby Enacted and Declared, by the Authority aforesaid, That all and every such Estate, real and personal, heretable and moveable, which may at any time before the Bankruptcy pertain or belong, or become due and addebted, to any such Bankrupt, as aforesaid, and of which he shall not have been before the said Bankruptcy fully and completely denuded by fair, legal, and unexceptionable Titles for adequate onerous Causes, or valuable Considerations, shall be deemed and adjudged, and the same are hereby declared and enacted, to be vested in the Trustee or Trustees

*this clause in part a repetition of 34 & 35th. the latter part of clause - notwithstanding would do better by a Declaration that all deeds contrary to the Acts therein recited shall be null & subject to reduction by way of Exception: for as the clause stands all estate one pertaining to a Bankrupt the*

to  
shall be null & subject to reduction by way of Exception: for as the clause stands all estate one pertaining to a Bankrupt the

to be chosen and authorized as aforesaid; and that, notwithstanding any Conveyances or Deeds of any Kind, which may have been made or granted by the said Bankrupt or Bankrupts, and may be liable to Challenge at the Instance of Creditors, upon the Act of Parliament made in Scotland, in the Year One thousand Six hundred and Twenty-one, intituled, *A Ratification of the Act of the Lords of Council and Session, made in July One thousand Six hundred and Twenty, against unlawful Dispositions and Alienations, made by Dyvours and Bankrupts*; or upon another Act of Parliament, made in Scotland, in the Year One thousand Six hundred and Ninety-six, intituled, *An Act for declaring Nottour Bankrupts*; or upon any other Law, or establish'd Custom or Usage, in that Part of Great Britain called Scotland: And that every such Exception or Objection to be proponed by any of the Creditors, shall be subject to the Cognizance of the Commissioner or Commissioners named and authorized as aforesaid, under Review of the Court of Session, in manner before mentioned.

42. And it is hereby Enacted, That the Debtor declared Bankrupt, as aforesaid, shall, in all Questions arising in the Execution of the Commission of Bankruptcy, to be granted pursuant to this Act, be held to have been insolvent from the Date of his having been declared Bankrupt, without any other Proof of such Insolvency; reserving, nevertheless, to the Bankrupt's Creditors, or any of them, to prove an anterior Insolvency, if they shall see Cause.

43. And it is hereby further Enacted and Declared, That the said Commissioner or Commissioners shall take under their Consideration every legal Diligence that may or shall have been led or deduced by any Creditor against any Part of the Estate or Effects hereby vested, as aforesaid; and shall give every such Creditor the Preference due to such Diligence, in so far as the same is not liable to any legal Objection.

*the trustees, & the Bankrupts disponees will be left to seek their remedy, whereas these deeds ought to stand, unless found to fall under the former acts: This short hand method of vesting in the trustees will be attended with bad consequences*

44. Ex.

What is to become of the Books of Trustees  
if Commission is executed?  
no provision in the Act, in case the Bankrupt  
( 22 )

shall 44. Excepting herefrom all Arrestments used within Six-  
ty Days prior to the said Bankruptcy, which are hereby  
declared to be null and void, and to have no Effect what-  
soever; but that the Sum so arrested, if not paid upon  
Decrets of forthcoming, shall be paid by the Debtors in  
whose Hands the Arrestments were used, to the Trus-  
tees, and by them divided amongst the Creditors, in the  
same manner as the Bankrupt's other Effects; or, if the  
Sums so arrested shall have been paid in virtue of such  
Decrets, the Receiver of the Payment shall be liable to  
repay the same to the Trustees, to be by them divided,  
as aforesaid.

is to 45. And also excepting all Poidings, which shall not  
be completely executed till within Fifteen Days of the  
Date of the said Bankruptcy, which are hereby declar-  
ed to be void and null; and that the Goods so poided  
shall belong to the said Trustees, to be divided as afore-  
said.

is to 46. And be it Enacted, by the Authority aforesaid,  
That it shall be competent to such Trustee and Trustees,  
and major Part of them, to sue all Actions, real or perso-  
nal, petitory or possessory, for Recovery of all and every  
the said Estate, Debts, or Effects, hereby vested in them,  
as aforesaid, and of the Rents and Profits thereof; and  
to sell, dispose of, or assign, convey, or discharge the  
same; and to grant Dispositions, Procuratories of Resig-  
nation, and Precepts of Seisine, as also Assignations,  
Conveyances, or Discharges, and all other Deeds ne-  
cessary to invest the Purchasers or Acquirers of the said  
Estate and Effects, or any Part thereof; and to exoner  
the Debtors of any Debts due to such Bankrupt, or his  
Predecessors; which shall be fully effectual to the Re-  
ceivers of the said Deeds, as much as if the same had  
been granted by the Bankrupt, and his Creditors, after  
proper Titles made up, as aforesaid.

47. And the said Trustees, one or more so named by  
the Creditors, and authorised as aforesaid, are hereby  
im-

clause 48.  
49 & 50.  
empowering to sell.

impowered and required forthwith to make up true and  
complete Inventories of the whole Real and Personal Es-  
tate belonging to the said Bankrupt; and of all Debts  
due to him, whether upon any written Document or  
Account, or any other manner of Way that shall come to  
their Knowledge, and to take up a judicial Rental of the  
real Estate, and to enter the same in a Book to be kept  
for that Purpose; and to cause a just Apprisement to be  
made of the moveable Goods and Effects, upon the Oaths  
of any Two Persons by them to be appointed, and the  
same to be entered in the said Book.

48. And the said Trustee or Trustees, and major Part  
of them, are hereby authorised and required, with all  
convenient Diligence, to expose the said moveable  
Goods and Effects to Sale, by way of publick Roup,  
after causing publick Notice to be given in any News-  
paper published at *Edinburgh, Glasgow, Aberdeen*, or any  
other Town that may be nearest to the Place of the Sale,  
at least Twenty-one Days before, of the Time and Place  
of the Sale, and the Particulars to be sold: And the said  
Roup to be adjourned from time to time, as the Trustees  
shall see Cause.

49. And the said Trustee and Trustees, or major  
Part of them, are also hereby authorised and required,  
with all convenient Diligence, to sue for, uplift, and re-  
cover, all Debts whatsoever due to the said Bankrupt,  
whether upon any written Document or Security, here-  
table or moveable, or by Accompt, or otherwise.

50. And also to sell and dispose of all Lands, Houses,  
Tenements, Teinds, Annualrents, Liferents, Tacks, and  
other Heretages, or heretable Rights whatsoever, re-  
deemable or irredeemable, belonging, accruing, or de-  
volving to such Bankrupt, and vested in them, as afore-  
said; and that by a publick Roup, to be held at such  
Time and Place as shall be by them appointed, and ad-  
vertised in the *Edinburgh* News-paper aforesaid Three se-  
veral times, and so as the Day of the said Roup shall  
not

not be before the Lapse of Twenty-one Days from the last of the said Advertisements; and that the said Advertisement shall particularly express the Names of the said several Lands, Houses, Tenements, or other Subjects to be sold, with the Rental thereof, as the same is stated in the Books kept by the said Trustees.

51. And, to the end that every Person or Persons, who may purchase any Lands, or heretable Subjects from such Trustee or Trustees, may be fully secured against any after Challenge; Be it Enacted, by the Authority aforesaid, That all Lands, and heretable Subjects whatsoever, that shall hereafter be sold by the said Trustee or Trustees, or the major Part of them, shall be, and the same are hereby fully disburdened of all Debts or Deeds of the Bankrupt, or his Predecessors; and that the Bankrupt, or his Heirs, or appearand Heirs or Creditors, without Exception of Minority, shall have no Access to affect any Lands or heretable Subjects so sold; but the Purchaser, upon paying the Price to the Trustees, shall be for ever secure, in the same manner as if he had purchased the same at a judicial Sale, before the Lords of Session, in Terms of an Act of Parliament passed in Scotland in the Year One thousand Six hundred and Ninety-five, (intituled, *Act regulating the Sale and Payment of Bankrupts Estates.*)

52. And be it further Enacted, by the Authority aforesaid, That the Trustee or Trustees of the Estate and Effects of such Bankrupt shall, from time to time, exhibit and produce fair and just Accounts of the State of the Bankrupt's Effects, and of all their Receipts and Payments of the same, and of what shall remain outstanding, and the Particulars thereof; and shall, within Eight Months from the Time of their being authorized, as aforesaid, exhibit a full Account of the then present State of the Bankrupt's Effects, and how much thereof hath been converted into Money, and at that time is in their Hands, and how much is outstanding; to the end that

that the said Commissioners may be enabled to settle, and direct a Dividend to be made amongst the Creditors in manner above-directed: And the said Trustee or Trustees shall then be examined upon Oath, touching the Truth of such Accounts, if the Commissioners shall think fit.

53. And in such Accounts the said Trustees shall be allowed and retain all such Sums of Money as they shall have paid and expended on account of the said Trust, and all other just Allowances they may be intitled to claim by reason thereof.

54. And be it further Enacted, by the Authority aforesaid, That the said Trustee or Trustees shall, after the Expiry of Thirty Days after the said first Dividend shall be settled by the said Commissioners, and notified to the Creditors in their Meeting aforesaid, forthwith make such Dividend and Distribution, in the Terms of the Judgments and Orders of the said Commissioners; and shall take Receipts in the Books, or Journal of their Proceedings, to be kept by the Clerk, as aforesaid, from every Creditor, or any Person by him authorized, for the Part or Share of such Dividend or Distribution so paid: And in case any Share shall not be called for by the Creditor to whom it is due, or his or her Attorney, having Power to receive the same, within other Thirty Days, the same shall be consigned either in the Bank of Scotland, or in the Royal Bank of Scotland; and the said Order and Receipts, so granted either by the Creditors, or their Attorneys, or by the Cashiers of the said Banks respectively, shall be a full and effectual Discharge to such Trustees for the Sums so paid or consigned.

55. Providing always, and it is hereby Enacted and Declared, That in case any Complaint shall be made against the Judgment or Judgments of the said Commissioners, within the Time and in the Manner above directed, which may vary such Distribution, in whole or in part, the said Distribution shall be so far superseded until

D

until the final Determination of such Complaint, and no longer.

56. And be it further Enacted, by the Authority aforesaid, That the said Trustee or Trustees shall, within Sixteen Months after the Time of their being authorized, as aforesaid, produce full and fair Accounts of the Bankrupt's whole Estate and Effects remaining undivided; and shall be thereupon examined upon Oath, if the Commissioners shall so think fit, in order to a second or total Division amongst the Creditors, who shall then have proved their Debts by Orders, and Judgments of the said Commissioners, as aforesaid: And the said Trustee or Trustees shall make this second Dividend and Distribution within the Times, and in the Manner, directed for the first Dividend, in all respects.

57. And this second Dividend shall be final, unless any Action or Process shall be then depending, or any Part of the Estate standing out, that cannot have been disposed of, or unless some other or future Estate or Effects of the said Bankrupt shall come to or vest in the said Trustees; in which Case, they shall, as soon as may be, convert such future Estate or Effects into Money in manner aforesaid; and shall, within Two Months next after the same is so converted, by the like Order of the Commissioners, divide the same amongst the said Bankrupt's Creditors, who shall have made due Proof of their Debts under such Commission.

58. And for the better Encouragement of all Persons against whom such Commission shall be issued, to give a just and true Account of their Effects, Be it further Enacted, by the Authority aforesaid, That all and every such Person or Persons who shall within the Time limited by this Act surrender himself to the Commissioner or Commissioners, duly authorized, as aforesaid, and in all things conform as by this Act is directed, shall be allowed the Sum of Five Pounds *per Centum* out of the neat Produce of all the Estate that shall be recovered in, and received,

*this encouragement may have a good effect*

ceived, which shall be paid in to such Bankrupt by the said Trustees, in case the said neat Produce, after such Allowance made, shall be sufficient to pay the whole Creditors, who shall have proved their Debts, the Sum of Ten Shillings in the Pound, and so as the said Sum of Five Pounds *per Centum* shall not amount in the Whole to above the Sum of Two hundred Pounds: And in case the neat Produce of the said Estate shall, over-and-above the Allowance hereafter mentioned, be sufficient to pay the said Creditors the Sum of Twelve Shillings and Sixpence in the Pound for their respective Debts, that then every Person so conforming shall be allowed the Sum of Seven Pounds Ten Shillings *per Centum* out of such neat Produce, so as the same shall not exceed in the Whole the Sum of Two hundred and Fifty Pounds: And in case the neat Produce of the said Estate shall, over-and-above the Allowance hereafter made, be sufficient to pay the said Creditors the Sum of Fifteen Shillings in the Pound for their respective Debts, that then every Person so conforming shall be allowed the Sum of Ten Pounds *per Centum* out of such neat Produce, so as the same shall not exceed in the Whole the Sum of Three hundred Pounds; all which Allowances are to be paid to said Bankrupt by the Trustees, and stated and allowed in their Accounts, to be given in as before-mentioned.

59. Provided always, That if the neat Proceeds of any such Bankrupt's Estate shall not amount to so much as will pay every one of his Creditors the Sum of Ten Shillings in the Pound, deducting all Charges, that then such Bankrupt shall not be intitled to any of the Allowances aforesaid; but only shall be allowed so much Money as the Commissioners shall think fit, not exceeding three Pounds *per Centum* of the neat Produce.

60. And be it further Enacted, by the Authority aforesaid, That after such Bankrupt's making a full Discovery of his Effects, and conforming himself in every thing according to the Directions of this Act, it shall be lawful

( 28 )

lawful to the said Commissioners, or major Part of them, if they shall see Cause, to certify to the Court of Session, by a Writing under their Hands, that such Bankrupt hath made such Discovery, and in all things conformed himself as aforesaid; and that there does not appear to them any Reason to doubt of the Truth of his Discovery, or that the same is not a full Discovery of all his Estate and Effects; and if Four Parts of Five, in Number and Value, of the Creditors of such Bankrupt, who shall be Creditors for not less than Ten Pounds respectively, and who shall have proved their Debts under such Commission, or some other Person by them respectively duly authorised thereto, shall sign such Certificate, and testify their Consent to the Bankrupt's Discharge, in Pursuance of this Act, then the said Certificate, and Consent of the Creditors, shall be advertised in the first *Edinburgh* News-paper aforesaid; and, after the Expiration of Twenty one Days from such Advertisement, the Court of Session are hereby authorised and required, upon Production of such Certificate from the Commissioners, consented to by Four-fifths of the Creditors, and *Edinburgh* News-paper, advertising the same, as aforesaid, to allow and confirm the same, unless any other Creditor shall appear, and instantly offer Evidence of Fraud or Concealment committed by the Bankrupt: Declaring always, That the Court is not to interpose to allow and confirm such Certificate, unless the Bankrupt make Oath, That the said Certificate, and Consent of the Creditors thereto, was obtained fairly, and without Fraud.

61. And it is hereby Enacted and Declared, by the Authority aforesaid, That from the time that such Certificate shall be allowed and confirmed, as aforesaid, every such Bankrupt shall be thenceforth discharged from all Debts whatsoever, due or owing by him, at or before the issuing of the Commission of Bankruptcy against him: And if he is in Prison at the time, an Order shall be granted

( 29 )

ed for his Liberation, without Payment of Goaler's Fees: And in case any Action, Process, or Diligence, shall be intended against him, for any such Debt, the Production of the said Certificate and Allowance shall be sustained in all Courts, as a sufficient Defence or Ground of Suspension of such Diligence, without Caution or Confignation; and the said Bankrupt shall be acquitted, and the Diligence suspended *simpliciter*, and shall recover full Costs; unless the Pursuer of such Action, or the User of the Diligence, can prove, that the Certificate was obtained unfairly, and by Fraud; or that the Bankrupt has made any Concealment of his Effects, to the Value of Ten Pounds or upwards.

62. Provided always, That every Bond, Bill, Note, Contract, or Agreement, to be made or given, by any Bankrupt, or by any other Person, unto, or to the Use of any Creditor, or for Security of the Payment of any Debt due by such Bankrupt, as a Consideration, or to the Intent to persuade such Creditor to consent, or to sign any such Certificate, shall be wholly void, and of no Effect: And such Creditor shall not be computed to make up the Four-fifths in Number and Value, who ought to sign the said Certificate.

63. Provided also, That nothing in this Act shall be construed to extend, or give any Privilege or Benefit to any Bankrupt, who shall have given to any of his Children, upon Marriage, or otherwise, above the Value of One hundred Pounds, unless he shall prove by his Books fairly kept, or otherwise, upon his Oath, before the major Part of the Commissioners, that, over and above the said Sum, he had at that Time remaining in Goods, Wares, Debts, ready Money, or other Estate, Real or Personal, sufficient to pay every one of his Creditors their full Debts; or who shall have lost in any One Day, to the Value of Five Pounds, or in the Whole, to the Value of One hundred Pounds, within the Space of Twelve Months next preceeding his becoming Bankrupt,

*thus per  
agraph  
very  
confused  
by express*

at

at Cards, Dice, Tables, Races, or any other kind of Game or Pastime, or Betting at any Game, Chance, or Hazard whatsoever.

64. Provided also, That in case any Commission of Bankruptcy shall issue against any Person, in virtue of this Act; and he shall also be discharged in virtue thereof; or shall have compounded with his Creditors, or delivered to them his Estate or Effects; and been discharged by them; and shall thereafter a second time become Bankrupt; that in the case of such second Bankruptcy, the Person only of such Bankrupt, tho' conforming as aforesaid, shall be free from Imprisonment, and personal Diligence, in virtue of this Act; but his future Estate and Effects shall remain liable to his Creditors (the Tools of Trade, the necessary Household Goods and Furniture, and necessary wearing Apparel, of such Bankrupt, and his Wife, and Children, and what may be sufficient for Six Months Sustenance to them, only excepted); unless his Estate shall produce clear, after all Charges, sufficient to pay to every Creditor under the said Commission Fifteen Shillings in the Pound for their respective Debts.

65. And further it is hereby Declared, That in no case shall the Discharge granted by this Act be construed to extend to any Person who shall be Partner, or any other Way jointly bound with the said Bankrupt, in any of the Debts, Obligations, or Contracts, of which he shall be discharged, as aforesaid; but that all such Partners, and Persons so bound, shall be liable to pay such Debts, and perform such Obligations or Contracts as if this Act had never been made.

*shall not be obliged to give his Attendance, upon every reasonable Notice in Writing, to be given to him, or left at*  
66. Provided also, and be it Enacted by the Authority aforesaid, That after any of the said Bankrupts shall have obtained his Certificate, and the same shall be duly confirmed; as before-mentioned, every such Bankrupt shall be obliged to give his Attendance, upon every reasonable Notice in Writing, to be given to him, or left at  
*until the whole Effects are returned to him.*

at his usual Place of Abode, by the Trustees, or their Order, requiring him to attend them, in order to make up, adjust, or settle, any Accounts betwixt him and any Debitor to, or Creditor of his Estate, or to attend any Court, in order to be examined touching the same, or for any other Business which such Trustees shall judge necessary, for getting in the said Bankrupt's Estate and Effects, for the Benefit of his Creditors; for which Attendance the Bankrupt shall be allowed and paid the Sum of Two Shillings *per Diem*, by such Trustees, out of the Bankrupt's Estate: And in case such Bankrupt shall neglect or refuse to attend, or shall refuse to assist on such Discovery, without sufficient Cause shewn to the Commissioners, upon the said Trustees, or any one of them making Oath, on such Refusal, the said Commissioner or Commissioners, or the major Part of them, are hereby required to issue a Warrant, directed to such Person as they shall think proper, for apprehending such Bankrupt, and committing him to the next secure Prison, there to remain until he duly conform to the Satisfaction of the Commissioners, and be by them, or by Letters of Suspension and Liberation passed by the Lords of Session, duly liberated and discharged.

67. And be it further Enacted, by the Authority aforesaid, That in case it shall happen, that any of the Bankrupts aforesaid shall not be able to obtain such Certificate, duly allowed and confirmed, as is herein before-mentioned, either for want of the Consent of Four-fifths of his Creditors, or for any other Cause or Reason whatsoever, it shall be competent to such Bankrupt to insist in a Process of *Cessio bonorum*, and to his Creditors to make all competent Defences against the same; which shall be determined according to the Law and Custom of *Scotland*, as if this Act had not been made.

68. And whereas Inconveniencies may ensue by lodging the Money arising from the Bankrupt's Estate and Effects in the Hands of the Trustees, which may become  
an



an Occasion to delay the Division thereof, to the Prejudice of the Creditors: For preventing whereof, and to the end the Trustees may make speedy Dividends of the Estate and Effects of such Bankrupts, Be it Enacted, by the Authority aforesaid, That before the Creditors shall proceed to make choice of Trustees of any Bankrupt's Estate, the major Part in Value of the Creditors, or their lawful Attornies, present at a Meeting held for that Purpose, may, if they think fit, direct in what manner, how, and with whom, and where, the Moneys arising from the Bankrupt's Estate shall be paid in, and remain, until the same shall be divided among all the Creditors, as by this Act is directed; to which Rule and Direction every Trustee afterwards to be chosen shall conform, as often as Fifty Pounds shall be got in, and received, from such Bankrupt's Estate, and shall be, and are hereby exonered for what they shall do in pursuance of such Direction of the Creditors.

69. Declaring always, That if the Creditors shall think fit to give no such Direction, that then the Trustees shall be obliged, and are hereby directed, at the Expiration of Six Months after their being chosen and authorized, as aforesaid, to consign and deposit in the Bank of *Scotland*, or the Royal Bank of *Scotland*, all the Money which they shall have then collected or recovered out of the Bankrupt's Estate; and that, after the Expiration of the said Six Months, the said Trustees shall, from time to time, consign and deposit in one of the said Banks all the other Moneys which they shall collect and recover out of the Bankrupt's Estate, within Thirty Days respectively after such Moneys shall have amounted to the Sum of Fifty Pounds: And in case the said Trustees shall neglect to consign or deposit the said Moneys respectively, in Manner as aforesaid, they shall, from the Times herein before respectively limited, pay and allow to the Creditors of the Bankrupt Interest for all such Moneys,

Moneys, after the Rate of Four Pounds *per Centum per Annum*.

70. And whereas the Trustees may be prevented from making such speedy Dividends of the Estate and Effects of the Bankrupt as by this Act is intended, by reason of Debts due to the Bankrupt, or Claims competent to him against Third Parties, or their Estates, which are not clear and liquid, but depend on intricate Accounts, or involved Competitions with Third Parties, which are not by this Act subjected to the Judgment of the Commissioners, but must be determined by Actions or Processes at Law, which may be kept depending for several Years, and many other Differences and Difficulties may arise under such Commissions, which it might be more expedient for all Parties concerned to have determined by Arbitration than by Process; Be it therefore Enacted, by the Authority aforesaid, That it shall be lawful to the Trustee or Trustees of any Bankrupt's Estate and Effects, or the major Part of them, with the Consent of the major Part in Value of the Bankrupt's Creditors or their Attornies, who shall have duly proved their Debts, under such Commission, and who shall be present at any Meeting of the said Creditors, pursuant to Twenty-one Days publick Notice to be for that Purpose given in the *Edinburgh* News-paper aforesaid, to submit any Difference or Dispute betwixt such Trustees, and any Person or Persons whatsoever, for, or on account, or by reason of any Matter, Cause, or Thing whatsoever, relating to such Bankrupt's Estate or Effects, whether heretable or moveable, real or personal; as also to submit the Value of any future Annuity, or Sum due by or to the Bankrupt, depending upon any contingent Event whatsoever, to the final Determination of Arbiters, to be chosen by the said Trustee or Trustees, or the major Part of them, and the major Part in Value of such Creditors, and the Party or Parties with whom they shall have such Difference, and to perform the Decrees which shall be

pronounced by such Arbiters; or otherways to compound and agree the Matters in Difference between them, in such manner as the said Trustee or Trustees, with such Consent as aforesaid, shall think fit, and can agree; and the same shall be binding upon all the Creditors of the said Bankrupts: And the Trustees are hereby indemnified and exonered for what they shall fairly do according to the Direction aforesaid,

71. And be it further also Enacted, by the Authority aforesaid, That the said Trustee or Trustees, or the major Part of them, shall be impowered, with Consent of the major Part of such Bankrupts Creditors in Value, or their Attorneys, who shall be present at a Meeting, to be held for that Purpose, after publick Notice given, as aforesaid, to make Composition with any Person or Persons, Debtors or Accomptants to such Bankrupts, when the same shall appear necessary and reasonable, and to take such reasonable Part as can, upon such Composition, be got, in full Discharge of all such Debts and Accounts; which shall be binding upon all the Creditors, any Law, Usage, or Custom to the contrary notwithstanding.

72. And further, whereas it may happen, That such Bankrupts may have Claims due to them, which cannot be adjusted or settled by Arbitration or Composition, as aforesaid; and yet it may be expedient for the Creditors, that such Claims should be speedily disposed of in the best manner they can, rather than the Distribution thereof be delayed among the Creditors; Be it therefore Enacted, by the Authority aforesaid, That it may be lawful to the said Trustee or Trustees, or the major Part of them, with Consent of the major Part of the Creditors in Value, or their Attorneys, who shall be present at a Meeting held for that Purpose, after publick Notice given, as aforesaid, to expose to Roup all such Claims, Debts, Demands, or Incumbrances competent or belonging to such Bankrupt, against any other Party

Party or Estate whatsoever, and that at such Time and Place as the said Trustees, with Consent aforesaid, shall think fit to appoint, after publick Notice given in the *Edinburgh* News-paper aforesaid thereof, for Three several times, the last Advertisement being always Twenty one Days distant from the Day appointed for the Roup.

73. And further it is hereby Declared, That in all the Cases before-mentioned, where the Consent of a major Part of a Meeting of Creditors is necessary, a Minute, by the Clerk chosen, as aforesaid, in the said Book to be kept by him for the Proceedings of the Trustees, shall be full and sufficient Evidence of such Consent; and the said Trustee or Trustees, or a major Part of them, shall, upon an Extract of the said Minute, signed by the Clerk, be fully authorized to submit, transact, compound, expose to Roup, sell, and do every other Matter and Thing expressed in the said Minute, in Terms thereof: And the Deeds, to be signed by such Trustees, shall be equally effectual, as if the major Part of the Creditors had signed Consenters thereto.

74. And whereas it may be found necessary, either by reason of the Death of some of the Trustees, or upon other accounts, That new Trustees should be named, or the former Trustees should be removed; Be it therefore Enacted, by the Authority aforesaid, That it shall and may be lawful to and for the major Part in Value of the Bankrupts Creditors, or their Attorneys, who shall have duly proved their Debts under such Commission, and who shall be present at any Meeting, pursuant to Twenty-one Days publick Notice, to be given by the Commissioners for that Purpose, in the *Edinburgh* News-paper aforesaid, to remove and displace any of the said Trustees, and to make choice of new Trustees in their place, who shall be authorized and confirmed by the Court of Session, if sitting, or by the Lord Ordinary on the Bills, and any other two Lords in time of Vacance,

Vacance, upon Application made to them for that Purpose by the said Commissioners: And the whole Estate, real and personal, heretable and moveable, which was vested in the former Trustees, and which shall then remain in their Hands or Possession, undisposed of, and not divided amongst the Creditors, is hereby declared to be from thenceforth vested in the new Trustee or Trustees so chosen and authorized, who shall have the same Right and Power over the Bankrupt's Estate and Effects, and be obliged to execute them in the same manner as the said former Trustees are herein before empowered and directed.

75. And the said Commissioners shall cause publick Notice to be given in the said *Edinburgh* News-paper, Two several times, immediately after the Removal of such Trustees, and the Appointment of others, of such Removal and Appointment; that such Persons who are indebted to the Bankrupt's Estate, do not pay any Part of their Debts to such Trustee or Trustees as shall be removed, as aforesaid.

*what use  
for conveyance  
= and when  
the act vests  
the subjects  
in the new  
trustees?*

76. And the former Trustees, so removed, shall be obliged to deliver up, assign, dispose, and convey all the Estate and Effects of such Bankrupt, which shall then be in their Hands or Possession, unto the new Trustee or Trustees so chosen by the Creditors, and authorized as aforesaid; and if the first Trustee or Trustees shall refuse or neglect, by the Space of Ten Days after Notice given of the new Trustees being so chosen and authorized, to make such Delivery, and grant such Disposition, Assignment, or Conveyance, every such Trustee shall respectively forfeit the Sum of One hundred Pounds, to be divided amongst the Creditors, in the same manner as the Bankrupt's Estate, towards Satisfaction of their Debts, and to be recovered by Action or Procès, brought before the Court of Session for that purpose.

77. And, in case of the Decease of the Commissioner, or of the major Part of the Commissioners, authorized as aforesaid,

aforesaid, Be it Enacted, by the Authority aforesaid, That it shall and may be lawful to the major Part of the said Creditors in Value, or their Attorneys, who shall be present at any Meeting, pursuant to Twenty one Days publick Notice given for that Purpose in the *Edinburgh* News-paper aforesaid, by the Trustees of such Bankrupt's Estate, to make choice of a new Commissioner or Commissioners, or to declare the whole Powers by this Act granted to Commissioners, to be vested in the surviving Commissioner or Commissioners: And such Commissioner or Commissioners being thereupon confirmed and authorized by the Court of Session, or any three Judges of the said Court in time of Vacance, shall be fully intitled to all the Powers hereby granted to Commissioners of a Bankrupt's Estate.

78. And, to the end that this Act may be the more effectually be put in Execution, Be it Enacted, by the Authority aforesaid, That although any of the said Bankrupts should happen to decease during the Dependence of such Commission, yet the Commissioners and Trustees authorized in virtue of this Act shall have full Power and Authority to execute the the whole Powers and Trusts hereby committed to them respectively, after the Decease of the said Bankrupt, in the same manner as if he were alive.

79. And be it further Enacted, by the Authority aforesaid, That none of the said Commissioners shall be capable to act in the Execution of any of the Powers granted by this present Act, until he and they shall have taken an Oath to the Effect following; that is to say,

*I A. B. do swear, That I will faithfully, impartially, and honestly, according to the best of my Skill and Knowledge, execute the several Powers and Trusts reposed in me as a Commissioner in a Commission of Bankrupt against C. D. and that without Favour or Affection, Prejudice or Malice.  
So help me God.*

Which

( 38 )

Which Oath shall be administered either by the Lords of Session, when the Commissioner or Commissioners are authorized, if he or they be then present, or otherways by the Sheriff, or any Two Justices of the Peace, of the County within which such Commissioner resides for the Time.

80. And be it further Enacted, by the Authority aforesaid, That the Clerk to be chosen, as aforesaid, by the said Commissioner or Commissioners, who shall also be Clerk to the Proceedings of the said Trustees, shall be obliged to give Inspection of the whole Proceedings of the said Commissioners and Trustees to the Creditors, or any other Parties concerned, or their Agents, whenever the same is applied for; and also shall give Extracts thereof, when required, without Delay; or in case of Refusal, shall forfeit to the Party requiring the Sum of Ten Pounds, to be recovered by Way of summary Complaint before the said Court of Session.

81. And the said Clerk shall be intitled to receive such Fees for his Trouble and Pains, as shall be modified and ascertained by the said Commissioners; and shall receive no more than Six-pence for the Inspection or Borrowing up of any Creditor's Interest; nor for the Extracts to be given by them, but the Sum of One Shilling *per* Sheet.

82. And the said Commissioners are also hereby empowered to modify and ascertain the Sums payable to Witnesses, to be adduced before them, for their Expences; and the Fees payable to Persons who shall give Notices, or deliver Schedules, as aforesaid, by Orders from them or from the Trustees.

83. And it is hereby Declared, That the Oath of such Person taken before the Commissioner or Commissioners, or the major Part of them, and entered by the Clerk into one of the Books aforesaid, upon the Notice given, whether to the Bankrupt, or any of his Creditors, or to any other Parties or Witnesses, shall be held

( 39 )

held sufficient Evidence of Summons given; any Law or Custom to the contrary notwithstanding.

84. And it is hereby further enacted, That the said Commissioners shall be empowered to settle, adjust, and determine the Fees or Rewards to Factors, or any other Persons employed under them, or under the Trustees in the Execution of this Act: But the Fees or Premiums due to the said Commissioners or Trustees, shall be ascertained by the major Part in Value of the said Creditors, or their Attorneys, at a Meeting to be held for that Purpose, upon Twenty-one Days publick Notice, as aforesaid.

85. Declaring always, That there shall not be paid or allowed by the Creditors, or out of the Estate of the Bankrupt, any Moneys whatsoever, for Expences in Eating or Drinking of the Commissioners or Trustees, or any other Person, at any of the Times of the Meeting of the said Commissioners or Trustees, or any of the Creditors.

86. And it is hereby declared, that the necessary Expences of the Execution of this Act shall be allocated by the Commissioners proportionally, upon every Creditor, in making out the Orders to be given by them for Distribution of the Bankrupt's Effects and Estate, as aforesaid.

87. And be it further enacted, by the Authority aforesaid, That the Minutes entered by the said Clerk, in the Books or Journals to be kept by him, of the Proceedings of the said Commissioners and Trustees, shall be fully probative of every Notice therein set forth to have been given, whether in the News-papers, or otherwise, and of every other Matter or Thing therein contained, unless the same shall be disproved before these Books shall be entered on Record, as herein after directed.

88. And be it further enacted, by the Authority aforesaid, That after making the final Dividend, as aforesaid, it shall be lawful to the said Commissioners, one or more authorized as aforesaid, or the major Part of them,

if they shall find, that the Trustee or Trustees have fairly paid out, or consigned the whole Moneys received agreeably to the Orders of the Commissioners, and the Nature of their Trust, to certify to the Court of Session, by a Writing under their Hands, that the Trustees have fairly accounted, and executed their Trust, and ought to be exonerated thereof: And a Copy of the said Certificate shall be entered by the Clerk, in the Book kept by the Commissioners, as soon as the same is signed, to be open to the Inspection of all Parties concerned: And publick Notice of such Certificate shall be given, by advertising the same in the next *Edinburgh* News-paper aforesaid.

89. And it shall and may be competent to any of the Creditors, or to any other Party concerned, within Thirty Days after the Date of such Certificate, to apply, by Petition to the Court of Session, or to the Lord-Ordinary on the Bills in the Time of Vacance; setting forth their Objections to the Certificate, which shall be appointed to be answered by the Trustees, upon Fifteen Days Notice; and thereafter summarily discussed before the said Court: And if the Objection shall appear not to be well founded, the Petitioner shall pay to the Trustees double Costs of Suit.

90. And in case no such Petition shall be presented, as aforesaid, within the said Thirty Days, or that the Objections therein specified shall be over-ruled, as aforesaid, then the Certificate granted by the Commissioners shall be allowed and confirmed by the Court of Session: And the Trustees, in virtue thereof, shall be fully exonerated and discharged of their Trust, at the Hands of all Parties concerned.

91. And be it enacted, by the Authority aforesaid, That after Execution of any Commission, in virtue of this Act, it shall be lawful to the said Commissioners and Trustees, or to any one of them, or to any one of the Creditors of such Bankrupt, or of the Purchasers of any Part of his Estate, to apply to the Court of Session, by summary

mary Petition, to have the said Books or Journals, kept by the Clerk to the Commission, of the Proceedings of the Commissioners and Trustees, as aforesaid, and the whole Writings that may be left in the Custody of the said Clerk, delivered into the Custody of the Clerks of Session: And the said Court is hereby authorized and required to order the said Clerks to take into their Custody the said Books and Writings, and to keep and preserve the same among their other Records; and to allow Inspection thereof to any Person, upon Payment of the Sum of Two Shillings for each Time; and to give out Extracts of any Part thereof, upon Payment of the Sum of Two Shillings for every Sheet of such Extract.

92. And whereas it may happen, in some Cases, that the great Bulk of the Creditors may think it reasonable to accept of a certain Composition from the Bankrupt, which would prevent the Trouble and Expence of the Execution of the Commission; and it were hard, that such Agreement should be disappointed by the Obstinacy of a few outstanding Creditors: Be it therefore Enacted, by the Authority aforesaid, That if either at the first Meeting, or at any other Meeting of the Creditors, upon publick Notice given, as aforesaid, before any Dividend is made, Four Parts of Five in Number and Value of the said Creditors, or their lawful Attorneys, shall agree to accept of so much a Pound, in full Satisfaction of the Debts due to them; and to take such Security as shall be offered to them, in Behalf of the Bankrupt, for the same; the said Agreement shall be binding upon the remaining Creditors: And upon such Bankrupt's paying, or consigning, in either of the two Banks before-mentioned the like Proportions for the Debts due to the remaining outstanding Creditors, the Commissioner or Commissioners are hereby authorized and impowered to declare the Commission at an End; and to allow the Bankrupt full Access to the Possession of his own Effects, or to order the Trustees, if then chosen, to deliver up the same to him, upon Payment

ment of the Expences already laid out on the Execution of the said Commission: And if within the Space of Four Months, after Notice given in the *Edinburgh* News-paper aforesaid, of the above Agreement and Proceedings, other Creditors do not appear, who may increase either the Number or Value of the outstanding Creditors to above One-fifth of the Whole, then the Commissioner or Commissioners shall grant a Certificate to the said Bankrupt, which shall be confirmed by the Court of Session; and shall have the same Effect to discharge him of the whole Debts contracted before the Bankruptcy, as the other Certificate herein before directed to be granted to Bankrupts upon their surrendering their Effects, and conforming to this Statute, as aforesaid.

93. Declaring always, That in case, at any Time within the said Four Months, other Creditors shall appear, and refuse to acquiesce in the said Agreement; who, being joined to the former outstanding Creditors, make up above One-fifth of the whole Creditors, either in Number or Value; the Commissioners and Trustees shall, upon Application of such Creditors, be obliged to execute the said Commission; and that the Proceedings of the Commissioners hereupon shall be liable to the Review of the Court of Session, upon a Petition given in within Twenty Days, either to the said Court, or to the Lord-Ordinary on the Bills, in time of Vacance, as is directed in the other Cases herein before-mentioned.

94. Provided also, That in case the whole Debts due by such Bankrupt, at the time of the Bankruptcy, shall be found to exceed the Sum of One thousand Pounds of lawful Money of *Great Britain*, then it shall be competent to a smaller Number of Creditors than One-fifth, to insist for the Execution of the said Commission, upon their agreeing that no Part of the Expence thereof shall come off the Shares of the Four-fifths, or greater Part of the Creditors, who are willing to accept of such Composition, until they shall have drawn the full Composition they agreed

to accept of, as aforesaid; and that only the remaining Sums, to be drawn by such major Part, shall be burdened with the said Expence, proportionally with the whole Sums to be drawn by the outstanding Creditors.

95. And it is further provided, That if any Bond, Bill, Note, Contract, or Agreement, shall appear to have been made or granted, by the Bankrupt, or any other Person, to induce any Creditor to consent to such Composition, the same shall be wholly void, and have no Effect: And such Creditor shall not be computed to make up the Four-fifths hereby required, to consent to such Composition or Abatement.

96. And be it further enacted, by the Authority aforesaid, That when any Person shall fraudulently, with the Privity of the Bankrupt, claim a Sum of Money, as due to him by such Bankrupt, which shall not be really and truly due and owing, and shall, in respect of such fictitious and pretended Debt, sign his Consent to the Certificate for such Bankrupt's Discharge from his Debts; that, in every such Case, unless such Bankrupt shall, before such Certificate is signed by the Commissioners, discover to one or more of the Commissioners, or one or more of the Trustees, the said Fraud, and object to the Reality of such Debt by a Writing under his Hand, such Certificate shall be void and null, to all Intents and Purposes; and such Bankrupt shall not, in that Case, be intitled to be discharged from his Debts, or to have or receive any of the Benefits or Allowances given or allowed to Bankrupts by this Act; and he shall be deemed and adjudged a fraudulent Bankrupt, and suffer the Pains and Penalties inflicted by this Act on fraudulent Bankrupts.

97. And be it further enacted, by the Authority aforesaid, That this Act shall be construed by all Judges in the most beneficial manner for promoting the Ends hereby intended; and that the same shall be extended to all Women, as well as Men, who may become Bankrupt, and fall under the Description above-recited; and that the whole

( 44 )

whole Powers and Authorities hereby committed to Commissioners or Trustees, shall be competent to the major Part of the Commissioners and Trustees, who act under the Commission, or to any one Commissioner or Trustee, when no more are chosen, or have accepted: And that in all Cases where an Oath is to be taken, a solemn Affirmation, emitted by any one of the People usually called *Quakers*, shall be held to be equivalent to an Oath.

98. And be it further enacted, by the Authority aforesaid, That it shall and may be lawful for the Court of Session in *Scotland* to establish such Regulations as shall appear to them most proper for carrying this Act into effectual Execution, according to the true Intent thereof; and to publish the same in any Act or Acts of *Sederunt*, which shall be in Force, in so far as is consistent with this Act, until the same shall be altered by a future Act of Parliament.

99. And whereas it would tend to the promoting of Trade in that Part of *Great Britain* called *Scotland*, that Promissory Notes were allowed the like summary Execution, and other Privileges, with Bills of Exchange; and it is also reasonable, that both Bills and Notes, which are chiefly intended for expediting Commerce, should be limited to a short Endurance, and not allowed to subsist for the Course of a long Prescription: Be it therefore enacted, by the Authority aforesaid, That from and after the First Day of *August* One thousand Seven hundred and Fifty-one, the same Execution shall be competent, and proceed upon all promissory Notes, whether holograph or not, as is provided to pass upon foreign Bills of Exchange, by the Act passed in the Third Parliament held in *Scotland*, in the Reign of King *Charles* the Second, (entituled *Act concerning Bills of Exchange*;) and that the said Act shall be extended to promissory Notes in all Points; and that the said Notes shall pass by blank Indorsation; and that Indorsees of such Notes shall have the same Privileg-

( 45 )

es as Indorsees of Bills of Exchange now have, in all Points.

100. And be it further enacted, by the Authority aforesaid, That no Bill of Exchange, foreign or inland, or Precept, or promissory Note whatsoever, executed after the said First Day of *August* One thousand Seven hundred and Fifty-one, shall be of any Force, or effectual to produce any Diligence or Action in that Part of *Great Britain* called *Scotland*, unless such Diligence shall have been commenced, or the Action raised and insisted in, within the Space of Six Years, from and after the respective Dates thereof.

101. And that no Bill, Note, or Precept, that has been, or shall be granted, before the said First Day of *August* One thousand Seven hundred and Fifty-one, shall be of any Force or Effect, unless Diligence has been, or shall be commenced, or Action raised and insisted in, for Payment of the Sums therein contained, before the Expiry of Six Years, from and after the said First Day of *August* One thousand Seven hundred and Fifty-one; any Law, Usage, or Custom to the contrary notwithstanding: Excepting always the Notes commonly called the Bank Notes of the Bank of *Scotland*, and of Royal Bank of *Scotland*, and the Notes of the *British* Linen Company, which shall noways be comprehended under the aforesaid Limitation or Prescription: And also that it shall and may be lawful and competent, at any Time after the Expiration of the said Six Years, in either of the Cases before-mentioned, to prove the Debts contained in the said Bills, Precepts, and promissory Notes, and that the same are resting and owing, by the Oaths of the Debtors.

102. And, for better ascertaining the time of protesting inland Bills, Precepts, and promissory Notes, in that Part of *Great Britain* called *Scotland*; It is hereby enacted and declared, That all such inland Bills, Precepts, and promissory Notes, shall and ought to be protested, in like manner as foreign Bills, before the Expiry of the three  
Days

Days of Grace; otherwise there shall be no Recourse against the Drawer, or any of the Indorsers of such inland Bills, Precepts, or promissory Notes.

103. Declaring always, That it shall be sufficient to operate Recourse, if Notice is given of the Dishonour of inland Bills, Precepts, or promissory Notes, within Fourteen Days after the Protest is made, without Prejudice to the Notification of foreign Bills, to be made within such time, as is requisite by the mercantile Usage and Custom.

104. And, for further promoting the Currency of Bills and Notes, so necessary for carrying on Commerce in an expeditious Manner; Be it enacted, by the Authority aforesaid, that from and after the said First Day of August One thousand Seven hundred and Fifty-one, summary Execution, by Horning, or other Diligence, shall pass upon all Bills, whether foreign or inland, though accepted; and upon all promissory Notes, not only against the Accepters of such Bills, or Granters of such Notes, but also against the Drawers of the Bills, and against the whole Indorsers of the said Bills or Notes, jointly and severally, except where the Indorsation is qualified to be without Recourse; saving and reserving to all the said Drawers and Indorsers their respective Claims of Recourse against one another, as accords of the Law.

105. And be it enacted, by the Authority aforesaid, That this Act shall continue in Force for the Space of Seven Years, and to the End of the then next Session of Parliament, and no longer.

### An ABSTRACT of the BANKRUPT ACT.

Parag.

- 1 Preamble. When a Merchant is under Diligence, Creditors may apply to the Court of Session, who are to name a Commissioner;
- 2 And he is to advertise the Debtor, and his Creditors to appear before him at a certain Day and Place;
- 3 And to make up a List of his Debts;
- 4 And to declare the Bankruptcy, and to appoint another Meeting, at which the Creditors are to chuse Commissioners and Trustees; who are to be confirmed by the Court of Session.
- 5 Powers to secure the Bankrupt's Effects.
- 7 Commissioners to ascertain the Debts, and to chuse a Clerk, who is to enter their and the Trustees Proceedings into Books. The Commissioners to examine the Bankrupt upon Oath.
- 8 Bankrupt not surrendering himself, and making a full Discovery and Surrender of his Effects, or embezzling Goods to the Value of 20 l. to be punished by the Court of Session.
- 9 Court may enlarge the Time for surrendering.
- 10 Bankrupt, while under Examination, to have Liberty to inspect his Books.
- 11 And to be free from Personal Diligence; and if apprehended, to be immediately discharged. Penalty on Messenger detaining him.
- 12 The Commissioners may give Orders with respect to the Seizure;
- 13 And the Custody of the Bankrupt's Person,
- 14 Till the Close of the Examination;
- 15 After which he is to be dismissed, if no Fraud appears. Commissioners to attend him, if in Prison.
- 16 Commissioners to examine the Bankrupt's Wife and Children, or any other Person, and to call for Production of his Writings and Effects.
- 17 Sheriff or Magistrate to compel them to appear.
- 18 Penalty on Persons concealing Effects in Trust.
- 19 Allowance to Persons making Discovery of the Bankrupt's Effects;
- 20 Commissioners to meet frequently, and to take Cognizance of the several Debts claimed, and to examine Witnesses;
- 21 And to determine the Extent of the Debts; and the Ranking of the Creditors; and to order the Distribution of the Bankrupt's Effects.
- 22 Debts payable at a future Day to be allowed, discompting the Interest;
- 23 Also all mutual Claims betwixt the Bankrupt, or any other Person,
- 24 Creditors



Parag.

- 24 Creditors to produce their Instructions of Debt, and make Oath within four Months, under a Penalty.
- 25 Commissioners to determine and rank the whole Debts claimed, within 8 Months, and immediately thereafter make up a State of the Effects converted into Money, and order a Dividend thereof, and publish the same to the Creditors at a Meeting to be held on ten Days Notice.
- 26 Their Judgment final, unless appealed from within a Time limited, to the Court of Session, who are to determine the said Appeal summarily, and to give Costs in case of Affirmance.
- 27 Creditors who do not prove their Debts within 8 Months, excluded from any Share of the first Dividend;
- 28 Except where the Proof is to be brought from foreign Parts.
- 29 Creditors may, after the first Dividend, prove their Debts, to be intitled to the second Dividend.
- 30 The Commissioners to give Judgement upon the whole Debts within 16 Months, and order the final Dividend immediately thereafter; and publish the same to the Creditors upon ten Days Notice.
- 31 Creditors, who shall not prove their Debts within 16 Months, excluded from the second Dividend and remaining Effects;
- 32 Except where the Proof is to be brought from foreign Parts.

T R U S T E E S.

- 33 Trustees vested in the moveable Estate belonging to the Bankrupt, or to which he hath, or may succeed.
- 34 The Commissioners to grant Warrant to the Trustees to secure and take Possession of the moveable Estate; and, if necessary, to break open Chambers and other Repositories, provided the Authority of the Judge Ordinary be applied for.
- 35 Trustees vested in the Bankrupt's real Estate. The Benefit of the Succession to a real Estate devolved upon the Bankrupt to belong to the Trustees:
- 36 Who are to obtain Adjudication of such Estate upon a summary Petition.
- 38 The Creditors of the Bankrupt's Predecessor intitled to the Benefit of this Adjudication, and to Preference, if he died within three Years of presenting said Petition;
- 39 And if he died before, *pari passu* with the Bankrupt's Creditors.
- 40 Provided they prove their Debts before the Commissioners.

41 Trustees

Parag.

- 41 Trustees vested in the Estate of the Bankrupt, which he had before the Bankruptcy, and was not denuded of by fair onerous Titles, notwithstanding of any Deeds liable to Challenge upon the Acts 1621 or 1696, or any other Law or Usage of Scotland; which are to be tried by the Commissioners.
- 42 The Debtor held insolvent from the Date of his being declared a Bankrupt. The Creditors may prove an anterior Insolvency.
- 43 But the Commissioners to rank every Creditor upon his Diligence;
- 44 Except Arrestments executed within 60 Days of the Bankruptcy, which are declared void.
- 45 As also Poidings executed within 15 Days.
- 46 Trustees empowered to sue all Actions real and personal, recover and discharge Debts, sell and dispose of the Estate.
- 47 Trustees bound to make up Inventories of the Bankrupt's whole Estate.
- 48 And to sell the Moveables by Roup.
- 49 And to recover the Debts.
- 50 And to sell the Lands by Roup.
- 51 The Purchasers to be secure.
- 52 The Trustees to make up the Accompts of the Bankrupt's Effects within eight Months, to enable the Commissioners to order a Dividend.
- 53 They are to be allowed their Expences.
- 54 They are to pay the Creditors within 30 Days after the Dividend is settled by the Commissioners. The Shares of the Creditors not calling for the same to be consigned;
- 55 Except an Appeal is entered, which may vary the Dividend.
- 56 The Trustees to make up the Accompts of the whole Effects within 16 Months, and to make the second Dividend, at the Time and in Manner directed for the first.
- 57 This Dividend final, unless any Part of the Estate remains outstanding; which, when converted into Money, is to be divided within two Months.

B A N K R U P T.

- 58 Allowances to Bankrupts.
- 60 A Certificate to be given by the Commissioners. If four-fifths in Number and Value of the Creditors consent. Publick Notices to be given thereof; and the Certificate, after the Lapse of 21 Days, to be confirmed by the Court of Session, unless Fraud is proved;

61 And

Parag.

- 61 And the Bankrupt thereupon discharged of all his former Debts;
- 62 Contract to induce Creditors to sign Certificates void.
- 63 Persons excepted from the Benefit of this Act.
- 64 Limitation thereof in case of a second Bankruptcy.
- 65 Benefit not to extend to Partners or Co-Obligants.
- 66 Bankrupt, after Allowance of Certificate, to attend Trustees in settling Accompts. Allowance for his Attendance. Imprisonment on Not-attendance.
- 67 Procefs of *Cessio bonorum* reserved.

ADDITIONAL REGULATIONS.

- 68 **C**reditors before chusing Trustees, may direct how the Bankrupt's Money is to be deposit before the Dividend.
- 69 If they do not, the Trustees are to consign the Money they receive in either of the Banks, at certain limited Times, or be liable for Interest.
- 70 Trustees, with Consent of Creditors, may submit Disputes to Arbitration; or transact the same;
- 71 Or compound for Debts which cannot be wholly recovered;
- 72 Or to expose the same to Roup.
- 74 Creditors may remove the Trustees, and chuse new ones.
- 75 Publick Notice to be given of such Removal and Choice.
- 76 And the former Trustees to denude, and deliver over the Bankrupt's Effects.
- 77 Creditors to chuse new Commissioners upon the Decease of the former.
- 78 Commissioners and Trustees to proceed after the Bankrupt's Death.
- 79 Commissioners Oath.
- 80 The Clerk to give Inspection of the Proceedings or Extracts when required.
- 81 Fees to be paid him.
- 82 Expences to Witnesses; and Fees to Officers who give Notice.
- 83 Notice to be verified on Oath.
- 84 Rewards to Factors or other Persons employed, and to Commissioners and Trustees.
- 85 No unnecessary Expence to be allowed.
- 86 Necessary Expences to be distributed proportionally.
- 87 Commissioners and Trustees Books to be probative.
- 88 Certificate to be given to the Trustees; and publick Notice to be given thereof;
- 89 Which may be objected to by any Creditor within 30 Days;
- 90 Or otherways to be confirmed by the Court of Session.

91 Commissi-

Parag.

- 91 Commissioners and Trustees Proceedings and Writings left with them to be recorded.
- 92 Agreement of Four-fifths of the Creditors in Number and Value to a Composition is binding upon the rest, and the Bankrupt to be allowed Possession of his Effects, and a Certificate and Discharge after the Lapse of four Months,
- 93 If above One fifth do not appear to oppose it in that Time;
- 94 And if the whole Debts do exceed 1000*l.* in which Case the Minor Part may insist for Execution of the Commission upon freeing the major Part of the Expence.
- 95 Contracts to induce Creditors to consent void.
- 96 If the Bankrupt do not discover fictitious Debts, he forfeits the Benefit of his Certificate and Discharge, and is to be deemed a fraudulent Bankrupt.
- 97 Act to be beneficially construed and extended,
- 98 And enforced by Regulations to be made by the Court of Session.

BILLS and NOTES.

- 99 **P**romissory Notes to have the same Execution and Privileges with Bills of Exchange.
- 100 Bills, Notes and Precepts to prescribe in six Years from the Date;
- 101 Or, if granted before 1st of August 1751, within six Years after that Time; excepting Bank Notes, and the Notes of the *British Linen Company*; but the Debts may be thereafter proved by the Debtors Oaths.
- 102 Inland Bills, Precepts and Notes must be protested within the three Days of Grace.
- 104 Summary Diligence to pass against the Drawers and Indorsers.
- 105 Act to continue for seven Years and to the End of the then next Session of Parliament, and no longer.

0152

