TITLE LXI.

BANKRUPTCY.

CHAPTER ONE.

COURTS OF BANKRUPTCY, THEIR JURISDICTION, ORGANIZATION, AND POWERS.

Sec.
4972. Scope of the jurisdiction of courts of bankruptcy.
4973. Authority of district courts and judges.
4974. Sessions of the district courts.
4975. Power of district courts to compel obedience.
4976. Powers of circuit judge during absence, sickness, or disability of district judge.
4977. Powers of the supreme court for the District of Columbia.
4978. Powers of the supreme courts for the Territories.
4979. Jurisdiction of actions between assignees and persons claiming adverse interest.
4980. Appeals to circuit court.
4981. How taken.
4982. How entered.
4983. Waiver of appeal.
4984. Appeal from decision rejecting claim.
4985. Costs.
4986. Power of general superintendence conferred on circuit court.
4987. Superintendence by supreme courts of Territories.
4988. Power of district judge in a district not within any organized circuit.
4989. Appeal and writ of error to Supreme Court.

Sec.
4990. Supreme Court may prescribe rules.
4991. What constitutes commencement of proceedings.
4992. Records of bankruptcy proceedings.
4993. Registers in bankruptcy.
4994. Who are elegible.
4995. Qualification.
4996. Restrictions upon registers.
4997. Removal of registers.
4998. Powers of registers.
4999. Limitations upon powers of registers.
5000. Registers to keep memoranda of proceedings.
5001. Registers to attend at place directed by judge.
5002. Power to summon witnesses.
5003. Mode of taking evidence.
5004. Depositions and acts to be reduced to writing.
5005. Witnesses must attend.
5006. Contempt before register.
5007. Registers may act for each other.
5008. Payment of fees of registers.
5009. Contested issues to be decided by judge.
5010. Certificates of matters to be decided by judge.
5011. Appeal from judge's decision upon questions submitted.
5012. Penalties against officers.
5013. Meaning of terms and computation of time.

SEC. 4972. The jurisdiction conferred upon the district courts as courts of bankruptcy shall extend:

First. To all cases and controversies arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy.

Second. To the collection of all the assets of the bankrupt.

Third. To the ascertainment and liquidation of the liens and other specific claims thereon.

Fourth. To the adjustment of the various priorities and conflicting interests of all parties.

Fifth. To the marshaling and disposition of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors.

Sixth. To all acts, matters, and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy.

Scope of the jurisdiction of courts of bankruptcy.

2 March, 1867, c. 176, s. 1, v. 14, p. 517.

Markson *vs.* Heaney, 1 Dill., 497; *In re* Wilbur, 1 Ben., 527; *In re* Bernstein, 2 Ben., 44; *In re* Schnepf, 2 Ben., 72; *In re* Olcott, 2 Ben., 443; *In re* Richardson, 2 Ben., 517; *In re* Schwab, 3 Ben., 231; *In re* Davidson, 4 Ben., 10; Johnson *vs.* Bishop, 1 Wool., 324; Sherman *vs.* Bingham, 5 Bank. Reg., 34; Alden *vs.* Boston, &c., R. R., 5 Bank. Reg., 230; Sweatt *vs.* Railroad, 5 Bank. Reg., 234; *In re* Iron Mountain Com., 9 Blatch., 320; *In re* Sacchi, 10 Blatch., 29.

Authority of district courts and judges.

2 March, 1867, c. 176, s. 1, v. 14, p. 517.

Smith *vs.* Mason, 14 Wall., 419.

SEC. 4973. The district courts shall be always open for the transaction of business in the exercise of their jurisdiction as courts of bankruptcy; and their powers and jurisdiction as such courts shall be exercised as well in vacation as in term time; and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority, as when sitting in court.

Sessions of the district courts.

2 March, 1867, c. 176, s. 1, v. 14, p. 517.

SEC. 4974. A district court may sit for the transaction of business in bankruptcy, at any place within the district, of which place and of the time of commencing session the court shall have given notice, as well as at the places designated by law for holding sessions of such court.

Power of district courts to compel obedience.

Ibid.

In re Hirsch, 2 Ben., 493.

SEC. 4975. The district courts as courts of bankruptcy shall have full authority to compel obedience to all orders and decrees passed by them in bankruptcy, by process of contempt and other remedial process, to the same extent that the circuit courts now have in any suit pending therein in equity.

Powers of circuit judge during absence, sickness, or disability of district judge.

30 June, 1870, c. 177, s. 2, v. 16, p. 174.

SEC. 4976. In case of a vacancy in the office of district judge in any district, or in case any district judge shall, from sickness, absence, or other disability, be unable to act, the circuit judge of the circuit in which such district is included may make, during such disability or vacancy, all necessary rules and orders preparatory to the final hearing of all causes in bankruptcy, and cause the same to be entered or issued, as the case may require, by the clerk of the district court.

Powers of the supreme court for the District of Columbia.

SEC. 4977. The same jurisdiction, power, and authority which are hereby conferred upon the district courts in cases in bankruptcy are also conferred upon the supreme court of the District of Columbia, when the bankrupt resides in that District.

2 March, 1867, c. 176, s. 49, v. 14, p. 541.

Powers of the supreme courts for the Territories.

Ibid.

30 June, 1870, c. 177, s. 1, v. 16, p. 173.

SEC. 4978. The same jurisdiction, power, and authority which are hereby conferred upon the district courts in cases in bankruptcy are also conferred upon the supreme courts of the several Territories when the bankrupt resides in either of the Territories. This jurisdiction may be exercised, upon petitions regularly filed in such courts, by either of the justices thereof while holding the district court in the district in which the petitioner or the alleged bankrupt resides.

Jurisdiction of actions between assignees and persons claiming adverse interests.

2 March, 1867, c. 176, s. 2, v. 14, p. 518.

8 June, 1872, c. 340, v. 17, p. 334.

SEC. 4979. The several circuit courts shall have within each district concurrent jurisdiction with the district court, whether the powers and jurisdiction of a circuit court have been conferred on such district court or not, of all suits at law or in equity brought by an assignee in bankruptcy against any person claiming an adverse interest, or by any such person against an assignee, touching any property or rights of the bankrupt transferable to or vested in such assignee.

Smith *vs.* Mason, 14 Wall., 419; Marshall *vs.* Knox, 16 Wall., 551; *In re* Masterson, 4 Bank. Reg., 180; Barston *vs.* Peckham, 5 Bank. Reg., 72.

Appeals to circuit court.

2 March, 1867, c. 176, s. 8, v. 14, p. 520.

SEC. 4980. Appeals may be taken from the district to the circuit courts in all cases in equity, and writs of error from the circuit courts to the district courts may be allowed in cases at law, arising under or authorized by this Title, when the debt or damages claimed amount to more than five hundred dollars; and any supposed creditor, whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim, may appeal from the decision of the district court to the circuit court for the same district.

Morgan *vs.* Thornhill, 11 Wall., 65; Hall *vs.* Allen, 12 Wall., 452; Insurance Co. *vs.* Comstock, 16 Wall., 258.

How taken.

2 March, 1867, c. 176, s. 8, v. 14, p. 520.

In re Coleman, 7 Blatch., 192; Rud-

SEC. 4981. No appeal shall be allowed in any case from the district to the circuit court unless it is claimed, and notice given thereof to the clerk of the district court, to be entered with the record of the proceedings, and also to the assignee or creditor, as the case may be, or to the defeated party in equity, within ten days after the entry of the decree or decision appealed from; nor unless the appellant at the time of claim-

ing the same shall give bond in the manner required in cases of appeals in suits in equity; nor shall any writ of error be allowed unless the party claiming it shall comply with the provisions of law regulating the granting of such writs.

dick *vs.* Billings, 1 Wool., 330; *In re* York and Hoover, 4 Bank. Reg., 156; *In re* Place *et al.*, 4 Bank. Reg., 178; Baldwin *vs.* Rapplee, 5 Bank. Reg., 19.

How entered.

SEC. 4982. Such appeal shall be entered at the term of the circuit court which shall be held within the district next after the expiration of ten days from the time of claiming the same.

2 March, 1867, c. 176, s. 8, v. 14, p. 520.

Baldwin *vs.* Rapplee, 5 Bank. Reg., 19.

Waiver of appeal.

SEC. 4983. If the appellant, in writing, waives his appeal before any decision thereon, proceedings may be had in the district court as if no appeal had been taken.

2 March, 1867, c. 176, s. 8, v. 14, p. 520.

Appeal from decision rejecting claim.

SEC. 4984. A supposed creditor who takes an appeal to the circuit court from the decision of the district court, rejecting his claim in whole or in part, shall, upon entering his appeal in the circuit court, file in the clerk's office thereof a statement in writing of his claim, setting forth the same, substantially, as in a declaration for the same cause of action at law, and the assignee shall plead or answer thereto in like manner, and like proceeding shall thereupon be had in the pleadings, trial, and determination of the cause, as in actions at law commenced and prosecuted, in the usual manner, in the courts of the United States, except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor.

Ibid., s. 24, p. 528.

Costs.

SEC. 4985. The final judgment of the circuit court, rendered upon any appeal provided for in the preceding section, shall be conclusive, and the list of debts shall, if necessary, be altered to conform thereto. The party prevailing in the suit shall be entitled to costs against the adverse party, to be taxed and recovered as in suits at law; if recovered against the assignee, they shall be allowed out of the estate.

2 March, 1867, c. 176, s. 24, v. 14, p. 528.

Power of general superintendence conferred on circuit court.

SEC. 4986. The circuit court for each district shall have a general superintendence and jurisdiction of all cases and questions arising in the district court for such district when sitting as a court of bankruptcy, whether the powers and jurisdiction of a circuit court have been conferred on such district court or not; and except when special provision is otherwise made, may, upon bill, petition, or other proper process, of any party aggrieved, hear and determine the case as in a court of equity; and the powers and jurisdiction hereby granted may be exercised either by the court in term time, or, in vacation, by the circuit justice or by the circuit judge of the circuit.

Ibid., s. 2, p. 518.

8 June, 1872, c. 340, v. 17, p. 334.

Morgan *vs.* Thornhill, 11 Wall., 65; Hall *vs.* Allen, 12 Wall., 452; Mead *vs.* Thompson, 15 Wall., 635; *In re* Binninger, 7 Blatch., 159; *In re* Binninger, 7 Blatch., 165; *In re* Hall, 1 Dill., 586; Ruddick *vs.* Billings, 1 Wool., 330; Littlefield *vs.* Canal Co., 4 Bank. Reg., 77; *In re* Place et al., 4 Bank. Reg., 178.

Superintendence by supreme courts of Territories.

SEC. 4987. The several supreme courts of the Territories shall have the same general superintendence and jurisdiction over the acts and decisions of the justices thereof in cases of bankruptcy as is conferred on the circuit courts over proceedings in the district courts.

30 June, 1870, c. 177, s. 1, v. 16, p. 173.

Power of district judge in a district not within any organized circuit.

SEC. 4988. In districts which are not within any organized circuit of the United States, the power and jurisdiction of a circuit court in bankruptcy may be exercised by the district judge.

2 March, 1867, c. 176, s. 49, v. 14, p. 541.

Appeal and writ of error to Supreme Court.

SEC. 4989. No appeal or writ of error shall be allowed in any case arising under this Title from the circuit courts to the Supreme Court, unless the matter in dispute in such case exceeds two thousand dollars.

Ibid., s. 9, p. 520.

Morgan *vs.* Thornhill, 11 Wall., 65; Hall *vs.* Allen, 12 Wall., 452; Smith *vs.* Mason, 14 Wall., 419; Insurance Com. *vs.* Comstock, 16 Wall., 258; Thornhill *vs.* Bank of Louisiana, 5 Bank. Reg., 377.

Supreme Court may prescribe rules.

2 March, 1867, c. 176, s. 10, v. 14, p. 521.

In re Robinson, 2 Ben., 145.

SEC. 4990. The general orders in bankruptcy heretofore adopted by the justices of the Supreme Court, as now existing, may be followed in proceedings under this Title; and the justices may, from time to time, subject to the provisions of this Title, rescind or vary any of those general orders, and may frame, rescind, or vary other general orders, for the following purposes:

First. For regulating the practice and procedure of the district courts in bankruptcy, and the forms of petitions, orders, and other proceedings to be used in such courts in all matters under this Title.

Second. For regulating the duties of the various officers of such courts.

Third. For regulating the fees payable and the charges and costs to be allowed, except such as are established by this Title or by law, with respect to all proceedings in bankruptcy before such courts, not exceeding the rate of fees now allowed by law for similar services in other proceedings.

Fourth. For regulating the practice and procedure upon appeals.

Fifth. For regulating the filing, custody, and inspection of records.

Sixth. And generally for carrying the provisions of this Title into effect.

All such general orders shall from time to time be reported to Congress, with such suggestions as the justices may think proper.

What constitutes commencement of proceedings.

2 March, 1867, c. 176, s. 38, v. 14, p. 535.

In re Patterson, 1 Ben., 508.

SEC. 4991. The filing of the petition for an adjudication in bankruptcy, either by a debtor in his own behalf, or by any creditor against a debtor, shall be deemed to be the commencement of proceedings in bankruptcy.

Records of bankruptcy proceedings.

2 March, 1867, c. 176, s. 38, v. 14, p. 535.

SEC. 4992. The proceedings in all cases of bankruptcy shall be deemed matters of record, but the same shall not be required to be recorded at large, but shall be carefully filed, kept, and numbered in the office of the clerk of the court, and a docket only, or short memorandum thereof, kept in books to be provided for that purpose, which shall be open to public inspection. Copies of such records, duly certified under the seal of the court, shall in all cases be presumptive evidence of the facts therein stated.

Registers in bankruptcy.

2 March, 1867, c. 176, s. 3, v. 14, p. 518.

SEC. 4993. Each district judge shall appoint, upon the nomination and recommendation of the Chief Justice of the Supreme Court, one or more registers in bankruptcy, when any vacancy occurs in such office, to assist him in the performance of his duties, under this Title, unless he shall deem the continuance of the particular office unnecessary.

Who are eligible.

Ibid.

SEC. 4994. No person shall be eligible for appointment as register in bankruptcy, unless he is a counselor of the district court for the district in which he is appointed, or of some one of the courts of record of the State in which he resides.

Qualification.

2 March, 1867, c. 176, s. 3, v. 14, p. 518.

SEC. 4995. Before entering upon the duties of his office, every person appointed a register in bankruptcy shall give a bond to the United States, for the faithful discharge of the duties of his office, in a sum not less than one thousand dollars, to be fixed by the district judge, with sureties satisfactory to such judge; and he shall, in open court, take and subscribe the oath prescribed in section seventeen hundred and fifty-six, Title, "PROVISIONS APPLICABLE TO SEVERAL CLASSES OF OFFICERS," and also an oath that he will not, during his continuance in office, be, directly or indirectly, interested in or benefited by the fees or emoluments arising from any suit or matter pending in bankruptcy, in either the district or circuit court in his district.

Restrictions upon registers.

Ibid., s. 4, p. 519.

SEC. 4996. No register shall be of counsel or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, nor in an appeal therefrom; nor shall he be executor, administrator, guardian, commissioner, appraiser, divider, or assignee of or upon any estate within the jurisdiction of either of those courts as courts of bankruptcy, nor shall he be interested in the fees or emoluments arising from any such trusts.

Removal of registers.

SEC. 4997. Registers are subject to removal from office by the judge of the district court.

Ibid., s. 5.

Powers of registers.

SEC. 4998. Every register in bankruptcy has power:

First. To make adjudication of bankruptcy in cases unopposed.

Second. To receive the surrender of any bankrupt.

Ibid., s. 4.

Third. To administer oaths in all proceedings before him.

Fourth. To hold and preside at meetings of creditors.

Fifth. To take proof of debts.

Sixth. To make all computations of dividends, and all orders of distribution.

In re Hasbrouck, 1 Ben., 402; *In re* Orne, 1 Ben., 420; *In re* Adams, 3 Ben., 7; *In re* Hyman, 3 Ben., 28; *In re* Speyer, 6 Bank. Reg., 255.

Seventh. To furnish the assignee with a certified copy of such orders, and of the schedules of creditors and assets filed in each case.

Eighth. To audit and pass accounts of assignees.

Ninth. To grant protection.

Tenth. To pass the last examination of any bankrupt in cases whenever the assignee or a creditor do not oppose.

Eleventh. To sit in chambers and dispatch there such part of the administrative business of the court and such uncontested matters as shall be defined in general rules and orders, or as the district judge shall in any particular matter direct.

Limitations upon powers of registers.

SEC. 4999. No register shall have power to commit for contempt, or to make adjudication of bankruptcy when opposed; or to decide upon the allowance or suspension of an order of discharge.

2 March, 1867, c. 176, s. 4, v. 14, p. 519.

Registers to keep memoranda of proceedings.

SEC. 5000. Every register shall make short memoranda of his proceedings in each case in which he acts, in a docket to be kept by him for that purpose, and shall forthwith, as the proceedings are taken, forward to the clerk of the district court a certified copy of these memoranda, which shall be entered by the clerk in the proper minute-book to be kept in his office.

Ibid.

Registers to attend at place directed by judge.

SEC. 5001. The judge of the district court may direct a register to attend at any place within the district for the purpose of hearing such voluntary applications under this Title as may not be opposed, of attending any meeting of creditors, or receiving any proof of debts, and, generally, for the prosecution of any proceedings under this Title.

Ibid., s. 5.

Power to summon witnesses.

SEC. 5002. Every register, so acting, shall have and exercise all powers, except the power of commitment, vested in the district court for the summoning and examination of persons or witnesses, and for requiring the production of books, papers, and documents.

Ibid.

Mode of Taking evidence.

SEC. 5003. Evidence or examination in any of the proceedings under this Title may be taken before the court, or a register in bankruptcy, viva voce or in writing, before a commissioner of the circuit court, or by affidavit, or on commission, and the court may direct a reference to a register in bankruptcy, or other suitable person, to take and certify such examination, and may compel the attendance of witnesses, the production of books and papers, and the giving of testimony in the same manner as in suits in equity in the circuit court.

Ibid., s. 38, p. 535.

Lawrence *vs.* Graves, 5 Bank. Reg., 279.

Depositions and acts to be reduced to writing.

SEC. 5004. All depositions of persons and witnesses taken before a register, and all acts done by him, shall be reduced to writing, and be signed by him, and shall be filed in the clerk's office as part of the proceedings. He shall have power to administer oaths in all cases and in relation to all matters in which oaths may be administered by commissioners of circuit courts.

Ibid., s. 5, p. 519.

Witnesses must attend.

SEC. 5005. Parties and witnesses summoned before a register shall be bound to attend in pursuance of such summons at the place and time designated therein, and shall be entitled to protection, and be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpœna.

2 March, 1867, c. 176, s. 7, v. 14, p. 520.

In re Fredenburg, 2 Ben., 133; *In re* Woolford 4 Ben., 9; Tenny *et al. vs.* Collins, 4 Bank. Reg., 156.

Contempt before register.

Ibid.

SEC. 5006. Whenever any person examined before a register refuses or declines to answer, or to swear to or sign his examination when taken, the register shall refer the matter to the judge, who shall have power to order the person so acting to pay the costs thereby occasioned, and to punish him for contempt, if such person be compellable by law to answer such question or to sign such examination.

Registers may act for each other.

Ibid., s. 4, p. 519.

SEC. 5007. Any register may act in the place of any other register appointed by and for the same district court.

Payment of fees of registers.

Ibid.

SEC. 5008. The fees of registers, as established by law or by rules and orders framed pursuant to law, shall be paid to them by the parties for whom the services may be rendered.

In re MacIntire, 1 Ben., 277.

Contested issues to be decided by judge.

2 March, 1867, c. 176, s. 4, v. 14, p. 519.

SEC. 5009. In all matters where an issue of fact or of law is raised and contested by any party to the proceedings before any register, he shall cause the question or issue to be stated by the opposing parties in writing, and he shall adjourn the same into court for decision by the judge.

In re Patterson, 1 Ben., 448; *In re* Levy, 1 Ben., 496; *In re* Watts., 3 Ben., 166.

Certificates of matters to be decided by judge.

2 March, 1867, c. 176, s. 6, v. 14, p. 520

In re Pulver, 1 Ben., 381; *In re* Levy, 1 Ben., 496; *In re* Haskell, 4 Bank. Reg., 181.

SEC. 5010. Any party shall, during the proceedings before a register, be at liberty to take the opinion of the district judge upon any point or matter arising in the course of such proceedings, or upon the result of such proceedings, which shall be stated by the register in the shape of a short certificate to the judge, who shall sign the same if he approve thereof; and such certificate, so signed, shall be binding on all the parties to the proceeding; but every such certificate may be discharged or varied by the judge at chambers or in open court.

Appeal from judge's decision upon questions submitted.

2 March, 1867, c. 176, s. 6, v. 14, p. 520.

SEC. 5011. In any proceedings within the jurisdiction of the court, under this Title, the parties concerned, or submitting to such jurisdiction, may at any stage of the proceedings, by consent, state any questions in a special case for the opinion of the court, and the judgment of the court shall be final unless it is agreed and stated in the special case that either party may appeal, if, in such case, an appeal is allowed by this Title. The parties may also, if they think fit, agree, that upon the questions raised by such special case being finally decided, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, or any property, or the amount of any disputed debt or claim, shall be paid, delivered, or transferred by one of such parties to the other of them, either with or without costs.

Penalties against officers.

2 March, 1867, c. 176, s. 45, v. 14, p. 539.

SEC. 5012. If any judge, register, clerk, marshal, messenger, assignee, or any other officer of the several courts of bankruptcy shall, for anything done or pretended to be done under this Title, or under color of doing anything thereunder, willfully demand or take, or appoint or allow any person whatever to take for him or on his account, or for or on account of any other person, or in trust for him or for any other person, any fee, emolument, gratuity, sum of money, or anything of value whatever, other than is allowed by law, such person shall forfeit and pay a sum not less than three hundred dollars and not more than five hundred dollars, and be imprisoned not exceeding three years.

Meaning of terms and computation of time.

2 March, 1867, c. 176, s. 48, v. 14, p. 540.

SEC. 5013. In this Title the word "assignee," and the word "creditor," shall include the plural also; and the word "messenger" shall include his assistant or assistants, except in the provision for the fees of that officer. The word "marshal" shall include the marshal's deputies; the word "person" shall also include "corporation;" and the word "oath" shall include "affirmation." And in all cases in which any particular number of days is prescribed by this Title, or shall be mentioned in any rule or order of court or general order which shall at any time be made under this Title, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day,

unless the last day shall fall on a Sunday, Christmas day, or on any day appointed by the President of the United States as a day of public fast or thanksgiving, or on the Fourth of July, in which case the time shall be reckoned exclusive of that day also.

CHAPTER TWO.

VOLUNTARY BANKRUPTCY.

Sec.
5014. Petition and schedule.
5015. Schedule of debts.
5016. Inventory of property.
5017. Oath to petition and schedule.
5018. Oath of allegiance.
5019. Warrant to marshal.
5020. Amendment of schedule.

Petition and schedules.

SEC. 5014. If any person residing within the jurisdiction of the United States, and owing debts provable in bankruptcy exceeding the amount of three hundred dollars, shall apply by petition addressed to the judge of the judicial district in which such debtor has resided or carried on business for the six months next preceding the time of filing such petition, or for the longest period during such six months, setting forth his place of residence, his inability to pay all his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors, and his desire to obtain a discharge from his debts, and shall annex to his petition a schedule and inventory, in compliance with the next two sections, the filing of such petition shall be an act of bankruptcy, and such petitioner shall be adjudged a bankrupt.

2 March, 1867, c. 176,s.11,v.14,p.521.

In re Magie, 2 Ben., 369; *In re* Wyelarski, 4 Bank. Reg., 130; *In re* Fogerty and Gerrity, 4 Bank. Reg., 148.

Schedule of debts.

SEC. 5015. The said schedule must contain a full and true statement of all his debts, exhibiting, as far as possible, to whom each debt is due, the place of residence of each creditor, if known to the debtor, and if not known the fact that it is not known; also the sum due to each creditor; the nature of each debt or demand, whether founded on written security, obligation, or contract, or otherwise; the true cause and consideration of the indebtedness in each case, and the place where such indebtedness accrued; and also a statement of any existing mortgage, pledge, lien, judgment, or collateral or other security given for the payment of the same.

2 March, 1867, c. 176,s.11,v.14,p.521.

In re Hill, 1 Ben., 321; *In re* Pulver, 1 Ben., 381; *In re* Orne, 1 Ben., 420.

Inventory of property.

SEC. 5016. The said inventory must contain an accurate statement of all the petitioner's estate, both real and personal, assignable under this Title, describing the same and stating where it is situated, and whether there are any, and, if so, what incumbrances thereon.

2 March, 1867, c. 176,s.11,v.14,p.521.

In re Hill, 1 Ben., 321; *In re* Sallee, 2 Bank. Reg., 78.

Oath to petition and schedule.

SEC. 5017. The schedule and inventory must be verified by the oath of the petitioner, which may be taken either before the district judge, or before a register, or before a commissioner of the circuit court.

2 March, 1867, c. 176,s.11,v.14,p.521.

Oath of allegiance.

SEC. 5018. Every citizen of the United States petitioning to be declared bankrupt shall, on filing his petition, and before any proceedings thereon, take and subscribe an oath of allegiance and fidelity to the United States, which oath may be taken before either of the officers mentioned in the preceding section, and shall be filed and recorded with the proceedings in bankruptcy.

Ibid.

Warrant to marshal.

SEC. 5019. Upon the filing of such petition, schedule, and inventory, the judge or register shall forthwith, if he is satisfied that the debts due from the petitioner exceed three hundred dollars, issue a warrant, to be signed by such judge or register, directed to the marshal for the district, authorizing him forthwith, as messenger, to publish notices in such newspapers as the warrant specifies; to serve written or printed notice, by mail or personally, on all creditors upon the schedule filed with the debtor's petition, or whose names may be given to him in addition by

Ibid.

the debtor; and to give such personal or other notice to any persons concerned as the warrant specifies.

Amendment of schedule.

2 March, 1867, c. 176, s.26, v.4, p.529.

SEC. 5020. Every bankrupt shall be at liberty, from to time, upon oath, to amend and correct his schedule of creditors and property, so that the same shall conform to the facts.

In re Morford, 1 Ben., 264; *In re* Orne, 1 Ben., 420; *In re* Watts, 3 Ben., 166; *In re* Ratcliffe, 1 Bank. Reg., 98.

CHAPTER THREE.

INVOLUNTARY BANKRUPTCY.

Sec.
5021. Acts of bankruptcy.
5022. Prior acts of bankruptcy.
5023. Who may file petition.
5024. Proceedings after filing petition.
5025. Service of order to show cause.
5026. Proceedings on return day.
5027. Costs at trial.
5028. Warrant.
5029. Distribution of property of debtor.
5030. Schedule and inventory.
5031. Proceedings when debtor is absent.

Acts of bankruptcy.

2 March, 1867, c. 176, s.39, v.14, p.536.

SEC. 5021. Any person residing within the jurisdiction of the United States and owing debts provable in bankruptcy exceeding the amount of three hundred dollars:

First. Who departs from the State, district, or Territory of which he is an inhabitant with intent to defraud his creditors, or, being absent, remains absent with such intent; or,

Second. Who conceals himself to avoid the service of legal process in any action for the recovery of a debt or demand provable in bankruptcy; or,

Third. Who conceals or removes any of his property to avoid its being attached, taken, or sequestered on legal process; or,

Fourth. Who makes any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors; or,

Fifth. Who has been arrested and held in custody under or by virtue of mesne process or execution, issued out of any court of any State, district, or Territory within which such debtor resides or has property, founded upon a demand in its nature provable against a bankrupt's estate, and for a sum exceeding one hundred dollars, if such process is remaining in force and not discharged by payment, or in some other manner provided by the law of such State, district, or Territory applicable thereto, for a period of seven days; or,

In re Marvin, 1 Dill., 178; Wright *vs.* Filley, 1 Dill., 171; *In re* Shick, 2 Ben., 5; *In re* Black and Secor, 2 Ben., 196; *In re* Dunham and Orr, 2 Ben., 488; *In re* Dibblee *et al.*, 3 Ben., 283; *In re* Patent Bolt Co., 3 Ben., 369; *In re* Wynne, 4 Bank. Reg., 5; *In re* Leighton, 5 Bank. Reg., 95; *In re* Massachusetts Brick Co., 5 Bank. Reg., 408; *In re* Merchants' Insurance Co., 6 Bank. Reg., 43; *In re* Independent Insurance Co., 6 Bank. Reg., 169.

Sixth. Who has been actually imprisoned for more than seven days in a civil action founded on contract, for the sum of one hundred dollars or upward; or,

Seventh. Who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, makes any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, or gives any warrant to confess judgment; or procures or suffers his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act; or,

Eighth. Who, being a banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment, or who has stopped or suspended and not resumed payment of his commercial paper, within a period of fourteen days, shall be deemed to have committed an act of bankruptcy, and to have become liable to be adjudged a bankrupt. And if such person shall be adjudged a bankrupt, the assignee may re-

cover back the money or other property so paid, conveyed, sold, assigned, or transferred contrary to this Title, provided the person receiving such payment or conveyance had reasonable cause to believe that a fraud on this Title was intended, and that the debtor was insolvent, and such creditor shall not be allowed to prove his debt in bankruptcy.

Prior acts of bankruptcy.

SEC. 5022. Any act of bankruptcy committed since the second day of March, eighteen hundred and sixty-seven, may be the foundation of an adjudication of involuntary bankruptcy, upon a petition filed within the time prescribed by law, equally with one committed hereafter.

Who may file petition.

2 March, 1867, c. 176,s.39,v.14,p.536.

SEC. 5023. An adjudication of bankruptcy may be made on the petition of one or more creditors, the aggregate of whose provable debts amounts to at least two hundred and fifty dollars, provided such petition is brought within six months after the act of bankruptcy shall have been committed.

In re Linn *et al.*, 4 Bank. Reg., 12; *In re* Skelley, 5 Bank. Reg., 214; *In re* Hunt, 5 Bank. Reg., 433; *In re* Stansell, 6 Bank. Reg., 183.

Proceedings after filing the petition.

2 March, 1867, c. 176,s.40,v.14,p.536.

In re Metzler *et al.*, 1 Ben., 356; *In re* Cone *et al.*, 2 Ben., 502; National Bank *vs.* Iron Co., 5 Bank. Reg., 491.

SEC. 5024. Upon the filing of the petition authorized by the preceding section, if it appears that sufficient grounds exist therefor, the court shall direct the entry of an order requiring the debtor to appear and show cause, at a court of bankruptcy to be holden at a time to be specified in the order, not less than five days from the service thereof, why the prayer of the petition should not be granted. The court may also, by injunction, restrain the debtor, and any other person, in the mean time, from making any transfer or disposition of any part of the debtor's property not excepted by this Title from the operation thereof and from any interference therewith; and if it shall appear that there is probable cause for believing that the debtor is about to leave the district, or to remove or conceal his goods and chattels or his evidence of property, or to make any fraudulent conveyance or disposition thereof, the court may issue a warrant to the marshal of the district, commanding him to arrest and safely keep the alleged debtor, unless he shall give bail to the satisfaction of the court for his appearance from time to time, as required by the court, until its decision upon the petition, or until its further order, and forthwith to take possession provisionally of all the property and effects of the debtor, and safely keep the same until the further order of the court.

Service of order to show cause.

2 March, 1867, c. 176,s.40,v.14,p.536.

In re Washington, &c., Ins.Co.,2 Ben., 292; Alabama, &c., R. R. Co., *vs.* Jones, 5 Bank. Reg., 97.

SEC. 5025. A copy of the petition and order to show cause shall be served on the debtor by delivering the same to him personally, or leaving the same at his last or usual place of abode; or, if the debtor cannot be found, and his place of residence cannot be ascertained, service shall be made by publication in such manner as the judge may direct. No further proceedings, unless the debtor appears and consents thereto, shall be had until proof has been given, to the satisfaction of the court, of such service or publication; and if such proof is not given on the return day of such order, the proceedings shall be adjourned and an order made that the notice be forthwith so served or published.

Proceedings on return day.

2 March, 1867, c. 176, ss. 41, 42, v. 14, p. 537.

Insurance Com. *vs.* Comstock, 16 Wall., 258; *In re* Pupke, 1 Ben., 342; *In re* Weyhausen *et al.*, 1 Ben., 397; *In re* Hoppock, 2 Ben., 478; *In re* Ulrich *et al.*, 3 Ben., 355.

SEC. 5026. On such return day or adjourned day, if the notice has been duly served or published, or is waived by the appearance and consent of the debtor, the court shall proceed summarily to hear the allegations of the petitioner and debtor, and may adjourn the proceedings from time to time, on good cause shown, and shall, if the debtor on the same day so demands, in writing, order a trial by jury at the first term of the court at which a jury shall be in attendance, to ascertain the fact of the alleged bankruptcy. If the petitioning creditor does not appear and proceed on the return day, or adjourned day, the court may upon the petition of any other creditor, to the required amount, proceed to adjudicate on such petition, without requiring a new service or publication of notice to the debtor.

Costs at trial.

2 March, 1867, c. 176, s. 41, v. 14, p. 537.

SEC. 5027. If upon such hearing or trial the debtor proves to the satisfaction of the court or of the jury, as the case may be, that the facts set forth in the petition are not true, or that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens was the sole ground of the proceeding, the proceedings shall be dismissed and the respondent shall recover costs.

Warrant.

2 March, 1867, c. 176, s. 42, v. 14, p. 537.

SEC. 5028. If upon the hearing or trial the facts set forth in the petition are found to be true, or if upon default made by the debtor to appear pursuant to the order, due proof of service thereof is made, the court shall adjudge the debtor to be a bankrupt, and shall forthwith issue a warrant to take possession of his estate.

Distribution of property of debtor.

2 March, 1867, c. 176, s. 42, v. 14, p. 537.

SEC. 5029. The warrant shall be directed, and the property of the debtor shall be taken thereon, and shall be assigned and distributed in the same manner and with similar proceedings to those hereinbefore provided for the taking possession, assignment, and distribution of the property of the debtor upon his own petition.

Schedule and inventory.

Ibid.

SEC. 5030. The order of adjudication of bankruptcy shall require the bankrupt forthwith, or within such number of days not exceeding five after the date of the order or notice thereof, as shall by the order be prescribed, to make and deliver, or transmit by mail, post-paid, to the messenger, a schedule of the creditors and an inventory of his estate in the form and verified in the manner required of a petitioning debtor.

Proceedings when debtor is absent.

Ibid.

SEC. 5031. If the debtor has failed to appear in person, or by attorney, a certified copy of the adjudication shall be forthwith served on him by delivery or publication in the manner provided for the service of the order to show cause; and if the bankrupt is absent or cannot be found, such schedule and inventory shall be prepared by the messenger and the assignee from the best information they can obtain.

CHAPTER FOUR.

PROCEEDINGS TO REALIZE THE ESTATE FOR CREDITORS.

Sec.
5032. Contents of notice to creditors.
5033. Marshal's return.
5034. Choice of assignee.
5035. Who are disqualified.
5036. Bond of assignee.
5037. Assignee liable for contempt.
5038. Resignation of the trust.
5039. Removal of assignee.
5040. Effect of resignation or removal.
5041. Filling vacancies.
5042. Vesting estate in remaining assignee.
5043. Former assignee to execute instruments.
5044. Assignment.
5045. Exemptions.
5046. What property vests in assignee.
5047. Right of action of assignee.
5048. No abatement by death or removal.
5049. Copy of assignment conclusive evidence of title.
5050. Bankrupt's books of account.
5051. Debtor must execute instruments.
5052. Chattel-mortgages.
5053. Trust property.
5054. Notice of appointment of assignee and record of assignment.
5055. Assignee to demand and receive all assigned estate.
5056. Notice prior to suit against assignee.
5057. Time of commencing suits.
5058. Assignee's accounts of money received.
5059. Assignee to keep money and goods separate.
5060. Temporary investment of money.
5061. Arbitration.
5062. Assignee to sell property.
5063. Sale of disputed property.
5064. Sale of uncollectible assets.
5065. Sale of perishable property.
5066. Discharge of liens.
5067. Provable debts.
5068. Contingent debts.
5069. Liability of bankrupt as surety.
5070. Sureties for bankrupt.
5071. Debts falling due at stated periods.
5072. No other debts provable.
5073. Set-offs.
5074. Distinct liabilities.
5075. Secured debts.
5076. Proof of debt.
5077. Creditor's oath.
5078. Oath, by whom made.
5079. Oath, before whom taken; proof sent to register.
5080. Proof to be sent to assignee.
5081. Examination by court into proof of claims.
5082. Withdrawal of papers.
5083. Postponement of proof.
5084. Surrender of preferences.
5085. Allowance and list of debts.
5086. Examination of bankrupt.
5087. Examination of witness.
5088. Examination of bankrupt's wife.

Sec.
5089. Examination of imprisoned or disabled bankrupt.
5090. No abatement upon death of debtor.
5091. Distribution of bankrupt's estate.
5092. Second meeting of creditors.
5093. Third meeting of creditors.
5094. Notice of meetings.
5095. Creditor may act by attorney.
5096. Settlement of assignee's account.
5097. Dividend not to be disturbed.
5098. Omission of assignee to call meetings.
5099. Compensation of assignee.
5100. Commissions.
5101. Debts entitled to priority.
5102. Notice of dividend to each creditor.
5103. Settlement of bankrupt estates by trustees.

Contents of notice to creditors.

SEC. 5032. The notice to creditors under warrant shall state:

First. That a warrant in bankruptcy has been issued against the estate of the debtor.

2 March, 1867, c. 176, s. 11, v. 14, p. 521.

Second. That the payment of any debts and the delivery of any property belonging to such debtor to him or for his use, and the transfer of any property by him, are forbidden by law.

In re Hill, 1 Ben., 321; *In re* Heys, 1 Ben., 333; *In re* Pulver, 1 Ben., 381.

Third. That a meeting of the creditors of the debtor, giving the names, residences, and amounts, so far as known, to prove their debts and choose one or more assignees of his estate, will be held at a court of bankruptcy, to be holden at a time and place designated in the warrant, not less than ten nor more than ninety days after the issuing of the same.

Marshal's return.

SEC. 5033. At the meeting held in pursuance of the notice, one of the registers of the court shall preside, and the messenger shall make return of the warrant and of his doings thereon; and if it appears that the notice to the creditors has not been given as required in the warrant, the meeting shall forthwith be adjourned, and a new notice given as required.

2 March, 1867, c. 176, s. 12, v. 14, p. 522.

In re Hill, 1 Ben., 321; *In re* Devlin, 1 Ben., 335; *In re* Pulver, 1 Ben., 381.

Choice of assignee.

SEC. 5034. The creditors shall, at the first meeting held after due notice from the messenger in presence of a register designated by the court, choose one or more assignees of the estate of the debtor; the choice to be made by the greater part in value and in number of the creditors who have proved their debts. If no choice is made by the creditors at the meeting, the judge, or if there be no opposing interest, the register, shall appoint one or more assignees. If an assignee, so chosen or appointed, fails within five days to express in writing his acceptance of the trust, the judge or register may fill the vacancy. All elections or appointments of assignees shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient, he may appoint additional assignees, or order a new election.

2 March, 1867, c. 176, s. 13, v. 14, p. 522.

In re Hill, 1 Ben., 321; *In re* Devlin, 1 Ben., 335, (338); *In re* Bliss, 1 Ben., 407; *In re* Smith, 2 Ben., 113; *In re* A. B., 3 Ben., 66; *In re* Phelps, Caldwell & Co., 1 Bank. Reg., 139; *In re* Scheiffer & Garrett, 2 Bank. Reg., 179; *In re* Zinn, 4 Bank. Reg., 145; *In re* Boston, &c., R. R., 5 Bank. Reg., 233.

Who are disqualified.

SEC. 5035. No person who has received any preference contrary to the provisions of this Title shall vote for or be eligible as assignee; but no title to property, real or personal, sold, transferred, or conveyed by an assignee, shall be affected or impaired by reason of his ineligibility.

2 March, 1867, c. 176, s. 18, v. 14, p. 525.

In re Powell, 2 Bank. Reg., 17; *In re* Barrett, 2 Bank. Reg., 165; *In re* Clairmont, 1 Bank. Reg., 42.

Bond of assignee.

SEC. 5036. The district judge at any time may, and upon the request in writing of any creditor who has proved his claim shall, require the assignee to give good and sufficient bond to the United States, with a condition for the faithful performance and discharge of his duties; the bond shall be approved by the judge or register by his indorsement thereon, shall be filed with the record of the case, and inure to the benefit of all creditors proving their claims, and may be prosecuted in the name and for the benefit of any injured party. If the assignee fails to give the bond within such time as the judge or register orders, not exceeding ten days after notice to him of such order, the judge shall remove him and appoint another in his place.

2 March, 1867, c. 176, s. 13, v. 14, p. 522.

In re Fernberg, 2 Bank. Reg., 114.

Assignee liable for contempt.

2 March, 1867, c. 176, s. 18, v. 14, p. 525.

SEC. 5037. Any assignee who refuses or unreasonably neglects to execute an instrument when lawfully required by the court, or disobeys a lawful order or decree of the court in the premises, may be punished as for a contempt of court.

Resignation of the trust.

Ibid.

SEC. 5038. An assignee may, with the consent of the judge, resign his trust and be discharged therefrom.

Removal of assignee.

Ibid.

SEC. 5039. The court, after due notice and hearing, may remove an assignee for any cause which, in its judgment, renders such removal necessary or expedient. At a meeting called for the purpose by order of the court, in its discretion, or called upon the application of a majority of the creditors in number and value, the creditors may, with consent of the court, remove any assignee by such a vote as is provided for the choice o assignee.

In re Stokes, 1 Bank. Reg., 130; *In re* Scheiffer & Garrett, 2 Bank. Reg., 179; *In re* Mallory, 4 Bank. Reg., 38; *In re* Price, 4 Bank. Reg., 137; *In re* Carson, 5 Bank. Reg., 290; *In re* Blodget & Sanford, 5 Bank. Reg., 472.

Effect of resignation or removal.

2 March, 1867, c. 176, s. 18, v. 14, p. 525.

SEC. 5040. The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successors, nor shall it affect the liability of the principal or surety on the bond given by the assignee.

Filling vacancies.

Ibid.

SEC. 5041. Vacancies caused by death or otherwise in the office of assignee may be filled by appointment of the court, or at its discretion by an election by the creditors, in the same manner as in the original choice of an assignee, at a regular meeting, or at a meeting called for the purpose, with such notice thereof in writing to all known creditors, and by such person as the court shall direct.

Vesting estate in remaining assignee.

Ibid.

SEC. 5042. When, by death or otherwise, the number of assignees is reduced, the estate of the debtor not lawfully disposed of shall vest in the remaining assignee or assignees, and in the persons selected to fill vacancies, if any, with the same powers and duties relative thereto as if they were originally chosen.

Former assignee to execute instruments.

Ibid.

SEC. 5043. Any former assignee, his executors or administrators, upon request, and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances, and assurances, and do all other lawful acts requisite to enable him to recover and receive all the estate. And the court may make all orders which it may deem expedient to secure the proper fulfillment of the duties of any former assignee, and the rights and interests of all persons interested in the estate.

Assignment.

Ibid., s. 14, p. 522.

Allen *vs.* Massey, 17 Wall., 351; *In re* Voge, 7 Blatch., 18; Johnson *vs.* Bishop, 1 Wool., 324; *In re* Ellis, 1 Bank. Reg., 104; Bowman *vs.* Harding, 4 Bank. Reg., 5.

SEC. 5044. As soon as an assignee is appointed and qualified, the judge, or, where there is no opposing interest, the register, shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in bankruptcy, and by operation of law shall vest the title to all such property and estate, both real and personal, in the assignee, although the same is then attached on mesne process as the property of the debtor, and shall dissolve any such attachment made within four months next preceding the commencement of the bankruptcy proceedings.

Exemptions.

2 March, 1867, c. 176, s. 14, v. 14, p. 522.

8 June, 1872, c. 339, v. 17, p. 334.

3 March, 1873, c. 235, v. 17, p. 577.

In re Beckerford, 1 Dill., 45; *In re* Van Buren Cobb, 1 Bank. Reg., 106; *In*

SEC. 5045. There shall be excepted from the operation of the conveyance the necessary household and kitchen furniture, and such other articles and necessaries of the bankrupt as the assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of five hundred dollars; also the wearing apparel of the bankrupt, and that of his wife and children, and the uniform, arms, and equipments of any person who is or has been a soldier in the militia, or in the service of the United States; and such other property as now is, or hereafter shall be, exempted from attachment, or seizure, or levy on execution by the laws of the United States, and such

other property not included in the foregoing exceptions as is exempted from levy and sale upon execution or other process or order of any court by the laws of the State in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount allowed by the constitution and laws of each State, as existing in the year eighteen hundred and seventy-one; and such exemptions shall be valid against debts contracted before the adoption and passage of such State constitution and laws, as well as those contracted after the same, and against liens by judgment or decree of any State court, any decision of any such court rendered since the adoption and passage of such constitution and laws to the contrary notwithstanding. These exceptions shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignee; and in no case shall the property hereby excepted pass to the assignee, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this Title; and the determination of the assignee in the matter shall, on exception taken, be subject to the final decision of the said court.

re Thornton, 2 Bank. Reg., 63; *In re* Griffin, 2 Bank. Reg., 85; *In re* Lambert, 2 Bank Reg., 138; *In re* Jefferson and Pearce, 2 Bank. Reg., 158; *In re* Gainey, 2 Bank. Reg., 163; *In re* McLean, 2 Bank. Reg., 173; *In re* Hester, 5 Bank. Reg., 285; *In re* Stevens, 5 Bank. Reg., 298; *In re* Welsh, 5 Bank. Reg., 348; *In re* Hunt, 5 Bank. Reg., 493; Bennett *vs.* Erben, 2 Bank. Reg., 66.

What property vests in assignee.

SEC. 5046. All property conveyed by the bankrupt in fraud of his creditors; all rights in equity, choses in action, patent-rights, and copyrights; all debts due him, or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which he had against any person arising from contract or from the unlawful taking or detention, or injury to the property of the bankrupt; and all his rights of redeeming such property or estate; together with the like right, title, power, and authority to sell, manage, dispose of, sue for, and recover or defend the same, as the bankrupt might have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, but subject to the exceptions stated in the preceding section, be at once vested is such assignee.

2 March, 1867, c. 176, s. 14, v. 14, p. 522.

Allan *vs.* Massay, 17 Wall., 351; Shackleford *vs.* Collier, 6 Bush., (Ky.,) 149; Boone *vs.* Hall, 7 Bush., (Ky.,) 66; Pratt *vs.* Curtis, 6 Bank. Reg., 139; Dwight *et al. vs.* Ames., 2 Bank. Reg., 147.

Right of action of assignee.

SEC. 5047. The assignee shall have the like remedy to recover all the estate, debts, and effects in his own name, as the debtor might have had if the decree in bankruptcy had not been rendered and no assignment had been made. If at the time of the commencement of the proceedings in bankruptcy, an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he requires it, be admitted to prosecute the action in his own name, in like manner and with like effect as if it had been originally commenced by him. And if any suit at law or in equity, in which the bankrupt is a party in his own name, is pending at the time of the adjudication of bankruptcy, the assignee may defend the same in the same manner and with the like effect as it might have been defended by the bankrupt.

2 March, 1867, c. 176, ss. 14, 16, v. 14, pp. 523, 524.

Herndon *vs.* Howard, 9 Wall., 664; North Carolina *vs.* Trustees of University, 5 Bank. Reg., 466; Neal *vs.* Beckwith *et al.*, 2 Bank. Reg., 82.

No abatement by death or removal.

SEC. 5048. No suit pending in the name of the assignee shall be abated by his death or removal; but upon the motion of the surviving or remaining or new assignee, as the case may be, he shall be admitted to prosecute the suit in like manner and with like effect as if it had been originally commenced by him.

2 March, 1867, c. 176, s. 16, v. 14, p. 524.

Copy of assignment conclusive evidence of title.

SEC. 5049. A copy duly certified by the clerk of the court, under the seal thereof, of the assignment, shall be conclusive evidence of the title of the assignee to take, hold, sue for, and recover the property of the bankrupt.

Ibid., s. 14, p. 522.

Herndon *vs.* Howard, 9 Wall., 664.

Bankrupt's books of account.

SEC. 5050. No person shall be entitled, as against the assignee, to withhold from him possession of any books of account of the bankrupt, or claim any lien thereon.

2 March, 1867, c. 176, s. 14, v. 14, p. 522.

Rogers *vs.* Winsor, 6 Bank. Reg., 246.

Debtor must execute instruments.

2 March, 1867, c. 176, s. 14, v. 14, p. 522.

SEC. 5051. The debtor shall, at the request of the assignee and at the expense of the estate, make and execute any instruments, deeds, and writings which may be proper to enable the assignee to possess himself fully of all the assets of the bankrupt.

Chattel mortgages.

Ibid.

SEC. 5052. No mortgage of any vessel or of any other goods or chattels, made as security for any debt, in good faith and for a present consideration and otherwise valid, and duly recorded pursuant to any statute of the United States or of any State, shall be invalidated or affected by an assignment in bankruptcy.

In re Soldiers' Business and Dispatch Co., 3 Ben., 204; Potter *et al. vs.* Coggeshall, 4 Bank. Reg., 19; *In re* Eldridge, 4 Bank. Reg., 162; *In re* Daw, 6 Bank. Reg., 10.

Trust property.

2 March, 1867, c. 176, s. 14, v. 14, p. 522.

SEC. 5053. No property held by the bankrupt in trust shall pass by the assignment.

In re Janeway, 4 Bank. Reg., 26; White *vs.* Jones, 6 Bank. Reg., 175.

Notice of appointment of assignee and record of assignment.

2 March, 1867, c. 176, s. 14, v. 14, p. 522.

In re Bellamy, 1 Ben., 390; Davis *vs.* Anderson, 6 Bank. Reg., 145.

SEC. 5054. The assignee shall immediately give notice of his appointment, by publication at least once a week for three successive weeks in such newspapers as shall for that purpose be designated by the court, due regard being had to their general circulation in the district or in that portion of the district in which the bankrupt and his creditors shall reside, and shall, within six months, cause the assignment to him to be recorded in every registry of deeds or other office within the United States where a conveyance of any lands owned by the bankrupt ought by law to be recorded.

Assignee to demand and receive all assigned estate.

2 March, 1867, c. 176, s. 15, v. 14, p. 524.

SEC. 5055. The assignee shall demand and receive, from all persons holding the same, all the estate assigned or intended to be assigned.

Notice prior to suit against assignee.

Ibid., s. 14, p. 522.

SEC. 5056. No person shall be entitled to maintain an action against an assignee in bankruptcy for anything done by him as such assignee, without previously giving him twenty days' notice of such action, specifying the cause thereof, to the end that such assignee may have an opportunity of tendering amends, should he see fit to do so.

Time of commencing suits.

Ibid., s. 2, p. 518.

Sedgwick *vs.* Casey, 4 Bank. Reg., 161; *In re* Masterson, 4 Bank. Reg., 180; *In re* Krogman, 5 Bank. Reg., 116; Peiper *vs.* Harmer, 5 Bank. Reg., 252; Davis *vs.* Anderson, 6 Bank. Reg., 145.

SEC. 5057. No suit, either at law or in equity, shall be maintainable in any court between an assignee in bankruptcy and a person claiming an adverse interest, touching any property or rights of property transferable to or vested in such assignee, unless brought within two years from the time when the cause of action accrued for or against such assignee. And this provision shall not in any case revive a right of action barred at the time when an assignee is appointed.

Assignee's accounts of money received.

2 March, 1867, c. 176, s. 15, v. 14, p. 524.

SEC. 5058. The assignee shall keep a regular account of all money received by him as assignee, to which every creditor shall, at reasonable times, have free resort.

Assignee to keep money and goods separate.

Ibid., s. 17.

SEC. 5059. The assignee shall, as soon as may be after receiving any money belonging to the estate, deposit the same in some bank in his name as assignee, or otherwise keep it distinct from all other money in his possession; and shall, as far as practicable, keep all goods and effects belonging to the estate separate from all other goods in his possession, or designated by appropriate marks, so that they may be easily and clearly distinguished, and may not be liable to be taken as his property or for the payment of his debts.

Temporary investment of money.

Ibid.

Sedgwick *vs.* Place, 3 Ben., 360.

SEC. 5060. When it appears that the distribution of the estate may be delayed by litigation or other cause, the court may direct the temporary investment of the money belonging to such estate in securities to be approved by the judge or register, or may authorize it to be deposited in any convenient bank, upon such interest, not exceeding the legal rate, as the bank may contract with the assignee to pay thereon.

Arbitration.

SEC. 5061. The assignee, under the direction of the court, may submit any controversy arising in the settlement of demands against the estate, or of debts due to it, to the determination of arbitrators to be chosen by him and the other party to the controversy, and, under such direction, may compound and settle any such controversy, by agreement with the other party, as he thinks proper and most for the interest of the creditors.

2 March, 1867, c. 176, s. 17, v. 14, p. 524.

In re Graves, 2 Ben., 100; *In re* Dibblee, 3 Ben., 354.

Assignee to sell property.

SEC. 5062. The assignee shall sell all such unincumbered estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but upon petition of any person interested, and for cause shown, the court may make such order concerning the time, place, and manner of sale as will, in its opinion, prove to the interest of the creditors.

2 March, 1867, c. 176, s. 15, v. 14, p. 524.

In re Troy Woolen Co., 8 Blatch., 465; *In re* Mott, 1 Bank. Reg., 9; March *vs.* Heaton *et al.*, 2 Bank. Reg., 66; *In re* Hitchings, 4 Bank. Reg., 125; *In re* Ryon and Griffin, 6 Bank. Reg., 235.

Sale of disputed property.

SEC. 5063. Whenever it appears to the satisfaction of the court that the title to any portion of an estate, real or personal, which has come into possession of the assignee, or which is claimed by him, is in dispute, the court may, upon the petition of the assignee, and after such notice to the claimant, his agent or attorney, as the court shall deem reasonable, order it to be sold, under the direction of the assignee, who shall hold the funds received in place of the estate disposed of; and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the parties in any court. But this provision shall not prevent the recovery of the property from the possession of the assignee by any proper action commenced at any time before the court orders the sale.

2 March, 1867, c. 176, s. 25, v. 14, p. 528.

In re Bogle, 7 Blatch., 18; Markson *vs.* Heaney, 1 Dill., 497; Pennington *vs.* Sale *et al.*, 1 Bank. Reg., 157; Dwight *et al. vs.* Ames, 2 Bank. Reg., 147; Knight *vs.* Cheney, 5 Bank. Reg., 305.

Sale of uncollectible assets.

SEC. 5064. The assignee may sell and assign, under the direction of the court and in such manner as the court shall order, any outstanding claims or other property in his hands, due or belonging to the estate, which cannot be collected and received by him without unreasonable or inconvenient delay or expense.

2 March, 1867, c. 176, s. 28, v. 14, p. 530.

Sale of perishable property.

SEC. 5065. When it appears to the satisfaction of the court that the estate of the debtor, or any part thereof, is of a perishable nature, or liable to deteriorate in value, the court may order the same to be sold, in such manner as may be deemed most expedient, under the direction of the messenger or assignee, as the case may be, who shall hold the funds received in place of the estate disposed of.

Ibid., s. 25, p. 528.

In re Metzger *et al.*, 1 Ben., 356.

Discharge of liens.

SEC. 5066. The assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage or conditional contract, or pledge or deposit, or lien upon any property, real or personal, whenever payable, and to tender due performance of the condition thereof, or to sell the same subject to such mortgage, lien, or other incumbrance.

2 March, 1867, c. 176, s. 14, v. 14, p. 522.

In re Dey, 3 Ben., 450; *In re* Stuart, 1 Bank. Reg., 42; Dwight *et al. vs.* Ames, 2 Bank. Reg., 47; *In re* Wynne, 4 Bank. Reg., 5; *In re* Trin, 5 Bank. Reg., 23.

Provable debts.

SEC. 5067. All debts due and payable from the bankrupt at the time of the commencement of proceedings in bankruptcy, and all debts then existing but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the bankrupt. All demands against the bankrupt for or on account of any goods or chattels wrongfully taken, converted, or withheld by him may be proved and allowed as debts to the amount of the value of the property so taken or withheld, with interest. When the bankrupt is liable for unliquidated damages arising out of any contract or promise, or on account of any goods or chattels wrongfully taken, converted, or withheld, the court may cause such damages to be assessed in such mode as it may deem best, and the sum so assessed may be proved against the estate.

2 March, 1867, c. 176, s. 19, v. 14, p. 525.

In re Orne, 1 Ben., 361; *In re* Patterson, 1 Ben., 508; *In re* Lathrop *et al.*, 3 Ben., 490; *In re* Williams, 2 Bank. Reg., 79; *In re* Bloss, 4 Bank. Reg., 37; *In re* Whittaker, 4 Bank. Reg., 41; *In re* Stevens, 4 Bank. Reg., 122; *In re* Blandin, 5 Bank. Reg., 39; *In re* Gallison, 5 Bank. Reg., 353; *In re* Knoepfel, 1 Ben., 398; *In re* Paddock, 6 Bank. Reg., 132.

Contingent debts.

2 March, 1867, c. 176, s. 19, v. 14, p. 525.

Sigsby *vs.* Willis, 3 Ben., 371.

SEC. 5068. In all cases of contingent debts and contingent liabilities contracted by the bankrupt, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed, with the right to share in the dividends, if the contingency happens before the order for the final dividend; or he may, at any time, apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained.

Liability of bankrupt as surety.

2 March, 1867, c. 176, s. 19, v. 14, p. 525.

SEC. 5069. When the bankrupt is bound as drawer, indorser, surety, bail, or guarantor upon any bill, bond, note, or any other specialty or contract, or for any debt of another person, but his liability does not become absolute until after the adjudication of bankruptcy, the creditor may prove the same after such liability becomes fixed, and before the final dividend is declared.

In re Ellershorst & Co., 5 Bank. Reg., 144; *In re* Crawford, 5 Bank. Reg., 301.

Sureties for bankrupt.

2 March, 1867, c. 176, s. 19, v. 14, p. 525.

In re Wynne, 4 Bank. Reg., 5; *In re* Trin, 5 Bank. Reg., 23.

SEC. 5070. Any person liable as bail, surety, guarantor, or otherwise for the bankrupt, who shall have paid the debt, or any part thereof, in discharge of the whole, shall be entitled to prove such debt or to stand in the place of the creditor if the creditor has proved the same, although such payments shall have been made after the proceedings in bankruptcy were commenced. And any person so liable for the bankrupt, and who has not paid the whole of such debt, but is still liable for the same or any part thereof, may, if the creditor fails or omits to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the general orders, and subject to such regulations and limitations as may be established by such general orders.

Debts falling due at stated periods.

2 March, 1867, c. 176, s. 19, v. 14, p. 525.

SEC. 5071. Where the bankrupt is liable to pay rent or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the bankruptcy, as if the same grew due from day to day, and not at such fixed and stated periods.

No other debts provable.

2 March, 1867, c. 176, s. 19, v. 14, p. 525.

SEC. 5072. No debts other than those specified in the five preceding sections shall be proved or allowed against the estate.

Set-offs.

Ibid., s. 20, p. 526.

Sawyer *vs.* Hoag, 17 Wall., 610; Gray *vs.* Rollo, 18 Wall., 629; *In re* City Bank of Savings, &c., 6 Bank. Reg., 71.

SEC. 5073. In all cases of mutual debts or mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed or paid; but no set-off shall be allowed in favor of any debtor to the bankrupt of a claim in its nature not provable against the estate, or of a claim purchased by or transferred to him after the filing of the petition.

Distinct liabilities.

2 March, 1867, c. 176, s. 21, v. 14, p. 526.

Mead *vs.* National Bank, &c., 6 Blatch., 180; *In re* Bigelow *et al.*, 3 Ben., 146.

SEC. 5074. When the bankrupt, at the time of adjudication, is liable upon any bill of exchange, promissory note, or other obligation in respect of distinct contracts as a member of two or more firms carrying on separate and distinct trades, and having distinct estates to be wound up in bankruptcy, or as a sole trader and also as a member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof and receipt of dividend in respect of such distinct contracts against the estates respectively liable upon such contracts.

Secured debts.

2 March, 1867, c. 176, s. 20, v. 14, p. 526.

In re Bigelow, 2 Ben., 480; *In re* Wynn, 1 Bank. Reg., 131; *In re* Cram, 1 Bank. Reg.,

SEC. 5075. When a creditor has a mortgage or pledge of real or personal property of the bankrupt, or a lien thereon for securing the payment of a debt owing to him from the bankrupt, he shall be admitted as a creditor only for the balance of the debt after deducting the value of such property, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the court shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as

security, the assignee may release to the creditor the bankrupt's right of redemption therein on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not so sold or released and delivered up, the creditor shall not be allowed to prove any part of his debt.

132; Davis *vs.* Carpenter *et al.*, 2 Bank. Reg., 125; *In re* Frizelle, 5 Bank. Reg., 122; *In re* Stansell, 6 Bank. Reg., 183.

Proof of debt.

SEC. 5076. Creditors residing within the judicial district where the proceedings in bankruptcy are pending shall prove their debts before one of the registers of the court, or before a commissioner of the circuit court, within the said district. Creditors residing without the district, but within the United States, may prove their debts before a register in bankruptcy, or a commissioner of a circuit court, in the judicial district where such creditor, or either one of joint creditors, reside; but proof taken before a commissioner, shall be subject to revision by the register of the court.

2 March, 1867, c. 176, s. 22, v. 14, p. 527.

27 July, 1868, c. 258, s. 3, v. 15, p. 228.

In re Sheppard, 1 Bank. Reg., 115; *In re* Haley, 2 Bank. Reg., 13; *In re* Strouse, 2 Bank. Reg., 18.

Creditor's oath.

SEC. 5077. To entitle a claimant against the estate of a bankrupt to have his demand allowed, it must be verified by a deposition in writing, under oath, and signed by the deponent, setting forth the demand, the consideration thereof, whether any and what securities are held therefor, and whether any and what payments have been made thereon; that the sum claimed is justly due from the bankrupt to the claimant; that the claimant has not, nor has any other person, for his use, received any security or satisfaction whatever other than that by him set forth; that the claim was not procured for the purpose of influencing the proceedings in bankruptcy; and that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of such creditor, to sell, transfer, or dispose of the claim, or any part thereof, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of such creditor for assignee, or any action on the part of such creditor, or any other person in the proceedings, is or shall be in any way affected, influenced, or controlled. No claim shall be allowed unless all the statements set forth in such deposition shall appear to be true.

2 March, 1867, c. 176, s. 22, v. 14, p. 527.

Oath by whom made.

SEC. 5078. Such oath shall be made by the claimant, testifying of his own knowledge, unless he is absent from the United States or prevented by some other good cause from testifying, in which case the demand may be verified by the attorney or authorized agent of the claimant, testifying to the best of his knowledge, information, and belief, and setting forth his means of knowledge. Corporations may verify their claims by the oath of their president, cashier, or treasurer. The court may require or receive further pertinent evidence either for or against the admission of any claim.

2 March, 1867, c. 176, s. 22, v. 14, p. 527.

Oath, before whom taken; proof sent to register.

SEC. 5079. Such oath may be taken in any district before any register or any commissioner of the circuit court authorized to administer oaths; or, if the creditor is in a foreign country, before any minister, consul, or vice-consul of the United States. When the proof is so made it shall be delivered or sent by mail to the register having charge of the case.

2 March, 1867, c. 176, s. 22, v. 14, p. 527.

27 July, 1868, c. 258, s. 3, v. 15, p. 228.

Proof to be sent to assignee.

SEC. 5080. If the proof is satisfactory to the register it shall be delivered or sent by mail to the assignee, who shall examine the same and compare it with the books and accounts of the bankrupt, and shall register, in a book to be kept by him for that purpose, the names of creditors who have proved their claims, in the order in which such proof is received, stating the time of receipt of such proof, and the amount and nature of the debts. Such books shall be open to the inspection of all the creditors. The court may require or receive further pertinent evidence either for or against the admission of any claim.

2 March, 1867, c. 176, s. 22, v. 14, p. 527.

Examination by court into proof of claims.

2 March, 1867, c. 176, s. 22, v. 14, p. 527.

SEC. 5081. The court may, on the application of the assignee, or of any creditor, or of the bankrupt, or without any application, examine upon oath the bankrupt, or any person tendering or who has made proof of a claim, and may summon any person capable of giving evidence concerning such proof, or concerning the debt sought to be proved, and shall reject all claims not duly proved, or where the proof shows the claim to be founded in fraud, illegality, or mistake.

In re Orne, 1 Ben., 361; *In re* Ray, 2 Ben., 53; *In re* Kyler, 2 Ben., 414; Comstock *vs.* Wheeler, 2 Bank. Reg., 171; McKinsey *et al. vs.* Harding, 4 Bank. Reg., 10; *In re* Paddock, 6 Bank. Reg., 132.

Withdrawal of papers.

2 March, 1867, c. 176, s. 24, v. 14, p. 528.

SEC. 5082. A bill of exchange, promissory note, or other instrument, used in evidence upon the proof of a claim, and left in court or deposited in the clerk's office, may be delivered, by the register or clerk having the custody thereof, to the person who used it, upon his filing a copy thereof, attested by the clerk of the court, who shall indorse upon it the name of the party against whose estate it has been proved, and the date and amount of any dividend declared thereon.

Postponement of proof.

Ibid., s. 23.

SEC. 5083. When a claim is presented for proof before the election of the assignee, and the judge or register entertains doubts of its validity or of the right of the creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim until the assignee is chosen.

In re Orne, 1 Ben., 361; *In re* Noble, 3 Ben., 332; *In re* Herrman, 4 Ben., 126; *In re* Stevens, 4 Bank. Reg., 122.

Surrender of preferences.

2 March, 1867, c. 176, s. 23, v. 14, p. 528.

SEC. 5084. Any person who, since the second day of March, eighteen hundred and sixty-seven, has accepted any preference, having reasonable cause to believe that the same was made or given by the debtor, contrary to any provisions of the act of March two, eighteen hundred and sixty-seven, chapter one hundred and seventy-six, to establish a uniform system of bankruptcy, or to any provisions of this Title, shall not prove the debt or claim on account of which the preference is made or given, nor shall he receive any dividend therefrom until he shall first surrender to the assignee all property, money, benefit, or advantage received by him under such preference.

In re Richter, 1 Dill., 544; *In re* Davidson, 4 Ben., 10; *In re* Tonkin, 4 Bank. Reg., 13; *In re* Scott and McCarthy, 4 Bank. Reg., 139; *In re* Kipp, 4 Bank. Reg., 190; Hall *vs.* Wager & Fales, 5 Bank. Reg., 181; Hood *vs.* Karver, 5 Bank. Reg., 358.

Allowance and list of debts.

SEC. 5085. The court shall allow all debts duly proved, and shall cause a list thereof to be made and certified by one of the registers.

2 March, 1867, c. 176, s. 23, v. 14, p. 528.

Examination of bankrupt.

Ibid., s. 26, p. 529.

SEC. 5086. The court may, on the application of the assignee, or of any creditor, or without any application, at all times require the bankrupt, upon reasonable notice, to attend and submit to an examination, on oath, upon all matters relating to the disposal or condition of his property, to his trade and dealings with others, to his accounts concerning the same, to all debts due to or claimed from him, and to all other matters concerning his property and estate and the due settlement thereof according to law. Such examination shall be in writing, and shall be signed by the bankrupt and filed with the other proceedings.

In re Baum, 1 Ben., 274; *In re* Ray, 2 Ben., 53; *In re* Solis, 4 Ben., 143.

Examination of witness.

2 March, 1867, c. 176, s. 26, v. 14, p. 529.

SEC. 5087. The court may, in like manner, require the attendance of any other person as a witness, and if such person fails to attend, on being summoned thereto, the court may compel his attendance by warrant directed to the marshal, commanding him to arrest such person and bring him forthwith before the court, or before a register in bankruptcy, for examination as a witness.

In re Levy, 1 Ben., 454; *In re* Fredenberg, 2 Ben., 133; *In re* Bellis and Milligan, 3 Ben., 386; *In re* Lewis, 4 Ben., 67; *In re* Lathrop, Cady, and Burtis, 4 Bank. Reg., 93.

Examination of bankrupt's wife.

2 March, 1867, c. 176, s. 26, v. 14, p. 529.

SEC. 5088. For good cause shown, the wife of any bankrupt may be required to attend before the court to the end that she may be examined as a witness; and if she does not attend at the time and place specified in the order, the bankrupt shall not be entitled to a discharge unless he proves to the satisfaction of the court that he was unable to procure her attendance.

In re Griffen, 2 Ben., 209; *In re* Van Tuyl, 3 Ben., 237; *In re* Woolford, 4 Ben., 9; *In re* Craig, 4 Bank. Reg., 50.

Examination of imprisoned or disabled bankrupt.

2 March, 1867, c. 176, s. 26, v. 14, p. 529.

SEC. 5089. If the bankrupt is imprisoned, absent, or disabled from attendance, the court may order him to be produced by the jailer, or any officer in whose custody he may be, or may direct the examination to be had, taken, and certified at such time and place and in such manner as the court may deem proper, and with like effect as if such examination had been had in court.

No abatement upon death of debtor.

Ibid., s. 12, p. 522.

SEC. 5090. If the debtor dies after the issuing of the warrant, the proceedings may be continued and concluded in like manner as if he had lived.

Distribution of bankrupt's estate.

Ibid., s. 27, p. 529.

In re Downing, 1 Dill., 33; *In re* Webb and Johnson, 2 Bank. Reg., 183; *In re* Lathrop, 5 Bank. Reg., 43; *In re* The Bucyrus Machine Co., 5 Bank. Reg., 303.

SEC. 5091. All creditors whose debts are duly proved and allowed shall be entitled to share in the bankrupt's property and estate, pro rata, without any priority or preference whatever, except as allowed by section fifty-one hundred and one. No debt proved by any person liable, as bail, surety, guarantor, or otherwise, for the bankrupt, shall be paid to the person so proving the same until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held for the benefit of the party entitled thereto, as the court may direct.

Second meeting of creditors.

2 March, 1867, c. 176, s. 27, v. 14, p. 529.

In re Son, 1 Bank. Reg., 58.

SEC. 5092. At the expiration of three months from the date of the adjudication of bankruptcy in any case, or as much earlier as the court may direct, the court, upon request of the assignee, shall call a general meeting of the creditors, of which due notice shall be given, and the assignee shall then report, and exhibit to the court and to the creditors just and true accounts of all his receipts and payments, verified by his oath, and he shall also produce and file vouchers for all payments for which vouchers are required by any rule of the court; he shall also submit the schedule of the bankrupt's creditors and property as amended, duly verified by the bankrupt, and a statement of the whole estate of the bankrupt as then ascertained, of the property recovered and of the property outstanding, specifying the cause of its being outstanding, and showing what debts or claims are yet undetermined, and what sum remains in his hands. The majority in value of the creditors present shall determine whether any and what part of the net proceeds of the estate, after deducting and retaining a sum sufficient to provide for all undetermined claims which, by reason of the distant residence of the creditor, or for other sufficient reason, have not been proved, and for other expenses and contingencies, shall be divided among the creditors; but unless at least one-half in value of the creditors attend the meeting, either in person or by attorney, it shall be the duty of the assignee so to determine.

Third meeting of creditors.

2 March, 1867, c. 176, s. 28, v. 14, p. 530.

SEC. 5093. Like proceedings shall be had at the expiration of the next three months, or earlier, if practicable, and a third meeting of creditors shall then be called by the court, and a final dividend then declared, unless any suit at law or in equity is pending, or unless some other estate or effects of the debtor afterward come to the hands of the assignee, in which case the assignee shall, as soon as may be, convert such estate and effects into money, and within two months after the same are so converted they shall be divided in manner aforesaid. Further dividends shall be made in like manner as often as occasion requires, and after the third meeting of creditors no further meeting shall be called, unless ordered by the court.

Notice of meetings.

2 March, 1867, c. 176, s. 17, v. 14, p. 524.

SEC. 5094. The assignee shall give such notice to all known creditors, by mail or otherwise, of all meetings, after the first, as may be ordered by the court.

Creditor may act by attorney.

SEC. 5095. Any creditor may act at all meetings by his duly constituted attorney the same as though personally present.

Ibid., s. 23, p. 528.—*In re* Hill, 1 Ben., 321; *In re* Knoepfel, 1 Ben., 330; *In re* Knoepfel, 1 Ben., 398; *In re* Powell, 2 Bank. Reg., 17.

Settlement of assignee's account.

2 March, 1867, c. 176, s. 28, v. 14, p. 530.

SEC. 5096. Preparatory to the final dividend, the assignee shall submit his account to the court and file the same, and give notice to the creditors of such filing, and shall also give notice that he will apply for a settlement of his account, and for a discharge from all liability as assignee, at a time to be specified in such notice, and at such time the court shall audit and pass the accounts of the assignee, and the assignee shall, if required by the court, be examined as to the truth of his account, and if it is found correct he shall thereby be discharged from all liability as assignee to any creditor of the bankrupt. The court shall thereupon order a dividend of the estate and effects, or of such part thereof as it sees fit, among such of the creditors as have proved their claims, in proportion to the respective amount of their debts.

Dividend not to be disturbed.

Ibid.

SEC. 5097. No dividend already declared shall be disturbed by reason of debts being subsequently proved, but the creditors proving such debts shall be entitled to a dividend equal to those already received by the other creditors before any further payment is made to the latter.

Omission of assignee to call meetings.

Ibid.

SEC. 5098. If by accident, mistake, or other cause, without fault of the assignee, either or both of the second and third meetings should not be held within the times limited, the court may, upon motion of an interested party, order such meetings, with like effect as to the validity of the proceedings as if the meeting had been duly held.

Compensation of assignee.

Ibid.

SEC. 5099. The assignee shall be allowed, and may retain out of money in his hands, all the necessary disbursements made by him in the discharge of his duty, and a reasonable compensation for his services, in the discretion of the court.

In re Dean, 1 Bank. Reg., 26.

Commissioners.

2 March, 1867, c. 176, s. 28, v. 14, p. 530.

In re Dean, 1 Bank. Reg., 26.

SEC. 5100. In addition to all expenses necessarily incurred by him in the execution of his trust, in any case, the assignee shall be entitled to an allowance for his services in such case on all moneys received and paid out by him therein, for any sum not exceeding one thousand dollars, five per centum thereon; for any larger sum, not exceeding five thousand dollars, two and a half per centum on the excess over one thousand dollars; and for any larger sum, one per centum on the excess over five thousand dollars. If, at any time, there is not in his hands a sufficient amount of money to defray the necessary expenses required for the further execution of his trust, he shall not be obliged to proceed therein until the necessary funds are advanced or satisfactorily secured to him.

Debts entitled to priority.

2 March, 1867, c. 176, s. 28, v. 14, p. 530.

Triplett *vs.* Hanley, 1 Dill., 217; *In re* Smith, 2 Ben., 122; *In re* Griffin, 2 Ben., 209; *In re* Hirschberg, 2 Ben., 466; *In re* Hausberger, 2 Ben., 504; *In re* Loder, 3 Ben., 211; *In re* Montgomery, 3 Ben., 364; *In re* New York Mail Steamship Co., 2 Bank. Reg., 170; *In re* Whitehead, 2 Bank. Reg., 180.

SEC. 5101. In the order for a dividend, the following claims shall be entitled to priority, and to be first paid in full in the following order:

First. The fees, costs, and expenses of suits, and of the several proceedings in bankruptcy under this Title, and for the custody of property, as herein provided.

Second. All debts due to the United States, and all taxes and assessments under the laws thereof.

Third. All debts due to the State in which the proceedings in bankruptcy are pending, and all taxes and assessments made under the laws thereof.

Fourth. Wages due to any operative, clerk, or house-servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the first publication of the notice of proceedings in bankruptcy.

Fifth. All debts due to any persons who, by the laws of the United States, are, or may be, entitled to a priority, in like manner as if the provisions of this Title had not been adopted. But nothing contained in this Title shall interfere with the assessment and collection of taxes by the authority of the United States or any State. [See §§ 3466–3468.]

Notice of dividend to each creditor.

2 March, 1867, c. 176, s. 27, v. 14, p. 529.

SEC. 5102. Whenever a dividend is ordered, the register shall, within ten days after the meeting, prepare a list of creditors entitled to dividend, and shall calculate and set opposite to the name of each creditor who has proved his claim the dividend to which he is entitled out of the net proceeds of the estate set apart for dividend, and shall forward, by mail, to every creditor a statement of the dividend to which he is entitled, and such creditors shall be paid by the assignee in such manner as the court may direct.

Settlement of bankrupt estates by trustees.

Ibid., s. 43, p. 538.

In re American Cloth Co., 1 Ben., 526; *In re* Jones, 2 Bank. Reg., 20; *In re* Stillwell, 2 Bank. Reg., 164; *In re* Darby, 4 Bank. Reg., 98; *In re* Zinn, 4 Bank. Reg., 145; *In re* Bakewell, 4 Bank. Reg., 198.

SEC. 5103. If at the first meeting of creditors, or at any meeting of creditors specially called for that purpose, and of which previous notice shall have been given for such length of time and in such manner as the court may direct, three-fourths in value of the creditors whose claims have been proved shall resolve that it is for the interest of the general body of the creditors that the estate of the bankrupt shall be settled by trustees, under the inspection and direction of a committee of the creditors, the creditors may certify and report such resolution to the court, and may nominate one or more trustees to take and hold and distribute the estate, under the direction of such committee. If it appears, after hearing the bankrupt and such creditors as desire to be heard, that the resolution was duly passed, and that the interests of the creditors will be promoted thereby, the court shall confirm it; and upon the execution and filing, by or on behalf of three-fourths in value of all the creditors whose claims have been proved, of a consent that the estate of the bankrupt shall be wound up and settled by trustees, according to the terms of such resolution, the bankrupt, or, if an assignee has been appointed, the assignee, shall, under the direction of the court, and under oath, convey, transfer, and deliver all the property and estate of the bankrupt to the trustees, who shall, upon such conveyance and transfer, have and hold the same in the same manner, and with the same powers and rights, in all respects, as the bankrupt would have had or held the same if no proceedings in bankruptcy had been taken, or as the assignee in bankruptcy would have done, had such resolution not been passed. Such consent and the proceedings under it shall be as binding in all respects on any creditor whose debt is provable, who has not signed the same, as if he had signed it, and on any creditor whose debt, if provable, is not proved, as if he had proved it. The court, by order, shall direct all acts and things needful to be done to carry into effect such resolution of the creditors, and the trustees shall proceed to wind up and settle the estate under the direction and inspection of such committee of the creditors, for the equal benefit of all such creditors; and the winding up and settlement of any estate under the provisions of this section shall be deemed to be proceedings in bankruptcy; and the trustees shall have all the rights and powers of assignees in bankruptcy. The court, on the application of such trustees, shall have power to summon and examine, on oath or otherwise, the bankrupt, or any creditor, or any person indebted to the estate, or known or suspected of having any of the estate in his possession, or any other person whose examination may be material or necessary to aid the trustees in the execution of their trust, and to compel the attendance of such persons and the production of books and papers in the same manner as in other proceedings in bankruptcy; and the bankrupt shall have the like right to apply for and obtain a discharge after the passage of such resolution and the appointment of such trustees as if such resolution had not been passed, and as if all the proceedings had continued in the manner provided in the preceding sections of this Title. If the resolution is not duly reported, or the consent of the creditors is not duly filed, or if, upon its filing, the court does not think fit to approve thereof, the bankruptcy shall proceed as if no resolution had been passed, and the court may make all necessary orders for resuming the proceedings. And the period of time which shall have elapsed between the date of the resolution and the date of the order for resuming proceedings shall not be reckoned in calculating periods of time prescribed by this Title.

CHAPTER FIVE.

PROTECTION AND DISCHARGE OF BANKRUPTS.

Sec.
5104. Bankrupt subject to orders of court.
5105. Waiver of suit by proof of debt.
5106. Stay of suits.
5107. Exemption from arrest.
5108. Application for discharge.
5109. Notice to creditors.
5110. Grounds for opposing discharge.
5111. Specification of grounds of opposition.
5112. Assets equal to fifty per cent. required.
5113. Final oath of bankrupt.
5114. Discharge of bankrupt.
5115. Form of certificate of discharge.
5116. Second bankruptcy.
5117. Certain debts not released.
5118. Liability of other persons not released.
5119. Effect of discharge.
5120. Application to annul discharge.

Bankrupt subject to orders of court.

2 March, 1867, c. 176, s. 26, v. 14, p. 529.

SEC. 5104. The bankrupt shall at all times, until his discharge, be subject to the order of the court, and shall, at the expense of the estate, execute all proper writings and instruments, and do all acts required by the court touching the assigned property or estate, and to enable the assignee to demand, recover, and receive all the property and estate assigned, wherever situated. For neglect or refusal to obey any order of the court, the bankrupt may be committed and punished as for a contempt of court. If the bankrupt is without the district, and unable to return and personally attend at any of the times or do any of the acts which may be required pursuant to this section, and if it appears that such absence was not caused by willful default, and if, as soon as may be after the removal of such impediment, he offers to attend and submit to the order of the court in all respects, he shall be permitted so to do, with like effect as if he had not been in default.

Waiver of suit by proof of debt.

2 March, 1867, c. 176, s. 21, v. 14, p. 526.

SEC. 5105. No creditor proving his debt or claim shall be allowed to maintain any suit at law or in equity therefor against the bankrupt, but shall be deemed to have waived all right of action against him; and all proceedings already commenced or unsatisfied judgments already obtained thereon against the bankrupt shall be deemed to be discharged and surrendered thereby.

In re Robinson, 6 Blatch., 253; *In re* Wright., 2 Ben., 509; *In re* Rosenberg, 3 Ben., 14; *In re* Migel, 2 Bank. Reg., 153; *In re* Meyers, 2 Ben., 424.

Stay of suits.

2 March, 1867, c. 176, s. 21, v. 14, p. 526.

SEC. 5106. No creditor whose debt is provable shall be allowed to prosecute to final judgment any suit at law or in equity therefor against the bankrupt, until the question of the debtor's discharge shall have been determined; and any such suit or proceedings shall, upon the application of the bankrupt, be stayed to await the determination of the court in bankruptcy on the question of the discharge, provided there is no unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge, and provided, also, that if the amount due the creditor is in dispute, the suit, by leave of the court in bankruptcy, may proceed to judgment for the purpose of ascertaining the amount due, which amount may be proved in bankruptcy, but execution shall be stayed. [See § 720.]

Markson *vs.* Heaney, 1 Dill., 497; *In re* Wilbur, 1 Ben., 527; *Ex parte* Seymour, 1 Ben., 348; *In re* Bernstein, 2 Ben., 44; *In re* Schnepf, 2 Ben., 72; *In re* Duncan, 2 Ben., 78; *In re* Meyers, 2 Ben., 424; *In re* Olcott, 2 Ben., 443; *In re* Richardson, 2 Ben., 517; *In re* Schwab, 3 Ben., 231; *In re* People's Steamship Co., 3 Ben., 226; *In re* Leszynsky, 3 Ben., 487; Sampson *vs.* Burton, 4 Bank. Reg., 1; *In re* Ghiradelli, 4 Bank. Reg., 42; Maxwell *vs.* Faxton, 4 Bank. Reg., 60.

Exemption from arrest.

2 March, 1867, c. 176, s. 26, v. 14, p. 529.—*In re* Robinson, 6 Blatch., 253; *In re* Kimball, 6 Blatch., 292; *In re* Patterson, 2 Ben., 155; *In re* Glaser, 2 Ben., 180; *Ex parte* Seymour, 1 Ben., 348; *In re* Valk, 3 Ben., 431; *In re* Devoe, 2 Bank. Reg., 11; *In re* Migel, 2 Bank. Reg., 153; Minon *vs.* Van Nostrand, 4 Bank. Reg., 28.

SEC. 5107. No bankrupt shall be liable during the pendency of the proceedings in bankruptcy to arrest in any civil action, unless the same is founded on some debt or claim from which his discharge in bankruptcy would not release him.

Application for discharge.

SEC. 5108. At any time after the expiration of six months from the adjudication of bankruptcy, or if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days, and within one year from the adjudication of bankruptcy, the bankrupt may apply to the court for a discharge from his debts.

2 March, 1867, c. 176, s. 29, v. 14, p. 531.

In re Greenfield, 6 Blatch., 287; *In re* Dodge, 2 Ben., 347; *In re* Solis, 4 Ben., 143; *In re* Woolums, 1 Bank. Reg., 131; *In re* Bodenheim, 2 Bank. Reg., 133; *In re* Martin, 2 Bank. Reg., 169; *In re* Bunster, 5 Bank. Reg., 82; *In re* Schenck, 5 Bank. Reg., 93; *In re* Farrell, 5 Bank. Reg., 125; *In re* Gallison, 5 Bank. Reg., 353.

Notice to creditors.

SEC. 5109. Upon application for a discharge being made the court shall order notice to be given by mail to all creditors who have proved their debts, and by publication at least once a week in such newspapers as the court shall designate, due regard being had to the general circulation of the same in the district, or in that portion of the district in which the bankrupt and his creditors shall reside to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the bankrupt.

2 March, 1867, c. 176, s. 29, v. 14, p. 531.

In re Bellamy, 1 Ben., 390; *In re* McIntire, 1 Ben., 543; *In re* Townsend, 2 Ben., 62; *In re* Blaisdell, 6 Bank. Reg., 78.

Grounds for opposing discharge.

SEC. 5110. No discharge shall be granted, or, if granted, shall be valid, in any of the following cases:

First. If the bankrupt has willfully sworn falsely in his affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in bankruptcy, in relation to any material fact.

2 March, 1867, c. 176, s. 29, v. 14, p. 531.

In re Beardsley, 1 Bank. Reg., 52; *In re* Solomon, 2 Bank. Reg., 94; *In re* Needham, 2 Bank. Reg., 124; *In re* Keefer, 4 Bank. Reg., 126; *In re* Smith & Bickford, 5 Bank. Reg., 20; *In re* Rainsford, 5 Bank. Reg., 381.

Second. If the bankrupt has concealed any part of his estate or effects, or any books or writings relating thereto, or has been guilty of any fraud or negligence in the care, custody, or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this Title, or if he has caused, permitted, or suffered any loss, waste, or destruction thereof.

In re Hill, 1 Bank. Reg., 114; *In re* Rathbone, 1 Bank. Reg., 145; *In re* O'Bannon, 2 Bank. Reg., 6; *In re* Solomon, 2 Bank. Reg., 94; *In re* Goodridge, 2 Bank. Reg., 105; *In re* Hussman, 2 Bank. Reg., 140; *In re* White, 2 Bank. Reg., 179; *In re* Beal, 2 Bank. Reg., 178; *In re* Rainsford, 5 Bank. Reg., 381.

Third. If, within four months before the commencement of such proceedings, the bankrupt has procured his lands, goods, money, or chattels to be attached, sequestered, or seized on execution.

In re Belden, 2 Bank. Reg., 14.

Fourth. If, at any time after the second day of March, eighteen hundred and sixty-seven, the bankrupt has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors; or has removed or caused to be removed any part of his property from the district, with intent to defraud his creditors.

Fifth. If the bankrupt has given any fraudulent preference contrary to the provisions of the act of March two, eighteen hundred and sixty-seven, to establish a uniform system of bankruptcy, or to the provisions of this Title, or has made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or has lost any part thereof in gaming, or has admitted a false or fictitious debt against his estate.

In re Rosenfeld, 1 Bank. Reg., 161; *In re* Rosenfeld, 2 Bank. Reg., 49; *In re* Metzger, 2 Bank. Reg., 114; *In re* Locke, 2 Bank. Reg., 123; *In re* Freeman, 4 Bank. Reg., 17; *In re* Warner, 5 Bank. Reg., 414.

Sixth. If the bankrupt, having knowledge that any person has proved such false or fictitious debt, has not disclosed the same to his assignee within one month after such knowledge.

Seventh. If the bankrupt, being a merchant or tradesman, has not, at all times after the second day of March, eighteen hundred and sixty-seven, kept proper books of account.

In re Cocks, 3 Ben., 260; *In re* Solomon, 2 Bank. Reg., 94; *In re* Newman, 2 Bank. Reg., 99; *In re* Gay, 2 Bank. Reg., 114; *In re* Murdock *et al.*, 4 Bank. Reg., 17; *In re* Tyler, 4 Bank. Reg., 27; *In re* Bound, 4 Bank. Reg., 164.

In re Mawson, 2 Ben., 332; *In re* Mawson, 2 Ben., 412.

Eighth. If the bankrupt, or any person in his behalf, has procured the assent of any creditor to the discharge, or influenced the action of any creditor at any stage of the proceedings, by any pecuniary consideration or obligation.

In re Brodhead, 3 Ben., 106; *In re* Freeman, 4 Bank. Reg., 17; *In re* Critew, 5 Bank. Reg., 423.

Ninth. If the bankrupt has, in contemplation of becoming bankrupt, made any pledge, payment, transfer, assignment, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed in satisfaction of his debts.

Tenth. If the bankrupt has been convicted of any misdemeanor under this Title.

Specification of grounds of opposition.

SEC. 5111. Any creditor opposing the discharge of any bankrupt may file a specification in writing of the grounds of his opposition, and the court may in its discretion order any question of fact so presented to be tried at a stated session of the district court.

2 March, 1867, c. 176, s. 31, v. 14, p. 532.—*In re* Rathbone, 1 Bank. Reg., 50; *In re* Rathbone, 1 Bank. Reg., 65; *In re* Mawson, 1 Bank. Reg., 115; *In re* Boutell, 2 Bank. Reg., 51; *In re* Smith & Bickford, 5 Bank. Reg., 20; *In re* Frizelle, 5 Bank. Reg., 119.

Assets equal to fifty per cent. required.

SEC. 5112. In all proceedings in bankruptcy commenced after the first day of January, eighteen hundred and sixty-nine, no discharge shall be granted to a debtor whose assets shall not be equal to fifty per centum of the claims proved against his estate upon which he shall be liable as the principal debtor, unless the assent in writing of a majority in number and value of his creditors to whom he shall have become liable as principal debtor, and who shall have proved their claims, is filed in the case at or before the time of the hearing of the application for discharge; but this provision shall not apply to those debts from which the bankrupt seeks a discharge which were contracted prior to the first day of January, eighteen hundred and sixty-nine.

27 July, 1868, c. 258, s. 1, v. 15, p. 227.

In re Billing, 3 Ben., 212: *In re* Rockwell & Woodruff, 4 Bank. Reg., 74; *In re* Sey, 4 Bank. Reg., 2; *In re* Bunster, 5 Bank. Reg., 82; *In re* Borden & Geary, 5 Bank. Reg., 128; *In re* Graham, 5 Bank. Reg., 155; *In re* Kahley, 6 Bank. Reg., 189.

Final oath of bankrupt.

SEC. 5113. Before any discharge is granted, the bankrupt must take and subscribe an oath to the effect that he has not done, suffered, or been privy to any act, matter, or thing specified as a ground for withholding such discharge, or as invalidating such discharge if granted.

14 July, 1870, c. 262, s. 1, v. 16, p. 276.

2 March, 1867, c. 106, s. 29, v. 14, p. 531.—*In re* Bellamy, 1 Ben., 426; *In re* Pulver, 3 Ben., 65; *In re* O'Farrell, 3 Ben., 191; *In re* Machad, 2 Bank. Reg., 113; *In re* Gunike, 4 Bank. Reg., 23; *In re* Frizelle, 5 Bank. Reg., 119.

Discharge of bankrupt.

SEC. 5114. If it shall appear to the court that the bankrupt has in all things conformed to his duty under this Title, and that he is entitled, under the provisions thereof, to receive a discharge, the court shall grant him a discharge from all his debts except as hereinafter provided, and shall give him a certificate thereof under the seal of the court.

2 March, 1867, c. 176, s. 32, v. 14, p. 532.

In re Bunster, 5 Bank. Reg., 82.

Form of certificate of discharge.

SEC. 5115. The certificate of a discharge in bankruptcy shall be in substance in the following form:

2 March, 1867, c. 176, s. 32, v. 14, p. 532.

District court of the United States, district of .

Whereas has been duly adjudged a bankrupt under the Revised Statutes of the United States, Title "BANKRUPTCY," and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said be forever discharged from all debts and claims which by said Title are made provable against his estate, and which existed on the day of , on which day the petition for adjudication was filed by (or against) him; excepting such debts, if any, as are by law excepted from the operation of a discharge in bankruptcy. Given under my hand and the seal of the court at , in the said district, this day of , .

(Seal.) , Judge.

Second bankruptcy.

SEC. 5116. No person who has been discharged, and afterward becomes bankrupt on his own application, shall be again entitled to a discharge whose estate is insufficient to pay seventy per centum of the debts proved against it, unless the assent in writing of three-fourths in value of his creditors who have proved their claims is filed at or before the time of application for discharge; but a bankrupt who proves to the satisfaction of the court that he has paid all the debts owing by him at the time of any previous bankruptcy, or who has been voluntarily released therefrom by his creditors, shall be entitled to a discharge in the same manner and with the same effect as if he had not previously been bankrupt.

Ibid., s. 30, p. 532.

Certain debts not released.

SEC. 5117. No debt created by the fraud or embezzlement of the bankrupt, or by his defalcation as a public officer, or while acting in any fiduciary character, shall be discharged by proceedings in bankruptcy; but the debt may be proved, and the dividend thereon shall be a payment on account of such debt.

Ibid., s. 33, p. 533.

In re Kimball, 6 Blatch, 292; *In re* Seymour, 1 Ben., 348; *In re* Kimball, 2 Ben., 554; *In re* Devoe, 2 Bank. Reg., 11; *In re* Whitehouse, 4 Bank. Reg., 15; Morse *vs.* Hutchins, 102 Mass., 439; Cronan *vs.* Cotting, 104 Mass., 245.

Liability of other persons not released.

SEC. 5118. No discharge shall release, discharge, or affect any person liable for the same debt for or with the bankrupt, either as partner, joint-contractor, indorser, surety, or otherwise.

2 March, 1867, c. 176, s. 33, v. 14, p. 533.—*In re* Levy, 2 Ben., 169.

Effect of discharge.

SEC. 5119. A discharge in bankruptcy duly granted shall, subject to the limitations imposed by the two preceding sections, release the bankrupt from all debts, claims, liabilities, and demands which were or might have been proved against his estate in bankruptcy. It may be pleaded by a simple averment that on the day of its date such discharge was granted to the bankrupt, setting a full copy of the same forth in its terms as a full and complete bar to all suits brought on any such debts, claims, liabilities, or demands. The certificate shall be conclusive evidence in favor of such bankrupt of the fact and the regularity of such discharge.

2 March, 1867, c. 176, s. 34, v. 14, p. 533.

Humble & Co. *vs.* Carson.

Application to annul discharge.

SEC. 5120. Any creditor of a bankrupt, whose debt was proved or provable against the estate in bankruptcy, who desires to contest the validity of the discharge on the ground that it was fraudulently obtained, may, at any time within two years after the date thereof, apply to the court which granted it to annul the same. The application shall be in writing, and shall specify which, in particular, of the several acts mentioned in section fifty-one hundred and ten it is intended to prove against the bankrupt, and set forth the grounds of avoidance; and no evidence shall be admitted as to any other of such acts; but the application shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of the application to be given to the bankrupt, and order him to appear and answer the same, within such time as to the court shall seem proper. If, upon the hearing of the parties, the court finds that the fraudulent acts, or any of them, set forth by the creditor against the bankrupt, are proved, and that the creditor had no knowledge of the same until after the granting of the discharge, judgment shall be given in favor of the creditor, and the discharge of the bankrupt shall be annulled. But if the court finds that the fraudulent acts and all of them so set forth are not proved, or that they were known to the creditor before the granting of the discharge, judgment shall be rendered in favor of the bankrupt, and the validity of his discharge shall not be affected by the proceedings.

2 March, 1867, c. 176, s. 34, v. 14, p. 533.

CHAPTER SIX.

PROCEEDINGS PECULIAR TO PARTNERSHIPS AND CORPORATIONS.

Sec.
5121. Bankruptcy of partnerships.
5122. Of corporations and joint-stock companies.
5123. Authority of State courts proceeding against corporations.

Bankruptcy of partnerships.

2 March, 1867, c. 176, s. 36, v. 14, p. 534.

Mead *vs.* National Bank, &c., 6 Blatch., 180; *In re* Boylan, 1 Ben., 266; *In re* Lewis, 2 Ben., 96; *In re* Little, 2 Ben., 186; *In re* Crockett *et al.*, 2 Ben., 514; *In re* Foster, 3 Ben., 386; *In re* Prankard, 1 Bank. Reg., 51; *In re* Abbe, 2 Bank. Reg., 26; *In re* Wilkins, 2 Bank. Reg., 113; *In re* Melick, 4 Bank. Reg., 26; *In re* Howard, Cole & Co., 4 Bank. Reg., 185; *In re* Penn, 5 Bank. Reg., 30; *In re* Stevens, 5 Bank. Reg., 112; *In re* Leland, 5 Bank. Reg., 222; *In re* Isaacs & Cohn, 6 Bank. Reg., 92.

SEC. 5121. Where two or more persons who are partners in trade are adjudged bankrupt, either on the petition of such partners or of any one of them, or on the petition of any creditor of the partners, a warrant shall issue, in the manner provided by this Title, upon which all the joint stock and property of the copartnership, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are hereinbefore excepted. All the creditors of the company, and the separate creditors of each partner, may prove their respective debts. The assignee shall be chosen by the creditors of the company. He shall keep separate accounts of the joint stock or property of the copartnership and of the separate estate of each member thereof; and after deducting out of the whole amount received by the assignee the whole of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the copartnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors. If there is any balance of the separate estate of any partner, after the payment of his separate debts, such balance shall be added to the joint stock for the payment of the joint creditors; and if there is any balance of the joint stock after payment of the joint debts, such balance shall be appropriated to and divided among the separate estates of the several partners according to their respective right and interest therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts. The certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been against him alone. In all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone. If such copartners reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case.

Of corporations and joint-stock companies.

2 March, 1867, c. 176, s. 37, v. 14, p. 535.

Rankin & Pullan *vs.* Florida, &c., R. R. Co., 1 Bank. Reg., 196; *In re* The Lady Bryan Mining Co., 4 Bank. Reg., 36; Adams *vs.* Boston, &c., R. R. Co., 4 Bank. Reg., 99; Alabama and Chattanooga R. R. *vs.* Jones, 5 Bank. Reg., 97; Sweatt *vs.* Railroad, 5 Bank. Reg., 234.

SEC. 5122. The provisions of this Title shall apply to all moneyed business or commercial corporations and joint-stock companies, and upon the petition of any officer of any such corporation or company, duly authorized by a vote of a majority of the corporators at any legal meeting called for the purpose, or upon the petition of any creditor of such corporation or company, made and presented in the manner provided in respect to debtors, the like proceedings shall be had and taken as are provided in the case of debtors. All the provisions of this Title which apply to the debtor, or set forth his duties in regard to furnishing schedules and inventories, executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, or paying away his money or property, shall in like manner, and with like force, effect, and penalties, apply to each and every officer of such corporations or company in relation to the same matters concerning the corporation or company, and the money and property thereof. All payments, conveyances, and assignments declared fraudulent and void by this Title when made by a debtor, shall in like manner, and to the like extent, and with like remedies, be fraudulent and void when made by a corporation or company. Whenever any corporation by proceedings under this Title is declared bankrupt, all its property and assets shall be distributed to the creditors of such corporations in the manner provided in this Title in respect to natural persons. But no allowance or

discharge shall be granted to any corporation or joint-stock company, or to any person or officer or member thereof.

Authority of State courts in proceedings against corporations, &c.

3 Feb., 1873, c. 135, v. 17, p. 436.

SEC. 5123. Whenever a corporation created by the laws of any State, whose business is carried on wholly within the State creating the same, and also any insurance company so created, whether all its business shall be carried on in such State or not, has had proceedings duly commenced against such corporation or company before the courts of such State for the purpose of winding up the affairs of such corporation or company and dividing its assets ratably among its creditors and lawfully among those entitled thereto prior to proceedings having been commenced against such corporation or company under the bankrupt laws of the United States, any order made, or that shall be made, by such court agreeably to the State law for the ratable distribution or payment of any dividend of assets to the creditors of such corporation or company while such State court shall remain actually or constructively in possession or control of the assets of such corporation or company shall be deemed valid notwithstanding proceedings in bankruptcy may have been commenced and be pending against such corporation or company.

CHAPTER SEVEN.

FEES AND COSTS.

Sec.
5124. Fees.
5125. Traveling and incidental expenses.
5126. Marshal's fees.
5127. Justices of the Supreme Court may change tariff of fees.

Fees.

2 March, 1867, c. 176, s. 47, v. 14, p. 540.

In re MacIntire, 1 Ben., 277; *In re* Clark, 2 Ben., 72; *In re* Robinson, 2 Ben., 145; *In re* Lowenstine, 3 Ben., 422; *In re* Dean, 1 Bank. Reg., 26; *In re* Sherwood, 1 Bank. Reg., 74; *In re* Talbot, 2 Bank. Reg., 93.

SEC. 5124. In each case there shall be allowed and paid, in addition to the fees of the clerk of the court as now established by law, or as may be established by general order for fees in bankruptcy, the following fees, which shall be applied to paying for the services of the registers:

First. For issuing every warrant, two dollars.

Second. For each day in which a meeting is held, three dollars.

Third. For each order for a dividend, three dollars.

Fourth. For every order substituting an arrangement by trust-deed for bankruptcy, two dollars.

Fifth. For every bond with sureties, two dollars.

Sixth. For every application for any meeting in any matter under this act, one dollar.

Seventh. For every day's service while actually employed under a special order of the court, a sum not exceeding five dollars, to be allowed by the court.

Eighth. For taking depositions, the fees now allowed by law.

Ninth. For every discharge when there is no opposition, two dollars.

Such fees shall have priority of payment over all other claims out of the estate, and, before a warrant issues, the petitioner shall deposit with the clerk of the court fifty dollars as security for the payment thereof; and if there are not sufficient assets for the payment of the fees, the person upon whose petition the warrant is issued shall pay the same, and the court may issue an execution against him to compel payment to the register.

Traveling and incidental expenses.

2 March, 1867, c. 176, s. 5, v. 14, p. 519.

In re Dean, 1 Bank. Reg., 26; *In re* Sherwood, 1 Bank. Reg., 74.

SEC. 5125. The traveling and incidental expenses of the register, and of any clerk or other officer attending him, shall be settled by the court in accordance with the rules prescribed by the justices of the Supreme Court, and paid out of the assets of the estate in respect of which such register has acted; or if there are no such assets, or if the assets are insufficient, such expenses shall form a part of the costs in the case in which the register acts, to be apportioned by the judge.

Marshal's fees.

2 March, 1867, c. 176, s. 47, v. 14, p. 540.

SEC. 5126. Before any dividend is ordered, the assignee shall pay out of the estate to the messenger the following fees, and no more:

First. For service of warrant, two dollars.

Second. For all necessary travel, at the rate of five cents a mile each way.

In re Lowenstine, 3 Ben., 422; *In re* Dean, 1 Bank. Reg., 26; *In re* Talbot, 2 Bank. Reg., 93.

Third. For each written note to creditor named in the schedule, ten cents.

Fourth. For custody of property, publication of notices, and other services, his actual and necessary expenses upon returning the same in specific items, and making oath that they have been actually incurred and paid by him, and are just and reasonable, the same to be taxed or adjusted by the court, and the oath of the messenger shall not be conclusive as to the necessity of such expenses.

For cause shown, and upon hearing thereon, such further allowance may be made as the court, in its discretion, may determine.

Justices of Supreme Court may change tariff of fees.

2 March, 1867, c. 176, s. 47, v. 14, p. 540.

SEC. 5127. The enumeration of the foregoing fees shall not prevent the justices of the Supreme Court from prescribing a tariff of fees for all other services of the officers of courts of bankruptcy, or from reducing the fees prescribed in the three preceding sections, in classes of cases to be named in their general orders.

CHAPTER EIGHT.

PROHIBITED AND FRAUDULENT TRANSFERS.

Sec.
5128. Preferences by insolvent.
5129. Fraudulent transfers of property.
5130. Presumptive evidence of fraud.
5131. Fraudulent agreements.
5132. Penalties against fraudulent bankrupt.

Preferences by insolvent.

2 March, 1867, c. 176, ss. 35, 39, v. 14, pp. 534, 536.

SEC. 5128. If any person, being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures or suffers any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this Title, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited.

Toof *vs.* Martin, 13 Wall., 40; Traders' Bank *vs.* Campbell, 14 Wall., 87; Gibson *vs.* Warden, 14 Wall, 244; Buchanan *vs.* Smith, 16 Wall., 277; Walbrun *vs.* Babbitt, 16 Wall., 577; Wager *vs.* Hall, 16 Wall., 584; Wilson *vs.* City Bank, 17 Wall., 473; *In re* Binninger *et al.*, 7 Blatch., 262; Cookingham *vs.* Morgan, 7 Blatch., 480; Collins *vs.* Gray, 8 Blatch., 483; Bean *vs.* Brookmeyer *et al.*, 1 Dill., 151; Wright *vs.* Filley, 1 Dill., 171; Rison *vs.* Knapp, 1 Dill., 186; Vanderhoof's Assignee *vs.* City Bank, &c., 1 Dill., 476; *In re* Dibblee, 3 Ben., 283; Graham *vs.* Stark, 3 Ben., 520; *In re* Davidson, 4 Ben., 10; *In re* Terry *et al.*, 4 Bank. Reg., 33; *In re* Butler, 4 Bank. Reg., 91; Vogle *vs.* Lathrop, 4 Bank. Reg., 146; Golson *vs.* Neihoff, 5 Bank. Reg., 56; Kohlsaat *vs.* Hoguet, 5 Bank. Reg., 159; Haskell *vs.* Ingalls, 5 Bank. Reg., 205; Hood *vs.* Karper, 5 Bank. Reg., 358; Scammon *vs.* Cole, 5 Bank. Reg., 257.

Fraudulent transfers of property.

2 March, 1867, c. 176, ss. 35, 39, v. 14, pp. 534, 536.

SEC. 5129. If any person, being insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance is made with a view to prevent his property from coming to his assignee in bankruptcy, or to

Toof *vs.* Martin, 13 Wall., 40; Gibson *vs.* Warden, 14 Wall., 244; Tiffany

prevent the same from being distributed under this act, or to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade any of the provisions of this Title, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt.

vs. Lucas, 15 Wall., 410; Cook *vs.* Tullis, 18 Wall., 332; Tiffany *vs.* Boatman's Institution, 18 Wall., 375; Bartholow *vs.* Bean, 18 Wall., 635; Hubbard *vs.* Allaire Works, 7 Blatch., 284; Andrews *vs.* Graves, 1 Dill., 108; Bean *vs.* Brookmeyer *et al.*, 4 Bank. Reg., 57; *In re* Butler, 4 Bank. Reg., 91; Burkholder *vs.* Stump, 4 Bank. Reg., 191; *In re* Hunt, 2 Bank. Reg., 166; Judson *vs.* Kelty, 6 Bank. Reg., 165.

Presumptive evidence of fraud.

SEC. 5130. The fact that such a payment, pledge, sale, assignment, transfer, conveyance, or other disposition of a debtor's property as is described in the two preceding sections, is not made in the usual and ordinary course of business of the debtor, shall be prima-facie evidence of fraud.

2 March, 1867, c. 176, s. 35, v. 14, p. 534.

Walbrun *vs.* Babbitt, 16 Wall., 577; *In re* Hunt, 2 Bank. Reg., 166; Rison *vs.* Heddens, 4 Bank. Reg., 114.

Fraudulent agreements.

SEC. 5131. Any contract, covenant, or security made or given by a bankrupt or other person with, or in trust for, any creditor, for securing the payment of any money as a consideration for or with intent to induce the creditor to forbear opposing the application for discharge of the bankrupt, shall be void; and any creditor who obtains any sum of money or other goods, chattels, or security from any person as an inducement for forbearing to oppose, or consenting to such application for discharge, shall forfeit all right to any share or dividend in the estate of the bankrupt, and shall also forfeit double the value or amount of such money, goods, chattels, or security so obtained, to be recovered by the assignee for the benefit of the estate.

2 March, 1867, c. 176, s. 35, v. 14, p. 534.

Penalties against fraudulent bankrupt.

SEC. 5132. Every person respecting whom proceedings in bankruptcy are commenced, either upon his own petition or upon that of a creditor:

First. Who secretes or conceals any property belonging to his estate; or,

Second. Who parts with, conceals, destroys, alters, mutilates, or falsifies, or causes to be concealed, destroyed, altered, mutilated, or falsified, any book, deed, document, or writing relating thereto; or,

2 March, 1867, c. 176, s. 44, v. 14, p. 539.

U. S. *vs.* Lattore, 8 Blatch., 134; U. S. *vs.* Clark, 4 Bank. Reg., 14; U. S. *vs.* Prescott, 4 Bank. Reg., 29; U. S. *vs.* Pusey, 6 Bank. Reg., 284.

Third. Who removes or causes to be removed any such property or book, deed, document, or writing out of the district, or otherwise disposes of any part thereof, with intent to prevent it from coming into the possession of the assignee in bankruptcy, or to hinder, impede, or delay him in recovering or receiving the same; or,

Fourth. Who makes any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate with the like intent; or,

Fifth. Who spends any property belonging to his estate in gaming; or,

Sixth. Who, with intent to defraud, willfully and fraudulently conceals from his assignee or omits from his inventory any property or effects required by this Title to be described therein; or,

Seventh. Who, having reason to suspect that any other person has proved a false or fictitious debt against his estate, fails to disclose the same to his assignee within one month after coming to the knowledge or belief thereof; or,

Eighth. Who attempts to account for any of his property by fictitious losses or expenses; or,

Ninth. Who, within three months before the commencement of proceedings in bankruptcy, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, obtains on credit from any person any goods or chattels with intent to defraud; or,

Tenth. Who, within three months next before the commencement of proceedings in bankruptcy, with intent to defraud his creditors, pawns, pledges, or disposes of, otherwise than by transactions made in good faith in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for,

Shall be punishable by imprisonment, with or without hard labor, for not more than three years.