

INSOLVENCY ACT

Act of Jun. 4, 1901, P.L. 404, No. 231

Cl. 39

AN ACT

Relating to insolvency; embracing, among other matters, voluntary assignments for the benefit of creditors, and adverse proceedings in insolvency by creditors; forbidding, also, certain preferences; providing for the distribution of the insolvent's estate, and in certain contingencies relieving him, and others liable with him, from further liability for his or their debts.

Section 1. Be it enacted, &c., That if any person, persons, firm, limited partnership, joint-stock company or corporation, being insolvent or in contemplation of insolvency, with a view to give a preference to any creditor or person having a claim against, or who is under any liability for, such insolvent, shall procure, suffer or permit any judgment to be entered, by confession or otherwise, or any execution to be levied, or any attachment or sequestration to be made of any part of his, their or its real or personal property, or shall make any payment, pledge, assignment, transfer, conveyance or encumbrance thereof, either absolutely or as collateral security for a debt then existing, whether due or not, such judgment, execution, attachment, sequestration, payment, pledge, assignment, transfer, conveyance, or encumbrance shall inure to the benefit of all the creditors of such insolvent, if an assignment for the benefit of creditors be made or proceedings in insolvency be commenced within four months after such judgment, execution, attachment, sequestration, payment, pledge, assignment, transfer, conveyance, or encumbrance shall have been entered, issued, commenced, made or recorded, and in the case of personal property exclusive possession given.

Section 2. If any person, persons, firm, limited partnership, joint-stock company or corporations, being insolvent or in contemplation of insolvency, with a view to give a preference to any creditor or person having a claim against, or who is under any liability for, such insolvent, shall procure, suffer or permit any judgment to be entered, by confession or otherwise, or any execution to be levied, or any attachment or sequestration to be made of any part of his, their or its real or personal property, or shall make any payment, pledge, assignment, transfer, conveyance, or encumbrance thereof, either absolutely or as collateral security for a debt then existing or about to be created, and if the aforesaid be known to such creditor, who thereby collusively attempts to obtain for himself or others a preference over other creditors, such judgment, execution, attachment, sequestration, payment, pledge, assignment, transfer, conveyance, or encumbrance shall inure to the benefit of all the creditors of such insolvent, if an assignment for the benefit of creditors be made or proceedings in insolvency be commenced within four months after such judgment, execution, attachment, sequestration, payment,

pledge, assignment, transfer, conveyance, or encumbrance shall have been entered, issued, commenced, made or recorded, and in the case of personal property exclusive possession given. A presumption of such knowledge and intention shall arise, by reason of the fact of such insolvency, if the consideration be grossly inadequate, or if such judgment, execution, attachment, sequestration, payment, pledge, assignment, transfer, conveyance, or encumbrance shall not have been entered, issued, commenced, made or recorded, and, in the case of personal property, exclusive possession be not given at or about the time of the creation of the debt, or if the transaction shall have not have been made in the usual and ordinary course of the business of such insolvent. But nothing herein contained shall in any manner affect any judgment, payment, pledge, assignment, transfer, conveyance, or encumbrance taken in good faith, without such knowledge or intention, when a debt is created or about to be created, if entered, made or recorded, and in the case of personal property exclusive possession be given at or about that time.

Section 3. Any person, persons, firm, limited partnership, joint-stock company or corporation may make an assignment of his, their or its property to one or more disinterested persons, as assignees, not exceeding three, for the benefit of his, their or its creditors; but, except as herein otherwise provided, all preferences or conditions therein contained shall be wholly void, and such assignment shall unconditionally inure to the benefit of all the creditors accepting a dividend, as in this act provided. An assignment of a portion of such property in trust, for the benefit of the creditors, or any of them, however expressed, shall be deemed an assignment of the whole estate, and shall be recorded in the same counties, with the same effect, as a general assignment; but a debtor may assign any part of his estate to certain creditors, or in trust for them, if at the time of so doing he be solvent, or the same be not in contravention of the other provisions of this act.

Section 4. Any member or members of a partnership, limited or otherwise, except the associations created under the act of second June, one thousand eight hundred and seventy-four, and its supplements, or any one or more joint, or joint and several debtors, may make an assignment of the assets in which he or they are interested with others, for the benefit of their creditors, in the manner and with the effect herein provided; but any other person or persons jointly, or jointly and severally, interested in such assets, may, within fifteen days after notice thereof, upon petition to the court and with notice to the assignors, give security to indemnify and save harmless the assignors, and to pay all debts, or to obtain the release of the assignors therefrom, within such time as the court shall designate, not exceeding six months; whereupon the assignees shall forthwith transfer to those entering such security all the assets passing by the assignment, freed and clear of all claims upon the part of the assignors and assignee, but the rights of the creditors shall remain as if no assignment had been made. In case of such an assignment, the assignee shall forthwith give written notice to the other person or persons jointly, or

jointly and severally, interested in such assets, and shall file of record an affidavit thereof, and the fifteen days shall be computed from the time of such filing. If the assignment be set aside, the costs incurred, including the reasonable expenses and the fees of the assignees, shall be paid as the court shall direct.

Section 5. Any person arrested on civil process may make an assignment for the benefit of his creditors in the manner herein set forth and may thereupon present his petition to the court issuing the same, accompanied by the assignment, inventory, schedules, and oath required, or copies thereof, if the process was issued by a different court from that which has jurisdiction of such assignment, and praying a rule to show cause why he should not be discharged from arrest. The court to which the petition is presented shall grant the rule, returnable at some convenient time, unless the case is one requiring the petitioner's imprisonment, shall discharge the petitioner pending the hearing of said rule, upon his paying the fees due the jailer, if any, and upon his entering such security for his appearance, surrender, and compliance with the decrees of the court, and his requirement of this act, as the court shall deem requisite. Actual notice of the rule shall be given to the plaintiff in the process, or his counsel of record, and to all creditors whose addresses are known to the petitioner; and publication thereof shall be made twice in a weekly newspaper published in the county, and twice in a daily newspaper published in the county, if there be any, and once in the legal periodical, if any, designated by the court, and an affidavit of such service and publication shall be filed in the cause at least three days before the day fixed for the hearing. Notice to creditors non-resident in the county may be made by registered letter. Upon the hearing of the rule, which shall be at the bar of the court, and at which the petitioner shall answer all questions put to him, and shall produce all papers and books required of him, if it shall appear to the court that the petitioner has duly assigned all his property for the benefit of his creditors, that he has not violated any of the provisions of this act, and that all the claims against him would be discharged by the creditors accepting a dividend, as by this act provided, the court shall forthwith discharge him from arrest; and he shall not thereafter be liable to arrest in said proceedings, or upon any claim existing at that time, unless upon petition to said court, and with notice to the insolvent, it shall afterwards be made to appear that, under this act, he should have been or should be imprisoned. If, however, he shall refuse to answer relevant questions, or to produce his books and papers, or it shall appear that he has violated any of the provisions of this act, or that any of the claims against him would not be discharged by the creditors accepting a dividend, as by this act provided, he shall be discharged from arrest only upon undergoing such imprisonment not exceeding ninety days, as the court shall require. If the petitioner fails to give notice as required, or to appear, or to surrender himself within forty-eight hours, or to comply with the decrees of the court or the provisions of this act, his bond shall thereby be forfeited; and

recovery may be had thereon by the assignee, for the use of all the creditors of the insolvent, and he may be rearrested by an alias or pluries writ. A surrender, to be valid, must be accompanied by a certified copy of the order of the court, or of the writ under which the arrest was originally made. The assignment, once made, shall proceed in the usual course. The benefits of this section shall not extend to any person who has been attached for failure to comply with an order or decree requiring him to make an assignment, execute a conveyance, or to do any other specific act, until he shall, in fact, have done so, nor shall it in any manner affect the liability of the petitioner to imprisonment for crime.

(5 amended Jun. 9, 1911, P.L.728, No.301)

Section 6. The court of common pleas of any county, in which any person may be confined by sentence or order of any court of this Commonwealth until he restore any stolen goods or chattels, or pay the value thereof; or in which any person may be confined for the non-payment of any fine or of the costs of prosecution, or upon conviction of fornication and bastardy, and for no other cause, shall discharge such person from confinement on his making application and conforming to the provisions herein directed in the case of insolvents, who have been arrested on civil process: Provided, That where such person shall have been sentenced to the payment of a fine, or after a conviction of fornication and bastardy, he shall not be entitled to make such application until after he shall have been in actual confinement for a period of not less than three months, except in case of a fine not exceeding fifteen dollars, exclusive of costs, in which event the actual confinement need not exceed thirty days.

Section 7. Any creditor of an alleged insolvent may, in the court of common pleas of the county where the alleged insolvent resides or his principal place of business is situate, by petition, under oath, aver that such person, persons, firm, limited partnership, joint-stock company or corporation is insolvent, has not made an assignment for the benefit of his, their or its creditors, is resident or is carrying on business in said county, and:--

(1). Has called a meeting of his creditors for the purpose of compounding with them, or has exhibited a statement showing his inability to meet his liabilities, or has otherwise acknowledged his insolvency; or,

(2). Has absconded or is about to abscond with intent to defraud any creditor, or to defeat or delay the remedy of any creditor, or to avoid being arrested or served with legal process, or conceals himself within or remains out of the Commonwealth, with like intent; or,

(3). Secretes or is about to secrete any part of his estate or effects, with intent to defraud his creditors, or to defeat or delay their demands, or any of them; or,

(4). Has assigned, removed or disposed of, or is about to assign, remove or dispose of, any part of his property, with intent to defraud, defeat or delay his creditors, or any of them; or,

(5). Has been actually imprisoned for more than thirty days, in a civil action, or, being arrested therefor, has escaped from

custody; or,

(6). Has refused or neglected to comply with any order, judgment or decree for the payment of money, and an execution therefor has been returned unsatisfied; or,

(7). Has suffered or permitted any attachment or sequestration to remain against any of his property, without attempting to dissolve, by rule taken for that purpose, or upon entering security for a period of thirty days, or having taken a rule to dissolve which has been discharged by the court, has not entered security within twenty days thereafter; or,

(8). Has made any pledge, assignment, transfer, conveyance or incumbrance of the whole or a large part of his stock in trade or property, without being able to meet his liabilities and without the consent of his creditors, either in payment of or as security for a debt then existing, or with the intent to prefer one creditor to another, or out of his usual course of business, or for the benefit of himself or family.

Whereupon, the court shall grant a rule to show cause why a receiver should not be appointed for the estate of such alleged insolvent, and all legal proceedings there against, if any, vacated and set aside. Notice of said rule shall be given to the alleged insolvent and all other persons interested. If the facts averred are not denied, under oath, the court shall make such order as the facts averred or shown may require. If they are denied, testimony shall be taken at the bar of the court or by a law judge thereof, and the court shall make such order or decree as the facts found will justify, and may enforce the same by attachment of the person or sequestration of the property of the party in default. Any person, without foundation, maliciously invoking the action of the court under this section, shall be liable for a sum equal to double the injury actually sustained by the alleged insolvent.

Section 8. In such proceedings, as soon as the fact of insolvency be made to appear, the court shall forthwith appoint a disinterested person as receiver, unless the insolvent has made an assignment for the benefit of his creditors or has given security to pay petitioner's debt. Property of a perishable nature or likely to deteriorate in value may be sold by leave of the court, the proceeds thereof to be substituted in lieu thereof.

Section 9. All such assignments shall be acknowledged before some person authorized to take the acknowledgment of deeds, and shall be forthwith recorded in the office of the recorder of deeds, where the debtor shall reside or his principal place of business is situate. Within five days thereafter a copy of said deed shall be filed by the assignor in the court of common pleas of the said county together with: (one), A schedule of all the assets of said debtor, whether real or personal, and wheresoever situate, whether in possession, reversion, remainder or in trust, and whether presently valuable or otherwise, and stating what evidences there are or should be thereof, the present value as near as may be, and the liens or claims if any there against; (two), a list of the creditors, with the amounts of their claims, the exact addresses of the creditors, how and where the debts arose, what evidences thereof there may be, and what

security or claims against other persons the creditors may have for the payment of the same or any part thereof; (three), a full statement of the cause of his insolvency; (four), a list of all the judgments confessed, or payments, pledges, assignments, transfers, conveyances or encumbrances made by him in payment of, or as security for, a pre-existing debt, or for the benefit of himself or family, or with intent to prefer one creditor to another, or out of the usual and ordinary course of his business, within three months prior to his assignment, and the consideration therefor. And attached thereto shall be an oath by the insolvent in the following form:

I do swear (or affirm) that all the schedules above set forth are in all respects just and true; that I have not at any time, or in any manner whatsoever, since my insolvency, disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors; that I have, in no instance, credited or acknowledged a debt for a greater sum than I honestly and truly owed; that I have not preferred or attempted to prefer one creditor over another since my insolvency, except as in said schedule set forth; that I have not withheld, concealed, entrusted, or in any way disposed of or encumbered, any of my property which should justly be delivered over for the benefit of my creditors; that I have not changed, altered or falsified any of my books or papers, but have delivered the same to my assignees for the purposes of my estate; and that if any further assets of my estate come to my knowledge I will forthwith disclose or deliver the same to my assignee. So help me God (or, and so I do affirm).

Section 10. The assignment or a certified copy of the decree of the court appointing a receiver shall be recorded in the county where the insolvent resides, or his principal place of business is situate, and in every county where he owns real estate. A failure to record shall not in any manner affect the assignment; but if the assignee fails to record it within fifteen days after its delivery, his compensation as assignee shall be reduced by a sum sufficient to pay the costs, expenses and counsel fees of any creditor, or creditors, who in ignorance thereof bring suit or proceed with one already brought, and such sums shall be paid to such creditors. Any creditor may compel the production and recording of an assignment, by petition to the proper court of common pleas, at the expense and cost of the defaulting assignee, including a reasonable counsel fee to such creditor's attorney.

Section 11. The assignee or receiver shall, immediately after his appointment, take, subscribe to, and file in the proper court, an oath or affirmation in the following form:

I, A. B., do solemnly swear (or affirm) that I am legally qualified to act as assignee (or receiver) of the estate of C. D., an insolvent; that I am not interested therein or adversely thereto; that I will faithfully manage said estate for the benefit of the creditors thereof, in the manner provided by law, and will fully and accurately account for all the assets. So help me God (or, and so I do affirm).

Section 12. The assignee or receiver shall, before entering on the performance of his duties, give bond, with sufficient

sureties, to the Commonwealth, for the use and benefit of all parties in interest, in at least double the value of the insolvent's estate, as known to him, conditioned as follows:

The condition of this obligation is such that if the above bounden A. B., assignee (or receiver) of the estate of C. D., an insolvent, has discharged and shall faithfully discharge his duty as assignee, shall faithfully account for all moneys or assets received or to be received by him, or in which the estate of said insolvent is in any manner interested, and has faithfully executed and shall faithfully execute the trust confided to him, in the manner provided by law, then this obligation to be void; otherwise, to be and remain in full force and effect.

If additional assets are discovered after the giving of said bond, or the assets realize much more than their estimated value, or the court shall be of opinion that any of the bonds theretofore given is, for any cause, insufficient, the assignee or receiver shall give a new bond or bonds and with like conditions. Suits may be brought thereupon, as in the case of other official bonds, until the amounts thereof are exhausted; but neither said suits, nor the exhaustion of said bonds, shall in any way limit the liability of such assignee or receiver.

Section 13. The insolvent shall forthwith deliver to the assignee or receiver all his assets; including all vouchers, notes, bonds, bills, securities or other evidences of debt, documents, muniments of title, and writings in any way relating to, or having any bearing upon, or connection with, his estate; all books of account, patents, copyrights, assignments, leases, agreements, and generally, everything which relates to the assets, or will assist the assignee or receiver in collecting the same, or in ascertaining the true amount due to the creditors of the estate. The said insolvent shall, from time to time, at the expense of the estate, make and execute such deeds and writings, endorse such bills and other negotiable papers, draw such checks and orders for money deposited in banks and elsewhere, and do all such other lawful acts and things as the assignee or receiver may reasonably require, and which may be deemed useful for confirming the assignment, or to enable the assignee to demand, recover and receive all the estate and effects of the insolvent, especially any part thereof which is without this Commonwealth. The court may, by rule to show cause, followed by attachments for contempt, compel the insolvent to comply with its orders in this regard; but his failure or refusal so to do, either before or after such order, shall in no wise affect or impair the right of the assignee or receiver to recover any of the assets by suit, in his own name.

Section 14. Immediately after his appointment, the assignee shall give written or printed notice to all the creditors known to him of the fact of his appointment; notifying them that on a given day and hour, not more than twenty days distant, and at a given place, particularly designated, a meeting of all the creditors will be held, for the purpose of selecting an additional assignee or assignees, if they deem the same to be necessary. At such meeting a majority in amount of the creditors present, in person or by proxy,--partnerships or joint creditors

however having but one vote each,--may select as many more assignees as there were assignees named in the original deed or assignment. The assignees originally named shall, by deed duly executed, acknowledged and recorded, transfer to those thus selected an equal and undivided interest in said estate, and all the assignees thus named and selected shall thereafter act as joint assignees, with the same effect as if all were originally named in the original deed of assignment.

Section 15. The receiver within twenty days after his appointment, and the assignees within twenty days after the meeting of the creditors, shall file a sworn inventory of the estate, with its then present value. For the purpose of enabling them to do so, or to file any supplementary inventory, they are hereby empowered to examine the insolvent, under oath, as to any matter appertaining to such assets, and by leave of the court to call before them, by subpoena, with or without his books and papers, or the books and papers of any firm, limited partnership, joint-stock company, or corporation with which he is connected; and examine also, under oath, on the same subject, any person who they have reason to believe has knowledge of other or further assets of the insolvent's estate, or can give them information touching the same. No objection to such examination shall be made on the ground that a disclosure would tend to bring the witness into contempt, or disgrace or convict him of crime; but the information thus obtained shall not be used against him in any other proceeding. Any witness may decline to answer any question, or produce any books and papers, which, aside from the foregoing, he would not be required to answer or to produce in court upon a trial involving the same questions. Every witness, including the insolvent, shall be entitled to receive, out of the insolvent's estate, the usual witness fee and mileage for his attendance for this purpose.

Section 16. Upon application of the assignee or receiver, the court shall vacate and set aside all attachments, executions, sequestrations or other legal proceedings not wholly completed, and all money in court or in the hands of the sheriff, by virtue thereof, shall be paid to such assignee or receiver. The assignee or receiver shall pay, out of so much of the insolvent's estate as was attached, sequestered or levied upon, or was received from the court or sheriff, the legal cost of such vacated proceedings, as a preferred claim if the creditor's claim is afterwards allowed in the distribution of the insolvent's estate; and the creditor's claim shall also be paid thereout, if it shall be decided that, notwithstanding the provisions of this act, he was entitled to a preference.

Section 17. An assignee or receiver for the benefit of creditors shall be under the control of the proper court of common pleas; shall be the representative of the creditors of the insolvent, and entitled by proper legal steps, in his own name as assignee or receiver, to have vacated and set aside for the benefit of all the creditors any judgment, execution, attachment, sequestration, payment, pledge, assignment, transfer, conveyance or encumbrance which heretofore could have been avoided by the creditors, or any of them, or by which it is attempted to give one creditor preference over another, or

which, by this act, inures to the benefit of all the creditors of such insolvent. He shall be vested with all the property of the insolvent, real or personal, which the insolvent could have sold, assigned or conveyed, or which might have been taken in execution, or otherwise made liable for his debts or engagements, or any of them, at law or in equity, including patents and copyrights, royalties, debts due to or for the insolvent, liens or securities therefor, and rights of action or redemption; and, by leave of and subject to the control of the court, may carry on any business in which the insolvent may have been engaged. Every beneficial power and the interest of any person entitled to compel the execution of a trust power, shall pass to the assignee or receiver of the person in whom such power or interest is vested. He may, by bill of discovery or other legal or equitable proceeding, obtain information of, and sue for and recover, in his own name as such assignee or receiver, any assets which the insolvent might sue for and recover, or which any of his creditors might make available in payment of their claims; and any recovery had shall inure to the benefit of all, in proportion to their respective demands. And he shall be liable to suit, in his representative capacity, by any person seeking to recover specific property, if such property could have been recovered as against the creditors of the insolvent levying an execution thereon: Provided,

I. That no purchase or assignment of the real or personal property of such insolvent, made bona fide and for a valuable consideration, before the recording of the assignment or of the appointment of a receiver in the county where such purchase or assignment is made, by or to any person not having actual notice or knowledge of such insolvency, or of the assignment or petition, shall be invalidated or impeached thereby, unless voidable under the other provisions of this act:

II. That if any person indebted to such insolvent, or having possession of any of his property, shall bona fide pay the said debt or deliver the said property to the said insolvent, without having had actual notice or knowledge of such petition or assignment, he shall not be liable to pay or deliver the same to such assignee or receiver.

Section 18. The assignee or receiver within one year after his appointment, unless the court upon cause shown shall extend the time, shall collect all the moneys due to the insolvent; shall sell at public or private sale all the stocks, bonds, mortgages, evidences of debt and other like property of the insolvent, and shall sell at public sale the real and other personal property of the insolvent, unless upon cause shown the court shall authorize a private sale. After the expiration of that time the court may, upon cause shown, authorize a public or private sale of all the assets, of whatever kind or character the same may be and wherever situate. All sales shall be for cash unless the court shall otherwise authorize. The purchaser from the assignee or receiver may maintain any action, regarding the property purchased, in his own name, or continue any action already brought to his use, with the same rights and to the same effect as the assignee or receiver might or could do, but shall be liable for all costs accrued and to accrue in case of an

unsuccessful issue.

Section 19. An assignee or receiver may compound or compromise any debt or claim due to the insolvent, if done in good faith and after proper inquiry; and, upon payment of the amount due, may require all mortgages, conditional contracts, pledges and liens, of or upon any real or personal property of the insolvent, to be satisfied, cancelled or assigned to him, as he may deem best, or he may sell the property subject thereto. Where any realty is subject to liens or claims which, under existing laws would be discharged by a judicial sale, such liens and claims shall be unaffected by a private sale of such realty; but a public sale may be made thereof, freed and clear of such liens or claims, by leave of court, after notice to the claimants; and the fund realized shall take the place of the liens or claims, and be distributed on the settlement of the account of the assignee or receiver, to the parties found entitled thereto. Executions issued on such liens or claims may be stayed by the court, to enable the property to be sold by the assignee or receiver. If a creditor purchases property upon which he has a lien or claim, he shall, after payment to the assignee or receiver of all the costs and expenses of the sale, and the amount of all prior liens or claims discharged by the sale, if any, be entitled to receipt to the assignee or receiver to the extent of his lien or claim, upon giving security, to be approved by the court, conditioned to make good the amount receipted for if it shall afterwards be made to appear that, for any cause, he should not be allowed such preference.

Section 20. No assignee or receiver shall purchase, directly or indirectly, any part of the assets of such insolvent except by leave of court, after notice to all the known creditors; nor shall he employ any person as manager or attorney who is related to the assignor, or has any interest, individually or as attorney, for any particular creditor, or in opposition to an equal distribution of the whole of the assignor's estate among all his creditors.

Section 21. The assignee or receiver shall as soon as may be after receiving any money belonging to the estate, deposit the same in some bank or trust company in good standing, in his name as assignee or receiver, and shall, as far as practicable keep all the assets of said estate separate and apart from his own, or designated by appropriate marks, so that they may be easily and clearly distinguished as the property of the insolvent's estate.

Section 22. The assignees immediately after the meeting of the creditors aforesaid, and the receivers immediately after their appointment, shall give written or printed notice to all the creditors known to them, requiring such creditors, within six months from the date of such notice, to make a proof of their claims in the manner hereinafter set forth, or be debarred from coming in upon the fund. They shall also, at the same time, advertise such notice in one weekly newspaper in said county, and in a daily newspaper published in the county, if there be any, and in such legal periodical, if any, as shall be designated by the court, once a week for four successive weeks.

(22 amended Jun. 9, 1911, P.L.728, No.301)

Section 23. No claim against the insolvent's estate shall be allowed unless the claimant, or some one for him if he cannot do so, shall furnish to the assignee or receiver a statement of his claim, together with a copy of any book entries appertaining thereto, or any note or other writing evidencing the same, verified by an affidavit in the following form:

I, G. H., do solemnly swear (or affirm) that the above is a true statement of my claim against the insolvent estate of E. F.; that there are no credits or allowances thereagainst, except as therein set forth; that I have not directly or indirectly made or entered into any bargain, arrangement or agreement, express or implied, to take or receive, directly or indirectly, any money, property, or consideration whatever, to or for myself, or to or for any other person, firm or corporation whatsoever, other than my dividend as a creditor of said estate, and that there is no collateral security for said indebtedness, or any part thereof, held by me or any one else, other than as above set forth. So help me God (or, and so I do affirm).

If such claim and affidavit be in proper form, and the balance claimed agrees with the amount stated by the insolvent, or upon consultation between the creditor and the insolvent the amount is agreed upon, the claim shall be allowed if presented before the filing or audit of the account, unless objected to in the manner hereinafter set forth.

Section 24. As soon after the expiration of said year as the assets shall have been collected, or whensoever thereafter required by the court, the assignee or receiver shall file his account, and a list of the claims proven before him, in the proper court, duly sworn to by him as correct in all particulars; and if there are no claims remaining unadjusted, he shall give a written or printed notice to the insolvent and all the creditors known to him, in the following form:

You are hereby notified that my account and a list of the claims proven before me has been filed in the court of common pleas of _____ county, as of _____ Term, eighteen hundred and _____, Number _____, and that said account will be allowed and distribution of the balance shown thereby will be made among the creditors therein named, according to their respective claims, on _____, the _____ day of _____, eighteen hundred and _____, unless objections be filed thereto or to any of said claims, before that time.

Section 25. The time fixed in said notice shall be between three and five weeks distant from the date thereof; and if there shall be unrepresented creditors, whose addresses are unknown, an advertisement thereof shall be inserted in one newspaper, published in the county, and in the legal periodical, if any, designated by the court, once a week for three successive weeks, prior to the time of meeting. On the date fixed, if no objections have been filed, the account shall be confirmed absolutely; the assignee or receiver shall prepare a schedule of distribution, which shall be approved and filed, and shall distribute the assets in his hands in accordance therewith.

Section 26. If at the time of filing the account and list of proved claims, there are claims which remain unadjusted, or if objections be filed, the court shall hear and decide the

disputed matters, or, in its discretion, may appoint an auditor for that purpose. The court or the auditor shall fix a time and place for the hearing, of which three weeks' notice shall be given by the assignee or receiver to the insolvent and all the creditors known to him, in the following form:

You are hereby notified that the court will (or, I. J. has been appointed auditor to) audit, settle and adjust my account as assignee (or receiver) of the estate of E. F., an insolvent, and make distribution among the creditors of said estate, and that a meeting for that purpose will be held at _____ in the of _____, on the _____ day of _____, eighteen hundred and _____, when and where you may be heard if you so desire.

If there shall have been no advertisement of the filing of the account, said notice shall be advertised, also in one newspaper published in the county, and in the legal periodical, if any, designated by the court, once a week for three successive weeks prior to the meeting.

Section 27. The hearing before the court or auditor, in case of objections filed, shall be confined thereto, unless the court, upon cause shown, shall give leave to file other objections. If objections be made to any claim duly verified, as aforesaid, whether upon objections filed or otherwise, express notice and an opportunity to defend the same shall be given to such creditor. The costs before the court or auditor shall be charged upon the fund or against any party appearing, according to equitable principles.

Section 28. All claims shall be made as of the date of the distribution of the fund, interest being allowed or discount being made to that time. A creditor having a claim for which the insolvent is primarily liable, and others secondarily, may prove for his whole claim; but, if the insolvent is only secondarily liable, the value of the liability of the primary debtor shall be adjusted between the creditor and the assignee; or, if the valuation cannot be agreed on, the same shall be submitted to the appropriate tribunal, and a dividend shall only be awarded to the creditor on the difference between such value, so determined, and the amount of his claim. In like manner, any collateral security held by any creditor for his debt shall be valued by said tribunal, and if the security be retained by the creditor his dividend shall be on the difference between his claim and the value of his security, so ascertained: Provided, That the creditor shall have the right to surrender his security, and take a dividend on his whole debt. If such creditor refuses to have his security valued or surrender the same, he shall be excluded from participation in the fund.

Section 29. Any creditor who shall, upon such distribution, present a claim, whether in judgment or otherwise, which shall be so largely in excess of that which is actually due as to be fraudulent and collusive, or shall assist others in so doing; or shall collude with the insolvent to hinder, delay or defraud his creditors, or any of them; or shall have received a preference from the insolvent, in violation of the provisions of this act, and shall not voluntarily surrender the same to the assignee or receiver, shall be postponed to all other creditors on the distribution of the insolvent's estate.

Section 30. At the time of receiving his dividend in case of a voluntary assignment, each creditor shall sign triplicate releases in the following form:

The undersigned creditors of E. F., an insolvent, for and in consideration of the sums of money set opposite our respective names, and received by us from A. B., assignee of the estate of E. F., as insolvent, do hereby release the said E. F. from any and every debt, demand and liability which we had or may have had against him, at the date of his assignment, on the day of , Anno Domini eighteen hundred and , whether due or not; and hereby agree that no suit, action or execution shall be maintained for or by reason of such debt, demand, or liability, reserving, however, to ourselves the right to avoid this release, upon showing any of the matters or things which, under the insolvent laws, shall entitle us to retain our respective claims against said insolvent, notwithstanding our participation in the settlement of his estate.

Witness our hands, the dates set opposite our respective names. One of said releases shall be filed in court, one shall be retained by the assignee, and one shall be delivered to the insolvent.

Section 31. An insolvent shall be entitled to the same exemption out of the assigned estate as he would be, had an execution been issued against him. Any lien or claim for wages, for rent, of mechanics or material men, or otherwise, which by virtue of any act of Assembly would be preferred in case of an execution, shall retain its preference in case of an assignment, and to the same extent. Rent accruing after the date of the assignment, and wages necessarily incurred in service rendered to or for the assignee or receiver, shall be paid as part of the expenses appertaining to the assignment. Except as herein otherwise provided, all and every interest, claim, and estate in the property shall be discharged or divested by an assignee's or receiver's sale, if it would have been discharged or divested by a sale under an execution at the time of the assignment, and not otherwise.

(31 amended Jun. 19, 1911, P.L.1069, No.817)

Section 32. Any person who shall discover to the assignee or receiver any secreted property, real or personal, in the possession or control of a third party, and in which the insolvent estate has an interest, shall receive out of the proceeds thereof, for so doing, an amount, to be fixed by the court or auditor, at least equal to the commission of the assignee or receiver in regard thereto.

Section 33. Nothing in this act shall be taken or understood as discharging an insolvent from liability to such of his creditors as do not choose to exhibit their claims, or who, before the schedule of distribution is made or filed, withdraw their claims; but, with respect to creditors who exhibit their claims before a voluntary assignee, or an auditor appointed in such case, and do not withdraw them as aforesaid, they shall be wholly debarred from maintaining afterwards, by suit, action, execution or otherwise, any claim existing at the time of the assignment, whether due or not, unless he shall aver and prove:

(1). That said action is founded on the actual force, fraud,

malice, or deceit of the insolvent; or,

(2). That said action is founded on the embezzlement or malfeasance of the insolvent; or, for libel, slander, malicious prosecution, conspiracy, seduction or criminal conversation; or,

(3). That such action is founded on the purchase by the insolvent of real or personal property, on credit and without security therefor, when he had reasonable cause to believe that he would not be able to pay therefor; or,

(4). That such insolvent has willfully sworn falsely in any material fact appertaining to the settlement of his estate, or has failed and refused to make all necessary conveyances to enable the assignee to speedily and effectively settle the same; or,

(5). That such insolvent fraudulently secreted, altered, injured, defaced or destroyed any part of his estate; or any books, documents, muniments of title, or writings appertaining thereto, or permitted the same to be done; or has secreted, conveyed or incumbered any part of his property, for the benefit of himself or family; or has collected and retained any of the assets of the assigned estate; or, in contemplation of insolvency, has failed to keep the books of account and papers usually kept by him in his business; or,

(6). That such insolvent has made any promise of future advantage to any creditor, or has knowingly permitted others to do so, to induce any creditor to participate in the settlement of the assigned estate, and has failed to disclose the same to the complaining creditor; or,

(7). That such insolvent, while knowingly insolvent or in contemplation of insolvency, has in any manner preferred or attempted to prefer one creditor to another, or permitted such preference to be obtained by judgment, execution, attachment, sequestration, or otherwise; or,

(8). That such insolvent has knowingly permitted a false or exaggerated claim to be made against said estate; or,

(9). That such insolvent has absented himself or concealed his property, to avoid an execution; or,

(10). That the insolvency arose from losses by gambling, or in the purchase of lottery tickets; or,

(11). That such insolvent has previously been an insolvent, and obtained a release of his debts under the provisions of the insolvent laws.

But the benefits of this section shall not apply in favor of any insolvent who was forced into the hands of a receiver by the action of his creditors.

Section 34. In cases where the insolvent is primarily liable for a claim proved against his estate, a discharge of that liability, by the creditor accepting a dividend under this act, shall not operate to release or discharge any person secondarily liable for the same debt, contract, engagement or other liability, if the participating creditor shall have given such third party written notice and an opportunity to purchase the claim and subrogate himself to the rights of such creditor; but, in that event, such secondary liability shall remain, in like manner as if such discharge had not taken place; but, if the creditor does not give such notice, the discharge of the

insolvent from primary liability shall also operate to discharge from liability the party secondarily liable.

Section 35. Whenever a majority in number and value of the creditors of an insolvent, who has made a voluntary assignment for the benefit of his creditors, shall consent in writing thereto, it shall be lawful for the court, upon application of such debtor, and notice thereof given to all undischarged creditors, in the manner hereinbefore provided for giving notice of the meeting of creditors, to make an order that the estate and effects which such insolvent may afterwards acquire shall be exempted, for the term of seven years thereafter, from execution, for any debt contracted or cause of action existing previously to such assignment; and if, after such order and consent, any execution shall be issued for such debt or cause of action, it shall be the duty of any judge of the court from which such execution issued to set aside the same, with costs.

Section 36. If any such insolvent or his legal representative shall satisfy the undisputed claims of his creditors, and shall give security, to be approved by the court, to pay those which are disputed, the court shall order his estate and effects, not sold, to be restored to him or his legal representatives; and he shall, by virtue of such order, be seized and possessed thereof as of his former estate and title thereto; and if, upon the final settlement of accounts by the assignee or receiver, there shall be a surplus, after payment of all the claims presented and allowed, the same shall be paid to such insolvent or his legal representatives.

Section 37. Any creditor may, by petition, move the court to discharge any assignee or receiver for dereliction of duty, incompetency or other reason affecting the estate; or the assignee or receiver may voluntarily petition for his own discharge; and if the court shall be of the opinion that the interests of the estate will be conserved by the appointment of some other person in his place or stead, it shall grant the prayer of such petition, and appoint a new assignee or receiver, with like powers and duties as the one removed, upon entering security as in the case of the original assignee; but such removal shall be without prejudice to all claims upon said assignee or receiver and their securities, growing out of their performance or nonperformance of duty. The assignee or receiver thus removed shall remain under control of the court, for the purpose of compelling him to make all necessary transfers of the assets of the insolvent estate to his successor or any others interested therein, or to give needed information and assistance in the settlement of the estate. If the assignee removed be the one selected by the creditors, the new appointee shall be selected in like manner.

Section 38. Any creditor may, in case of a vacancy in the office of assignee or receiver, petition the court for the appointment of a new assignee, whenever he may have reason to believe that there are assets of the assigned estate that have not yet been collected, or that any duties appertaining to the office remain unperformed; and such appointment shall be made by the court with the same effect as in a case of the original appointment.

(39 repealed Jun. 3, 1971, P.L.118, No.6)

Section 40. If any insolvent shall be convicted of perjury, in respect to any oath or affirmation taken by virtue of this act, he shall be liable to arrest and committal on mesne process, and to be charged in execution, in the same manner as if he had not before been arrested or taken in execution, or as if he had not made application for the benefit of the insolvent laws; and, moreover, such person shall never afterwards be entitled to his discharge as an insolvent debtor by virtue of this act.

Section 41. A person shall be deemed insolvent, within the provisions of this act, whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts.