

CHAPTER 83.

Of Insolvency.

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PROCEEDINGS IN INSOLVENCY.

1. The Supreme Court, in term or vacation, or any Judge thereof in chambers, may declare any person insolvent who may be made to appear to the satisfaction of such Court or Judge (in manner hereinafter provided) insolvent or unable to pay his creditors one hundred cents to the dollar; and in case such person shall have been arrested and be in prison or on bail under mesne or final process, or by virtue of any other proceeding either at law or in equity, except for contempt for any matter other than

the non-payment of money, may discharge him from prison, unless he shall have rendered himself liable to punishment in manner hereinafter provided and exonerate his bail; and in case a writ of attachment shall have been issued against such person, the property attached under which shall have been relieved from attachment by security, may discharge such security from further responsibility upon the property so attached being delivered up, or the value of it paid into Court to the credit of the insolvent estate, in cases where, or the extent to which, the security would be liable to answer by his bond.

2. No person declared insolvent under this chapter shall be liable thereafter to arrest or imprisonment for any debts or liabilities for which a certificate of insolvency and discharge under this chapter would be a discharge.

3. Any debtor desiring to be declared insolvent, or any person desiring to have his debtor declared insolvent, shall proceed by petition, directed to the Court or Judge, as the case may be, setting forth that such debtor is insolvent or unable to pay his creditors one hundred cents to the dollar, and, in case of the debtor himself being the petitioner, having attached to the petition a schedule containing a true account of his debts and liabilities and of his assets; and where the petition is by a creditor, the said petition shall have attached to it a like schedule, or a statement of such facts as may satisfy the Court or Judge that the order hereinafter mentioned should be made upon the petition or that the case is one for enquiry. The petition shall have attached to it an affidavit of the truth of its contents, and where a schedule accompanies, of the contents of such schedule.

4. The Court or Judge shall appoint a specified time and place for the hearing, the rule or order for which shall, when the application is made in St. John's, be published in the *Royal Gazette* and one other newspaper of the colony, at least one week before the hearing; the petition, schedule and affidavit having prior to the publication of the rule or order, been filed in the registrar's office.

5. Where the application is made to declare a debtor insolvent in an outport, the rule or order for hearing shall be posted up in a conspicuous place at the Court House, and such other place or places for such length of time, or where no Court House, at such place or places and for such a length of time as the Court or Judge may direct.

6. The Court or Judge proceeding under this chapter may, if necessary, direct the examination before an examiner at any place, of any petitioner, debtor or witness, and for such purpose may postpone or adjourn from time to time the hearing or adjudication of any application to declare a debtor insolvent.

7. The Court or Judge may, upon motion, or with the consent of the petitioner, adjourn the hearing from time to time, if in the opinion of

the Court or Judge it may be necessary or advisable so to do in order to satisfy such Court or Judge of the insolvency of the party sought to be declared insolvent; or the Court or Judge may dismiss the petition for want of sufficient evidence of insolvency.

PENAL PROCEEDINGS.

8. The person sought to be declared insolvent, if so declared, shall be liable to punishment by imprisonment in the following cases, for any period not exceeding two years from time of adjudication. If when insolvent, and with a view of fraudulently giving an undue preference to any creditor or of fraudulently diminishing his assets, he have conveyed, charged, mortgaged or otherwise granted or assigned his property or effects, or any part or parts thereof, or made any gift, delivery or transfer of any of his goods or chattels, or made any payment in money or otherwise, or discharged any debt due from any debtor or if he have concealed any part of his property, debts or effects with the intent of diminishing the sum to be divided amongst his creditors; if he have, with intent to conceal the state of his affairs, kept false books or made false entries, or withheld entries from, or wilfully altered or falsified, any books, papers or writings, or have destroyed or otherwise wilfully prevented or purposely withheld the production of any books, papers, writings or evidence relating to such of his affairs as are subject to investigation under this chapter; or if he have contracted any of his debts by means of a breach of trust, or by means of false pretences, or without having reasonable or probable expectation at the time when contracted of paying the same; or if he shall have put any creditor to unnecessary expense by the vexatious defence of any action or suit, or shall be indebted for damages recovered in any action for a malicious prosecution, or for libel or slander, or for criminal conversation, or seduction, or assault and battery, or for damages recovered in any action for malicious injury, or in an action of tort, where it shall appear that the injury complained of was malicious; or if he shall have done any other act fraudulent towards his creditors: Provided that, in the cases aforesaid where the insolvent shall be indebted for damages, or the matter shall be one of personal wrong, he may be relieved from punishment in the first place, and from his imprisonment at any time within the period of such imprisonment, by the consent of the party aggrieved, or the plaintiff or all the plaintiffs in any action for such damages, if he be not otherwise liable to punishment or imprisonment under this section.

9. After it shall be made to appear to the Court or a Judge that the party sought to be declared insolvent is insolvent, no petition praying that a debtor be declared insolvent under the provisions of this chapter shall be withdrawn or proceedings thereon stayed or prevented if any creditor shall object thereto, except in cases of liquidation or composition as hereinafter provided; and for the purpose of securing the person of any debtor not in prison who may be declared insolvent, the Court or Judge may, at any time before he may have obtained his certificate and final discharge, make a rule or order directed to the sheriff of the district or any other

person to apprehend the person of such debtor and bring him before such Court or Judge to be examined or to receive punishment: Provided that in case such debtor require further time to bring proof, or require other reasonable delay, the Court or a Judge may grant such further time or delay and commit him to prison provisionally, or, upon the debtor providing bail or security for his appearance, discharge him from custody until the expiry of such further time.

EVIDENCE.

10. For the purposes of this chapter the Court or Judge may, either in term or vacation, exercise the like powers for summoning and compelling the attendance of witnesses, the taking of evidence, the ordering of examinations, the issuing of commissions to take evidence, and for the punishment of persons guilty of contempt, as the Supreme Court now exercises in any action or proceeding at law: Provided that in the case of proceedings by or before a Judge under this chapter, there shall be no necessity for the use of a seal, but the name of a Judge, in his handwriting, shall be sufficient.

PREFERENTIAL ASSIGNMENTS, ETC.

11. Every charge, mortgage, conveyance, grant or assignment of the property or effects of an insolvent, or of any part thereof, and every gift, delivery or transfer of any of his goods or chattels, and every payment made by him in money, or otherwise, and every cognovit, warrant of attorney, judgment, or other security whatsoever, paid, made or given by any insolvent within two months prior to his declared insolvency, and with a view to give an undue preference to any creditor, shall be and are hereby declared to be null and void and of no effect in case the person taking or receiving the same, or for whose benefit the same was taken or received, had notice or was aware of the insolvency: Provided that nothing in this chapter contained shall invalidate such charge, grant or assignment, or the gift, delivery or transfer of any goods or chattels, if the same shall, subsequently to the execution or making thereof, have been assigned to or be in the hands or possession of any *bona fide* holder for valuable consideration, not having had notice of the character of such appropriation prior to the transfer to him; but the person or persons first entitled, their executors, administrators and estates, shall be liable to account for the value to the trustees of the estate of the insolvent in such case; and in case they have realized any of the said securities, they shall be liable in an action for money had and received or otherwise; and nothing herein contained shall be construed to confirm or make valid any acts otherwise void.

TRUSTEES.

12. At or any time after the making of the rule or order provided in the fourth section of this chapter, the Court or Judge may make an order which shall be published in the *Royal Gazette* and one other newspaper,

vesting the estate of the person sought to be declared insolvent in a trustee or trustees, whose duty it shall be to discover, collect and receive the estate and effects of such person, and to hold the same, subject to the orders and directions of the Court or Judge; and in the event of the person being declared insolvent, to invest, realize, and distribute the same, under the direction of the Court or Judge and the provisions of this chapter; and such trustee or trustees may sue both at law and in equity, in his or their own name, for and upon all causes of action for the benefit of the insolvent estate, in the same way as the insolvent himself might have done; and in any proceeding, it shall be sufficient for them to declare or plead as trustees of such insolvent, and proceed at once to the statement of the cause of action, without setting out the particulars of their appointment, and as nearly as applicable according to the forms used by executors, or administrators: Provided, that in the case of leasehold interests and tenancies, the trustee or trustees shall not be bound to accept the same, but may within one month after the declaration of insolvency notify the landlord, in writing, of his or their intention not to hold as tenant; whereupon his or their interest or liability shall cease; but the estate of the insolvent shall be liable for rent from the time of the appointment of trustees until such notice shall have expired.

- (a.) The working tools and implements of trade of any person, his fishing skiff or punt, the necessary cooking apparatus, the bedding and wearing apparel of himself and family, shall not pass to or vest in the trustee under this chapter.

13. The trustees or assignees of the estate and effects, or any part thereof, of any debtor, under any conveyance or assignment for the benefit of creditors, shall be liable and compellable to pay out of the first proceeds all creditors who, in case of a declaration of insolvency under this chapter, would have preferential claims; and such trustees or assignees shall also be liable and compellable, unless a majority in number and value of the creditors shall otherwise agree, to distribute such estate and effects according to the provisions of this chapter, as in the case of insolvency, anything in any such conveyance or assignment contained to the contrary notwithstanding; and all such trustees and assignees shall, in the distribution of such estate and effects in such cases, be subject to the order and direction of the Supreme Court or a Judge thereof, as fully and in like manner as the trustees of the estate of any person declared insolvent.

14. The trustee or trustees shall be changed or removed by the Court or Judge, at the instance of a majority in number and value of the creditors, and such person or persons appointed in his or their place as the said majority may recommend; and may also be removed for any sufficient cause appearing to the Court or Judge; and the Court or Judge may require trustees to find sureties for the faithful execution of their office.

15. The trustee or trustees shall be entitled to such compensation, not exceeding five per cent. on the realized value of assets, over and above

the actual and reasonable expenses and disbursements, as the Court or Judge may allow.

16. Where, in case a person sought to be declared insolvent is in prison, it shall be deemed expedient by the Court or Judge that certain matters or things ought to be performed by such person before he be actually discharged from custody, the Court or Judge may remand such person to prison until the performance of such matters or things, or until such further time or times as the hearing may be adjourned to; or such Court or Judge may take bail for the performance of such matters or things within a certain time.

COSTS.

17. The costs of all proceedings whereby the body or any portion of the estate and effects of the insolvent may have been taken or secured before the declaration of insolvency shall be payable out of the estate.

18. The costs of the petitioner, and other costs not herein provided for, shall be in the discretion of the Court or Judge.

19. The costs of creditors proving their debts shall be borne by themselves: Provided that if any creditor give frivolous or vexatious opposition to the claim of another creditor, and cause such other creditor extraordinary expense in the proof of his debt, the dividend of such opposing creditor shall be liable, in the distribution of the estate, for such extraordinary expenses.

20. Costs shall be taxed as nearly as applicable, except the costs of a suit at law, according to the practice on the equity side of the Court.

DELIVERY OF PROPERTY.

21. In case any person declared insolvent, or sought to be declared insolvent, shall wilfully refuse to deliver up to the Court or Judge, or to the trustee or trustees, any property, money or effects, deeds, accounts, books, or other documents, pursuant to any order of such Court or Judge, or shall disobey any other order made in the premises by such Court or Judge, such Court or Judge may remand or commit him to prison from time to time until he shall conform to the order of the said Court or Judge.

CERTIFICATE.

22. The Supreme Court or any Judge thereof may, by and with the consent of the majority in number and value of the creditors, grant to any person declared insolvent a certificate of insolvency and discharge, five days previous notice of the application having been given in the *Royal Gazette* and one other newspaper, and to the trustee or trustees; and in any case where such consent shall be refused, the insolvent may apply to

the Supreme Court, which may, upon hearing the parties, grant such certificate: Provided, that such insolvent, whether his application be made to a Court or Judge, shall not have been guilty of any such acts as may, or if discovered at the time of the declaration of insolvency would, render him liable to imprisonment or punishment under this chapter; and provided he shall have made a full and true discovery, disclosure and delivery of his property and effects under his insolvency, and shall have conformed to the orders and directions of the Court or Judge touching the same, and shall have, if and when required, rendered such information and aid to the trustees, by way of proof or otherwise, in the discovering, collecting, and receiving the estate and effects of the insolvent estate, at the expense of the estate, as shall have been reasonably required by them. Such certificate shall be a release of any judgment recovered and a bar to any action or suit that may at any time thereafter be brought for any debt or liability due or owing at the time of his being declared insolvent, or to become due under any contract previously entered into: Provided, that if the insolvent shall have undergone punishment for any fraudulent or other acts punishable under this chapter, or if he has received the consent of the majority in number and value of his creditors, the Court or Judge, in their or his discretion, may grant him his certificate and final discharge in like manner as in other cases.

23. Nothing herein contained shall discharge an insolvent from rent coming due after such declaration of insolvency under any tenancy originating previously and continued by the insolvent subsequently to such declaration of insolvency.

PRIVILEGED CREDITORS AND DISTRIBUTION OF ESTATE.

24. When it shall be made to appear that the hirer or employer of any seaman, fisherman or other servant is insolvent or unable to pay his creditors one hundred cents in the dollar, such seaman, fisherman or other servant actually employed in catching, curing of fish or oil, and such person as shall have supplied bait to the hirer or employer aforesaid, and who shall be creditors for wages, shares or bait for the current season, shall upon all such fish and oil taken, cured or made by the hirer or employer aforesaid, or out of the produce or value thereof, if the same be in the possession of the hirer or employer, or of any other person aware of or privy to the hiring or employing of any such seaman, fisherman or other servant, or having notice of the claim of such seaman, fisherman or other servant, whether the same be accruing or due at or before the time of such other person receiving such fish or oil or the produce or value thereof, or before paying the hirer or employer for the same, be considered privileged creditors, and shall first be paid one hundred cents in the dollar, so far as such fish or oil, or the produce or value thereof, shall go.

25. Where such fish and oil shall be insufficient for the full payment of the wages or shares of all such seamen, fishermen, or other servants, or of the persons who shall supply bait as aforesaid, they shall be paid

their claims rateably in proportion to their respective wages, shares or bait money.

26. In the case of the supplying merchant, no seamen, fishermen or other servants than those engaged with the knowledge and consent of such supplying merchant, being a receiver, shall be privileged creditors in manner aforesaid, in regard to any supplying merchant, being such receiver, nor in regard to the fish or oil, or the produce or value thereof, in the hands of such receiver.

27. Any person who may be *bona fide* engaged or shipped in the place of any such seaman, fisherman or other servant who may during the voyage have been discharged, or have left, or deserted, or have died, or have been incapacitated by illness or other cause from continuing his service, shall be a privileged creditor in manner aforesaid, and shall be entitled to claim on the supplying merchant, being such receiver, for the period he may have served in such stead.

28 Any defence which the hirer or employer could have made if the action had been taken against him by such seaman, fisherman or other servant, or supplier of bait, for such wages, share or bait money, shall be equally available for the receiver to make on the trial of any action brought against him by such seaman, fisherman or other servant or supplier of bait, for such wages, share or bait money, or the value of such fish and oil, or any part thereof as aforesaid: Provided that the receiver of the voyage, or any part of the produce or value of same, shall not be liable for the payment of the wages or share of such seaman, fisherman or other servant or supplier of bait, or any part thereof, unless it be proven on the trial that such receiver is liable under the provisions of this chapter: Provided that any shareman selling or lawfully disposing of his share of fish or oil, or any part thereof, may sue and recover payment for same from the purchaser thereof, according to the terms of his contract, before any stipendiary Justice or Court; and any shareman, fisherman or other servant may in like manner sue for and recover his wages or share from his hirer or employer, notwithstanding the provisions of this chapter.

29. To enable such seaman, fisherman or servant, or person supplying bait as aforesaid, to recover the amount of his wages, share or bait money from the receiver of such fish and oil, or the produce or value thereof, it shall not be necessary that the hirer or employer should have been formally declared insolvent; but it will be sufficient if it be made to appear on the trial of any action which such seaman, fisherman or other servant or supplier of bait may bring for money had and received, or for wages, against the said receiver, before any stipendiary Justice, Court of Sessions or other Court that the share, wages or bait money was due at the time of bringing such action, and that the said hirer or employer was then insolvent or unable to pay his creditors one hundred cents in the dollar.

30. If such seaman, fisherman, or other servant, or supplier of bait, has knowingly or wilfully colluded with or assisted the hirer or employer in disposing of his voyage otherwise than to his supplying merchant, such supplying merchant not being paid to the extent of his supplies over and above the unpaid wages or bait money at the time of the action being brought, such seaman, fisherman or other servant or supplier of bait, shall not be entitled to recover in any action brought against any receiver, being a supplying merchant.

31 Nothing herein contained shall prevent such seaman, fisherman or other servant, from recovering such share or wages from any person other than the supplying merchant who may have received such voyage or any part thereof, and who would be otherwise liable under this chapter.

32. Sealers who have put in or sold their shares of seals' pelts, skins or oil to the owners or outfitters of sealing ships, shall, in like manner with servants, under the twenty-fourth section, be preferential creditors upon the estates of such owners or outfitters, in the event of their insolvency. Sealers who have sold their shares of seals' pelts, skins or oil, to a vendee other than the owners or outfitters, aforesaid, shall rank in like manner upon the estate of such vendee in the event of his insolvency. In the cases provided for by this section, the seals' pelts, skins or oil, for which the preferable claim is given, must have been delivered to the owner, outfitter, or other vendee, within six months prior to the declaration of insolvency. Nothing in this section contained shall entitle sealers to claim for their share of seals' pelts, skins or oil, to which, according to the terms of their agreements, they may have forfeited their right; and in such case the persons entitled to the forfeiture shall be entitled to claim, as aforesaid, in their stead. Nothing in this section contained shall be construed to affect any custom as to set-off against shares of seals' pelts, skins or oil, of hirers' or employers' accounts.

33. The estates of persons declared insolvent shall, after the payment of costs and expenses, be distributed rateably amongst the creditors, except in the cases herein provided for.

34. In the distribution of the estate of any person declared insolvent, all wages earned by clerks and servants at any time within one year prior to the appointment of a trustee in insolvency, and also in the event of any receiver or supplying merchant being declared insolvent, any seaman, fisherman or other servant, or supplier of bait, as aforesaid, who may be a privileged creditor under the twenty-fourth section of this chapter, to the extent of his rateable proportion, as aforesaid, of the fish or oil, or the produce or value thereof, shall be privileged creditors, and shall be co-equally entitled to recover and receive one hundred cents in the dollar out of the estate and effects of the person declared insolvent. Any person who, but for a wrongful dismissal from service, would have been entitled to claim preferentially, and who shall obtain judgment for damages in any action for wrongful dismissal, within one year before the appointment

of a trustee in insolvency, or who, not having obtained such judgment before the appointment of such trustee, shall prove his claim for damages in such a manner as the Court or Judge shall direct, shall be entitled to claim preferentially for such damages, not exceeding one year's wages, and in the same manner as if such damages were wages actually earned.

35. Next after preferable payments provided for in the preceding sections of this chapter, all debts and claims due to the Crown or to the Government or revenues of this colony, shall form a prior claim upon the estate and effects of any person declared insolvent, and shall be first paid so far as such estates and effects will go; and all moneys deposited by or on account of the Newfoundland Savings' Bank in any bank or banking company, or received or collected by such bank or banking company, for or on account of the said Savings' Bank, shall constitute a Crown debt, and form a prior claim on such bank or banking company, and upon its property, estate and effects in the case of the insolvency of such bank or banking company, and may be sued for and recovered in the name of Her Majesty, or the Receiver General or Attorney General of this colony: Provided that nothing herein contained shall affect the provisions of the ninety-eighth section of chapter eight of these consolidated statutes, entitled "Of the Customs, Warehouses, Distilleries," etc."

36. After the payment of preferable claimants under the foregoing sections of this chapter, every creditor for supplies necessarily and *bona fide* furnished for the prosecution of the fishery during the current season, that is to say, at any time after the close of the last preceding season of the fishery, shall be a privileged creditor, and shall be paid one hundred cents in the dollar, as far as the insolvent estate will go.

INSOLVENCY OF DECEASED PERSONS.

37. When any person shall die in this colony or elsewhere leaving estates and effects in this colony or in any place within the Government thereof, and such estates and effects shall not be sufficient to pay and satisfy all his just debts, the Supreme Court or any Judge thereof may, either in term or vacation, on the petition of the executor, administrator, or a creditor of such deceased person, to be made in writing and upon oath and laid before the said Court or any Judge thereof, by which it shall appear to the Court or said Judge before whom such statement shall be laid that the estate or effects of such deceased person are not sufficient to pay all his just debts, authorize the executor or administrator of such deceased person, or, if they shall see cause, any trustee or trustees whom they may appoint, to collect and to distribute the estate and effects amongst his creditors, according to the manner of distribution by law directed to be made in respect to the estates of persons declared insolvent, subject in all cases to the provisions of this chapter: Provided that nothing herein contained shall be construed to affect the right of any creditor of such deceased person to recover the full amount of such debts as may have been *bona fide* secured in the lifetime of such deceased person by mortgage or other legal

conveyance of any portion of the estate or effects of such deceased person, and not void under the foregoing provisions of this chapter; and also, that the like course shall be pursued with the estate and effects of any persons dying insolvent, where no executor or administrator thereof has been appointed or resides in this island, on the application of any creditor to the said Court or any Judge thereof, who may appoint trustees or receivers of such estates and effects, to realize and distribute the same as aforesaid, subject to the orders and control of the Court or Judge.

REFERENCE OF CLAIMS.

38. The Court or Judge acting under the provisions of this chapter may make any order of reference to the master or other person to investigate and report upon claims, accounts and other matters, whether on behalf of or against the insolvent estate; and the decision to be come to thereon shall be as binding between the parties as an action at law or suit in equity, and may be pleaded in bar of any other proceeding.

APPEAL.

39. Any person feeling himself aggrieved by the decision of a Judge in chambers or sitting alone in the Supreme Court, and proceeding under the provisions of this chapter, may have a re-hearing in manner provided by the fourth section of chapter fifty of these consolidated statutes, entitled "Of the Supreme Court and Procedure therein," upon such terms (if any) as the said Judge may impose; and the judgment on such re-hearing shall be enforced by the Supreme Court.

JUDGE MAY MAKE FURTHER ORDERS.

40. In any case or matter within the provisions of this chapter in which the Court or a Judge may deem it necessary to make any rule or order, whether hereinbefore provided for or not, for the effectual carrying out of the provisions of this chapter, the Court or Judge may make such rule or order; and any person disobeying the same shall be deemed guilty of contempt, and may be proceeded against and punished therefor by the Court or Judge, either in term, in vacation or in chambers.

PERJURY.

41. Any person who, in his examination upon oath or affirmation, or who in any affidavit in any proceeding under this chapter, shall wilfully and corruptly give false evidence, or swear or affirm anything which shall be false, shall be deemed guilty of wilful and corrupt perjury and be liable to be indicted therefor, and upon conviction shall be liable to the penalties of wilful and corrupt perjury.

TRIAL BY JURY.

42. For the purpose of trying any question of fact arising under the eleventh section of this chapter, the Court or Judge may empanel a jury

according to the provisions of the laws now or hereafter to be in force for regulating trial by jury: provided that nothing herein contained shall prevent the Court or Judge from determining any questions of fact.

ARRANGEMENTS AND COMPOSITIONS.

43. At any time after petition filed, praying for a declaration of insolvency, and before the close or winding up of the estate of any insolvent, the Supreme Court or a Judge thereof may, on proof to its or his satisfaction that either before or since the filing of such petition an arrangement by liquidation or for a composition has been entered into by the debtor, and two-thirds in number and value of his creditors resident or having a house of business in Newfoundland, and of two-thirds of his creditors elsewhere, or of three-fourths of the whole of such creditors in number and value, make an order dissolving the proceedings in insolvency, or staying such proceedings, or the realization or winding up of the estate of the debtor, either altogether or for a limited time, on such terms and subject to such conditions as the Court or Judge may think fit, or from time to time determine; and all creditors shall be bound thereby.

44. Under the provisions of the foregoing section, the trustee in insolvency may be relieved in whole or in part, altogether or temporarily, from his place and responsibility; and it may be made part of the terms and conditions aforesaid that the person or persons to manage and supervise the estate of the debtor, and the debtor himself shall be liable to the order and direction of the Court or of the Judge during the carrying out of the liquidation or composition, or otherwise as the case may be.

45. It shall be lawful for any creditor, not being a party or consenting to any arrangement by liquidation or for a composition, under the provisions of the forty-third section, to show that the insolvent debtor has committed such act or acts as would render him liable to punishment under the eighth section of this chapter; and it shall be competent for the Court or Judge, if satisfied that such act or acts have been committed, to refuse to act upon any arrangement as aforesaid, and to proceed with the insolvency as if no such arrangement had been made, or to act upon such arrangement, and to punish the insolvent debtor as if proceedings in insolvency had gone on in the ordinary way.

46. Notwithstanding any arrangement as aforesaid by liquidation or for composition, the Court or a Judge may order that the insolvent debtor shall, after fulfilment or other determination of the arrangement, remain liable for the unpaid balance or such other proportion, greater than the dividend under the arrangement, as the Court or Judge may then or afterwards order, of any debt which he the said insolvent debtor incurred or increased by any fraud or collusion, or whereof, before the date of the arrangement, he obtained forbearance by any fraud or collusion; provided that the defrauded creditor has not consented to the arrangement or composition, otherwise than by proving his debt or accepting dividends. The

provisions of sections forty-three and fifty-one of this chapter shall not affect such continuing liability.

47. If it appear to the Court or Judge, on satisfactory evidence, that an arrangement by liquidation or for composition cannot proceed without injustice or undue delay to the creditors or to the debtor, the Court or Judge may adjudge the debtor insolvent, and proceedings may be had accordingly.

48. The three preceding sections shall not apply to any arrangement by liquidation or for a composition existing before the twentieth day of May, one thousand eight hundred and eighty-two.

49. The rights of creditors preferential by law shall be prior claims, as in the case of distribution under proceedings in insolvency.

50. In calculating the two-thirds or three-fourths (as the case may be) in number and value of the creditors, as in the forty-third section provided, creditors whose debts do not exceed twenty dollars shall be reckoned in the value but not in the number; and such shall be the mode of calculation for any votes or consent of creditors which may become necessary under any orders of the Court or Judge under this chapter. Preferential creditors to the extent of their prior claims shall not count at all, unless they shall have consented to act as ordinary creditors for such preferential claims, or unless the whole estate be insufficient for payment of preferential debts.

51. An arrangement or composition acted upon by the Court or a Judge in manner aforesaid shall at any time, with leave of the Court or Judge, be equivalent to and have the same effect as a certificate of insolvency and discharge, and the facts may be certified in writing to the debtor by the Court or Judge or the clerk of the Court, under the seal of the Court, or otherwise, in a document to be called a certificate of composition or of arrangement, or otherwise as the case may be, and shall be conclusive evidence of the fact of discharge: provided that such documents and certificates in insolvency and of composition or arrangement shall be recorded in the office of the registrar of the Court before which the petitioner may be declared insolvent, or the composition or arrangement acted upon, and if before a Judge, in the office of the registrar of the Supreme Court.

PARTIES SECONDARILY LIABLE.

52. Nothing in this chapter contained shall affect or operate to change the liability of any person secondarily liable to any creditor for the debts of the insolvent, either as drawer or endorser of negotiable paper, or as guarantor, surety, or otherwise; nor of any partner or other person liable jointly or severally with the insolvent to such creditor for any debt; nor shall it affect any mortgage, lien, collateral or other security, held by any such creditor as security for any debt: Provided that the person secondarily

liable shall not be bound by the acts of such creditor unless with his assent, or unless such person shall have himself been declared insolvent or shall have assigned his property for the benefit of his creditors, or entered into a composition or arrangement.

DISTRRAINT.

53. The landlord or other person to whom any rent is due from the debtor, at any time before or after the appointment of a trustee under a petition for declaration of insolvency of such debtor, may distrain upon the goods or effects of the debtor for the rent so due to him: Provided that if such distress for rent be levied after the appointment of a trustee as aforesaid, or after an arrangement or composition being acted upon by the Court or Judge in manner aforesaid, or if such distress having been levied before such appointment or before arrangement or composition being acted upon in manner aforesaid, the goods distrained shall not have been lawfully sold under the distress at the time of such appointment or arrangement or composition being acted upon as aforesaid, then such distress shall be available in case of declaration of insolvency or arrangement or composition acted upon as aforesaid only for one year's rent accrued due prior to the date of such appointment or of such arrangement or composition being acted upon as aforesaid, but the surplus shall be provable as an ordinary debt under insolvency, composition or arrangement aforesaid.

DIVIDENDS.

54. When any rent or other payment falls due at stated periods, and the declaration of insolvency is ordered at any other than one of such periods, the person entitled may prove for a proportionate part thereof up to the declaration of insolvency, as if such rent or payment grew from day to day.

55. In a calculation and distribution of a dividend the trustee shall make provision for debts provable, appearing from the insolvent's statement or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in insolvency, the subject of claims not yet determined.

56. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any moneys for the time being in the hands of the trustees, any dividend or dividends he may have failed to receive before such moneys are made applicable to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved, by reason that he has not participated therein.

57. Any creditor holding a specific security on the property of the insolvent or joint insolvent, if more than one or any part thereof, may, on giving up his security, prove for his whole debt. He shall be entitled to a dividend in respect to the balance due to him after realizing or giving credit for the value of his security, to be ascertained, if necessary, in manner to be prescribed by the Court or Judge. A creditor holding such security, and not complying with the foregoing conditions, shall be excluded from all share in any dividend.

JURISDICTION.

58. Notwithstanding that a petition for a declaration of insolvency may be directed to the Court or a Judge particularly named in said petition, it may, where expedient, by reason of the illness or absence of the Judge from the judicial district in which proceedings have been commenced, or other sufficient cause, be proceeded upon by any Judge of the Supreme Court; and any Judge other than the Judge before whom proceedings in insolvency may have been commenced, or when such proceedings have been commenced before the Court, may hear and adjudicate upon matters arising subsequently in the same insolvency and not already heard and determined by the first-named Judge or the Court. The Supreme Court in St. John's shall have like powers where such proceedings have been commenced before a Judge or the Court on circuit.

59. A Judge hearing proceedings in insolvency shall be deemed a Court of Record, and may enforce his orders in the same manner.
