

have been issued, and all recognizances returnable, and all suits and other proceeding, which have been continued to the said district court on the first Monday in April next, shall be returned and held continued to the said court on the first Monday of May next.

APPROVED, March 19, 1800.

STATUTE I.

CHAP. XVIII.—*An Act to extend the privilege of franking letters and packages to Martha Washington.*

April 3, 1800.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all letters and packages to and from Martha Washington, relict of the late General George Washington, shall be received and conveyed by post free of postage, for and during her life.

APPROVED, April 3, 1800.

STATUTE I.

CHAP. XIX.—*An Act to establish an uniform System of Bankruptcy throughout the United States.*(a)

April 4, 1800.

SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from*

Repealed by
Act of Dec. 19,
1803, ch. 6.

(a) *Decisions on the Bankrupt Law of the United States.*—The holder of a promissory note, drawn before, but transferred after a commission of bankruptcy had issued against the drawer, is entitled to prove his debt under the commission, and to receive a dividend. *Humphreys v. Blight's Assignees*, 4 Dall. 370.

In the case of negotiable paper, the assignee takes it, discharged of all the equity as between the original parties, of which he had no notice. But wherever the assignee has notice of such equity, either positively or constructively, he takes the assignment at his peril. A commission of bankruptcy is legal notice that wherever mutual debts subsisted between the bankrupt and his creditors, the right of set-off attaches. When the negotiable paper was assigned after the commission of bankruptcy, the party takes it, subject to any set-off as between the drawer and payee. *Ibid.*

Under the bankrupt law of the United States, a joint debt may be set-off against the separate claim of the assignee of one of the partners; but such set-off could not have been made at law, independent of the bankrupt law. *Tucker v. Oxley*, 5 Cranch, 34; 2 Cond. Rep. 182.

A joint debt may be proved under a separate commission, and a full dividend received; it is equity alone which can restrain the joint creditor from receiving his full dividend until the joint effects are exhausted. *Ibid.*

Wherever the terms in which a power is granted by the constitution to Congress, or wherever the nature of the power itself, requires that it shall be exclusively exercised by Congress, the subject is completely taken away from state legislatures, as if they had been forbidden to act upon it. The power granted to Congress of establishing uniform laws on the subject of bankruptcy, is not of this description. *Sturges v. Crowninshield*, 4 Wheat. 122; 4 Cond. Rep. 409.

In the distribution of a bankrupt's effects in this country, the United States are entitled to a preference, although the debt was contracted by a foreigner in a foreign country; and although the United States had proved their debt under the commission of bankruptcy, and had voted for an assignee. *Harrison v. Sterry et al.*, 5 Cranch, 289; 2 Cond. Rep. 260.

A conveyance on the eve of bankruptcy, to give a preference to a particular class of creditors, is a fraud on the bankrupt law and void. *Ibid.*

Such assignment may be valid to secure money actually advanced on the credit of it, and subsequent to its date. *Ibid.*

Under a separate commission of bankruptcy, against one partner only, his private property, and his interest in the funds of the company passes. *Ibid.*

The right to compensation from Spain, held under an abandonment made to underwriters, and accepted by them, for damages and injuries, which were to be satisfied under the treaty, by the United States; passed to the assignees of the bankrupt, who held such rights by the provisions of the bankrupt law of the United States, passed April 4, 1800. *Comegys et al. v. Vasse*, 1 Peters, 193.

The circuit courts of the United States have jurisdiction of matters arising under the bankrupt law of the United States, as they have of any other subject, where the constitution and laws of the United States give jurisdiction; but the district courts have not the same jurisdiction in cases of bankruptcy, as the chancellor of England has. *Lucas et al. v. Morris et al.*, 1 Paine's C. C. R. 396.

The district courts of the United States have not, like the chancellor in England, exclusive jurisdiction over the entire execution of the bankrupt law. They cannot remove assignees, nor compel them to account. *Ibid.*

Upon the death of an assignee under the bankrupt law of the United States, the right of action for a debt due to the bankrupt, vested in the executor of the assignee. *Richards et al. Assignees, &c. v. Maryland Ins. Co.*, 8 Cranch, 84; 3 Cond. Rep. 45.

Where the original ground of action is founded on contract, but the immediate cause arises ex delicto, and the claim is for damages, unliquidated by any express agreement, or such as the law will not imply an agreement to pay; the certificate of bankruptcy is no bar; because such claim could not have been proved under the commission. *Dusar v. Murgatroyd*, 1 Wash. C. C. R. 13.

Who may be a bankrupt. and after the first day of June next, if any merchant, or other person, residing within the United States, actually using the trade of merchandise, by buying and selling in gross, or by retail, or dealing in exchange, or as a banker, broker, factor, underwriter, or marine insurer, shall,

But if the agreement were to pay a particular sum, on failure to perform the contract; or if the case was such that the plaintiff has his election to bring either trespass or case for money had and received, and waives the former by bringing the latter; the damages become a debt, which the law implies a promise to pay, and the certificate is a bar. *Ibid.*

In an action brought against the owner of a vessel for damages for an injury sustained on board a ship by the neglect of the master, a certificate of bankruptcy cannot be pleaded in bar. *Ibid.*

One guilty of perjury in proceedings under the bankrupt law, cannot be prosecuted for the offence, after the repeal of the law. *United States v. Passmore*, 4 Dall. 372.

A deed executed before the 1st of June, 1800, although acknowledged after, is not within the 1st section of the bankrupt act of April 4th, 1800, chap. 19. *Wood v. Owings*, 1 Cranch, 239; 1 Cond. Rep. 302.

A certificated bankrupt or insolvent, discharged from the particular contract, need not be made a party to the bill on the contract. *Van Reimsdyke v. Kane's Ex'r*, 1 Gall. C. C. R. 371.

The power given to Congress to pass uniform laws, relative to bankruptcy, is exclusive of such power in the state governments; and this, whether the former has thought proper to exercise it or not. *Golden v. Prince*, 3 Wash. C. C. R. 313.

A discharge from a debt under the bankrupt laws of the place of contract, is good in every other place where pleaded, as an extinguishment of the debt. But a like discharge where the contract is not made, has no effect. *Le Roy v. Crowninshield*, 2 Mason's C. C. R. 151.

A debtor concealing himself from, and being denied to his creditors, does not constitute an act of bankruptcy under the laws of the United States; unless the service of process is thereby prevented. *Barnes et al. v. Billington*, 1 Wash. C. C. R. 29.

If the debtor order himself to be denied to creditors and others, and is in consequence thereof denied to an officer, who comes to serve a process, it is an act of bankruptcy; provided the officer comes to serve the process, and not on other business: and the denial has taken place within six months of the issuing of the commission. *Ibid.*

Giving a bond, with warrant to confess judgment to one creditor, upon the eve and in contemplation of bankruptcy, does not constitute a bankruptcy; unless the judgment entered on the bond, and the issuing of the execution was at the instance or by the procurement of the debtor. Such a bond would be a fraud on the general creditors. *Ibid.*

Where two of three assignees of a bankrupt enter into an agreement in the absence of the third, the contract is not binding on the absent assignee; unless he had previously given authority to make it, or substantially recognize and acknowledge it. *Aliter*, among partners. *Blight v. Ashley et al.*, 1 Peters' C. C. R. 16.

The agreement of the assignees of a bankrupt, to give a preference to a particular creditor, is not valid, without the assent of the commissioners, and a certain portion of the creditors. *Ibid.*

Denial to an officer, whereby he is prevented serving process, must be really adversary, and not by concert between the creditor and the debtor, to bring about an act of bankruptcy. *Ibid.*

No debt but such as is due and owing at the time of the bankruptcy, can be proved under the commission; and, consequently, an endorser or acceptor of a bill of exchange, drawn by the bankrupt, who has not paid it before the bankruptcy, cannot prove the debt. *Marks et al. Assignees v. Barker et al.*, 1 Wash. C. C. R. 178.

The acceptor or endorser of a bill of exchange, who pays the bill after the bankruptcy of the drawer, may offset the same against the bankrupt's assignees; but he must show the debt to be a subsisting one in him, at the time the action was brought, for this is a case of mutual credit, given before the bankruptcy, although the money was not paid until after. *Ibid.*

The district courts of the United States have not power, in bankrupt cases, to remove assignees, or compel them to account. *Lucas v. Morris, Paine's C. C. R. 396.*

The holder of the negotiable paper, payable "without defalcation," under the laws of Pennsylvania, assigned after a commission of bankruptcy has issued, may come in under the commission; allowing all just offsets existing at the time of the bankruptcy, and which would have been admitted if the assignment had not been made. *Humphreys v. Blight's Assignees*, 1 Wash. C. C. R. 44.

The purchaser of a negotiable note, who becomes so after a commission of bankruptcy has issued, may prove under the commission; and he holds the note, subject to all legal offsets. *Ibid.*

The 65th section of the bankrupt law of the United States, passed the 2d of March, 1799, does not repeal the provisions of the laws of the United States, which give to the surety who pays bonds for duties, a preference over other creditors. *Mott v. The Assignees of Maris*, 2 Wash. C. C. R. 196.

The provisions of the bankrupt law except from its general operation, not only the preference of the United States, but also the right of preference for satisfaction of debts due to the United States. *Ibid.*

P. paid a sum of money to the United States, as surety of S., in a bond for duties. S. became insolvent, and assigned his effects to Baker, who received four thousand dollars under the assignment, mixed the same with his own funds, and afterwards became bankrupt, and the defendants were appointed his assignees; but no effects, known to be part of the estate of S., came into their hands. The plaintiff claimed to have a preference and priority over the general creditors of Baker. By the Court—Although the United States might, under the 65th section of the law to regulate the collection of duties, be entitled to claim of the defendants to the amount which came into the hands of B., as the assignees of S., the provisions of the law do not extend to the surety who has paid the bond, the same rights and privileges. *Pollock v. Pratt & Harvey*, 2 Wash. C. C. R. 490.

A. H. devised an estate to C. S., for life; and after the death of C. S., he directed that the estate should be sold, and divided among the grandchildren of the testator, who should be living at the death of C. S. B. married one of the grandchildren, and, before the death of C. S., B. became bankrupt. B. and wife, after the decease of C. S., sold the property claimed under the will of A. H., and the plaintiff claimed

with intent unlawfully to delay or defraud his or her creditors, depart from the state in which such person usually resides, or remain absent therefrom, or conceal him or herself therein, or keep his or her house, so that he or she cannot be taken, or served with process, or willingly or fraudulently procure him or herself to be arrested, or his or her lands, goods, money or chattels to be attached, sequestered, or taken in execution, or shall secretly convey his or her goods out of his or her house, or conceal them to prevent their being taken in execution, or make, or cause to be made, any fraudulent conveyance of his or her lands, or chattels, or make or admit any false or fraudulent security, or evidence of debt, or being arrested for debt, or having surrendered him or herself in discharge of bail, shall remain in prison two months, or more, or escape therefrom, or whose lands or effects being attached by process issuing out of, or returnable to, any court of common law, shall not, within two months after written notice thereof, enter special bail and dissolve the same, or in districts in which attachments are not dissolved by the entry of special bail, being arrested for debt after his or her lands and effects, or any part thereof, have been attached for a debt or debts amounting to one thousand dollars or upwards, shall not, upon notice of such attachment, give sufficient security for the payment of what may be recovered in the suit in which he or she shall be arrested, at or before the return day of the same, to be approved by the judge of the district, or some judge of the court out of which the process issued upon which he is arrested, or to which the same shall be returnable, every such person shall be deemed and adjudged a bankrupt: *Provided*, that no person shall be liable to a commission of bankruptcy, if the petition be not preferred, in manner herein after directed, within six months after the act of bankruptcy committed.

What shall be an act of bankruptcy.

SEC. 2. *And be it further enacted*, That the judge of the district court of the United States, for the district where the debtor resides, or usually resided at the time of committing the act of bankruptcy, upon petition, in writing, against such person or persons being bankrupt, to him to be exhibited by any one creditor, or by a greater number, being partners, whose single debt shall amount to one thousand dollars, or by two creditors, whose debts shall amount to one thousand five hundred dollars, or by more than two creditors, whose debts shall amount to two thousand dollars, shall have power, by commission under his hand and seal, to appoint such good and substantial persons, being citizens of the United States, and resident in such district, as such judge shall deem proper, not exceeding three, to be commissioners of the said bankrupt, and in case of vacancy or refusal to act, to appoint others from time to time, as occasion may require: (a) *Provided always*, that before any

Proceedings to obtain a commission of bankruptcy.

under this conveyance. By the Court—The decisions of the English courts, abundantly prove that a possibility, whether belonging to the husband or the wife, would not pass to the assignees of the husband, on his becoming bankrupt, if it were not for the strong language of the statutes of bankruptcy. *Krumhaar v. Burt*, 2 Wash. C. C. R. 406.

The possibility held by B., under the will of A. H., formed no part of his estate to which he was entitled in law or equity, of which the commissioners could take possession under the 5th section of the bankrupt law of the United States; and, therefore, they could not transfer it to the assignees of the bankrupt, under the provisions of the 6th section. *Ibid*.

The provisions of the English bankrupt laws, and those of the bankrupt law of the United States, differ in relation to the contingent interests of the bankrupt; and it is clear, that by the most liberal construction of the law, the interest of the husband in the estate of his wife, under the will of A. H., did not pass to the assignees. *Ibid*.

The provisions of the 13th section of the bankrupt law of the United States, do not affect this question; they do not require an assignment of contingent interests, but relate to their disclosure by the bankrupt. *Ibid*.

So exclusively have bankrupt laws operated on traders, that it may well be doubted, whether an act of Congress, subjecting to such a law every description of persons within the United States, would comport with the spirit of the powers vested in them in relation thereto. Per Livingston, J. in *Adams v. Storey*, Paine's C. C. R. 79.

(a) By the 14th section of the act of April 29, 1802, entitled, "An act to amend the judicial system of the United States," the commissions in bankruptcy issued by the district judge were to be directed to general commissioners appointed by the President of the United States in each district.

commission shall issue, the creditor or creditors petitioning shall make affidavit or solemn affirmation before the said judge, of the truth of his, her, or their debts, and give bond, to be taken by the said judge, in the name, and for the benefit of the said party so charged as a bankrupt, and in such penalty, and with such surety as he shall require, to be conditioned for the proving of his, her, or their debts, as well before the commissioners as upon a trial at law, in case the due issuing forth of the said commission shall be contested, and also for proving the party a bankrupt, and to proceed on such commission, in the manner herein prescribed. And if such debt shall not be really due, or after such commission taken out it cannot be proved that the party was a bankrupt, then the said judge shall, upon the petition of the party aggrieved, in case there be occasion, deliver such bond to the said party, who may sue thereon, and recover such damages, under the penalty of the same, as, upon trial at law, he shall make appear he has sustained, by reason of any breach of the condition thereof.

Commissioners to take an oath, and the mode of declaring the party a bankrupt.

SEC. 3. *And be it further enacted*, That before the commissioners shall be capable of acting, they shall respectively take and subscribe the following oath or affirmation, which shall be administered by the judge issuing the commission, or by any of the judges of the supreme court of the United States, or any judge, justice, or chancellor of any state court, and filed in the office of the clerk of the district court: "I, A. B., do swear, or affirm, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me, as a commissioner in a commission of bankruptcy against and that without favour or affection, prejudice or malice." And the commissioners, who shall be sworn as aforesaid, shall proceed, as soon as may be, to execute the same; and upon due examination, and sufficient cause appearing against the party charged, shall and may declare him or her to be a bankrupt: *Provided*, that before such examination be had, reasonable notice thereof, in writing, shall be delivered to the person charged as a bankrupt; or if he, or she, be not found at his or her usual place of abode, to some person of the family above the age of twelve years, or if no such person appear, shall be fixed at the front or other public door of the house, in which he or she usually resides, and thereupon it shall be in the power of such person, so charged as aforesaid, to demand before, or at the time appointed for such examination, that a jury be empaneled to inquire into the fact or facts, alleged, as the causes for-issuing the commission, and on such demand being made, the inquiry shall be had before the judge granting the commission, at such time as he may direct, and in that case, such person shall not be declared bankrupt, unless, by the verdict of the jury, he or she shall be found to be within the description of this act, and shall be convicted of some one of the acts described in the first section of this act: *Provided also*, that any commission which shall be taken out as aforesaid, and which shall not be proceeded in as aforesaid, within thirty days thereafter, may be superseded by the said judge, who shall have granted the same, upon the application of the party thereby charged as a bankrupt, or of any creditor of such person, unless the delay shall have been unavoidable, or upon a just occasion.

Commissioners may cause the bankrupt to be arrested.

SEC. 4. *And be it further enacted*, That the commissioners so to be appointed, shall have power forthwith, after they have declared such person a bankrupt, to cause to be apprehended, by warrant under their hands and seals, the body of such bankrupt, wheresoever to be found, within the United States: *Provided*, they shall think, that there is reason to apprehend that the said bankrupt intends to abscond or conceal him or herself, and in case it be necessary, in order to take the body of the said bankrupt, shall have power to cause the doors of the dwelling-

house of such bankrupt to be broken, or the doors of any other house in which he or she shall be found.

SEC. 5. *And be it further enacted*, That it shall be the duty of the commissioners so to be appointed, forthwith, after they have declared such person a bankrupt, and they shall have power to take into their possession, all the estate, real and personal, of every nature and description to which the said bankrupt may be entitled, either in law or equity, in any manner whatsoever, and cause the same to be inventoried and appraised to the best value, (his or her necessary wearing apparel, and the necessary wearing apparel of the wife and children, and necessary beds and bedding of such bankrupt only excepted) and also to take into their possession, and secure, all deeds and books of account, papers and writings belonging to such bankrupt; and shall cause the same to be safely kept, until assignees shall be chosen or appointed, in manner hereafter provided.

They shall take into their possession the bankrupt's property, books and papers.

SEC. 6. *And be it further enacted*, That the said commissioners shall forthwith, after they have declared such person a bankrupt, cause due and sufficient public notice thereof to be given, and in such notice shall appoint some convenient time and place for the creditors to meet, in order to choose an assignee or assignees of the said bankrupt's estate and effects;—at which meeting the said commissioners shall admit the creditors of such bankrupt to prove their debts;—and where any creditor shall reside at a distance from the place of such meeting, shall allow the debt of such creditor to be proved by oath or affirmation, made before some competent authority, and duly certified, and shall permit any person duly authorized by letter of attorney from such creditor, due proof of the execution of such letter of attorney being first made, to vote in the choice of an assignee or assignees of such bankrupt's estate and effects, in the place and stead of such creditor: and the said commissioners shall assign, transfer or deliver over, all and singular the said bankrupt's estate and effects, aforesaid, with all muniments and evidences thereof, to such person or persons as the major part, in value, of such creditors, according to the several debts then proved, shall choose as aforesaid: *Provided always*, that in such choice, no vote shall be given by, or in behalf of any creditor whose debt shall not amount to two hundred dollars.

Notice of the bankruptcy, appointment of assignees, proof of debts, and assignment of the bankrupt's estate.

SEC. 7. *Provided always, and be it further enacted*, That it shall be lawful for the said commissioners, as often as they shall see cause, for the better preserving and securing the bankrupt's estate, before assignees shall be chosen as aforesaid, immediately to appoint one or more assignee or assignees of the estate and effects aforesaid, or any part thereof; which assignee or assignees aforesaid, or any of them, may be removed at the meeting of the creditors, so to be appointed as aforesaid, for the choice of assignees, if such creditors, entitled to vote as aforesaid, or the major part, in value, of them, shall think fit; and such assignee or assignees as shall be so removed, shall deliver up all the estate and effects of such bankrupt, which shall have come to his or their hands or possession, unto such other assignee or assignees as shall be chosen by the creditors as aforesaid; and all such estate and effects shall be, to all intents and purposes, as effectually and legally vested in such new assignee or assignees, as if the first assignment had been made to him or them, by the said commissioners; and if such first assignee or assignees shall refuse or neglect, for the space of ten days next after notice, in writing, from such new assignee or assignees of their appointment, (a) as aforesaid, to deliver over as aforesaid, all the estate and effects as aforesaid, every such assignee or assignees shall, respectively, forfeit a sum not exceeding five thousand dollars, for the use of the creditors, and shall moreover be liable for the property so detained.

SEC. 8. *And be it further enacted*, That at any time, previous to the

(a) Apportionment in the original.

Creditors may remove the assignees and choose others.

closing of the accounts of the said assignee or assignees so chosen as aforesaid, it shall be lawful for such creditors of the bankrupt, as are hereby authorized to vote in the choice of assignees, or the major part of them, in value, at a regular meeting of the said creditors, to be called for that purpose, by the said commissioners, or by one fourth, in value, of such creditors, to remove all or any of the assignees chosen as aforesaid, and to choose one or more in his or their place and stead: and such assignee or assignees as shall be so removed, shall deliver up all the estate and effects of such bankrupt, which shall have come into his or their hands or possession, unto such new assignee or assignees as shall be chosen by the creditors, at such meeting; and all such estate and effects shall be, to all intents and purposes, as effectually and legally vested in such new assignee or assignees, as if the first assignment had been made to him or them, by the said commissioners: and if such former assignee or assignees shall refuse or neglect, for the space of ten days next after notice, in writing, from such new assignee or assignees, of their appointment, as aforesaid, to deliver over, as aforesaid, all the estate and effects aforesaid, every such former assignee or assignees, shall, respectively, forfeit a sum not exceeding five thousand dollars, for the use of the creditors, and shall moreover be liable for the property so detained.

Suits not abated by the removal of assignees.

SEC. 9. *And be it further enacted*, That whenever a new assignee or assignees shall be chosen as aforesaid, no suit at law or in equity shall be thereby abated; but it shall and may be lawful for the court in which any suit may depend, upon the suggestion of a removal of a former assignee or assignees, and of the appointment of a new assignee or assignees, to allow the name of such new assignee or assignees, to be substituted in place of the name or names of the former assignee or assignees, and thereupon the suit shall be prosecuted in the name or names of the new assignee or assignees, in the same manner as if he or they had originally commenced the suit in his or their own names.

General effect of the assignment by the commissioners.

SEC. 10. *And be it further enacted*, That the assignment or assignments of the commissioners of the bankrupt's estate and effects as aforesaid, made as aforesaid, shall be good at law or in equity, against the bankrupt; and all persons claiming by, from, or under such bankrupt, by any act done at the time, or after he shall have committed the act of bankruptcy, upon which the commission issued: *Provided always*, that in case of a *bona fide* purchase made before the issuing of the commission from or under such bankrupt, for a valuable consideration, by any person having no knowledge, information, or notice of any act of bankruptcy committed, such purchase shall not be invalidated or impeached.

It shall bar an estate tail.

SEC. 11. *And be it further enacted*, That the said commissioners shall have power, by deed or deeds, under their hands and seals, to assign and convey to the assignee or assignees, to be appointed or chosen as aforesaid, any lands, tenements, or hereditaments, which such bankrupt shall be seised of, or entitled to, in fee tail, at law, or in equity, in possession, remainder, or reversion, for the benefit of the creditors; and all such deeds, being duly executed and recorded according to the laws of the state within which such lands, tenements, or hereditaments may be situate, shall be good and effectual against all persons whom the said bankrupt, by common recovery, or other means, might or could bar of any estate, right, title, or possibility of or in the said lands, tenements, or hereditaments.

Commissioners may tender performance of the conditions on which the bankrupt's property is pledged.

SEC. 12. *And be it further enacted*, That if any bankrupt shall have conveyed or assured any lands, goods or estate, unto any person, upon condition or power of redemption, by payment of money or otherwise, it shall be lawful for the commissioners, or for any person by them duly authorized for that purpose, by writing, under their hands and seals, to make tender of money or other performance according to the nature of

such condition, as fully as the bankrupt might have done; and the commissioners, after such performance or tender, shall have power to assign such lands, goods and estate, for the benefit of the creditors, as fully and effectually as any other part of the estate of such bankrupt.

SEC. 13. *And be it further enacted*, That the commissioners aforesaid shall have power to assign, for the use aforesaid, all the debts due to such bankrupt, or to any other person for his or her use or benefit; which assignment shall vest the property and right thereof in the assignee or assignees of such bankrupt, as fully as if the bond, judgment, contract, or claim, had originally belonged or been made to the said assignees; and after the said assignment, neither the said bankrupt, nor any person acting as trustee for him or her, shall have power to recover or discharge the same, nor shall the same be attached as the debt of the said bankrupt; but the assignee or assignees aforesaid shall have such remedy to recover the same, in his or their own name or names, as such bankrupt might or could have had, if no commission of bankruptcy had issued. And when any action in the name of such bankrupt shall have been commenced, and shall be pending for the recovery of any debt or effects of such bankrupt, which shall be assigned, or shall, or might become vested in the assignee or assignees of such bankrupt as aforesaid, then such assignee or assignees may claim to be, and shall be thereupon admitted to prosecute such action in his or their name, for the use and benefit of the creditors of such bankrupt; and the same judgment shall be rendered in such action, and all attachments or other security taken therein, shall be in like manner holden and liable, as if the said action had been originally commenced in the name of such assignee or assignees, after the original plaintiff therein had become a bankrupt as aforesaid: *Provided*, that where a debtor shall have, *bona fide*, paid his debt to any bankrupt, without notice that such person was bankrupt, he or she shall not be liable to pay the same to the assignee or assignees.

Effect of the assignment of debts, and mode of recovery.

SEC. 14. *And be it further enacted*, That if complaint shall be made or information given to the commissioners, or if they shall have good reason to believe or suspect, that any of the property, goods, chattels, or debts, of the bankrupt, are in the possession of any other person, or that any person is indebted to, or for the use of the bankrupt, then the said commissioners shall have power to summon, or to cause to be summoned, by their attorney or other person duly authorized by them, all such persons before them, or the judge of the district where such person shall reside, by such process, or other means, as they shall think convenient, and upon their appearance, to examine them by parole or by interrogatories, in writing, on oath, or affirmation, which oath or affirmation they are hereby empowered to administer, respecting the knowledge of all such property, goods, chattels, and debts; and if such person shall refuse to be sworn or affirmed, and to make answer to such questions or interrogatories as shall be administered, and to subscribe the said answers, or upon examination shall not declare the whole truth, touching the subject matter of such examination, then it shall be lawful for the commissioners, or judge, to commit such person to prison, there to be detained until they shall submit themselves to be examined in manner aforesaid, and they shall, moreover, forfeit double the value of all the property, goods, chattels, and debts, by them concealed.

Mode of discovering concealed property or debts.

SEC. 15. *And be it further enacted*, That if any of the aforesaid persons shall, after legal summons to appear before the commissioners or judge, to be examined, refuse to attend, or shall not attend at the time appointed, having no such impediment as shall be allowed of by the commissioners or judge, it shall be lawful for the said commissioners or judge to direct their warrants to such person or persons as by them shall be thought proper, to apprehend such persons as shall refuse to appear, and to bring them before the commissioners or judge, to be examined,

Mode of compelling the attendance of witnesses.

Their compensation.

Punishment of perjury and subornation thereof.

Penalty on making a fraudulent claim.

Commissioners may assign property fraudulently conveyed away.

Duty of the bankrupt to surrender himself and be examined, &c.

and upon their refusal to come, to commit them to prison, until they shall submit themselves to be examined, according to the directions of this act : *Provided*, that such witnesses as shall be so sent for, shall be allowed such compensation as the commissioners or judge shall think fit, to be rateably borne by the creditors ; and if any person, other than the bankrupt, either by subornation of others, or by his or her own act, shall wilfully or corruptly commit perjury on such examination, to be taken before the commissioners as aforesaid, the party so offending, and all persons who shall procure any person to commit such perjury, shall, on conviction thereof, be fined, not exceeding four thousand dollars, and imprisoned, not exceeding two years, and moreover shall, in either case, be rendered incapable of being a witness in any court of record.

SEC. 16. *And be it further enacted*, That if any person or persons shall fraudulently, or collusively claim any debts, or claim or detain any real or personal estate of the bankrupt, every such person shall forfeit double the value thereof, to and for the use of the creditors.

SEC. 17. *And be it further enacted*, That if any person, prior to his or her becoming a bankrupt, shall convey to any of his or her children, or other persons, any lands or goods, or transfer his or [her] debts or demands into other persons' names, with intent to defraud his or her creditors, the commissioners shall have power to assign the same, in as effectual a manner as if the bankrupt had been actually seised or possessed thereof.

SEC. 18. *And be it further enacted*, That if any person or persons who shall become bankrupt within the intent and meaning of this act, and against whom a commission of bankruptcy shall be duly issued, upon which commission such person or persons shall be declared bankrupt, shall not, within forty-two days after notice thereof, in writing, to be left at the usual place of abode of such person or persons, or personal notice in case such person or persons be then in prison, and notice given in some gazette, that such commission hath been issued, and of the time and place of meeting of the commissioners, surrender him or herself to the said commissioners, and sign or subscribe such surrender, and submit to be examined, from time to time, upon oath or solemn affirmation, by and before such commissioners, and in all things conform to the provisions of this act, and also upon such his or her examination, fully and truly disclose and discover all his or her effects and estate, real and personal, and how and in what manner, to whom and upon what consideration, and at what time or times he or she hath disposed of, assigned or transferred, any of his or her goods, wares, or merchandise, monies, or other effects and estate, and of all books, papers and writings relating thereunto, of which he or she was possessed, or in or to which he or she was any ways interested or entitled, or which any person or persons shall then have, or shall have had in trust for him or her, or for his or her use, at any time before or after the issuing of the said commission, or whereby such bankrupt, or his or her family then hath, or may have or expect any profit, possibility of profit, benefit or advantage whatsoever, except only such part of his or her estate and effects as shall have been really and *bona fide* before sold and disposed of, in the way of his or her trade and dealings, and except such sums of money as shall have been laid out in the ordinary expenses of his or her family, and also upon such examination, execute in due form of law, such conveyance, assurance, and assignment of his or her estate, whatsoever and wheresoever, as shall be devised and directed by the commissioners, to vest the same in the assignees, their heirs, executors, administrators, and assigns for ever, in trust, for the use of all and every the creditors of such bankrupt, who shall come in and prove their debts under the commission ; and deliver up unto the commissioners, all such part of his or her the said bankrupt's goods, wares, merchandises, money, effects and estate, and all books,

papers, and writings relating thereunto, as at the time of such examination shall be in his or her possession, custody or power, his or her necessary wearing apparel, and the necessary wearing apparel of the wife and children, and necessary beds and bedding, of such bankrupt only excepted, then he or she the said bankrupt, upon the conviction of any wilful default, or omission in any of the matters or things aforesaid, shall be adjudged a fraudulent bankrupt, and shall suffer imprisonment for a term not less than twelve months, nor exceeding ten years, and shall not, at any time after, be entitled to the benefits of this act: *Provided always*, that in case any bankrupt shall be in prison or custody at the time of issuing such commission, and is willing to surrender and submit to be examined, according to the directions of this act, and can be brought before the said commissioners and creditors for that purpose, the expense thereof shall be paid out of the said bankrupt's effects, and in case such bankrupt is in execution, or cannot be brought before the commissioners, that then the said commissioners, or some one of them shall, from time to time, attend the said bankrupt in prison or custody, and take his or her discovery as in other cases, and the assignees, or one of them, or some person appointed by them, shall attend such bankrupt in prison or custody, and produce his or her books, papers and writings, in order to enable him or her to prepare his or her discovery; a copy whereof the said assignees shall apply for, and the said bankrupt shall deliver to them or their order, within a reasonable time after the same shall have been required.

SEC. 19. *And be it further enacted*, That the said commissioners shall appoint, within the said forty-two days, so limited as aforesaid, for the bankrupt to surrender and conform as aforesaid, not less than three several meetings for the purposes aforesaid, the third of which meetings shall be on the last of the said forty-two days: *Provided always*, that the judge of the district within which such commission issues, shall have power to enlarge the time so limited as aforesaid, for the purposes aforesaid, as he shall think fit, not exceeding fifty days, to be computed from the end of the said forty-two days, so as such order for enlarging the time be made at least six days before the expiration of said term.

SEC. 20. *And be it further enacted*, That it shall be lawful for the commissioners, or any other person or officers, by them to be appointed, by their warrant, under their hands and seals, to break open in the day time the houses, chambers, shops, warehouses, doors, trunks, or chests, of the bankrupt, where any of his or her goods or estate, deeds, books of account or writings, shall be, and to take possession of the goods, money, and other estate, deeds, books of account or writings of such bankrupt.

SEC. 21. *And be it further enacted*, That if the bankrupt shall refuse to be examined, or to answer fully, or to subscribe his or her examination as aforesaid, it shall be lawful for the commissioners to commit the offender to close imprisonment, until he or she shall conform him or herself; and if the said bankrupt shall submit to be examined, and upon his or her examination, it shall appear that he or she hath committed wilful or corrupt perjury, he or she may be indicted therefor, and being thereof convicted, shall suffer imprisonment for a term not less than two years, nor exceeding ten years.

SEC. 22. *And be it further enacted*, That every bankrupt, having surrendered, shall, at all seasonable times before the expiration of the said forty-two days, as aforesaid, or of such further time as shall be allowed to finish his or her examination, be at liberty to inspect his or her books and writings, in the presence of some person to be appointed by the commissioners, and to bring with him or her, for his or her assistance, such persons as he or she shall think fit, not exceeding two at one time, and to make extracts and copies to enable him or her to make a full discovery of his or her effects; and the said bankrupt shall

Mode of examination when the bankrupt is in prison.

Days of meeting to be appointed within the term limited for the surrender, &c.

The term may be enlarged.

Houses, doors, &c. of the bankrupt may be broken open.

Bankrupt may be committed for refusal to be examined, &c.

Punishment of his perjury.

To have access to his books and writings.

To be free from arrest in coming to surrender, &c.

be free from arrests, in coming to surrender, and after having surrendered to the said commissioners, for the said forty-two days, or such farther time as shall be allowed for the finishing his or her examination; and in case such bankrupt shall be arrested for debt, or taken on any escape warrant or execution, coming to surrender, or after his surrender within the time before mentioned, then on producing such summons or notice under the hand of the commissioners, and giving the officer a copy thereof, he or she shall be discharged; and in case any officer shall afterwards detain such bankrupt, such officer shall forfeit to such bankrupt for his or her own use, ten dollars for every day he shall detain the bankrupt.

Penalty on concealing a bankrupt.

SEC. 23. *And be it further enacted*, That every person who shall knowingly or wilfully receive or keep concealed any bankrupt, so as aforesaid summoned to appear, or who shall assist such bankrupt in concealing him or herself, or in absconding, shall suffer such imprisonment, not exceeding twelve months, or pay such fine to the United States, not exceeding one thousand dollars, as upon conviction thereof shall be adjudged.

Bankrupt's wife may be examined.

SEC. 24. *And be it further enacted*, That the said commissioners shall have power to examine, upon oath or affirmation, the wife of any person lawfully declared a bankrupt, for the discovery of such part of his estate as may be concealed or disposed of by such wife, or by any other person; and the said wife shall incur such penalties for not appearing before the said commissioners, or refusing to be sworn or affirmed, or examined, and to subscribe her examination, or for not disclosing the truth, as by this act is provided against any other person in like cases.

Cause of commitment to be expressed in the commissioners' warrant.

SEC. 25. *And be it further enacted*, That in case any person shall be committed by the commissioners for refusing to answer, or for not fully answering any question, or for any other cause, the commissioners shall, in their warrant, specify such question or other cause of commitment.

Bounty for discovering bankrupt's estate.

SEC. 26. *And be it further enacted*, That if after the bankrupt shall have finished his or her final examination, any other person or persons shall voluntarily make discovery of any part of such bankrupt's estate, before unknown to the commissioners, such person or persons shall be entitled to five per cent. out of the effects so discovered, and such further reward as the commissioners shall think proper; and any trustee having notice of the bankruptcy, wilfully concealing the estate of any bankrupt, for the space of ten days after the bankrupt shall have finished his final examination, as aforesaid, shall forfeit double the value of the estate so concealed, for the benefit of the creditors.

Penalty on trustees concealing his property.

SEC. 27. *And be it further enacted*, That if any person shall become bankrupt, and at such time, by consent of the owner, have in his or her possession and disposition, any goods whereof he or she shall be reputed owner, and take upon him or herself, the sale, alteration, or disposition thereof, as owner, the commissioners shall have power to assign the same, for the benefit of the creditors, as fully as any other part of the estate of the bankrupt.

Goods of which the bankrupt is the reputed owner, may be assigned.

Penalty on the person suing out a commission, receiving an undue satisfaction from the bankrupt. Proceedings thereon.

SEC. 28. *And be it further enacted*, That if any bankrupt, after the issuing any commission against him or her, pay to the person who sued out the same, or give or deliver to such person, goods or any other satisfaction or security for his or her debt, whereby such person shall privately have and receive a greater proportion of his or her debt than the other creditors, such preference shall be a new act of bankruptcy, and on good proof thereof, such commission shall and may be superseded, and it shall and may be lawful for either of the judges, having authority to grant the commission as aforesaid, to award any creditor petitioning another commission, and such person, so taking such undue satisfaction as aforesaid, shall forfeit and lose, as well his or her whole debts, as the

whole he or she shall have taken and received, and shall pay back, or deliver up the same, or the full value thereof, to the assignee or assignees who shall be appointed or chosen under such commission, in manner aforesaid, in trust for, and to be divided among the other creditors of the said bankrupt, in proportion to their respective debts.

SEC. 29. *And be it further enacted,* That every person who shall be chosen assignee of the estate and effects of a bankrupt, shall, at some time after the expiration of four months, and within twelve months from the time of issuing the commission, cause at least thirty days public notice to be given, of the time and place the commissioners and assignees intend to meet, to make a dividend or distribution of the bankrupt's estate and effects; at which time the creditors who have not before proved their debts, shall be at liberty to prove the same; and upon every such meeting, the assignee or assignees shall produce to the commissioners and creditors then present, fair and just accounts of all his or their receipts and payments, touching the bankrupt's estate and effects, and of what shall remain outstanding, and the particulars thereof, and shall, if the creditors then present, or a major part of them, require the same, be examined upon oath or solemn affirmation, before the same commissioners, touching the truth of such accounts; and in such accounts, the said assignee or assignees shall be allowed and retain all such sum and sums of money, as they shall have paid or expended in suing out and prosecuting the commission, and all other just allowances on account of, or by reason or means of their being assignee or assignees; and the said commissioners shall order such part of the nett produce of the said bankrupt's estate, as by such accounts or otherwise shall appear to be in the hands of the said assignees, as they shall think fit, to be forthwith divided among such of the bankrupt's creditors as have duly proved their debts under such commission, in proportion to their several and respective debts; and the commissioners shall make such their order for a dividend in writing, under their hands, and shall cause one part of such order to be filed amongst the proceedings under the said commission, and shall deliver unto each of the assignees under such commission, a duplicate of such their order, which order of distribution shall contain an account of the time and place of making such order, and the sum total or quantum of all the debts proved under the commission, and the sum total of the money remaining in the hands of the assignee or assignees to be divided, and how many per cent. in particular is there ordered to be paid to every creditor of his debt; and the said assignee or assignees in pursuance of such order, and without any deed or deeds of distribution, to be made for the purpose, shall forthwith make such dividend and distribution accordingly, and shall take receipts in a book to be kept for the purpose, from each creditor, for the part or share of such dividend or distribution, which he or they shall make, and pay to each creditor respectively; and such order and receipt shall be a full and effectual discharge to such assignee for so much as he shall fairly pay, pursuant to such order as aforesaid.

SEC. 30. *And be it further enacted,* That within eighteen months next after the issuing of the commission, the assignee or assignees shall make a second dividend of the bankrupt's estate and effects, in case the same were not wholly divided upon the first dividend, and shall cause due public notice to be given of the time and place the said commissioners intend to meet, to make a second distribution of the bankrupt's estate and effects, and for the creditors who shall not before have proved their debts, to come in and prove the same; and at such meeting, the said assignees shall produce, on oath or solemn affirmation as aforesaid, their accounts of the bankrupt's estate and effects, and what, upon the balance thereof, shall appear to be in their hands, shall by like order of the commissioners, be forthwith divided amongst such of the bankrupt's

Notice of a dividend.

Mode of making the first dividend.

Second and subsequent dividends.

creditors as shall have made due proof of their debts, in proportion to their several and respective debts; which second dividend shall be final, unless any suit at law, or equity, be depending, or any part of the estate standing out, that could not have been disposed of, or that the major part of the creditors shall not have agreed to be sold or disposed of, or unless some other or future estate or effects of the bankrupt shall afterwards come to, or rest in the said assignees, in which cases the said assignees shall, as soon as may be, convert such future or other estate and effects into money, and shall, within two months after the same be converted into money, by like order of the commissioners, divide the same among such bankrupt's creditors as shall have made due proof of their debt under such commission.

Bankrupt's estate to be proportionally divided without regard to creditors' security.

SEC. 31. *And be it further enacted,* That in the distribution of the bankrupt's effects, there shall be paid to every of the creditors a portionate, according to the amount of their respective debts, so that every creditor having security for his debt by judgment, statute, recognizance, or specialty, or having an attachment under any of the laws of the individual states, or of the United States, on the estate of such bankrupt, (*Provided,* there be no execution executed upon any of the real or personal estate of such bankrupt, before the time he or she became bankrupt) shall not be relieved upon any such judgment, statute, recognizance, specialty, or attachment, for more than a rateable part of his debt, with the other creditors of the bankrupt.

Assignees shall keep books of account open to the creditors' inspection.

SEC. 32. *And be it further enacted,* That the assignees shall keep one or more distinct book or books of account, wherein he or they shall duly enter all sums of money or effects, which he or they shall have received, or got into his or their possession, of the said bankrupt's estate, to which books of account, every creditor who shall have proved his or her debt, shall, at all reasonable times, have free resort, and inspect the same as often as he or she shall think fit.

Bankrupt bound to attend the assignees when required.

SEC. 33. *And be it further enacted,* That every bankrupt, not being in prison or custody, shall, at all times after his surrender, be bound to attend the assignees, upon every reasonable notice, in writing, for that purpose, given or left at the usual place of his or her abode, in order to assist in making out the accounts of the said bankrupt's estate and effects, and to attend any court of record, to be examined touching the same, or such other business, as the said assignees shall judge necessary, for which he shall receive three dollars per day.

Allowance to the bankrupt out of his estate.

SEC. 34. *And be it further enacted,* That all and every person and persons who shall become bankrupt as aforesaid, and who shall, within the time limited by this act, surrender him or herself to the commissioners, and in all things conform as in and by this act is directed, shall be allowed five per cent. upon the nett produce of all the estate that shall be recovered in and received, which shall be paid unto him or her by the assignee or assignees, in case the nett produce of such estate, after such allowance made, shall be sufficient to pay the creditors of said bankrupt, who shall have proved their debts under such commission, the amount of fifty per cent. on their said debts, respectively, and so as the said five per cent. shall not exceed, in the whole, the sum of five hundred dollars; and in case the nett produce of the said estate shall, over and above the allowance hereafter mentioned, be sufficient to pay the said creditors seventy-five per cent. on the amount of their said debts, respectively, that then the said bankrupt shall be allowed ten per cent. on the amount of such nett produce, to be paid as aforesaid, so as such ten per cent. shall not, in the whole, exceed the sum of eight hundred dollars; and every such bankrupt shall be discharged from all debts by him or her due or owing, at the time he or she became bankrupt, and all which were or might have been proved under the said commission; and in case any such bankrupt shall afterwards be arrested, prosecuted

He shall be discharged from all debts which might be proved under the commission.

or impleaded, for or on account of any of the said debts, such bankrupt may appear without bail, and may plead the general issue, and give this act, and the special matter in evidence. And the certificate of such bankrupt's conforming, and the allowance thereof, according to the directions of this act, shall be, and shall be allowed to be, sufficient evidence, *prima facie*, of the party's being a bankrupt within the meaning of this act, and of the commission and other proceedings precedent to the obtaining such certificate, and a verdict shall thereupon pass for the defendant, unless the plaintiff in such action can prove the said certificate was obtained unfairly, and by fraud, or unless he can make appear any concealment of estate or effects, by such bankrupt to the value of one hundred dollars. *Provided*, That no such discharge of a bankrupt, shall release or discharge any person who was a partner with such bankrupt, at the time he or she became bankrupt, or who was then jointly held or bound with such bankrupt for the same debt or debts from which such bankrupt was discharged as aforesaid.

SEC. 35. *Provided always, and be it further enacted*, That if the nett proceeds of the bankrupt's estate, so to be discovered, recovered and received, shall not amount to so much as will pay all and every of the creditors of the said bankrupt, who shall have proved their debts under the said commission, the amount of fifty per cent. on their debts respectively, after all charges first deducted, that then, and in such case, the bankrupt shall not be allowed five per centum on such estate as shall be recovered in, but shall have and be paid by the assignees so much money as the commissioners shall think fit to allow, not more than three hundred dollars, nor exceeding three per centum on the nett proceeds of the said bankrupt's estate.

If the bankrupt's estate does not pay half his debts, what allowance he shall have.

SEC. 36. *Provided also, and be it further enacted*, That no person becoming a bankrupt according to the intent and provisions of this act, shall be entitled to a certificate of discharge, or to any of the benefits of the act, unless the commissioners shall certify under their hands, to the judge of the district within which such commission issues, that such bankrupt hath made a full discovery of his or her estate and effects, and in all things conformed him or herself to the directions of this act, and that there doth not appear to them any reason to doubt of the truth of such discovery, or that the same was not a full discovery of the said bankrupt's estate and effects; or unless the said judge should be of opinion that the said certificate was unreasonably denied by the commissioners; and unless two thirds, in number and in value, of the creditors of the bankrupt, who shall be creditors for not less than fifty dollars respectively, and who shall have duly proved their debts under the said commission, shall sign such certificate to the judge, and testify their consent to the allowance of a certificate of discharge, in pursuance of this act; which signing and consent shall be also certified by the commissioners; but the said commissioners shall not certify the same till they have proof by affidavit or affirmation, in writing, of such creditors, or of the persons respectively authorized for that purpose, signing the said certificate; which affidavit or affirmation, together with the letter or power of attorney to sign, shall be laid before the judge of the district within which such commission issues, in order for the allowing the certificate of discharge, and the said certificate shall not be allowed unless the bankrupt make oath or affirmation in writing, that the certificate of the commissioners, and consent of the creditors thereunto were obtained fairly and without fraud; and any of the creditors of the said bankrupt are allowed to be heard, if they shall think fit, before the respective persons aforesaid, against the making or allowing of such certificates by the commissioners or judge.

A certificate of discharge may be necessary, and how it is to be obtained.

SEC. 37. *And be it further enacted*, That if any creditor, or pretended creditor, of any bankrupt, shall exhibit to the commissioners any ficti-

For what misconduct of the

bankrupt, he shall lose his right to a certificate, &c.

Bankrupt, if arrested, may be discharged on an *habeas corpus*.

Persons whose debts are due at a future day may prove them.

Obligees of certain bonds, and the assured in a policy of insurance may claim under the commission, &c.

Proceedings on *habeas corpus*, brought by a person committed by the commissioners.

Penalty on the gaoler suffering such person to go at large.

Prisoner to be produced by the gaoler on demand of a creditor.

tious or false debt, or demand, with intent to defraud the real creditors of such bankrupt, and the bankrupt shall refuse to make discovery thereof, and suffer the fair creditors to be imposed upon, he shall lose all title to the allowance upon the amount of his effects, and to a certificate of discharge as aforesaid, nor shall he be entitled to the said allowance or certificate, if he has lost, at any one time fifty dollars, or in the whole three hundred dollars, after the passing of this act, and within twelve months before he became a bankrupt, by any manner of gaming or wagering whatever.

SEC. 38. *And be it further enacted*, That if any bankrupt, who shall have obtained his certificate, shall be taken in execution or detained in prison, on account of any debts owing before he became a bankrupt, by reason that judgment was obtained before such certificate was allowed, it shall be lawful for any of the judges of the court wherein judgment was so obtained, or for any court, judge, or justice, within the district in which such bankrupt shall be detained, having powers to award or allow the writ of *habeas corpus*, on such bankrupt producing his certificate so as aforesaid allowed, to order any sheriff or gaoler who shall have such bankrupt in custody, to discharge such bankrupt without fee or charge, first giving reasonable notice to the plaintiff, or his attorney, of the motion for such discharge.

SEC. 39. *And be it further enacted*, That every person who shall have *bona fide* given credit to or taken securities, payable at future days, from persons who are or shall become bankrupts, not due at the time of such persons becoming bankrupt, shall be admitted to prove their debts and contracts, as if they were payable presently, and shall have a dividend in proportion to the other creditors, discounting, where no interest is payable, at the rate of so much per centum per annum, as is equal to the lawful interest of the state where the debt was payable; and the obligee of any bottomry or respondentia bond, and the assured in any policy of insurance, shall be admitted to claim, and after the contingency or loss, to prove the debt thereon, in like manner as if the same had happened before issuing the commission; and the bankrupt shall be discharged from such securities, as if such money had been due and payable before the time of his or her becoming bankrupt; and such creditors may petition for a commission, or join in petitioning.

SEC. 40. *And be it further enacted*, That in case any person, committed by the commissioners' warrant, shall obtain a *habeas corpus*, in order to be discharged, and there shall appear any insufficiency in the form of the warrant, it shall be lawful for the court or judge before whom such party shall be brought by *habeas corpus*, by rule or warrant, to commit such persons to the same prison, there to remain until he shall conform as aforesaid, unless it shall be made to appear that he had fully answered all lawful questions put to him by the commissioners; or in case such person was committed for not signing his examination, unless it shall appear that the party had good reason for refusing to sign the same, or that the commissioners had exceeded their authority in making such commitment; and in case the gaoler to whom such person shall be committed, shall wilfully or negligently suffer such person to escape, or go without the doors or walls of the prison, such gaoler shall, for such offence, being convicted thereof, forfeit a sum not exceeding three thousand dollars for the use of the creditors.

SEC. 41. *And be it further enacted*, That the gaoler shall, upon the request of any creditor, having proved his debt, and showing a certificate thereof, under the hands of the commissioners, which the commissioners shall give without fee or reward, produce the person so committed; and in case such gaoler shall refuse to show such person to such creditor, requesting the same, such person shall be considered as having escaped, and the gaoler or sheriff so refusing, shall be liable as for a wilful escape.

SEC. 42. *And be it further enacted*, That where it shall appear to the said commissioners that there hath been mutual credit given by the bankrupt, and any other person, or mutual debts between them at any time before such person became bankrupt, the assignee or assignees of the estate shall state the account between them, and one debt may be set off against the other, and what shall appear to be due on either side on the balance of such account after such set off, and no more, shall be claimed or paid on either side respectively.

Offsets to be allowed.

SEC. 43. *And be it further enacted*, That it shall and may be lawful to and for the assignee or assignees of any bankrupt's estate and effects, under the direction of the commissioners, and by and with the consent of the major part in value of such of the said bankrupt's creditors, as shall have duly proved their debts under the commission, and shall be present at any meeting of the said creditors, to be held in pursuance of due and public notice for that purpose given, to submit any difference or dispute for, on account of, or by reason or means of, any matter, cause, or thing whatsoever, relating to such bankrupt, or to his or her estate or effects, to the final end and determination of arbitrators to be chosen by the said commissioners, and the major part in value of such creditors as shall be present at such meeting as aforesaid, and the party or parties with whom they shall have such difference or dispute, and to perform the award of such arbitrators, or otherwise to compound and agree the matter in difference and dispute as aforesaid, in such manner as the said assignee or assignees under the direction and with the consent aforesaid, shall think fit and can agree; and the same shall be binding on the several creditors of the said bankrupt, and the said assignee or assignees are hereby indemnified for what they shall fairly do, according to the directions aforesaid.

Assignees may with consent of the commissioners, &c. agree to a reference or compromise.

SEC. 44. *And be it further enacted*, That the assignees shall be, and hereby are vested with full power to dispose of all the bankrupt's estate, real and personal, at public auction or vendue, without being subject to any tax, duty, imposition, or restriction, any law to the contrary notwithstanding.

Bankrupt's estate may be disposed of at public auction, without paying duty, &c.

SEC. 45. *And be it further enacted*, That if after any commission of bankruptcy, sued forth, the bankrupt happen to die before the commissioners shall have distributed the effects, or any part thereof, the commissioners shall, nevertheless, proceed to execute the commission, as fully as they might have done if the party were living.

What is to be done if the bankrupt die, pending the proceedings.

SEC. 46. *And be it further enacted*, That where any commission of bankruptcy shall be delivered to the commissioners, therein named, to be executed, it shall and may be lawful for them before they take the oath or affirmation of qualification, to demand and take from the creditor or creditors prosecuting such commission, a bond with one good security, if required, in the penalty of one thousand dollars, conditioned for the payment of the costs, charges, and expenses, which shall arise and accrue upon the prosecution of the said commission: *Provided always*, that the expenses, so as aforesaid to be secured and paid by the petitioning creditor or creditors, shall be repaid to him or them by the commissioners or assignees, out of the first monies arising from the bankrupt's estate or effects, if so much be received therefrom.

Commissioners may demand security for the expenses of the commission.

SEC. 47. *And be it further enacted*, That the district judges, in each district respectively, shall fix a rate of allowance to be made to the commissioners of bankruptcy, as compensation of services to be rendered under the commission, and it shall be lawful for any creditor, by petition to the district judge, to except to any charge contained in the account of the commissioners: and the said judge, after hearing the commissioners, may in a summary way decide upon the validity of such exception.

District judge to fix the compensation to the commissioners.

SEC. 48. *And be it further enacted*, That all penalties given by this

Penalties how recovered and appropriated.

General issue and double costs provided for defendants who acted under the commission.

Property coming to the bankrupt, before he obtains a certificate, to be vested in the commissioners.

Proceedings of the commissioners to be filed in the office of the clerk of the district, &c.

Creditors may attend the examinations of the bankrupt and the allowance of the certificate.

Trial by jury may be had in relation to certain facts.

Allowance to the bankrupt, pending the proceedings.

Creditors may direct where

act for the benefit of the creditors, shall be recovered by the assignee or assignees by action of debt, and the money so recovered, the charges of suit being deducted, shall be distributed towards payment of the creditors.

SEC. 49. *And be it further enacted*, That if any action shall be brought against any commissioner, or assignee, or other person, having authority under the commission, for any thing done or performed by force of this act, the defendant may plead the general issue, and give this act and the special matter in evidence; and in case of a nonsuit, discontinuance, or verdict or judgment for him, he shall recover double costs.

SEC. 50. *And be it further enacted*, That if any estate real or personal shall descend, revert to, or become vested in any person, after he or she shall be declared a bankrupt, and before he or she shall obtain a certificate, signed by the judge as aforesaid, all such estate shall, by virtue of this act, be vested in the said commissioners, and shall be by them assigned and conveyed to the assignee or assignees in fee simple, or otherwise, in like manner as above directed, with the estate of the said bankrupt, at the time of the bankruptcy, and the proceeds thereof shall be divided among the creditors.

SEC. 51. *And be it further enacted*, That the said commissioners shall, once in every year, carefully file, in the clerk's office of the district court, all the proceedings had in every case before them, and which shall have been finished, including the commissions, examinations, dividends, entries, and other determinations of the said commissioners, in which office, the final certificate of the said bankrupt may also be recorded; all which proceedings shall remain of record in the said office, and certified copies thereof shall be admitted as evidence in all courts, in like manner as the copies of the proceedings of the said district court are admitted in other cases.

SEC. 52. *And be it further enacted*, That it shall and may be lawful for any creditor of such bankrupt, to attend all or any of the examinations of said bankrupt, and the allowance of the final certificate, if he shall think proper, and then and there to propose interrogatories, to be put by the judge or commissioners to the said bankrupt and others, and also to produce and examine witnesses and documents before such judge or commissioners, relative to the subject matter before them. And in case either the bankrupt or creditor shall think him or herself aggrieved by the determination of the said judge or commissioners, relative to any material fact, in the commencement or progress of the said proceedings, or in the allowance of the certificate aforesaid, it shall and may be lawful for either party to petition the said judge, setting forth such facts and the determination thereon, with the complaint of the party, and a prayer for trial by a jury to determine the same, and the said judge shall, in his discretion, make order thereon, and award a *venire facias* to the marshal of the district, returnable within fifteen days before him, for the trial of the facts mentioned in the said petition, notice whereof shall be given to the commissioners and creditors concerned in the same; at which time the said trial shall be had, unless, on good cause shown, the judge shall give farther time, and judgment being entered on the verdict of the jury, shall be final, on the said facts, and the judge or commissioners shall proceed agreeably thereto.

SEC. 53. *And be it further enacted*, That the commissioners before the appointment of assignees, and the assignees after such appointment, may, from time to time, make such allowance out of the bankrupt's estate until he shall have obtained his final discharge, as in their opinion may be requisite for the necessary support of the said bankrupt and his family.

SEC. 54. *And be it further enacted*, That it shall be lawful for the major part in value of the creditors, before they proceed to the choice

of assignees, to direct in what manner, with whom, and where the monies arising by, and to be received from time to time out of the bankrupt's estate, shall be lodged, until the same shall be divided among the creditors, as herein provided; to which direction every such assignee and assignees shall conform as often as three hundred dollars shall be received.

the money shall be deposited.

SEC. 55. *And be it further enacted*, That every matter and thing by this act, required to be done by the commissioners of any bankrupt, shall be valid to all intents and purposes, if performed by a majority of them.

Majority of the commissioners may act.

SEC. 56. *And be it further enacted*, That in all cases where the assignees shall prosecute any debtor of the bankrupt for any debt, duty or demand, the commission, or a certified copy thereof, and the assignment of the commissioners of the bankrupt's estate, shall be conclusive evidence of the issuing the commission, and of the person named therein, being a trader and bankrupt, at the time mentioned therein.

The commission shall be evidence of the party being a bankrupt, &c.

SEC. 57. *And be it further enacted*, That every person obtaining a discharge from his debts, by certificate as aforesaid, granted under a commission of bankruptcy, shall not, on any future commission, be entitled to any other certificate than a discharge of his person only; unless the nett proceeds of the estate and effects of such person so becoming bankrupt a second time, shall be sufficient to pay seventy-five per cent. to his or her creditors on the amount of their debts respectively.

Effect of a discharge under a second commission.

SEC. 58. *And be it further enacted*, That any creditor of a person, against whom a commission of bankruptcy shall have been sued forth, and who shall lay his claim before the commissioners appointed in pursuance of this act, may at the same time declare his unwillingness to submit the same to the judgment of the said commissioners, and his wish that a jury may be impaneled to decide thereon: And in like manner the assignee or assignees of such bankrupt may object to the consideration of any particular claim by the commissioners, and require that the same should be referred to a jury. In either case, such objection and request shall be entered on the books of the commissioners, and thereupon an issue shall be made up between the parties, and a jury shall be impaneled, as in other cases, to try the same in the circuit court for the district in which such bankrupt has usually resided. The verdict of such jury shall be subject to the control of the court, as in suits originally instituted in the said court, and when rendered, if not set aside by the court, shall be certified to the commissioners, and shall ascertain the amount of any such claim, and such creditor or creditors shall be considered in all respects as having proved their debts under the commission.

Claims of creditors may be tried by jury.

SEC. 59. *And be it further enacted*, That the lands and effects of any person becoming bankrupt may be sold on such credit, and on such security, as a major part in value of the creditors may direct: *Provided*, nothing herein contained shall be allowed so to operate, as to retard the granting the bankrupt's certificate.

Bankrupt's estate may be sold on credit.

SEC. 60. *And be it further enacted*, That if any person becoming bankrupt, shall be in prison, it shall be lawful for any creditor or creditors, at whose suit he or she shall be in execution, to discharge him or her from custody, or if such creditor or creditors shall refuse to do so, the prisoner may petition the commissioners, to liberate him or her, and thereupon, if, in the opinion of the commissioners, the conduct of such bankrupt shall have been fair, so as to entitle him or her in their opinion, to a certificate, when by law such certificate might be given, it shall be lawful for them to direct the discharge of such prisoner, and to enter the same in their books, which being notified to the keeper of the gaol in which such prisoner may be confined, shall be a sufficient authority for his or her discharge: *Provided*, that in either case, such dis-

Creditors or commissioners may release the bankrupt from prison, and the former may issue a new execution if he does not obtain a discharge.

charge shall be no bar to another execution, if a certificate shall be refused to such bankrupt: *And provided also*, that it shall be no bar to a subsequent imprisonment of such bankrupt by order of the commissioners, in conformity with the provisions of this act.

How far this act shall affect the insolvent laws of the states.

SEC. 61. *And be it further enacted*, That this act shall not repeal or annul, or be construed to repeal or annul the laws of any state now in force, or which may be hereafter enacted, for the relief of insolvent debtors, except so far as the same may respect persons, who are, or may be clearly within the purview of this act, and whose debts shall amount in the cases specified in the second section thereof to the sums therein mentioned. And if any person within the purview of this act, shall be imprisoned for the space of three months, for any debt, or upon any contract, unless the creditors of such prisoner shall proceed to prosecute a commission of bankruptcy against him or her, agreeably to the provisions of this act, such debtor may and shall be entitled to relief, under any such laws for the relief of insolvent debtors, this act notwithstanding.

Saving of the rights of the U. States and of each state as to their debts.

SEC. 62. *And be it further enacted*, That nothing contained in this law shall, in any manner, effect the right of preference to prior satisfaction of debts due to the United States as secured or provided by any law heretofore passed, nor shall be construed to lessen or impair any right to, or security for, money due to the United States or to any of them.

Saving of existing liens.

SEC. 63. *And be it further enacted*, That nothing contained in this act, shall be taken, or construed to invalidate, or impair any lien existing at the date of this act, upon the lands or chattels of any person who may have become a bankrupt.

Limitation of this act.

SEC. 64. *And be it further enacted*, That this act shall continue in force during the term of five years, and from thence to the end of the next session of Congress thereafter, and no longer: *Provided*, that the expiration of this act shall not prevent the complete execution of any commission which may have been previously thereto issued.

APPROVED, April 4, 1800.

STATUTE I.

April 5, 1800.

Repealed by Act of Nov. 25, 1803, ch. 5.

CHAP. XXI.—*An Act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act intituled "An act to regulate the collection of duties on imports and tonnage."*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any goods, wares or merchandise, which shall be exported from the United States, after the tenth day of April current, in the manner prescribed by law, to the port of New Orleans, on the river Mississippi, shall be deemed and taken to be entitled to such drawbacks of duties as would be allowable thereon, when exported to any other foreign port or place, any thing in the act intituled "An act to regulate the collection of duties on imports and tonnage," to the contrary hereof notwithstanding.

APPROVED, April 5, 1800.

STATUTE I.

April 12, 1800.

[Obsolete.]

Act of Feb. 16, 1792, ch. 6.
Act of June 19, 1813, ch. 2.

Continuation of the act for ten years.

CHAP. XXII.—*An Act to continue in force "An act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein," and for other purposes as therein mentioned.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the act intituled "An act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein," shall be in force, and is hereby continued for the term of ten years, from the third day of March, one thousand eight hundred, and until the end